

RESOLUTION 2021-050

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO GRANTING APPROVAL OF A CONDITIONAL USE PERMIT FOR ON-SITE BEER AND WINE SALES ASSOCIATED WITH AN EXISTING RESTAURANT, EL MEZCAL TAQUERIA, AND THE DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR ON-SITE BEER AND WINE SALES AT 14260 SAN PABLO AVENUE, APN 416-120-012

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 approval authority for all such requested permits;

WHEREAS, the project site at 14260 San Pablo Avenue is located in the San Pablo Avenue Specific Plan area (SP-2) and the land use designation is Residential Mixed Use;

WHEREAS, restaurants are an allowed use in the Residential Mixed Use district within the San Pablo Avenue Specific Plan (SP-2);

WHEREAS, the applicant, Francisco Sepulveda of El Mezcal Taqueria, wishes to add beer and wine sales to an existing full-service restaurant at this location;

WHEREAS, San Pablo Avenue Specific Plan Table 2-2 allows alcohol beverage sales use in the Residential Mixed Used district upon approval of a Use Permit;

WHEREAS, the California Department of Alcoholic Beverage Control identifies the City Council as the local governing body to approve a determination of Public Convenience or Necessity. For this reason, final action on the Conditional Use Permit and Public Convenience or Necessity must be made by the City Council;

WHEREAS, this project is exempt from the California Environmental Quality Act under Class 1, Existing Facilities, as it involves an existing private structure with no interior or exterior modifications;

WHEREAS, following a duly-noticed public hearing on March 23, 2021, the Planning Commission of the City of San Pablo unanimously adopted Resolution PC 21-04, recommending approval of PLAN2103-0002, a Conditional Use Permit for on-site beer and wine sales associated with an existing full-service restaurant, and the determination of public convenience or necessity for the on-site beer and wine sales;

WHEREAS, a public notice hearing has been given by mail to the applicant, local affected agencies and to all property owners within 300 feet of the subject property, and has been published in the West County Times newspaper (West Contra Costa edition of the East Bay Times) in accordance with the requirements of Government Code Section 65091, and public hearing was held on April 19, 2021, at which public testimony was considered.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of San Pablo has reviewed the proposed project and approves the Conditional Use Permit, 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 the building, where the restaurant is currently operating.

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 building, the proposal for a new restaurant with on-site beer and wine sales is exempt from the California Environmental Quality Act.

- B. The granting of the Conditional 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.

The use requires a determination by the City Council that there is a public convenience or necessity for an on-sale beer and wine license due to a higher-than-average crime rate in the area in which the permit would be located per section 23958.4 of the California Business and Professional Code.

Granting the Conditional Use Permit for the proposed beer and wine sales would help the newly-established El Mezcal Taqueria build its clientele by offering additional choices for beverages along with its meals, thus helping to make it a more viable business at this location. The site is in an area that is largely commercial, containing other auto-oriented commercial and personal services businesses. The relatively intensive commercial character likely contributes to the higher-than-average number of crime offences in the area. Offering beer and wine sales at this location would not be disruptive to other nearby uses nor would it be detrimental or injurious to property improvements in the neighborhood or the general welfare of the City as a whole.

- C. The proposed request would be responsive to General Plan policies calling for the enhancement of existing commercial areas.

The proposal to add beer and wine sales at this full-service restaurant is consistent with these policies in that it would help to strengthen the viability of an existing commercial use by offering additional beverage choices for diners.

- D. The project complies with the development standards of the Zoning Ordinance and would not result in the expansion of any nonconformities at the site.

The existing restaurant operates in an existing building that meets the development standards of the SP-2, Residential Mixed Use District.

