

Agenda Report



Date: January 12, 2016
To: Jeffrey W. Collier, City Manager
From: Conal McNamara, Director of Community Development
Subject: 14300 Whittier Boulevard (Whittier Carwash & Café)
Conditional Use Permit No. CUP15-008

RECOMMENDATION

It is recommended the City Council adopt a resolution denying Conditional Use Permit No. CUP15-008 to allow the on-site sale of beer and wine for an existing café within a carwash (D.B.A. Whittier Car Wash & Cafe) at 14300 Whittier Boulevard.

BACKGROUND

On September 21, 2015, the Whittier Planning Commission voted 3-0 to adopt Resolution No. P.C.15-32 denying Conditional Use Permit No. CUP15-008 due to an overconcentration of alcohol licenses within the census tract.

On October 20, 2015, the business owner, Freddie Esmaili, submitted a request to appeal the Planning Commission's decision to deny Conditional Use Permit No. CUP15-008.

On December 8, 2015, the City Council voted 3-0 (Mayor Fernando Dutra and Mayor Pro Tem Joe Vinatieri recused) to uphold the Planning Commission's decision to deny Conditional Use Permit No. CUP15-008 to allow the on-site sale of beer and wine for an existing café located in a carwash (D.B.A. Whittier Car Wash & Café) located at 14300 Whittier Boulevard. The City Council then directed staff to bring back a resolution denying Conditional Use Permit No. CUP15-008.

DISCUSSION

The State of California Department of Alcoholic Beverage Control (ABC) regulates businesses involved with the sale of alcoholic beverages. State law limits the issuance of a new license in a geographical region (census tract) of over concentration of retail alcohol outlets. If the ratio of outlets to census tract population exceeds a certain threshold, the tract is considered to be over-concentrated. The City Council expressed concern that the census tract for the site is over-concentrated and located in close proximity to schools.

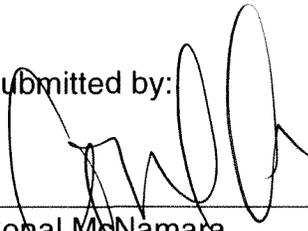
In order for the applicant to obtain the approval from ABC, the property site must either be located within a census tract that is not considered over concentrated or the City must make a finding of public convenience or necessity supporting the license.

According to ABC, the subject site is located within Census Tract 5019, and per ABC, a total of four (4) on-site (combined beer and wine and general) licenses are permitted. Currently, there are five (5) on-site licenses within the census tract where the subject site is located; consequently it is currently considered over-concentrated by one (1). As a result, the City Council determined that there is an abundance of alcohol outlets within the census tract and in the surrounding area; therefore, a finding of public convenience or necessity could not be supported for the project and an additional on-site alcohol license could not be granted.

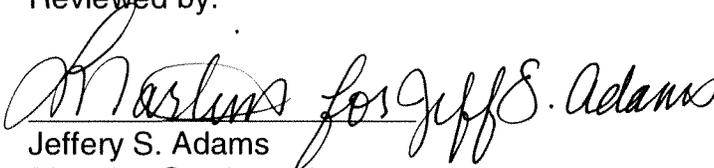
The attached resolution cites the findings for denial of the project (Attachment A).

FISCAL IMPACT

There is no fiscal impact associated with this report.

Submitted by:


Conal McNamara
Director of Community Development

Reviewed by:


Jeffery S. Adams
Planning Services Manager

Prepared by:


Brooke Daley
Assistant Planner

Attachment: A - City Council Resolution for Conditional Use Permit No.CUP15-008

ATTACHMENT A

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DETERMINING THAT THE PROJECT IS CLASSIFIED AS STATUTORILY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT UNDER SECTION 15270 (PROJECTS WHICH ARE DISAPPROVED), A FINDING THAT THERE IS NO PUBLIC CONVENIENCE OR NECESSITY TO BE SERVED BY THE PROPOSED USE AND DENYING CONDITIONAL USE PERMIT NO. CUP15-008 TO ALLOW THE ON-SITE SALE OF BEER AND WINE UNDER A TYPE 41 ALCOHOL LICENSE FOR A RESTAURANT LOCATED WITHIN AN EXISTING CAR WASH LOCATED AT 14300 WHITTIER BOULEVARD

WHEREAS, Conditional Use Permit No. CUP15-008 was submitted to allow the on-site sale of beer and wine under a Type 41 alcohol license for an existing café located in a carwash (Whittier Car Wash & Cafe) located at 14300 Whittier Boulevard, more particularly described as Assessor Parcel No. 8160-001-001, in the City of Whittier;

WHEREAS, on September 21, 2015 the Planning Commission heard public testimony and voted 3-0 to adopt Resolution No. P.C.15-32 denying Conditional Use Permit No. CUP15-008 due to an overconcentration of alcohol licenses within the census tract;

WHEREAS, on October 20, 2015, the business owner, Freddie Esmaili, submitted a letter to appeal the Planning Commission's decision to deny Conditional Use Permit No. CUP15-008; and

WHEREAS, on December 8, 2015 the City Council conducted a de novo public hearing of the Planning Commission's action to deny Conditional Use Permit No. CUP15-008.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. That on December 8, 2015, in compliance with the California Environmental Quality Act, the City Council determined that the project is Statutorily Exempt from review under Section 15270 (Projects which are Disapproved).

SECTION 2. Based upon the evidence presented, including the staff analysis and public testimony, the City Council determined that the findings as required by Section 18.52.040 (B) of the Whittier Municipal Code for the approval of a Conditional Use Permit could not be made as follows:

REQUIRED FINDING: *That the proposed use will be compatible with the permitted uses of surrounding and adjacent properties.*

FACT: The subject site is located 1,470 feet from Ocean View Elementary and 680 feet from East Whittier Middle School. Consumption of alcohol in relation to a carwash within such a close proximity to schools is not considered compatible with the existing school uses in the area due to safety.

FACT: The restaurant use is not the primary use on the site therefore most patrons coming to the site would be there for only the time it takes for their car to be cleaned. Consumption of alcohol during this short time and then returning the patron's vehicle could compromise the safety of the children in the nearby schools. Alcohol consumption should be minimized in locations that are in such proximity to schools.

FINDING: The City Council has determined that the proposed use would not be compatible with the permitted uses of the surrounding and adjacent land uses based on the fact that the carwash is located very close to existing schools and permitting an eating and drinking establishment could compromise the safety of the students at the schools.

SECTION 3. Based upon the evidence presented, including the staff analysis and public testimony, the City Council determined that it cannot make a finding of public convenience and necessity for the proposed alcohol use for the following reasons:

REQUIRED FINDING: That the use will serve a public convenience or necessity.

FACT: State law limits the issuance of new licenses in a geographical region of "undue concentration" of retail alcohol outlets.

FACT: In this case, the subject site is located within Census Tract 5019 and per ABC, a total of four (4) on-site (combined beer and wine and general) licenses are permitted. Currently, there are five (5) on-site licenses within the census tract, as a result it is considered currently over-concentrated by one (1) on-site alcoholic license.

FINDING: Due to there being an abundance of nearby alcohol licenses within the immediate vicinity, the City Council finds that a finding of Public Convenience or Necessity cannot be supported.

SECTION 4. The City Clerk-Treasurer shall certify to the passage and adoption of this resolution and shall forward a certified copy hereof to the applicant and any person requesting the same.

APPROVED AND ADOPTED this _____ day of _____ 2016.

FERNANDO DUTRA, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer

