



CITY COUNCIL AGENDA STATEMENT



October 20, 2020

File ID: 20-0391

TITLE

CONSIDERATION OF THE DECISION OF THE CHIEF OF POLICE AND FINDING REGARDING AN ALCOHOLIC BEVERAGE LICENSE AT H STREET MARKET LOCATED ON H STREET

A. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AFFIRMING THE DECISION OF THE CHIEF OF POLICE AND FINDING THAT AN ALCOHOLIC BEVERAGE LICENSE AT 645 H STREET SUITE B (H STREET MARKET, INC.) DOES NOT SERVE PUBLIC CONVENIENCE OR NECESSITY

- OR -

B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA REVERSING THE DECISION OF THE CHIEF OF POLICE AND FINDING THAT AN ALCOHOLIC BEVERAGE LICENSE AT 645 H STREET SUITE B (H STREET MARKET, INC.) SERVES PUBLIC CONVENIENCE OR NECESSITY

RECOMMENDED ACTION

Council conduct the public hearing and adopt resolution A.

SUMMARY

H Street Market, Inc. has appealed the Police Department's finding that an alcoholic beverage license would not serve Public Convenience or Necessity.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. In addition, notwithstanding the foregoing, the Development Services Director has also determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

The Department of Alcoholic Beverage Control (ABC) is responsible for the issuance of licenses for the sale of alcoholic beverages in the State of California. Section 23958 of the California Business and Professions Code gives ABC the authority to deny an application for a license if such a license would result in an over-concentration of licenses and/or a higher than average crime rate in the area. The Business and Professions Code requires the local governing body to determine if a public convenience or necessity is served by the issuance of the alcoholic beverage license given ABC's initial determination of over-concentration and/or high crime rate. The local governing body must affirmatively sign a "Public Convenience or Necessity" form in order for the business to obtain an alcoholic beverage license.

Process for Public Convenience and Necessity (PCN)

Once ABC has determined that there is over-concentration and/or high crime rate in the census tract where the application is submitted, the applicant must submit a "Public Convenience or Necessity" form to the Chief of Police. Once the Chief of Police receives the form from the applicant, a determination hearing is scheduled. The determination hearing is an open meeting, and the Police Department solicits responses from the community by sending a letter to all business owners and residents within 500 feet of the applicant premises notifying them of the determination hearing; they can also leave a telephone message with a detective to voice their support for or protest of the license. The business must also post a notice of the application on the premises. The Chief of Police then determines whether a public convenience or necessity exists. The decision is based on the following criteria: the convenience or necessity of alcohol sales to residents in the area, the history of the subject business and/or owner, existing conditions at the site or in the vicinity (e.g., potential for creation of a police problem or aggravation of an existing problem), and the crime rate within the vicinity of the application. If the Chief finds that there is no public convenience or necessity, the applicant may appeal the decision to the City Council. Upon the filing of the appeal with the City Clerk's Office, the matter is set for a public hearing before the full City Council. The process of determining public convenience or necessity is found in Chula Vista Municipal Code Chapter 5.09. [Attachment 1]

