



Meeting Date: 10/12/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Douglas J. Spondello, Assistant Planner ^{DS} Agenda Item No. **I-2**

Reviewed By: City Manager [Signature] City Attorney SMF Finance [Signature] Other (Specify) _____

DATE: September 27, 2010

TO: City Council

FROM: Susan L. Martin, AICP, Planning Manager [Signature]
Development Services Department

SUBJECT: Resolution granting appeal of a request to permit the sale of beer, wine, and distilled spirits for off-site consumption at an existing Walmart Supercenter Store, located at 2001 North Rose Avenue. Filed by Lisa Kolieb, on behalf of Walmart.

RECOMMENDATION

That City Council adopt a resolution upholding the appeal and approving Planning and Zoning Permit No. 10-510-03, consistent with the Council's vote at the July 27, 2010 meeting.

DISCUSSION

On July 27, 2010, Council directed Staff to prepare a resolution upholding the appeal and approving the request to permit to the sale of alcohol for off-site consumption from the existing Walmart Supercenter. The resolution (Attachment #1) includes the conditions of approval recommended by the Planning Division and Police Department, as agreed to by the Applicant.

FINANCIAL IMPACT

None

(DS)

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD UPHOLDING THE APPEAL OF THE PLANNING COMMISSION'S DECISION AND APPROVING PLANNING AND ZONING PERMIT NO. 10-510-03 (SPECIAL USE PERMIT FOR ALCOHOL), A REQUEST TO PERMIT THE SALE OF BEER, WINE, AND DISTILLED SPIRITS FOR OFF-SITE CONSUMPTION AT AN EXSTING WALMART SUPERCENTER STORE, LOCATED AT 2001 NORTH ROSE AVENUE. FILED BY DESIGNATED AGENT LISA KOLIEB, 11355 WEST OLYMPIC BOULEVARD, LOS ANGELES, CA 90064.

WHEREAS, Planning Commission Resolution No. 2010-13 denied an application for Special Use Permit No. 10-510-03, filed by Lisa Kolieb; and

WHEREAS, the Planning Commission's decision was appealed to the City Council; and

WHEREAS, the City Council has carefully reviewed the Planning Commission decision denying the application, the staff report, and minutes of testimony at the Planning Commission public hearing; and

WHEREAS, on July 27, 2010, the City Council conducted a public hearing and received evidence in favor of and opposed to the application for an SUP to sell beer, wine, and distilled spirits for off-site consumption at the property located at 2001 North Rose Avenue; and

WHEREAS, Section 15301 of Title 14 of the California Code of Regulations exempts the project from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, the City Council finds, after due study, deliberation and public hearing, that the following circumstances exist:

1. The proposed use is in conformance with the General Plan and other adopted policies of the City of Oxnard.
2. The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.
3. The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this resolution.
4. The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.

5. The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.
6. The presumption of undue concentration has been rebutted by a preponderance of evidence, which shows that the establishment is in a retail center where the possibility of additional retailers selling alcohol for off-site consumption is appropriate.
7. The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.

WHEREAS, the City Council finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oxnard hereby upholds the appeal and approves Planning and Zoning Permit No. 10-510-03, based on the findings set forth herein and subject to the following conditions:

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. G-1) while some are taken from environmental documents (e.g. MND-S2).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Public Works, Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the plans dated November 13, 2009 ("the plans"), on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning

Manager or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)

3. By commencing any activity related to the project or using any structure authorized by this permit, Permittee accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Permittee agrees, as a condition of adoption of this resolution, at Permittee's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Permittee's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)
5. Any covenants, conditions, and restrictions (CC&Rs) applicable to the project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
6. Permittee shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Permittee shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
7. Permittee shall provide off-street parking for the project, including the number of spaces, stall size, paving, striping, location, and access, as required by the City Code. (PL/B, G-9)
8. Before placing or constructing any signs on the project property, Permittee shall obtain a sign permit from the City. Except as provided in the sign permit, Permittee may not change any signs on the project property. (PL/B, G-10)
9. Permittee shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
10. Permittee shall not permit any combustible refuse or other flammable materials to be burned on the project property. (FD, G-12)
11. Permittee shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or

used on the project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)

12. If Permittee fails to comply with any of the conditions of this permit, the Permittee shall be subject to a civil fine pursuant to the City Code. (CA, G-14)
13. Prior to issuance of building permits, Permittee shall correct all violations of the City Code existing on the project property. (PL, G-15).

PLANNING DIVISION SPECIAL CONDITION

14. This permit shall automatically be null and void 12 months from the date of issuance, unless Permittee has received a license to sell alcoholic beverages on the project property from the State Department of Alcoholic Beverage Control. (PL)

POLICE DEPARTMENT STANDARD CONDITIONS

15. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Sales and Service (RBSS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
16. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
17. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
18. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
19. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the

Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)

20. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
21. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
22. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
23. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
24. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
25. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
26. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
27. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
28. Coolers or displays containing alcoholic beverages shall be separate from other coolers or displays and shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)

29. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
30. No single containers, 12 oz. or 40 oz. of beer or malt liquor shall be sold. (PD)
31. No fortified wine products shall be sold with an alcohol content greater than 14% by volume with the exception of the following products (provided they are consistent with those permitted by their Alcoholic Beverage Control License): Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth. (PD)
32. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
33. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
34. Alcoholic beverages shall not be sold between the hours from 12:00 midnight and 6:00 AM. (PD)
35. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
36. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol coolers and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
37. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business. (PD)
38. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function. (PD)
39. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
40. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)

41. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
42. Permittee shall install height gauges at all exit doors. (PD)
43. Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
44. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
45. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE DEPARTMENT SPECIAL CONDITIONS

46. Permittee shall install a video feedback monitor which displays the live feed from security cameras positioned nearby. The monitor shall, at a minimum, be displayed at each customer entrance. Permittee shall install an additional feedback monitor in the alcoholic beverage display area. (PD)
47. The sale of single containers 16 oz., 20 oz., 24 oz., or 32 oz. of beer or malt liquor shall be limited to specialty beers or micro-brews. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited and is only allowed in the manufacturers original multi-pack containers. (PD)
48. Any display of distilled spirits shall be maintained in locked cabinets at all times or under the direct control of employees. No distilled spirits shall be accessible to customers at any time without assistance from an employee. (PD)
49. Coolers or displays containing alcoholic beverages shall be maintained in such a way as to allow for them to be locked or inaccessible during hours of prohibited sale and shall, in fact, be secured during the hours from 12:00 Midnight to 6:00 AM. (PD)
50. Permittee shall develop a security plan that is approved by the Chief of Police or his designee and that includes comprehensive anti-theft strategies to minimize the risk of thefts related to the availability of alcohol. Such strategies may include but are not limited to anti-theft tags or sensors, product checks by staff at the exits, cart stopping devices and CCTV. Strategies that minimize the likelihood for sales of alcohol to underage customers shall be part of this plan. (PD)

Resolution No

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PASSED AND ADOPTED this 12th day of October 2010, by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

ATTACHMENT 1

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