



City of Rialto

Legislation Text

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For City Council Meeting [December 14, 2021]

TO: Honorable Mayor and City Council

APPROVAL: Marcus Fuller, City Manager

FROM: Sean M. Moore, AICP, Director of Community Development

Request City Council to Conduct a Public Hearing to Consider an Appeal of the Planning Commission's Decision to Approve Conditional Development Permit No. 2021-0006, a request to allow the Sale of Distilled Spirits for Off-Site Consumption, in addition to Existing sales of Beer and Wine for Off-Site consumption, from an Existing Convenience market located at 718 E. Foothill Boulevard within the Commercial Pedestrian (C-P) land use District of the Foothill Boulevard Specific Plan. This Project is Categorically Exempt pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act Guidelines and consider **Resolution No. 7814** denying appellant's appeal.

(ACTION)

BACKGROUND:

APPELLANT:

Mtanous Issa, 845 E. Foothill Boulevard, Rialto, CA 92376.

APPLICANT:

Samer Elian Ibrahim, 718 E. Foothill Boulevard, Rialto, CA 92376.

LOCATION:

The project site is located at 718 E. Foothill Boulevard within the Rialto Town Center commercial center, which is located at the northeast corner of Foothill Boulevard and Eucalyptus Avenue (Refer to the attached Location Map (**Exhibit A**)).

Surrounding General Plan Land Use Designations

Location	General Plan Designation
Site	Specific Plan with a Specific Plan Overlay (Foothill SP)
North	Specific Plan with a Specific Plan Overlay (Foothill SP)
East	Specific Plan with a Specific Plan Overlay (Foothill SP)
South	Specific Plan with a Specific Plan Overlay (Foothill SP)
West	Residential 21 / Specific Plan with a Specific Plan Overlay (Foothill SP)

Surrounding Zoning Designations

Location	Zoning
Site	Commercial Pedestrian (C-P) - Foothill Boulevard Specific Plan
North	General Commercial (C-3)
East	Commercial Pedestrian (C-P) - Foothill Boulevard Specific Plan
South	Commercial Pedestrian (C-P) / Residential High Density (R-HD) - Foothill Boulevard Specific Plan
West	Multi-Family Residential (R-3) / Residential Mixed Use (R-MU) - Foothill Boulevard Specific Plan

Site Characteristics

The project site consists of a 1,700 square foot tenant space within the Rialto Town Center commercial center located at the northeast corner of Foothill Boulevard and Eucalyptus Avenue. The commercial center consists of seven (7) parcels of land with an area of approximately 225,000 square feet or 5.17 acres. The overall dimensions of the commercial center are approximately 520 feet (east-west) by 425 feet (north-south). The commercial center is currently developed with four (4) buildings totaling approximately 46,300 square feet.

Surrounding Area

The Rialto Town Center commercial center is bound on the south by Foothill Boulevard and on the west by Eucalyptus Avenue. To the north is the Rialto Eucalyptus Head Start State Preschool, and to the east is the San Bernardino County Department of Behavioral Health Rialto facility. To the south, across Foothill Boulevard, is the Holiday Manor mobile home park and another commercial center comprised of four (4) buildings totaling approximately 16,650 square feet, and to the west, across Eucalyptus Avenue, are several single-family residences, the Chandler Court apartment complex, and approximately 0.45 acres of vacant land.

Existing Operation

The applicant currently operates a convenience market, known as Foothill Beer & Wine Mart, at the project site. The convenience market presently operates from 8:00 a.m. to 10:00 p.m. seven (7) days a week. The existing operation consists of the sale of typical convenience goods, such as snacks, drinks, sundry items, cigarettes, lottery, etc., and also includes the sale of beer and wine for off-site consumption. The sale of beer and wine from the convenience market is currently licensed by the California Department of Alcoholic Beverage Control (ABC) via a Type 20 (Off-Sale Beer & Wine) license. A copy of the floor plan for the existing convenience market is attached as **Exhibit B**.