H Street Market, Inc. appeal

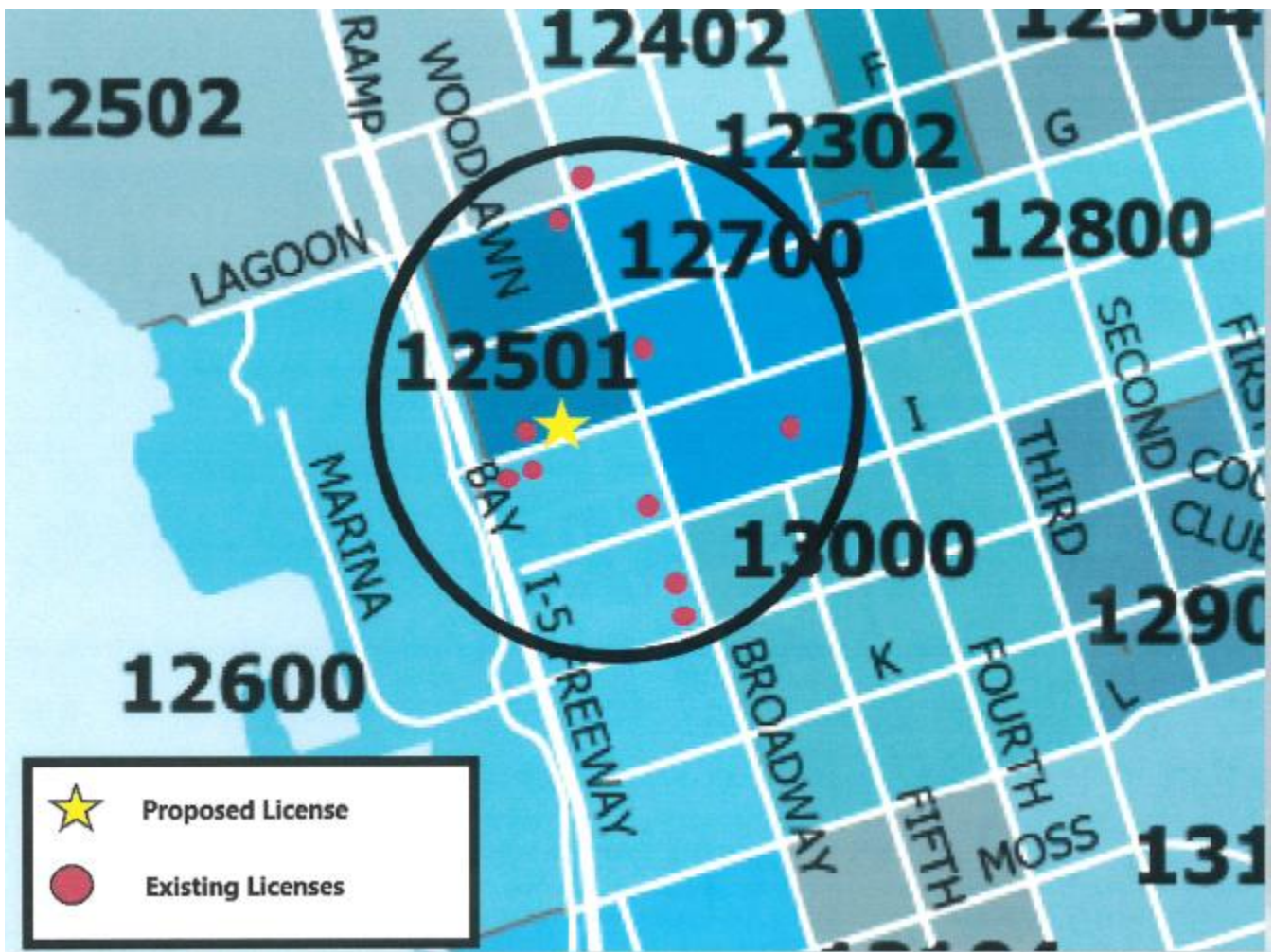
On March 2, 2020, H Street Market located at 645 H Street Suite B applied for an off-sale beer and wine license (ABC License Type 20) with the California State Department of Alcoholic Beverage Control [Attachment 2]. An off-sale beer and wine license authorizes a retailer to sell beer and wine for consumption off the premises where sold.

ABC determined that there is an over-concentration of alcohol licenses in the census tract where the application is submitted. On March 27, 2020, H Street Market Inc. formally requested the Chula Vista Police Department to conduct a finding of Public Convenience or Necessity for its business located at 645 H Street Suite B. The Police Department provided notice of H Street Market's ABC license application to residents and business owners within 500 feet of the location [Attachment 3]. On June 30, 2020, Chula Vista Police Department held a public hearing to gather input on Public Convenience and Necessity for H Street Market. Upon the conclusion of the public hearing, the Police Department determined that the census tract of the applicant's location will have an over concentration of alcohol licenses as defined by the Department of

Alcoholic Beverage Control if the application is approved. The Police Department issued notice on July 16, 2020, that the applicant failed to meet Public Convenience or Necessity [Attachment 5]. On July 27, 2020, H Street Market appealed the Police Department's finding that an alcoholic beverage license would not serve a public convenience or necessity [Attachment 6].

The Police Department based the finding that issuing an ABC license to H Street Market located at 645 H Street Suite B does not serve the Public Convenience or Necessity on the following criteria:

1. Another ABC license would cause the area to become over-concentrated with ABC licenses. According to ABC, the census tract (125.01) in which the business is located allows for two (2) licenses in that area, and currently two (2) off-sale licenses exist.

