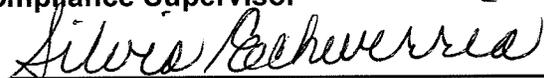


STAFF REPORT
COUNCIL MEETING DATE
NOVEMBER 26, 2012

ITEM FOR COUNCIL CONSIDERATION

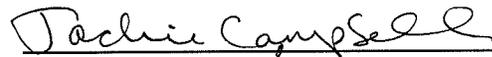
THRIFTY PAYLESS, INC. (DBA RITE AID) REQUEST FOR A LETTER OF PUBLIC CONVENIENCE AND NECESSITY RELATED TO AN ALCOHOLIC BEVERAGE CONTROL PREMISES TO PREMISES TRANSFER OF A TYPE 21 OFF-SALE GENERAL LICENSE TO SELL BEER, WINE AND DISTILLED SPIRITS AT 801 LINDEN AVENUE

Report prepared by: Silvia Echeverria, Code Compliance Supervisor
Department: Community Development



Signature

Reviewed by: Jackie Campbell
Community Development Director



Signature

City Manager: Dave Durlinger



Signature

Staff Recommendation

Action Item X; Non-Action Item

Review Rite Aid's application for a Premises to Premises Transfer of an ABC License from Goleta to Carpinteria and determine that the Public Convenience and Necessity would not be served by the issuance of an ABC license at the subject location.

Sample Motion: I move that a Letter of Public Convenience and Necessity not be issued as there are three licenses of this type in the vicinity that serve the public.

I. BACKGROUND/DISCUSSION

The City and the Santa Barbara County Sheriff's Department were notified by the State Department of Alcoholic Beverage Control (ABC) that Thrifty Payless, Inc., dba Rite Aid, applied on October 2, 2012 (Attachment A – Application) for a Premises to Premises Transfer of a Type 21 Off-Sale General license to sell beer, wine and distilled spirits. The license, if approved, would be transferred from 7127 Hollister Avenue in Goleta to the Rite Aid location at 801 Linden Avenue. The site is zoned Commercial Business with a Visitor Serving Overlay and has been occupied by the Rite Aid since June 2008.

Rite Aid ABC License
November 26, 2012

On January 1, 1995 the City Council passed Resolution No. 4193, which requires the Council to issue a Letter of Public Convenience and Necessity to an applicant for any new ABC license location in the City. The Resolution only applies to sites where alcohol has never before been sold. As alcohol has not previously been sold at 801 Linden Avenue, the requirement for a Letter of Public Convenience and Necessity is triggered by this Resolution.

As required by the Business and Professions Code, Rite Aid also submitted a Public Convenience and Necessity Statement (see Attachment B) which includes the following statement from Rite Aid:

Although the immediate vicinity is considered to be over-concentrated with liquor licenses, we believe issuance of License No. 526578 will further serve public convenience and necessity without interfering with the quiet enjoyment of property by nearby residents. Our experience together with our trained staff (will) help mitigate sales to minors, loitering and other unwanted effects sometimes associated with the sale of alcoholic beverages. The prior location of this store and its sales to minors was an anomaly. We successfully run our stores with minimal violations.

Rite Aid is asking for a Letter of Public Convenience and Necessity with the following conditions:

1. Hours of operation from 8:00 a.m. to 10:00 p.m. daily;
2. No games or vending machines of any kind on the premises;
3. Doors kept closed at all times to minimize normal cash register and customer noise; and
4. Trash receptacles inside and outside for litter problems - employees to patrol parking lot for litter.

Rite Aid last applied in July 2008 to ABC for a beer and wine license which was protested by the Sheriff's Department and not issued by ABC. Rite Aid applied again in September 2009 for a retail liquor license and the Sheriff's Department again protested; Rite Aid thereafter withdrew their application from ABC.

The Sheriff's protests of both applications were based on the violations incurred by Rite Aid at its previous location at 1012 Casitas Pass Road. To recount, on September 29, 2005, Rite Aid sold alcohol to an underage buyer in an undercover decoy program conducted by the Sheriff's Department. On June 4, 2006, Rite Aid was cited again and fined for a second occurrence of the same violation and received a 25-day license suspension. On August 25, 2007, Rite Aid was cited a third time for the same offense. On April 8, 2008 ABC revoked the Rite Aid license for the third strike violation of selling alcohol to an underage buyer. Rite Aid then moved to the current location at 801 Linden Avenue and has operated the retail store without alcohol sales since that time.

The Rite Aid store located in Goleta at 7127 Hollister Avenue also sold alcohol to underage buyers on three separate occasions within a three-year period between October 2005 and October 2011. The ABC license for the location was then placed on inactive status when the store was closed. The pending request would transfer the inactive license from Goleta to the 801 Linden Avenue site where it would then be activated by ABC if approved.

