

## **RESOLUTION 2017-071**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO APPROVING PLAN1702-0016, A CONDITIONAL USE PERMIT FOR AN ON-SALE ALCOHOL LICENSE FOR BEER AND WINE ONLY FOR A NEW FULL-SERVICE RESTAURANT, OCOTES GRILL, WITH A LIMITED OUTDOOR DINING AREA, AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR ALCOHOL SALES AT 1439 23<sup>RD</sup> STREET, SAN PABLO, CA 94806, APN 410-180-023 DESPITE AN UNDUE CONCENTRATION OF ALCOHOL USES (COMMERCIAL MIXED USE ZONING DESIGNATION AND OUTSIDE OF THE 23<sup>RD</sup> STREET SPECIFIC PLAN)**

WHEREAS, Zoning Code Section 17.16.070(B) states that all projects with multiple approvals shall be processed concurrently, and final action shall be taken by the highest level designated approving authority for all such requested permits;

WHEREAS, Zoning Code section 17.34.030 and Table 17.34-A Commercial and Industrial Districts: Use Regulations, lists a full service restaurant as requiring a use permit, and outdoor dining requiring an administrative use permit;

WHEREAS, Zoning Code Table 17.34-A allows an alcohol beverage sales use in the Commercial Mixed Use zoning district upon approval of a Use Permit;

WHEREAS, the state department of Alcoholic Beverage Control identifies the City Council as the local governing body to approve a determination of Public Convenience or Necessity when an undue concentration of alcohol sales uses exists. For this reason, final action on the Conditional Use Permit for the full service restaurant with a limited outdoor dining area and Public Convenience or Necessity must be made by the City Council;

WHEREAS, the City Council shall make findings that the establishment, maintenance or operation of the proposed on-site beer and wine sales will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;

WHEREAS, this project is exempt under the California Environmental Quality Act, Class 1, Existing Facilities. Class 1 addresses an existing private structure, such as this recently renovated building, where a new full service, with a limited outdoor dining area, will be operating;

WHEREAS, the Planning Commission conducted a public hearing on March 21, 2017, at which oral and written testimony was taken, in addition to reviewing the staff report and all attachments, and the Planning Commission adopted Commission Resolution 17-03 recommending approval subject to conditions of approval; and

WHEREAS, notices were mailed to owners of properties within a 300-foot radius of the site. The notices were mailed on Tuesday, April 4, 2017. In addition, a Public Hearing Notice was published in the East Bay Times newspaper on Wednesday, April 5, 2017.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Pablo has reviewed the proposed project and recommends approval to the City Council based on the following findings:

- A. The proposed project has been determined to be categorically exempt from the provisions of the California Environmental Quality Act, in accordance with CEQA Guidelines pursuant to Section 15301, Existing Facilities. Class 1 addresses an existing private structure, such as this recently renovated building, where a restaurant will be operating.

*In 2011, the Planning Commission approved a design review for a change to the exterior of the existing building. No addition to the building was part of the design review that was approved in 2011, and there is no addition to the building as part of the project to open a new restaurant at 1439 23<sup>rd</sup> Street. Section 15301, Existing Facilities, Class 1 of the CEQA Guidelines consists of the operating of private structures involving negligible or no expansion of use. As there is no expansion to the existing and recently renovated building, the proposal for a new restaurant with on-site beer and wine sales is exempt from the California Environmental Quality Act.*

- B. That the granting of this Use Permit will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicants and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

*Granting the Use Permit allows the proposed new full service restaurant, with a limited outdoor dining area, to provide a service, the purchase of beer and wine that are consumed on site with meals, and enables the restaurant to compete with similar dining establishments. The beer and wine sales is an option to those customers who would like to enhance their dining experience with beer or wine. A condition of approval has been assigned to require employees of the restaurant to receive License Education on Alcohol and Drugs (LEAD) training. This training provides practical information on serving alcoholic beverages safely, responsibly and legally, and preventing illicit drug activity at the restaurant. For this reason, the granting of the Use Permit will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicants and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.*

- C. The proposed project complies with the development standards of the Commercial Mixed Use (CMU) zoning district.