- 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 Monday April 5, 2021. In addition, a Public Hearing Notice was published in the West County Times (West Contra Costa edition of the East Bay Times) newspaper on April 9, 2021; and

BE IT FURTHER RESOLVED that the City Council of the City of San Pablo finds that despite the higher-than-average number of offenses in the census tract where the proposed project is located, the public convenience or necessity would be served by allowing this existing full-service restaurant to provide on-site beer and wine sales as an added service for its patrons, and in order to be more competitive with other full-service restaurants along San Pablo Avenue, and within the City of San Pablo generally, that provide a similar on-site alcohol sales component to the dining experience; and

BE IT FURTHER RESOLVED that the City Council of the City of San Pablo hereby approves this Use Permit, along with the determination of Public Convenience or Necessity, subject to the following Conditions of Approval:

1. The Use Permit shall become null and void within one year of the effective date of approval if not applied.
2. The Use Permit is only for on-sale beer and wine sales. No sales of distilled spirits shall occur at this location without the submittal and approval of an application to amend the approved Use Permit.
3. The use shall be conducted in substantial compliance with the Narrative, proposed menu, and floor plan of the restaurant, submitted on March 10, 2021, and on file with the Community Development Department, PLAN2103-0002. 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 restaurants.

5. The applicant shall obtain a City of San Pablo business license and all permits and licenses needed to serve food and drinks, 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 at this location. All food and drink preparation shall be done in strict accordance with Federal, State and local health regulations.
6. An evaluation of this Use Permit shall occur after a 12-month period from the approval date in order for staff and the Police Department to verify that all conditions of approval are met and to conduct a safety evaluation.
7. The applicant shall submit an application and obtain an Administrative Use Permit from the City of San Pablo to allow the Outdoor Dining section of the Restaurant, per Section 17.18.080 of the Zoning Code. If the outdoor dining is a temporary provision during the COVID-19 pandemic, the operator shall alternatively apply for and obtain a Temporary Use Permit from the City of San Pablo as well as a temporary catering permit from ABC.
8. The operating hours shall be 10:00 am to 8:00 pm Monday through Sunday. No alcohol sales shall be allowed after 7:30 pm. Any future request to increase the hours associated with the on-sale beer and wine license, or include the sales of distilled spirits, shall 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 shall be limited to no later than 12:00 midnight.
9. 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.
10. At the close of the business hours, the management or its representatives shall not allow patrons to loiter in or about the business and shall not furnish or sell alcohol to anyone on the premises.
11. The business shall affix "NO LOITERING" signs to the building that are easily visible by the public prior to a Business License issuance.
12. A minimum of sixty (60) percent of the revenue of the sales shall come from food, and a maximum of forty (40) percent of sales shall come from alcoholic beverages from this business. 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 shall be kept on a monthly basis and shall be made available to the San Pablo Police Department on demand.

13. All current and future employees shall attend at least one LEAD, License Education on Alcohol and Drugs, prevention and education provided by the California Department of Alcoholic Beverage Control or equivalent program before engaging in alcohol beverage service. 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 by current employees, provided by the California Department of Alcohol Beverage Control, shall be required to be submitted to the Community Development Department, before alcohol beverage service begins.
14. The Conditional Use Permit shall be contingent upon compliance with relevant Contra Costa County Health Orders, with the Department of Alcoholic Beverage Control COVID-19 Temporary Catering Authorization, and compliance with State COVID-19 Industry Guidance for Restaurants providing indoor or outdoor dining, takeout, drive- through, and delivery.
15. No illegal signs, pennants, banners, balloons, flags, or streamers are to be used on this site at any time.
16. 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 the Planning Division and building permits from the Building Department.
17. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
18. If the use granted by this Conditional Use Permit is discontinued for a period of six consecutive months, the Use Permit shall automatically expire.
19. Failure to comply with any of the terms or conditions of this Use Permit is a violation of the City of San Pablo Municipal Code, 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.
20. Any Use Permit granted in accordance with the terms of the City of San Pablo Municipal Code 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.
21. 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 19th day of April 2021, by the following votes:

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| AYES: | COUNCILMEMBER: | Cruz, Ponce, Pineda and Xavier |
| NOES: | COUNCILMEMBER: | None |
| ABSENT: | COUNCILMEMBER: | Pabon-Alvarado |
| ABSTAIN: | COUNCILMEMBER: | None |

ATTEST:

APPROVED:

/s/ Dorothy Gantt
Dorothy Gantt, City Clerk

/s/ Elizabeth Pabon-Alvarado
Elizabeth Pabon-Alvarado, Mayor