



## Legislation Text

File #: #17-0119, Version: 1

**PREPARED BY:** ELIZABETH DUNN

**DATE OF MEETING:** 04/17/17

**SUBJECT:**

PUBLIC HEARING AND 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 AS PART OF A NEW FULL SERVICE RESTAURANT WITH A LIMITED OUTDOOR DINING AREA, AND A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR OCOTES GRILL, 1439 23<sup>RD</sup> STREET, SAN PABLO, CA 94806 (COMMERCIAL MIXED USE ZONING DESIGNATION AND OUTSIDE OF THE 23<sup>RD</sup> STREET SPECIFIC PLAN)

**CITY MANAGER RECOMMENDATION**

Conduct public hearing; adopt Resolution

**COMPLIANCE STATEMENTS**

There is no specific policy initiative in the FY 2015-2017 Council Adopted Workplan, effective October 1, 2016, that addresses processing private development applications. However, the San Pablo Municipal Code gives the City Council the authority to take action on a Conditional Use Permit and Determination of Public Convenience or Necessity for on-site alcohol sales where an undue concentration of alcohol uses exists.

**CEQA Compliance Statement**

This project is exempt under the California Environmental Quality Act, Section 15301, Class 1, Existing Facilities. Class 1 addresses an existing private structure, such as this recently renovated building, where a restaurant will be operating.

**PROJECT OVERVIEW AND DESCRIPTION**

The project applicant, Raul Ledesma, is requesting approval of a Use Permit for on-site beer and wine sales as part of a new full-service restaurant, with a limited outdoor dining area, and has requested a determination of Public Convenience or Necessity (PCN) for this on-site alcohol license. The determination of Public Convenience or Necessity is required as there is an undue concentration of on-sale retail alcohol licenses in the Census Tract where the restaurant is located. Ocotes Grill is the new full-service restaurant, with a limited outdoor dining area, and is located at 1439 23rd Street, APN 410-180-023. Adopting the attached Resolution approves the Use Permit, for a full-service restaurant with a limited outdoor dining area, and approves the determination of Public Convenience or Necessity for the sale of beer and wine.

**SITE LOCATION/CHARACTERISTICS:**

Property Owner: Griselda Ledesma

Applicant: Raul Ledesma

Location: 1439 23rd Street

Assessor Parcel Number: 410-180-023

General Plan Designation: Commercial Mixed Use (CMU)

Zoning District: Commercial Mixed Use (CMU)

Surrounding Zoning and Land Uses:

North: CMU: Medium Density Residential designation approximately 100 away from the CMU property

South: CMU: Medium Density Residential designation approximately 100 away from the CMU property

East: CMU on the east side of 23rd Street. CMU: Medium Density Residential designation approximately 100 away from the CMU property

West: CMU on the east side of 23rd Street. CMU: Medium Density Residential designation approximately 100 away from the CMU property

**GENERAL PLAN CONFORMANCE**

The proposal, to allow an alcoholic beverage sales use for beer and wine as part of a new full service restaurant with a limited outdoor dining area, is consistent with the following General Plan Actions and Policies for the Commercial Mixed Use land use category:

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 complimentary services within the neighborhood, such as child care, neighborhood retail, and other stores.

The owner of property at 1439 23rd Street received approval from the Planning Commission in 2011 to renovate the existing building, redesign the exterior façade, landscape and parking layout of the property and create a mixed-use building. Six (6) commercial tenant spaces are proposed on the ground floor with one (1) residential unit above. A new full service restaurant with a limited outdoor dining area, Ocotes Grill, will occupy two spaces on the ground floor that face 23rd Street.

**ZONING CONFORMANCE**

The property is in the Commercial Mixed Use (CMU) district. General restaurants are allowed uses in the Commercial Mixed Use (CMU) zoning district. A full service restaurant requires a Conditional Use Permit in the Commercial Mixed Use (CMU) zoning district. Outdoor dining is allowed with an administrative use permit. The City Council has the authority to approve a Conditional Use Permit for on-site alcohol beverage sales use and determination of Public Convenience or Necessity when an undue concentration of alcohol uses exists. The Municipal Code provisions regarding alcoholic beverage sales require that this be a full-service restaurant. The request to use the outdoor dining

space is incorporated into the Conditional Use Permit for the full service restaurant use at 1439 23<sup>rd</sup> Street.

The following table illustrates the development standards for the CMU zoning district:

**Summary of Zoning Ordinance Development Standards**

<b>DEVELOPMENT STANDARDS FOR CMU ZONING DISTRICT</b>			
<b>Standards</b>	<b>Zoning Ordinance Requirement</b>	<b>Proposed Project</b>	<b>Complies?</b>
Minimum parcel area	5,000 square feet	10, 750 square feet	Yes
Maximum building height	50 feet	25.4	Yes
Minimum floor area ratio	.75	.45	Yes
Maximum floor area ratio (non-office)	1.5	.45	Yes
Maximum density (du/ac)	50	12	Yes
Setbacks	None are required	NA	Yes

Section 17.62.020 describes its purpose, and defines alcoholic beverage, restrictions on locations, and full-service restaurant for alcoholic beverage sales. This language from the Zoning Code is provided below:

17.62.020 Alcoholic beverage sales.

A. Purpose. The purpose of this section is to establish site planning, development, and/or operating standards for alcoholic beverage sales businesses. It is the city’s intent, in establishing these standards, to mitigate the potential adverse impacts of this use and activities on adjacent and surrounding land uses.

B. Alcoholic Beverage. For the purposes of this section, “alcoholic beverage” means alcohol, spirits, liquor, wine, beer, or any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

C. Restrictions on Location. No alcoholic beverage sales use shall be located closer than one thousand feet to any other alcoholic beverage sales use, school, licensed day care center, public park or playground, church, senior citizen facility, or licensed alcohol or drug treatment facility except as follows:

1. If the activity is in conjunction with a full-service restaurant; or
2. In establishments with twenty-five or more full-time equivalent employees and a total gross

floor area twenty thousand square feet or more.