*The proposed new restaurant will be operating in an existing building that meets the development standards of the Commercial Mixed Use zoning district.*

- D. The proposed project incorporates Policy LU I -20, Mixed Use, for the Commercial Mixed Use Land Use category where this policy, “allows small-scale non-residential uses in neighborhoods that contribute to the residential character of an area or provide complimentary services within the neighborhood, such as child care, neighborhood retail, and other stores”.

*The request for a Use Permit, for an on-sale beer and wine license as part of a new full service restaurant, with a limited outdoor dining area, at 1439 23<sup>rd</sup> Street, is meant to enhance the restaurant dining experience. It is commonplace and an expected aspect of dining out that a patron, over the age of 21, can purchase beer or wine to add to the enjoyment of their meal. Not having the opportunity to sell beer and wine, in conjunction with a meal, can put a restaurant at a competitive disadvantage with other similar uses. There are two (2) restaurants in Census Tract 3680.01 that have licenses to sell alcohol with meals – one on 23<sup>rd</sup> Street and one on Rumrill Blvd. The balance of on-site alcohol sales within the City are other restaurants or bars where beer, wine or distilled spirits are consumed. Conditions of approval have been assigned by the Police Department to limit the hours of sales of beer and wine, prevent loitering, and require that monthly records that clearly illustrate the gross sales of food and alcoholic beverages. As the applicant has indicated that 70% of the sales will be from food, and 15% will come from the sale of alcoholic beverages, Planning staff has included these percentages in the conditions of approval. Planning staff will also include the condition about attending a LEAD program for each employee, and will incorporate the relevant operating characteristics as discussed in the narrative about the restaurant and alcohol sales use as conditions of approval. Lastly, the approval of the Use Permit for an on-sale beer and wine license, and full service restaurant, with a limited outdoor dining area, by the City Council, along with the determination of Public Convenience or Necessity due to an undue concentration of retail alcohol uses, requires any change in the Use Permit – hours of operation, change in license type – must first be submitted to the City of San Pablo for review.*

- E. Public notice of the hearing has been given by mail to the applicants, local affected agencies, all property owners within 300 feet of the subject property, and has been published in the East Bay Times, in accordance with the requirements of Government Code Section 65905.

*Notices were mailed to owners of properties within a 300-foot radius of the site. The notices were mailed on Tuesday, April 4, 2017. In addition, a Public Hearing Notice was published in the East Bay Times newspaper on Wednesday, April 5, 2017.*

BE IT FURTHER RESOLVED that the City Council of the City of San Pablo finds that despite the undue concentration of establishments serving alcohol in the census tract where the proposed project would be located, public convenience or necessity would be served by allowing a full service restaurant with a limited outdoor dining area at this location to have an on-sale beer and wine license. This allows the new full service restaurant, with a limited outdoor dining area, to provide a service, on-site beer and wine sales, as an added feature to its patrons, in order to be competitive with other restaurants along 23<sup>rd</sup> Street, and within the City of San Pablo that provide a similar on-site alcohol sales component to the dining experience. Staff of the restaurant will participate in training offered by the state department of Alcoholic Beverage Control. The purpose of this training is to provide the licensee with practical information on serving alcoholic beverages safely, responsibly and legally, and preventing illicit drug activity at the restaurant. Proof of attendance of this program, provided by the state department of Alcohol Beverage Control, will be required to be submitted to the Development Services Department, within 60 days of the receiving the beer and wine license from the state department of Alcoholic Beverage Control.

BE IT FURTHER RESOLVED that the City Council of the City of San Pablo hereby approves the Conditional Use Permit, for a new full service restaurant with a limited outdoor dining area, and on-site beer and wine sales, and approves the determination of Public Convenience or Necessity. The following Conditions of Approval for PLAN1702-0016 are provided below:

