



## STAFF REPORT

**MEETING DATE:** April 26, 2023

**PRESENTER:** Jesus R. Orozco, Community Development Director

**SUBJECT:** Request for a Public Convenience or Necessity for a Type 20 (Off-Sale Beer and Wine) ABC License for Vikram Vohra and Vinay Vohra (Fast N Esy) Located at 14195 W Whitesbridge Rd. (JRO)

**RECOMMENDATION:** Council by motion, review and consider adoption of a Resolution Adopting Findings of Public Convenience or Necessity for a Type 20 (Off-Sale Beer & Wine) ABC License for Vikram Vohra and Vinay Vohra (Fast N Esy) Located at 14195 W Whitesbridge Rd. Which Has Received a Conditional Use Permit by the City's Planning Commission

**EXECUTIVE SUMMARY:** A request for Public Convenience or Necessity (PCN) for a Type 20 (Off-Sale Beer and Wine) ABC license was presented at the February 22, 2023, City Council (Council) meeting. The Council determined to table the matter as there were only three Council Members present. The PCN request was submitted by Vikram Vohra and Vinay Vohra (Fast N Esy) located at 14195 W. Whitesbridge Rd. The subject site is in undue concentrated Census Tract 40.06. As a result of the undue concentration of ABC licenses in this census tract, under section 23958.4 of the Business and Professions Code, the Council must determine within 90 days of notification of a completed application that a PCN would be served by the issuance of the ABC license. Because a pending alcohol CUP was pending before the Planning Commission (Commission), the PCN request was placed on hold. The Planning Commission (Commission) held a public hearing on April 10, 2023, and adopted Resolution No. 2023-023 (see Attachment 'C') approving the Alcohol CUP. The Commission resolution includes the required findings for approval consistent with Ordinance No. 23-01 as well as 30 conditions of approval. Fast N Esy.

**DISCUSSION:** Project Proposal Applicants Vikram Vohra and Vinay Vohra wish to include the sale of beer and wine as a component of a convenience store to be developed in association with a 24-hour fueling station and a drive-through restaurant. Alcohol sales will only be sold out of the convenience store. Before an ABC license is issued by the State Department of Alcohol Beverage Control, the Council must first determine by making findings that ABC sales would serve a public convenience or necessity (PCN). The Commission's approval of CUP 2023-03, is subject to a number of conditions and allows for the sale of beer and wine between the hours of 6 AM and 1 AM.

### Council Policy

Historically, the Council considered PCN requests for convenience stores on a case-by-case basis. The case-by-case basis approach was determined to be non-objective by Council. In order to address concerns regarding an objective review of PCN and ABC sales, the Council adopted Ordinance No. 23-01, requiring all new and expansion of alcohol sales to procure a CUP. Additionally, specific distance restrictions were imposed as part of the CUP review and consideration process. The applicant has completed the CUP process as required by the ordinance. The Commission approved CUP 2023-03 for Fast N Esy with the understanding the Council must make a PCN determination.

**Census Tract 40.06**

As already mentioned in this report, there is an undue concentration of ABC sales within Census Tract 40.06. Census Tract 40.06 encompasses properties north of Kearney Blvd., well beyond city limits and properties east of Madera Ave, well beyond city limits as shown in Attachment ‘B’. At this time there are eight (8) Off-sale ABC licenses where only two (2) Off-sale ABC licenses are allowed in the census tract. Approval of this PCN would result in nine (9) Off-sale ABC licenses. The next closest ABC sales site is located within the Wal-Mart shopping center, which currently holds a Type 21 (Off-sale General). Of note, one of the eight (8) Off-sale ABC license’s is located outside the City’s sphere of influence.

The table shows all active ABC licenses in Census Tract 40.06.

Census Tract 40.06						
Sale Type	Lic. Type	Orig. Iss. Date	Expir. Date	Primary Owner	Premises Addr.	Business Name
On-sale	41	5/31/2006	4/30/2023	GONG, HUI ZHI	160 S MADERA AVE	HONG KONG RESTAURANT
Off-sale	21	5/24/2010	6/30/2023	THRIFTY PAYLESS, INC.	456 S MADERA AVE	RITE AID 5853
Off-sale	21	10/1/2009	9/30/2023	MAHLI & SAMRA INCORPORATED	432 S MADERA AVE	FASTRIP 918
Off-sale	21	12/4/2013	6/30/2023	WALMART INC.	14061 W WHITESBRIDGE RD	WALMART 5701
Off-sale	20	2/12/2016	6/30/2023	CHAHAL MANAGEMENT INC	240 S MADERA AVE	KERMAN U SAVE MINI MART
Off-sale	20	10/15/2019	9/30/2023	R&S DIVERSIFIED, INC.	14980 W WHITESBRIDGE AVE	KERMAN CARNITAS
Off-sale	20	11/13/2020	10/31/2023	RASHED, YAHYA ABDULKARIM	1048 N MADERA AVE	HWY 145 MARKET
Off-sale	20	4/22/2021	6/30/2023	GROCERY OUTLET INC	14868 W WHITESBRIDGE RD	GROCERY OUTLET
Off-sale	21	11/29/2022	10/31/2023	DB KERMAN INC	14859 W WHITESBRIDGE AVE	KERMAN FOODMART
On-sale	47 & 77	1/26/2023	12/31/2023	ALONSO CORPORATION	170 N MADERA AVE	CEVICHEs & BEER

**Findings**

In considering a Type 20 (Off-sale Beer and Wine) ABC license, the Council must determine that the request is warranted by a PCN, and Council must make a determination on whether or not a PCN would be served by the issuance of an off-sale ABC license prior to the issuance of a license by the State’s Department of Alcohol Beverage Control.

