



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 18, 2005

ITEM NUMBER:

SUBJECT: ON-SALE GENERAL PUBLIC CONVENIENCE OR NECESSITY FINDING FOR HAVANITA'S CIGAR LOUNGE – 750 WEST 17TH STREET, UNIT A

DATE: JANUARY 5, 2005

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: DONALD D. LAMM, DEPUTY CITY MGR./DEV. SVS. DIRECTOR

FOR FURTHER INFORMATION CONTACT: MEL LEE, SENIOR PLANNER
714.754.5611

RECOMMENDATION:

Make a finding of public convenience or necessity to allow a State Alcoholic Beverage Control (ABC) Type "57" License (On-Sale General, Club) for Havanita's Cigar Lounge.

BACKGROUND:

On September 13, 2004, Planning Commission approved Conditional Use Permit PA-04-32 to establish a members-only cigar lounge in a portion of an existing industrial building with sale of alcoholic beverages for on-site consumption. The property is located within a census tract that has an undue concentration of on-sale ABC licenses. Although an on-sale license is requested, State Law provides that the Department of Alcoholic Beverage Control may not approve the license unless the City's legislative body makes a finding of public convenience or necessity because the use is not a bona fide eating place (i.e., a restaurant).

ANALYSIS:

Government Code Section 23958.4 requires a local legislative body to make a determination of public convenience or necessity whenever there is an undue concentration of on-sale licenses. Undue concentration occurs when the ratio of ABC licenses to population within the census tract exceeds the countywide ratio of ABC licenses to population. In this case, the census tract in which the site is located allows 6 on-sale licenses; the proposed license would increase the number of licenses within the census tract to 9, creating undue concentration.

It is staff's opinion that a finding of public convenience can be made since the cigar lounge is for members only and is not open to the general public, and the proposed use was reviewed and approved by the Planning Commission with appropriate conditions of approval to minimize any adverse impacts to surrounding properties and uses.

ALTERNATIVES CONSIDERED:

City Council may consider the following alternatives:

1. Make the finding for public convenience or necessity which would allow the ABC license as proposed; or,
2. Not make the finding for public convenience or necessity, which would stop ABC issuance of the license.

FISCAL REVIEW:

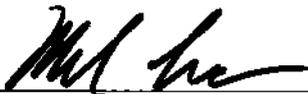
Fiscal review of the subject request is not necessary.

LEGAL REVIEW:

Legal review of the subject request is not necessary.

CONCLUSION:

Although the license would result in an undue concentration of off-sale ABC licenses within the census tract, the license is for members-only lounge not open to the general public. As a result, staff believes City Council can make a finding of public convenience without any resulting adverse impact on the surrounding community.



 MEL LEE
 Senior Planner



 DONALD D. LAMM
 Deputy City Mgr./Dev. Svs. Director

DISTRIBUTION: City Manager
 City Attorney
 City Clerk (2)
 Staff (4)
 File (2)

Havanita's Cigar Lounge
 750 West 17th Street, Unit A
 Costa Mesa, CA 92627

ATTACHMENTS: 1. Planning Commission Resolution for PA-04-32
 2. ABC License Form

File: 011805750W17THABC	Date: 010505	Time: 300pm.
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RESOLUTION NO. PC-04-64

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA APPROVING PLANNING
APPLICATION PA-04-32**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Marcia Dossey, authorized agent for Levon Gugasian, with respect to the real property located at 750 W. 17th Street, requesting approval of a conditional use permit to establish a members-only cigar lounge with sale of alcoholic beverages for on-site consumption in a portion of an existing industrial building, and a minor conditional use permit to deviate from shared parking based upon off-set hours of operation; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 13, 2004;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **APPROVES** Planning Application PA-04-32 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this resolution is expressly predicated upon the activity as described in the staff report for PA-04-32 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Should any material change occur in the operation, or should the applicant fail to comply with the conditions of approval, then this resolution, and any recommendation for approval herein contained, shall be deemed null and void.

PASSED AND ADOPTED this 13th day of September, 2004.