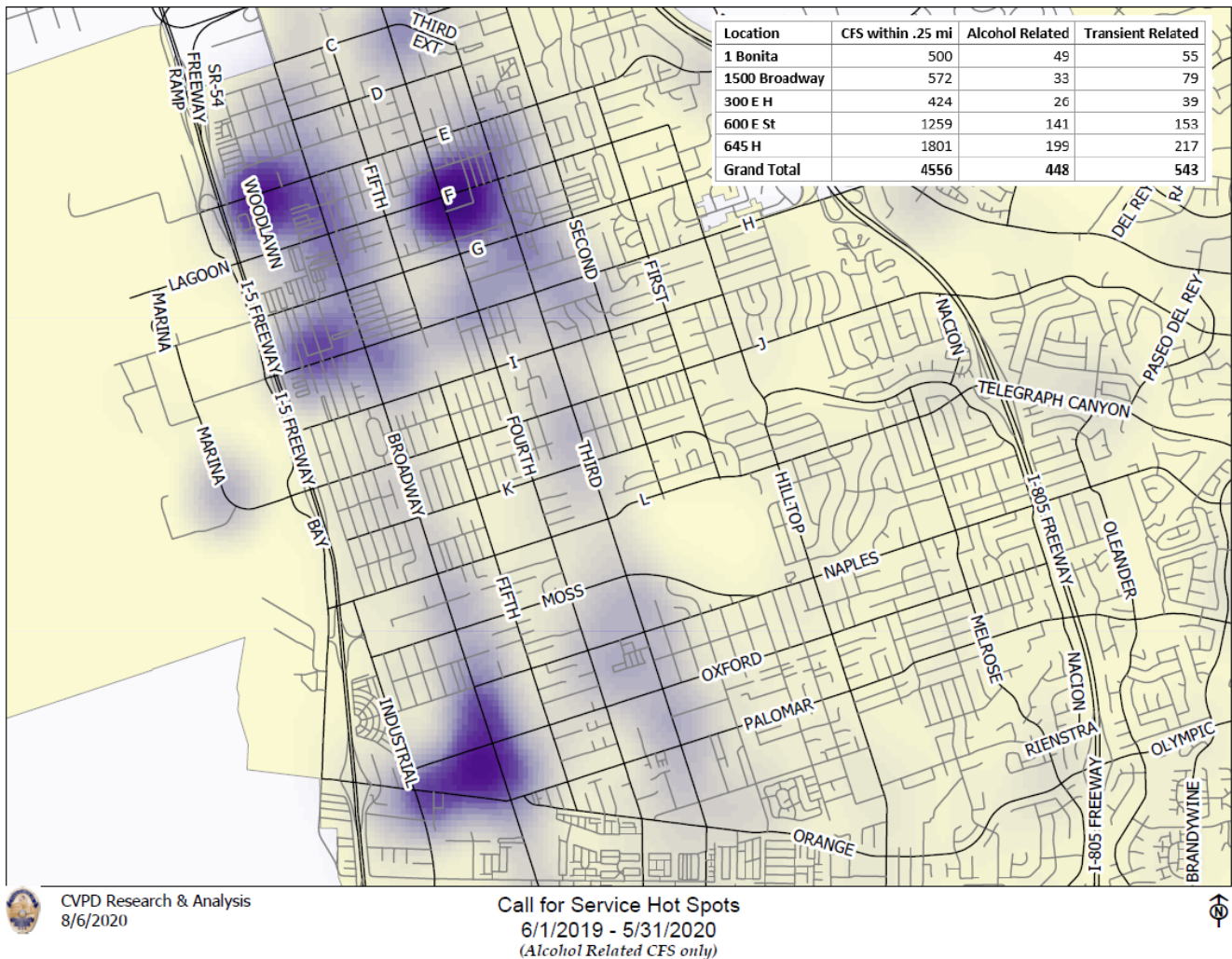


The following two (2) businesses in census tract 125.01 have off-sale licenses: 1) Bobar Market & Gas, 600 F Street; and 2) Keg & Bottle, 677 H Street. In neighboring census tracts, the following eight (8) businesses within a two-block radius of the proposed license have off-sale licenses: 1) Little Spirit Shop, 299 Broadway; 2) Sunny Market, 449 Broadway; 3) Arco AM/PM, 720 H Street; 4) 7-Eleven, 698 H Street; 5) CVS Pharmacy, 555 Broadway; 6) Walgreens, 621 I Street; 7) Quick Stop Liquor, 670 Broadway; and 8) 7-Eleven, 796

Broadway. The map above shows the proposed license at 645 H Street, along with existing ABC licenses in the area.

2. According to Police Department data, the Department received 199 alcohol-related (drunk driver, drunk in public) calls for service (CFS) and 217 transient-related CFS within a quarter mile radius of 645 H Street over the June 2019 to May 2020 12-month period.

3. A comparison of alcohol-related calls for service within a quarter-mile radius of 645 H Street with that of other commercial locations in Chula Vista revealed that the area surrounding 645 H Street is a high crime area in comparison to other areas within the city limits.



4. The majority of the public do not support for issuance of the license. During the public hearing held on June 30, 2020 at Police Department headquarters, three (3) people were in attendance, with all three opposing the issuance of the license. Twelve (12) phone calls were received [Attachment 4], with eleven (11) opposing and one (1) supporting the license. Members of the public have expressed the following concerns.

- a. Over-concentration of alcohol licenses already exists in the area
- b. Easy access to alcohol for homeless population
- c. License could increase surrounding homeless population
- d. Increase in alcohol-related crimes
- e. Decrease in quality of life in the area

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

Staff is not independently aware, and has not been informed by any Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

There is no fiscal impact to the General Fund if the application is denied. Sales tax revenue from alcoholic beverage sales will have no impact due to over-concentration of alcohol licenses already existing in the area.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact if the application is denied.

ATTACHMENTS

Attachment 1: Chula Vista Municipal Code Chapter 5.09 Alcoholic Beverage Licenses

Attachment 2: Application for Alcoholic Beverage License – H Street Market

Attachment 3: Notice to residents and business owners of ABC license application dated March 25, 2020

Attachment 4: Public responses regarding ABC license application

Attachment 5: Police Department's denial of issuance of ABC license dated July 16, 2020

Attachment 6: Appeal of denial of ABC license dated July 27, 2020

Attachment 7: Letter from Chief of Police to City Clerk dated August 6, 2020 regarding findings of Public Convenience or Necessity

Staff Contact: Jonathan Alegre, Police Department