ANALYSIS/DISCUSSION:

Project Proposal

Samer Elian Ibrahim, the applicant, proposes to sell distilled spirits for off-site consumption, in addition to beer and wine, from the existing convenience market. Specifically, the applicant will seek

to change their license with the ABC from a Type 20 (beer and wine only) license to a Type 21 (beer, wine, and distilled spirits) license. The convenience market will continue to operate from 8:00 a.m. to 10:00 p.m. seven (7) days a week, and the convenience market operation will remain the same as it currently is except for the addition of sales of distilled spirits for off-site consumption.

Entitlement Requirements

The proposal to include the sale of distilled spirits requires a change in ABC license classification, and, per Section 18.110.040 of the Rialto Municipal Code, said change requires the approval of a Conditional Development Permit by the Planning Commission. The applicant complied with this requirement and filed a Conditional Development Permit application on February 18, 2021.

Safety

The report containing the calls for service to the establishments 718 E Foothill Blvd. (Foothill Beer and Wine Mart) from January 1, 2020, through August 10, 2021, was obtained from the Rialto Police Department (**Exhibit C**). The report indicates that there ten (10) calls for service at Foothill Beer and Wine Mart. The calls consisted of one (1) false burglary alarm, two (2) unwanted subjects, one (1) petty theft, one (1) indecent exposure, one (1) parking violation, one (1) extra patrol, (1) parking violation, and three (3) follow-up investigations.

Furthermore, in accordance with Section 18.106.050A(1) of the Rialto Municipal Code, the applicant submitted a Crime Prevention Plan (**Exhibit D**) that details the safety measures to increase employee and customer safety and minimize criminal activity within the existing convenience market. Safety measures contained within the Crime Prevention Plan include the installation of security lighting at a minimum of 1.5 foot-candles around the entire building and the installation/maintenance of burglary alarms and surveillance cameras. Corporal Jonathan Palmer with the Rialto Police Department reviewed and endorsed the prevention measures contained within the applicant's Crime Prevention Plan and concluded that, if properly implemented and sustained, these safety measures will minimize crime and nuisance activities that may otherwise be associated with the convenience market. Additionally, the Draft Resolution for Conditional Development Permit No. 2021-0006 includes a condition of approval requiring adequate management on-site at all times at the existing convenience market to ensure proper execution of the Crime Prevention Plan.

Public Convenience and Necessity

Prior to the issuance of a license for the sale of alcoholic beverages, ABC will typically require a city to make of Finding of Public Convenience and Necessity (PCN) for any new establishment in a census tract area that already exceeds the number of licenses that ABC will issue by right. However, in this case, the ABC will not require a PCN since the existing convenience market already possesses a license from ABC and the request to does not involve a new establishment seeking to sell alcoholic beverages.

Land Use Compatibility

The project is consistent with the Commercial Pedestrian (C-P) land use district of the Foothill Boulevard Specific Plan and Chapter 18.110 (Regulation of the Off-Sale of Alcoholic Beverages) of the Rialto Municipal Code. The nearest sensitive uses are the preschool to the north of the project site and the single-family residences to the west of the project site. Implementation of the Crime Prevention Plan and enforcement of the Conditions of Approval contained within the Draft Resolution for Conditional Development Permit No. 2021-0006 will ensure that project does not negatively impact these sensitive uses.

ENVIRONMENTAL IMPACT:

California Environmental Quality Act

The project site is located in an existing building within the Rialto Town Center commercial center. The project involves a request by an existing convenience market to add the sale of distilled spirits to their existing retail operation. No new construction or alterations are proposed as a part of the project. Therefore, the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301, Existing Facilities, of the CEQA Guidelines. Class 1 allows for the exemption of a project which consists of the operation of existing private structures involving negligible or no expansion of use. This project meets the guidelines established by CEQA and is in compliance with the General Plan and Zoning designations for the site

Additionally, the appeal itself does not meet the definition of a project as defined by Section 15378 California Environmental Quality Act (CEQA). A “project” means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and excludes the following:

- 1) Continuing administrative or maintenance activities, such as purchases for supplies, personnel -related actions, general policy and procedure making.
- 2) Organization or administrative activities of governments that will not result in direct or indirect physical changes in environment.