Chair, Costa Mesa
Planning Commission

EXHIBIT "A"

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
1. The proposed development and use is compatible and harmonious with uses on surrounding properties.
 2. Safety and compatibility of the design of the buildings, parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 3. The project is consistent with the General Plan.
 4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the proposed club will be reasonably compatible with the surrounding area, which is industrial. There are no residential properties in the vicinity. Staff has incorporated conditions of approval to minimize adverse impacts on the adjacent properties. Because the club is not open to the general public, security or other problems are not anticipated. Granting the conditional use permit will not allow a use, density or intensity, which is not in accordance with the general plan designation for the property.
- C. The request to deviate from shared parking based upon offset hours of operation does comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the deviation will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, because the club is proposing to operate in the evening hours, substantially after the industrial uses are closed, no adverse parking impacts are anticipated.
- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- E. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"**CONDITIONS OF APPROVAL**

- Plng.
1. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
 2. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
 3. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
 4. Hours of operation for customer service shall be limited to the hours between 4:00 p.m. to 11:00 p.m., seven days a week.
 5. The use shall be limited to the type of operation described in the staff report, i.e., a members-only cigar lounge with no "walk-ups" or daily memberships accepted, and permitted to operate with a Type "57" (On-Sale General, Club) State Alcoholic Beverage Control license. Any change in the operational characteristics including, but not limited to, hours of operation, sale of alcoholic beverages or provision of live entertainment and/or dancing, will require approval of an amendment to the conditional use permit, subject to Planning Commission approval.
 6. Live entertainment, amplified music and/or dancing shall not be permitted.
 7. A maximum of three (3) pool tables and three (3) video games shall be permitted unless the applicant applies for, and is granted, a minor conditional use permit.
 8. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time.
 9. There shall be no sales of alcoholic beverages for off-site consumption.
 10. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas over which applicant has

provide adequate lighting above the entrances to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.

- 11 The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
- 12 The application will be reviewed annually by Planning Staff. Any problems or violations of the conditions of approval may require review of the application by Planning Commission.

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
28 Civic Center Plaza, Room 369
Santa Ana, CA 92701
(714) 558-4101

File Number: 418819
Receipt Number: 1491802
Geographical Code: 3004
Copies Mailed Date: October 25, 2004 AA
Issued Date:

DISTRICT SERVING LOCATION: SANTA ANA

First Owner: BEACH BODIES TRAINING INC

Name of Business: HAVANITAS CIGAR LOUNGE

Location of Business: 750 W 17TH ST
COSTA MESA, CA 92627

County: ORANGE

Is premise inside city limits? Yes Census Tract 0636.05

Mailing Address: 26561 VIA GAVIOTA
MISSION VIEJO, CA 92691
(If different from premises address)

Type of license(s): 57

Transferor's license/name: 394593 / GOMEZ EDUARDO Dropping Partner: Yes No X

Table with 7 columns: License Type, Transaction Type, Fee Type, Master, Dup, Date, Fee. Rows include 57 SPECIAL ON-SALE G ANNUAL FEE and 57 SPECIAL ON-SALE G STATE FINGERPRINTS.

overpayment
Total \$836.00
\$936.00

Have you ever been convicted of a felony? No

Have you ever violated any provisions of the Alcoholic Beverage Control Act, or regulations of the Department pertaining to the Act? No

Explain any "Yes" answer to the above questions on an attachment which shall be deemed part of this application.

Applicant agrees (a) that any manager employed in an on-sale licensed premise will have all the qualifications of a licensee, and (b) that he will not violate or cause or permit to be violated any of the provisions of the Alcoholic Beverage Control Act.

STATE OF CALIFORNIA County of ORANGE Date: October 25, 2004

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department or to gain or establish a preference to or for any creditor or transferor or to defraud or injure any creditor of transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

Applicant Name(s)

BEACH BODIES TRAINING INC

211-A & R/N attached

Applicant Signature(s)

Handwritten signatures: P. S. Ward, Derek Ronald, see. Vanderward, Guevett