In response to questions to Rite Aid Licensing Supervisor Tina Macier about what type of training will be provided to prevent sales to underage buyers as has occurred in the past, she responded with the following statements.

1. Computer based training at the store level will occur at the time of issuance of the license as well as in April and September of each year. Training is mandatory for all Rite Aid Store Associates and is based on legal parameters to verify identification.
2. Rite Aid has ID card readers attached to its cash registers. The ID card readers cannot be over-ridden. In addition to the computer based training, Associates are also provided with a cashier training manual.
3. Rite Aid has never been cited for selling tobacco to a minor at Store #5776 (801 Linden Avenue). To prevent sales to minors, Rite Aid ensures all of its cashiers receive computer based training regarding alcohol and tobacco sales.
4. Upon issuance of the ABC license, Rite Aid will conduct a "mini remodel" of Store #5776 to accommodate the alcohol department. The mini remodel will address the issue of the uninviting display wall that blocks the public view of the inside of the store from one of the storefront windows on Linden Avenue.

II. POLICY/ANALYSIS

There are currently six Type 21 licenses in the City, including three on Linden Avenue in the vicinity of the subject site at Vons, Beach Liquors and City Market 15. There are a total of 44 ABC licenses in the City (see Attachment C – License Locations and Type), causing an over-concentration of licenses pursuant to State Law standards.

If the Council issues a Letter of Public Convenience and Necessity, the Council may place conditions on the license, such as hours of operation, graffiti and litter removal, proof of training of its employees, on-site manager requirement, etc. Additionally, the Santa Barbara County Sheriff's Department may conduct Minor Decoy Programs to check whether the licensee sells alcohol to underage buyers as has been done in the past.

As noted above and shown on Attachment C, there are three existing retail alcohol outlets in the vicinity of the Rite Aid store, within a five-minute walk. These stores have the same type of license as requested here and sell beer, wine and distilled spirits. Therefore, there does not appear to be a need to allow another retail alcohol outlet in the downtown as the public convenience and necessity is already served by the existing retailers in this location. The City has not received any requests from the public for additional retail alcohol sale outlets.

III. FINANCIAL CONSIDERATIONS

The City's Master Fee Schedule establishes a non-refundable application fee of \$2,210 to cover the City's cost to review ABC license applications. The fee provisions allow for 100% recovery of the costs to process the application, whether the license is approved or not. The applicant submitted the \$2,210 fee and thus staff costs associated with this request have been paid for by the applicant.

IV. LEGAL ISSUES

California Business and Professions Code §23958.4, Undue Concentration; Licensure for Public Convenience or Necessity, states that the local governing body of the area in which the subject premises are located may determine within 90 days of notification of a completed application, that public convenience or necessity would or would not be served by the issuance of the license. The City Council may, in the exercise of its police power for the protection of public morals, health and safety, protest the license and recommend that the ABC not issue the license based on an overconcentration of licenses in the vicinity and/or the history of the applicant's conduct of alcohol sales. If the Council does not make a determination within the 90-day period, ABC may issue a license if Rite Aid demonstrates that the public convenience or necessity would be served. ABC will consider the City's input and has independent and exclusive authority to determine if the alcohol sales license is issued or not.

As required by ABC, Rite Aid published a Notice of Application to Sell Alcoholic Beverages and ABC has received no public response or protest to date. Rite Aid also circulated to all owners of real property within a 500-foot radius the Notice of Intention to Engage in the Sale of Alcoholic Beverages and ABC has received no public response or protest to that notice.

V. ALTERNATIVE(S)

Issue a Letter of Public Convenience and Necessity for the transfer of Rite Aid's ABC License to 801 Linden Avenue.

VI. PRINCIPAL PARTIES EXPECTED

Tina Macier, Rite Aid Licensing Supervisor
Lt. Kelly Moore, Santa Barbara County Sheriff's Department

VII. ATTACHMENTS

Attachment A - Application for ABC Premises to Premises License Transfer
Attachment B - Rite Aid Public Convenience and Necessity Statement
Attachment C - Existing ABC License Locations and Type

Attachment A
Premises to Premises License Transfer Application

Rite Aid ABC License Request
Letter of Public Convenience and Necessity

City Council Hearing
November 26, 2012

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
 1000 SOUTH HILL ROAD
 SUITE 310
 VENTURA, CA 93003
 (805) 289-0100

File Number: **526578**
 Receipt Number: **2136427**
 Geographical Code: **4205**
 Copies Mailed Date: **October 2, 2012**
 Issued Date:

