



# City of Chula Vista

## Legislation Details (With Text)

**File #:** 16-0554      **Name:** Public Convenience or Necessity hearing - 99 Cents Only Store  
**Type:** Public Hearing      **Status:** Filed  
**In control:** City Council  
**On agenda:** 12/6/2016      **Final action:** 12/6/2016  
**Title:** CONSIDERATION OF THE DECISION OF THE CHIEF OF POLICE AND FINDING REGARDING AN ALCOHOLIC BEVERAGE LICENSE AT A 99 CENTS ONLY STORE LOCATED ON THIRD AVENUE

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 1030 THIRD AVENUE (99 CENTS ONLY STORE) 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 1030 THIRD AVENUE (99 CENTS ONLY STORE) SERVES PUBLIC CONVENIENCE OR NECESSITY

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Item 11 - Resolution A, 2. Item 11 - Resolution B, 3. Item 11 - Attachment 1, 4. Item 11 - Attachment 2, 5. Item 11 - Attachment 3, 6. Item 11 - Attachment 4, 7. Item 11 - Attachment 5, 8. Item 11 - Attachment 6, 9. Item 11 - Additional Information

Date	Ver.	Action By	Action	Result
12/6/2016	1	City Council	withdrawn	

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## **RECOMMENDED ACTION**

Council conduct the public hearing and adopt Resolution A.

## **SUMMARY**

Steven Rawlings, consultant to 99 Cents Only Stores, has appealed the Chief of Police's finding that an alcoholic beverage license would not serve Public Convenience or Necessity.