1. The Use Permit shall become null and void within one year of the effective date of approval.
2. The Use Permit is only for on-sale beer and wine sales in a new full service restaurant with a limited outdoor dining area. No sales of distilled spirits can occur at this location without submitting an application to amend the approved Use Permit.
3. The use shall be conducted in substantial compliance with Exhibit A-1, dated February 28, 2017, on file with the Development Services Department, PLAN1702-0016. Minor amendments to this Conditional Use Permit may be approved by the Zoning Administrator if it is determined the overall intent of the permit is fulfilled.
4. The applicant shall comply with all of the provisions of Section 17.62.020, Alcoholic Beverage Sales, of the San Pablo Zoning Ordinance including full compliance with Section 17.62.020 (D) regarding full-service restaurant.
5. The applicant shall obtain a City of San Pablo business license and all permits and licenses needed to serve food and drink, including but not limited to licenses from the Contra Costa County Health Department. Nothing other than food, drinks and associated restaurant items shall be sold. All food and drink preparation shall be done in strict accordance with Federal, State and local health regulations.
6. The operating hours shall be 9am – 10pm, Monday through Sunday. No alcohol sales are allowed after 10pm. Any request to increase the hours

associated with the on-sale beer and wine license, or include the sales of distilled spirits, must be submitted in an application to amend the hours of operation and type of on-sale license of this Use Permit from the City of San Pablo. Any subsequent request to increase the hours of the restaurant and the beer and wine sales will be limited to 12midnight.

7. The applicant, in the operation of the business, shall not serve alcohol to an obviously intoxicated person, serve or sell alcohol to a minor, serve or sell alcohol without valid identification verifying age, or serve or sell alcohol outside of the permitted hours. If two such violations occur in a 12-month period, the use permit may be revoked.
8. Upon the closing of the restaurant, the management or its representatives will not allow patrons to loiter in or about the business and will not furnish or sell alcohol to anyone on the premises.
9. The business shall affix "NO LOITERING" signs to the building that are easily visible by the public.
10. A minimum of seventy (70) percent of the revenue of the sales shall come from food, and a maximum of fifteen (15) percent of sales shall come from alcoholic beverages. The monthly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect a separate gross sale of food and the gross sales of alcoholic beverages of the licensed business. Records will be kept on a monthly basis and shall be made available to the San Pablo Police Department on demand.
11. No reduction in the offering of breakfast meals can occur without first obtaining approval from the Development Services Department.
12. All current and future employees shall attend one free LEAD, License Education on Alcohol and Drugs, prevention and education program. The purpose of this training is to provide the licensee with practical information on serving alcoholic beverages safely, responsibly and legally, and preventing illicit drug activity at the restaurant. Proof of attendance of this program, provided by the state department of Alcohol Beverage Control, will be required to be submitted to the Development Services Department, within 60 days of the receiving the beer and wine license from the state department of Alcoholic Beverage Control.
13. If the use granted by this Conditional Use Permit is discontinued for a period of six consecutive months, the Use Permit automatically expires.
14. Failure to comply with any of the terms or conditions of this Use Permit is a violation of this title, subject to the enforcement provisions prescribed by Chapter 17.10, Enforcement, and any and all other penalties and remedies that may be provided by law.

15. Any Use Permit granted in accordance with the terms of this chapter may be revoked if any of the conditions or terms of such permit are violated, the use is discontinued, or if any law or ordinance is violated in connection therewith.
16. No illegal signs, pennants, banners, balloons, flags, or streamers are to be used on this site at any time.
17. All signs shall be subject to the review and approval by the City. No other outside displays are permitted. Prior to the installation of any signs, the applicant shall obtain design review approval from Development Services Planning Division, and building permits from the Building Department.
18. The site be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
19. Indemnification: Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless the City of San Pablo and its agents, officers, or employees from any claim to attack, set aside, void or annul, the City's approval concerning this planning application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the applicant of any such claim, action, or proceeding and cooperate fully in the defense.

BE IT FURTHER RESOLVED that the foregoing recitations are true and correct, and are included herein by reference as findings.

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ADOPTED this 17<sup>th</sup> day of April, 2017, by the following vote:

AYES:	COUNCILMEMBERS:	Cruz, Kinney, Morris, Calloway and Valdez
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None

ATTEST:

APPROVED:

/s/ Ted J. Denney  
Ted J. Denney, City Clerk

/s/ Cecilia Valdez  
Cecilia Valdez, Mayor