DISTRICT SERVING LOCATION: VENTURA
 First Owner: **THRIFTY PAYLESS INC**
 Name of Business: **RITE AID #5776**
 Location of Business: **801 LINDEN AVE**
CARPINTERIA, CA 93013-2042
 County: **SANTA BARBARA**
 Is Premise inside city limits? **Yes**
 Mailing Address: **2600 CAPITOL AVE**
 (If different from **STE 300**
 premises address) **SACRAMENTO, CA 95816-5930**

RECEIVED

OCT 03 2012

CITY OF CARPINTERIA

Census Tract **0016.04**

Type of license(s): **21**

Transferor's license/name: **64946 / THRIFTY PAYLESS INC**

Dropping Partner: Yes No

<u>License Type</u>	<u>Transaction Type</u>	<u>Fee Type</u>	<u>Master</u>	<u>Dup</u>	<u>Date</u>	<u>Fee</u>
21 - Off-Sale General	PREMISE TO PREMISE TRANSFER	NA	Y	0	10/02/12	\$100.00
Total:						\$100.00

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? **Yes**

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 premises 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 **SANTA BARBARA**

Date: **October 2, 2012**

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. Effective July 1, 2012, Revenue and Taxation Code Section 7057, authorizes the State Board of Equalization and the Franchise Tax Board to share taxpayer information with Department of Alcoholic Beverage Control. The Department may suspend, revoke, and refuse to issue a license if the licensee's name appears in the 500 largest tax delinquencies list. (Business and Professions Code Section 494.5.)

Applicant Name(s)

Applicant Signature(s)

See 211 Signature Page

THRIFTY PAYLESS INC

Attachment B
Rite Aid Public Convenience and Necessity Statement

Rite Aid ABC License Request
Letter of Public Convenience and Necessity

City Council Hearing
November 26, 2012

Public Convenience and Necessity Statement and Statement of Non-Interference Per Rule 61.4

Re: Thrifty Payless Inc
DBA Rite Aid #5776
801 Linden Ave
Carpinteria CA 93013-2042
Pending ABC Lic. No. 21-526578

We are seeking issuance of the above-referenced pending Type 21 Off Sale Beer, Wine & Liquor license.

Although the immediate vicinity is considered to be over concentrated with liquor licenses; we believe issuance of Lic. No. 526578 will further serve public convenience and necessity without interfering with the quiet enjoyment of property by nearby residents.

We feel that our new currently operating store maximizes convenience to local shoppers by facilitating a 'one-stop' shopping experience. Accordingly, in addition to a broad array of household goods and health and beauty aids in our general merchandise sections; we operate the following departments:

- Pharmacy
- Pre-Packaged Food & Drink
- One Hour Photo

Our free-standing store offers ample parking to our patrons in our on site parking lot. Since the building is located within 100' of area residences, our on-site parking lot will continually assure neighbors that our customers will not take parking spaces adjacent to area resident's homes.

Furthermore the following additional measures make certain that our retail operation will not interfere with our neighbor's quiet enjoyment of their properties:

- Hours of operation are from 8:00 AM to 10:00 PM daily. We feel that these are reasonable hours of operation that will not disturb nearby residents.
- No games will be conducted or vending machines of any kind are or will be located on the premise.
- Doors are kept closed at all times, to minimize normal cash register and customer noise, which might disturb neighbors.
- There are trash receptacles both inside and outside the store to control litter problems. Employees have been instructed to patrol the parking lot and keep it litter free.

Additionally, Thrifty Payless Inc responsibly operates nearly six hundred licensed premises within California. Our experience together with our trained staff help mitigate sales to minors, loitering and other unwanted effects sometimes associated with the sale of alcoholic beverages. The prior location of this store and its sales to minors was an anomaly. We successfully run our stores with minimal violations. We can confidently state that we have rectified the situation with our prior location of this store. Our new store is properly managed and well run.

In summary, by making responsible sales of alcoholic beverages from an attractive new building that is designed to maximize customer service; Rite Aid #5776 will enhance public convenience and necessity. Furthermore, for all the reasons stated above, we feel that the issuance of this license will not interfere with the quiet enjoyment of property by nearby residents

If you have any questions regarding our pending application, or the operation of our store, please contact Tina Macier in the Rite Aid Licensing Department at 717/214-8851, or via email at kmacier@riteaid.com.

Attachment C
Existing ABC License Locations and Type
November 2012

Rite Aid ABC License Request
Letter of Public Convenience and Necessity

City Council Hearing
November 26, 2012

Downtown Carpinteria ABC Licenses Nov 2012



Legend

Proposed ABC License

- ★ 21, Off-Sale General

Existing ABC Licenses

- 20, Off-Sale Beer & Wine
- 21, Off-Sale General
- 23, Small Beer Manufacturer
- 40, On-Sale Beer
- 41, On-Sale Beer & Wine
- 42, On-Sale Beer & Wine
- 47, On-Sale General