



## Legislation Details (With Text)

**File #:** #21-149      **Version:** 1      **Name:**

**Type:** RESOLUTION      **Status:** Passed

**File created:** 3/31/2021      **In control:** City Council

**On agenda:** 4/19/2021      **Final action:** 4/20/2021

**Title:** PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR AN ON-SITE BEER AND WINE LICENSE FOR AN EXISTING RESTAURANT, EL MEZCAL TAQUERIA, AT 14260 SAN PABLO AVENUE, APN 416-120-012

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. RES 2021-050 El Mezcal CUP 14260 San Pablo Ave, 2. A - RES PC21-04 Amended 14260 San Pablo Ave, CUP Alcohol Sales, 3. B - Concentration Statistics, 4. C - Section 23958.pdf, 5. D - ABC Licenses types

Date	Ver.	Action By	Action	Result
4/20/2021	1	City Council	adopted	Pass

**PREPARED BY:** LAURA SANTILLAN

**DATE OF MEETING:** 04/19/21

**SUBJECT:**

PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR AN ON-SITE BEER AND WINE LICENSE FOR AN EXISTING RESTAURANT, EL MEZCAL TAQUERIA, AT 14260 SAN PABLO AVENUE, APN 416-120-012

**CITY MANAGER RECOMMENDATION**

Conduct public hearing; adopt Resolution

**COMPLIANCE STATEMENTS**

**FY 2021-23 City Council Priority Workplan Compliance Statement**

*Economic Development and Diversification* is an adopted Major Policy Goal under FY 2021-23 City Council Priority Workplan, effective March 15, 2021.

**CEQA Compliance Statement**

The project has been determined to be exempt under the California Environmental Quality Act, Section 15301, Class 1, Existing Facilities. Class 1 addresses an existing private structure, such as the existing commercial building, where the restaurant is currently operating.

**BACKGROUND**

A request for approval of a Conditional Use Permit and determination of public convenience or necessity for on-site beer and wine sales at an existing restaurant, known as El Mezcal Taqueria, at 14260 San Pablo Avenue, APN 416-120-012 has been submitted by Francisco Sepulveda.

A determination of Public Convenience or Necessity is required by the State Department of Alcoholic

Beverage Control as there is a higher-than-average overall crime rate in the Census Tract where the restaurant is located. The applicant must demonstrate that a determination of Public Convenience or Necessity (PCN) exists to allow Alcoholic Beverage Control to issue an additional on-site alcohol sales license (for beer and wine only) in an area where there is a higher-than-average crime rate. The Planning Commission reviews the request for the Conditional Use Permit and the PCN determination and forwards a recommendation to the City Council. The City Council is the authorized approving authority for the determination of PCN.

A former Weinerschnitzel franchise location, the subject restaurant, El Mezcal Taqueria, faces San Pablo Avenue with secondary access from Purisima Street. The 2,261 square foot free-standing building has on-site parking and a drive-through facility. The drive-through is located on the southern side of the building with a designated curb cut entrance on San Pablo Avenue. The site has 26 off-street parking spaces including two (2) ADA designated spaces, in front of the building facing San Pablo Ave and around the southern side of the building.

Attached to this memorandum is a copy of the restaurant menu, which includes both lunch and dinner items, and photographs of the restaurant facility. The posted hours of operation are Monday through Sunday 10 AM to 8 PM. This is a local chain restaurant which has other locations in San Lorenzo and Hayward and has been operating in San Pablo for approximately one year (see Attachment E). The restaurant offers an outdoor dining section; however, the Planning Division does not have an approved permit on file for outdoor dining at this location. Per Table 2-2 Land Use Standards by Classification of the San Pablo Ave Specific Plan (SP2), an Administrative Use Permit is required for Outdoor Dining. An Administrative Use Permit application for outdoor dining will be required as a condition of approval for this Conditional Use Permit. Alternatively, if the outdoor dining is of a temporary nature due to the COVID-19 pandemic, the applicant shall seek a Temporary Use Permit from the City of San Pablo.

At its meeting on March 23, 2021, the Planning Commission recommended approval of the request for the Conditional Use Permit and the PCN determination by a vote of four ayes and zero nays.