D. Full-Service Restaurant. For the purposes of this section, “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. The following additional provisions shall be used to define a full-service restaurant:

1. A full-service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided, with the exception that alcohol sales to restaurant patrons may continue for up to two hours after meal service has ceased to allow guests to comfortably complete their meals.
2. The offer of meals is not adequate to meet the above criteria. A full-service restaurant shall make actual and substantial sales of meals to guests for compensation. Substantial sales shall mean that no less than sixty percent of total revenue shall be generated from food service and no more than forty percent of revenue from the sales of alcohol.
3. “Meals” means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. Meals shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this section.
4. Premises shall be equipped for meal service and maintained in good faith. Premises shall possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.
5. A full-service restaurant shall comply with all local health department and state standards.
6. A full-service restaurant may have a separate lounge or bar area; provided, that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed. (Ord. 2015-002 § 3 (Exh. 1)(part), 2015)

### **USE PERMIT AND PUBLIC CONVENIENCE OR NECESSITY**

As stated above, a full service restaurant and on-site alcohol beverage sales use requires an approved Conditional Use Permit be issued by the City of San Pablo before this service can be established. Should this Use Permit be approved, the license will be issued by the state department of Alcoholic Beverage Control (ABC).

In conversations with staff in the San Pablo Police Department, and the State Department of

Alcoholic Beverage Control (ABC), an undue concentration exists for on-sale beer and wine licenses within Census Tract 3680.01 (see Attachment B). Census Tracts are used as the geographic boundaries to identify and quantify the issue of undue concentration pursuant to Section 23817.9 of the California Business and Professions Code (see Attachment C).

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 Professions Code (CBPC), where the issue of “undue concentration” is discussed (see Attachment D). 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 crime reporting areas in the City of San Pablo; and
- 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.

When an on-sale beer and wine license is to be part of a restaurant, CBPC 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-s beer and wine license. An on-sale beer and wine only - eating place is a Type 41 license (see Attachment E).

The applicant, Raul Ledesma, has submitted a narrative which discusses the business purpose, products and services, revenue and management, uniqueness and positive impact on the City with the addition of Ocotes Grill, and the on-s beer and wine license. The hours of operation are 9am - 10pm, Monday - Sunday, with seating for 50 guests. Breakfast, lunch and dinner will be served at this location, focusing primarily on bistro style Mexican American cuisine. It is expected that 70% of the revenue will come from the sale of meals, with the balance from the sale of alcoholic and non-alcoholic beverages, both at 15%. Management and staff at Ocotes Grill have previous restaurant experience. Six to eight staff will be in the restaurant during the operating hours: 3 floor staff, 3 kitchen staff, and 2 managers. Beverage staff will be over 21 years of age, and management and staff will have any required Alcoholic Beverage Control training. Attachment F is the narrative, application to ABC for the on-sale beer and wine license, proposed menu, and floor plan of the restaurant.

In a conversation with the San Pablo Police Department, there are 24 on-sale licenses in the City. Based on the census tract map which is Attachment B, two (2) of these are restaurants - one on 23rd Street and one on Rumrill Blvd. Within the City, the balance of the on-sale licenses are other restaurants or bars, where beer, wine or distilled spirits can be consumed.

The Police Department has provided conditions of approval for the request for an on-sale beer and wine license. These conditions are included below:

- No alcohol sales past 10pm. (Planning staff has created additional language which states that any subsequent request to increase the hours of the restaurant and the beer and wine sales will be limited to 12am midnight. 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.)

- 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. 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.

Development Services staff has also assigned the following condition to the Use Permit, as listed below:

- 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 Development Services Department, Planning Division staff, within 60 days of the receiving the beer and wine license from the state department of Alcoholic Beverage Control.

## **FINDINGS**

The following findings are included in the recommended Resolution 2017-XX approving the Project and Conditional Use Permit:

- 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 is for a Use Permit for an on-sale beer and wine license at this location, as part of a full service restaurant with a limited outdoor dining area, as the sales of the alcoholic beverages are 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 will use 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, should the City Council recommend approval of the Use Permit for a new full service*

*restaurant, with a limited outdoor dining area, and an on-sale beer and wine, and approve a determination of Public Convenience or Necessity, 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.*

### **PUBLIC HEARING NOTICE**

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.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on this item on March 21, 2017. Discussion topics included the conditions of approval regarding the maximum allowable percentage of sales attributable to alcohol sales, loitering, and undue concentration of alcohol sales in the City. The public hearing was opened, and speakers included Raul Ledesma, owner of Ocotes Grill, and his sister, Griselda Ledesma, owner of the property. The applicants confirmed agreement with the conditions of approval. There being no members of the audience wishing to speak regarding the project, the public hearing was closed.

The Planning Commission adopted Commission Resolution 17-03, recommending approval of PLAN1702-0016, a Conditional Use Permit for on-site beer and wine sales associated with a new full service restaurant with a limited outdoor dining area, and the determination of public convenience or necessity for the on-site beer and wine sales due to the undue concentration of such uses, subject to the findings and conditions. The approval of the Resolution was adopted unanimously.

### **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**

- A: Planning Commission Resolution 17-03
- B: Census Tract Map from ABC Website
- C: Section 23817.9 of the California Business and Professions Code
- D: 23958.4 of the California Business and Professions Code
- E: ABC License types and their basic privileges
- F: Narrative, application to ABC for the on-sale beer and wine license, proposed menu, and floor

G: plan of the restaurant  
Proof of Publication