## **ENVIRONMENTAL REVIEW**

### **Environmental Notice**

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

### **Environmental Determination**

## **BOARD/COMMISSION 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]

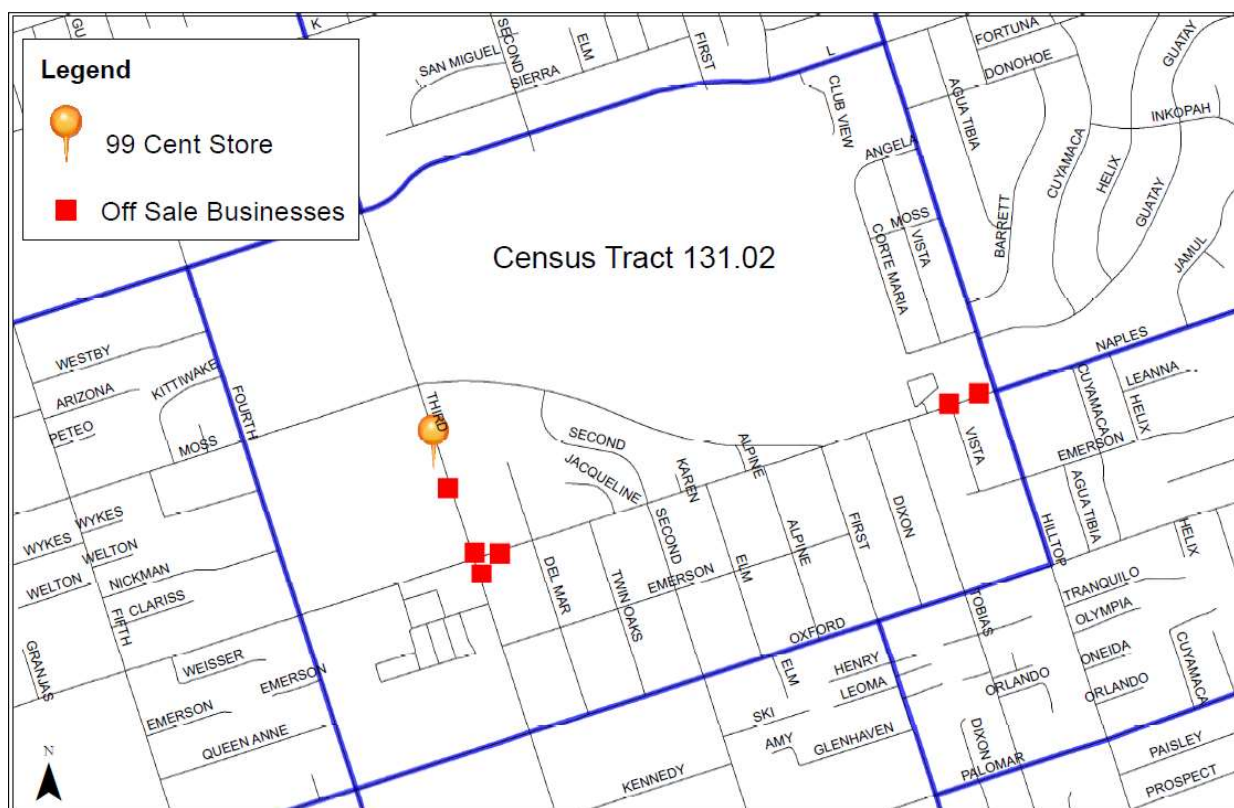
### 99 Cents Only Store appeal

The 99 Cents Only Store located at 1030 Third Avenue applied for an off-sale beer and wine license (ABC License Type 20) with the California State Department of Alcoholic Beverage Control. ABC determined that there is over-concentration of alcohol licenses and high crime rate in the census tract where the application is submitted. On July 5, 2016, Steven Rawlings, consultant to 99 Cents Only Stores, formally requested the Chula Vista Police Department to conduct a finding of Public Convenience or Necessity [Attachment 2] for the store located at 1030 Third Avenue. The Police Department provided notice of 99 Cents Only Store's ABC license application to residents and business owners within 500 feet of the location [Attachment 3]. On October 4, 2016, the Chula Vista Police Department held a public hearing to gather input on Public Convenience and Necessity for the 99 Cents Only Store. 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 that the applicant failed to meet Public Convenience or Necessity [Attachment 4]. On October 13, 2016, Mr. Rawlings appealed the Police Department's finding that an alcoholic beverage license would not serve a public convenience or necessity [Attachment 5].

The Police Department based the finding that issuing an ABC license to the 99 Cents Only Store located at 1030 Third Avenue does not serve the Public Convenience or Necessity on the following criteria:

1. Another ABC license would cause the area to become further over-concentrated with ABC licenses. According to ABC, the census tract in which the business is located allows for four (4) licenses in that area, and currently six (6) exist.

The following six (6) businesses in the area have off-sale licenses: a) 7-Eleven, 7 Naples St.; b) Walgreens, 1111 Third Ave.; c) Bolbol Produce Market, 287 Naples St.; d) 7-Eleven, 1099 Third Ave.; e) Square Bottle Liquor, 21 Naples St.; and f) Northgate Supermarket, 1058 Third Ave. The map below shows the existing ABC licenses in the census tract.



2. According to ABC, the average number of crime offenses for all ABC reporting districts is 133.8 (6,958 total offenses divided by 52 reporting districts). The total number of crime offenses in the actual reporting district in which the store is located is 250. This number is 86.8% higher than the average for all ABC reporting districts, making the reporting district in which the store is located a “high crime reporting district.”

3. According to Police Department data, the Department received 46 alcohol-related calls for service (such as drunk driver, drunk in public, reckless driving, underage drinking) in the 1000 block of Third Avenue, and 200 and 300 blocks of Moss and Naples streets in the past year.

4. There has been no public support for issuance of the license. Members of the public who expressed opinions during the public comment period and at a public hearing held on October 4, 2016 at Department headquarters were unanimously opposed to issuance of the license. Thirteen (13) phone calls were received, and nine (9) people attended the public hearing. 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 by homeless individuals
- c. Increase in alcohol-related crimes
- d. Decrease in quality of life in the area

**DECISION-MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council and has found that Councilmember Bensoussan has real property holdings within 500 feet of the boundaries of the property which is the subject of this action. Consequently, pursuant to California Code of Regulations Title 2, sections 18700 and 18702.2(a)(11), this item presents a disqualifying real property-related financial conflict of

interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.) for the above-identified member.

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

#### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The denial of this alcoholic beverage license supports the Strong and Secure Neighborhoods goal as it limits the number of ABC licenses issued in the city.

#### **CURRENT YEAR FISCAL IMPACT**

Minimal loss of sales tax revenue to the General Fund from alcoholic beverage sales if application is denied.

#### **ONGOING FISCAL IMPACT**

Minimal loss of sales tax revenue to the General Fund from alcoholic beverage sales if application is denied.

#### **ATTACHMENTS**

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

Attachment 2: Request for a finding of Public Convenience or Necessity dated July 5, 2016

Attachment 3: Notice to residents and business owners of ABC license application dated August 24, 2016

Attachment 4: Police Department's denial of issuance of ABC license dated October 5, 2016

Attachment 5: Appeal of denial of ABC license dated October 13, 2016

Attachment 6: Letter from Chief of Police to City Clerk dated November 14, 2016 regarding findings of Public Convenience or Necessity

*Staff Contact: Jonathan Alegre, Police Department*