### **GENERAL PLAN CONFORMANCE**

The General Plan designation of the applicable parcel is Residential Mixed-Use within the San Pablo Avenue Specific Plan. This designation is intended for a mix of uses that include residential, office and retail. The following General Plan policies apply to this request:

***Guiding Policy LU-G-7: Retain and enhance existing commercial, industrial, educational and entertainment land use areas to strengthen San Pablo's economic base.***

***Guiding Policy LU-G-6: Promote site sensitive design and pedestrian-oriented activities in mixed-use developments.***

### ***Policy LU-I-20: Mixed Use***

***Allow small-scale non-residential uses in neighborhoods that contribute to the residential character of an area or provide complementary services within the neighborhood such as child care, neighborhood retail, and other stores.***

The community-serving restaurant use is envisioned by the General Plan as a part of the Residential Mixed-Use area. 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 customers. The existing outdoor dining promotes site-sensitive design and pedestrian-oriented activities but will require proper permitting as a condition of the current request.

### **ZONING CONFORMANCE**

The property is located along San Pablo Avenue and is designated Residential Mixed-Use by the San Pablo Avenue Specific Plan (SP2). Restaurants are allowed uses in the Residential Mixed-Use zoning district. However, the alcoholic beverage sales use requires approval of a Conditional Use Permit along with a determination of Public Convenience or Necessity (PCN) at this location. No exterior or interior changes are proposed to the building other than an anticipated outdoor dining request. Section 17.62.020 of the Zoning Ordinance defines alcoholic beverages, restrictions on locations for selling or serving alcoholic beverages, and full-service restaurant requirements for alcoholic beverage sales. The subject restaurant, EL Mezcal Taqueria, is a full-service restaurant, as defined by Section 17.62.020 Alcoholic beverage sales. According to Section 17.62.020.D:

*“full-service restaurant” means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant.”*

### **CONDITIONAL USE PERMIT**

As stated above, the alcohol beverage sales use requires the approval of a Conditional Use Permit before this service can be established. Should the requested Use Permit be approved, then the license will be considered by the California Department of Alcoholic Beverage Control (ABC).

The Conditional Use Permit process is set forth in Section 17.20.040 of the Zoning Code, and identifies the following necessary findings for granting of a permit:

*That the establishment, maintenance, or operation of the use of the building applied for 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 the general welfare of the city.*

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 making 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. 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.

Findings to support the granting of a Conditional Use Permit in this case include the following:

- A. The granting of the requested Conditional Use Permit will not materially adversely affect the health or safety of persons residing or working in the neighborhood of the property 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.

- B. The proposed request would help to strengthen a newly-established full-service restaurant that is well suited to the site and to other auto-oriented commercial uses in the vicinity.
- C. The proposed request would be responsive to General Plan policies calling for the enhancement of existing commercial areas.
- 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.
- E. Public notice of the hearing has been given by mail to the applicants, local affected agencies, and all property owners within 300 feet of the subject property and has been published in the West County Times (West Contra Costa edition of East Bay Times), in accordance with the requirements of Government Code Section 65905.

### **PUBLIC CONVENIENCE OR NECESSITY**

California Business and Professional Code Section 23958.4 states that if there is an undue concentration in alcohol licenses or the location is in a higher crime identified area, the applicant must demonstrate that public convenience or necessity would be served by the issuance of the on-sale beer and wine license. According to ABC, 14260 San Pablo Avenue has been identified as an area with a higher crime rate (see Attachment B). A determination to demonstrate public convenience or necessity is required in this case. An on-sale beer and wine only eating place is a Type 41 license (see Attachment D).

The criteria to be used for a determination of “public convenience or necessity” for an on-sale beer and wine license is found in section 23958.4 of the California Business and Professional Code (CBPC), where the issue of “undue concentration” is discussed (see Attachment C). The language in Section 23958.4(a)(1) and (2) and (b)(1) states that an “undue concentration” exists when either:

- There are 20% more crimes in the crime reporting area than the average number of reported crimes from all reporting areas in the City of San Pablo; and/or
- The ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

According to the ABC, up to five (5) on-sale licenses are allowed in the corresponding census tract. Based on the statistics provided by ABC, there are currently three (3) other active type 41 licenses in this census tract. The total number of offenses in the reporting district is twenty-five (25), and the average number of offenses per district is fourteen (14). In this case, the number of alcohol licenses is not the triggering factor, but rather the crime rate number in the area. The higher-than-average number of offenses at this location is likely due to the relatively intensive commercial character of the surrounding area.