To that end, applicants Vikram Vohra and Vinay Vohra (Fast N Esy) have submitted an application for a CUP and SPR in order to ensure compliance with the recently adopted ordinance related ABC sales. Moreover, ABC sales are generally incidental to convenience stores with fueling stations which is a permitted use in commercial zone districts. At this time, staff has not been in receipt of any comments in favor or against the ABC license application due to the mandatory notice of application posted on the site.

Additional, the General Plan includes numerous goals and policies intended to help guide economic and community development in the City. The following policies directly or indirectly support findings for a public convenience or necessity.

- **Policy ED – 1.1 Increase Business.** The City shall strive to increase the number of businesses operating in Kerman to satisfy the routine needs and dining, services, and retail desires of residents while also increasing sales, property, business, and potential transient-occupancy taxes.
- **Policy ED – 3.2 Expanding Operations and Employment.** The City shall assist existing industries in expanding their operations and increasing employment in Kerman to reduce commutes.
- **Policy ED – 3.4 Attracting Industries for Local Jobs.** The City shall seek industries that complement the existing workforce in terms of educational and vocational skills set and commute patterns, and will provide full-time, stable employment with competitive wages and benefits.

**CEQA:** The proposed project is a commercial project pursuant to and in conformity with the Kerman 2040 General Plan. According to CEQA Guidelines Section 15183, a project that is consistent with a general plan required no further environmental review since it is consistent with the development density established by the 2040 General Plan for which an EIR was certified. There are no project-specific significant effects on the project or the site which would require additional environmental review. Accordingly, staff recommends that the Council find the project exempt from further review under CEQA.

**FISCAL IMPACT:**

None

**ATTACHMENTS:**

- A. Resolution
- B. Census Tract 40.06 Map
- C. Planning Commission Resolution

**RESOLUTION NO. 23-\_\_\_**

**A RESOLUTION OF THE CITY OF KERMAN CITY COUNCIL ADOPTING FINDINGS OF PUBLIC CONVENIENCE OR NECESSITY FOR A TYPE 20 OFF-SALE BEER AND WINE ABC LICENSE FOR VIKRAM VOHRA AND VINAY VOHRA (FAST N ESY) LOCATED AT 14195 W. WHITESBRIDGE ROAD WHICH HAS RECEIVED AN ALCOHOL CONDITIONAL USE PERMIT BY THE CITY PLANNING COMMISSION**

WHEREAS, on January 23, 2023, the Community Development Department received a complete application for a Public Convenience or Necessity (PCN) request regarding an application for a Type 20 (Off-Sale Beer & Wine) alcohol license (ABC license), from Vikram Vohra and Vinay Vohra (Fast N Esy) located at 14195 W Whitesbridge Rd.; and

WHEREAS, the California Department of Alcoholic Beverage Control has determined that there is an undue concentration of off-sale ABC licenses in Census Tract 40.06 in which Fast N Esy wishes to establish ABC sales; and

WHEREAS, a Public Convenience or Necessity ( PCN ) determination is required when the Alcoholic Beverage Control Board of the State of California ( ABC ) finds that there is an oversaturation of alcohol beverage outlets in a particular census tract; and.

WHEREAS, the City Council is the City's governing body and has the ability to make a determination of public convenience or necessity; and

WHEREAS, the City Council has adopted an ordinance requiring all new ABC licenses to procure a Conditional Use Permit; and

WHEREAS, the City of Kerman Planning Commission has held a public hearing to review and consider a Conditional Use Permit (CUP) application for Fast N Esy; and

WHEREAS, the Planning Commission has made the requisite findings required by Ordinance No. 23-01 for approval for Conditional Use Permit 2023-03 and has approved the CUP subject to conditions of approval; and

WHEREAS, on April 26, 2023 the City Council considered the request for public convenience or necessity. makes findings of public convenience or necessity for a Type 20 Off-Sale Beer & Wine alcohol license; and

NOW, THEREFORE, the City Council of the City of Kerman resolves as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The City Council hereby determines that public convenience or necessity would be served by the issuance of a Type 20 ABC Off-Sale Beer and Wine alcohol license to Fast

N Esy located at 14195 W. Whitesbridge Rd. in the City of Kerman. The Council's determination is based on the following findings:

- a. The sale of beer and wine would serve the public convenience as Fast N Esy has successfully procured an Alcohol Conditional Use Permit as required by Ordinance 23-02. Additionally, the CUP is subject to numerous health and safety conditions.
  - b. Alcohol sales are an incidental activity within convenience stores with fueling stations which is a permitted use in commercial zone districts.
  - c. The proposed use would stimulate economic activity by generating sales tax revenues, full- and part-time jobs while guiding community and economic goals and policies of the General Plan.
  - d. Staff has not been in receipt of any comments in favor or against the ABC license application being issued as a result of the mandatory notice of application posted on the site.
3. The City Council authorizes the City Manager or his designee to submit a letter to ABC advising it of the Council's adoption of this Resolution to allow for the issuance of a Type 20 ABC license.
  4. This resolution is effective upon adoption.

The foregoing resolution was approved by the City Council of the City of Kerman at a regular meeting held on the 26<sup>th</sup> of April 2023, and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSAL:

The foregoing resolution is hereby approved

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Maria Pacheco  
Mayor

ATTEST:

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Marci Reyes  
City Clerk