GENERAL PLAN CONSISTENCY:

The proposal to add the sale of distilled spirits within a 1,700 square foot existing convenience market is consistent with the following goals of the Economic Development Element of the Rialto General Plan:

Goal 3-1: Strengthen and diversify the economic base and employment opportunities and maintain a positive business climate.

Goal 3-3: Attract, expand, and retain commercial and industrial businesses to reduce blighted conditions and encourage job growth.

Goal 3-4: Revitalize aging and underperforming commercial and industrial areas.

PLANNING COMMISSION ACTION:

On September 8, 2021, the Planning Commission held a public hearing and considered oral and written testimony for Conditional Development Permit No. 2021-0006. After consideration, the Planning Commission adopted Planning Commission Resolution No. 2021-39 (**Exhibit E**) approving Mr. Ibrahim’s request to allow the sale of distilled spirits for off-site consumption, in addition to existing sales of beer and wine for off-site consumption, at the project site.

APPEAL:

On September 22, 2021, the appellant filed an Appeal with the City Clerk’s Office, in accordance with

Chapter 18.68 (Appeals) of the Rialto Municipal Code. A copy of the applicant's Appeal form is attached as **Exhibit F**. The applicant's appeal seeks to have the City Council overturn the Planning Commission's decision.

In general, the Appeal form indicates that the appellant currently owns and operates Brownie's Liquor located at 845 E. Foothill Boulevard and that the appellant is concerned that competition from the applicant will negatively affect the viability of his business and his livelihood. The appellant's Appeal form did not provide any information or facts to indicate that the project would not comply with the required findings of approval for a Conditional Development Permit, and only focused on a concern regarding a potential personal economic impact.

Staff requested similar information from the Rialto Police Department (**Exhibit G**) regarding calls for service at the appellant's store at 845 E. Foothill Blvd. The report indicates that there were forty (40) calls for service at Brownie's Liquor from January 1, 2020, through November 15, 2021.

As documented in Planning Commission Resolution No. 2021-39 and in the staff report, the applicant's request to allow the sale of distilled spirits for off-site consumption, in addition to existing sales of beer and wine for off-site consumption, complies with all of the required criteria contained within Chapter 18.110 (Regulation of the Off-Sale of Alcoholic Beverages), is consistent with the other commercial uses in the Rialto Town Center commercial center, and satisfies all of the required findings contained within Chapter 18.66 (Conditional Development Permits) that are necessary to grant approval of a Conditional Development Permit. The Planning Division concurs with the Planning Commission's previous decision and recommends that the City Council uphold the Planning Commission's decision to approve Conditional Development Permit No. 2021-0006.

LEGAL REVIEW:

The City Attorney has reviewed and approved the staff report and the attached resolution.

FINANCIAL IMPACT:

Operating Budget Impact

There is no impact to the City's General Fund.

Capital Improvement Budget Impact

There is no capital improvement budget impact.

Licensing

There is no licensing associated with this request.

RECOMMENDATION:

In accordance with the Appeal process provided in Section 18.68.050 of the Rialto Municipal Code, Staff recommends that the City Council conduct a Public Hearing to consider the appellant's appeal, and either:

- Uphold the decision of the Planning Commission and Adopt the attached Resolution (**Exhibit H**) approving Conditional Development Permit No. 2021-0006; or
- Overturn the decision of the Planning Commission and direct staff to prepare a Resolution

denying Conditional Development Permit No. 2021-0006; or

- Uphold the decision of the Planning Commission subject to modifications.