Other nearby liquor license holders include La Movida Nightclub and the Hardy Liquor Store across San Pablo Avenue and to the north at Lovegrove Street. The Walgreens Pharmacy on San Pablo Avenue just north of the site also has alcoholic beverages for package sale. The El Mezcal Taqueria is the only full-service restaurant in the nearby vicinity and would be the only license holder in immediate area offering on site beer and wine for consumption with meals.

When an on-sale beer and wine license is to be part of a restaurant, Section 23958.4(b)(2) states that it is the applicant (business or property owner) who must demonstrate that public convenience or necessity would be served by the issuance of the on-sale beer and wine license. The applicant has submitted a narrative which discusses the business products and services, hours of operation and number of employees, uniqueness and positive impact on the City with the on-sale beer and wine license. The hours of operation would be 10:00 a.m. to 8:00 p.m., Monday through Sunday. Lunch and dinner are served at this location. Beverage staff shall be over 21 years of age, and management and staff would need to have required Alcohol Beverage Control training. Attachment E is the narrative, proposed menu, and floor plan of the restaurant.

### **SUGGESTED CONDITIONS OF APPROVAL**

The attached Council Resolution includes the following conditions of approval that have been prepared by the Police and Community Development Departments and are recommended by the San Pablo Planning Commission:

- No alcohol sales past 7:30 pm. Any subsequent request to increase the hours of the restaurant and the beer and wine sales will be limited to 12:00 midnight. Any request to increase the hours associated with the on-sale beer and wine license, or to 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.
- Upon closing, 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.
- The business shall affix “NO LOITERING” signs to the building that are easily visible by the public.
- The business shall operate as a full-service restaurant, as defined in San Pablo Municipal Code section 17.62.020 Alcoholic beverage sales. Substantial sales shall mean that no less than 60 percent of total revenue shall be generated from food service and no more than 40 percent of revenue from the sales of alcohol. 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.
- 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 conduct a safety evaluation.
- 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 Alcoholic Beverage Control, will be required to be submitted to the Community Development Department, Planning Division staff, before alcohol

beverage service can begin.

- The Conditional Use Permit is contingent upon compliance with relevant Contra Costa County Health Orders, with the Department of Alcoholic Beverage Control COVID-19 Temporary Catering Authorization, and with State COVID-19 Industry Guidance for Restaurants providing outdoor dining, takeout, drive-through, and delivery.
- The applicant shall submit an Administrative Review application and corresponding materials to the Planning Division for the Outdoor Dining section of the Restaurant, per Section 17.18.080 Administrative Use Permit. 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.

### **PUBLIC HEARING NOTICE**

Notices were mailed to owners of properties within a 300-foot radius of the site on April 5, 2021. In addition, a Public Hearing Notice was published in the West County Times (West County Edition of the East Bay Times) newspaper on Friday, April 9, 2020.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on this item on March 23, 2021. The public hearing was opened and there were no public comments. As the applicant was not able to attend the hearing due to a schedule conflict, he provided prior agreement to the Conditions of Approval which was relayed by City staff. The Planning Commission adopted Resolution PC 21-04, recommending approval of the 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, subject to findings and conditions. The approval of the Resolution was adopted unanimously.

### **CONCLUSION**

Along with the Planning Commission recommendation, staff also supports the request for a Use Permit for an on-sale beer and wine license and finding of Public Convenience or Necessity (PCN) at this location as the sales of alcoholic beverages is proposed to enhance the restaurant dining experience and to improve the economic viability of the business. 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. Conditions of approval have been recommended to limit the hours of sales of beer and wine, prevent loitering, and require that monthly records be submitted that clearly illustrate the gross sales of food and alcoholic beverages. Employees must also attend a LEAD program regarding the lawful and responsible serving of alcohol. There would be a safety evaluation of the Conditional Use Permit after a 12-month period. Any changes to the approved Conditional Use Permit, including hours of operation or a change in license type, must first be submitted to the City of San Pablo for review.

### **FISCAL IMPACT**

Planning application fees were collected and City resources spent for the review of the project. Approval of the conditional use permit would likely result in higher sales and use tax revenues for the City due to the additional sale of alcoholic beverages.

### **ATTACHMENTS**

Resolution 2021-###

- A. Resolution PC21-04; Planning Commission Recommendation
- B. Concentration Statistics Form from ABC
- C. Section 23958 Times.4 of the California Business and Professions Code
- D. ABC License types and their basic privileges
- E. Narrative, proposed menu, floor plan of the restaurant and photos
- F. Proof of Publication of Public Hearing