

December 7, 2005

Honorable Mayor and Members of  
the Hermosa Beach City Council

Regular Meeting of  
December 13, 2005

**REQUEST FROM ABC REGARDING APPLICATION OF LARA SOWINSKI,  
302 PIER AVENUE, TO ALLOW ON-PREMISES WINE SAMPLING IN  
CONJUNCTION WITH OFF-SALE BEER AND WINE LICENSE**

**Recommendation:**

That the City Council consider taking an action to direct staff to write a letter to ABC stating that granting a license to allow sampling of wine would serve the public convenience and necessity.

**Background:**

The Planning Commission approved the CUP amendment to allow on-premises wine sampling in February 2005. The applicant, Lara Sowinski, requested that ABC process the license application for the wine sampling aspect of the business and was told by ABC that the City must submit a letter requesting that the license be issued as a matter of public convenience or necessity. This is required because of the concentration of ABC licenses in the City. I have attached the code section related to the process for the City Council of making the finding that the issuance of the license for the public convenience or necessity would be served by the issuance.

It is my understanding that, if the City Council does not make this finding, then the ABC will not process the license application.

This is the only request that we have had for a wine sampling store. The store is operating now but does not offer tasting because they do not have the license for that now. A copy of the Planning Commission staff report is attached and goes into some detail about the business and the condition of approval.

Respectfully submitted,



Stephen R. Burrell  
City Manager

February 8, 2005

**Honorable Chairman and Members of the  
Hermosa Beach Planning Commission**

**Regular Meeting of  
February 18, 2005**

CONTINUED FROM 10/19/04 AND 11/16/04

SUBJECT:       CONDITIONAL USE PERMIT AMENDMENT 04-5 TO ALLOW ON-PREMISES WINE  
                  SAMPLING IN CONJUNCTION WITH A MARKET WITH OFF-SALE BEER AND WINE

LOCATION:       302 PIER AVENUE

APPLICANT:   LARA SOWINSKI

**Recommendation**

To direct Staff as deemed appropriate

**Background**

ZONING:	C-2
GENERAL PLAN:	Restricted Commercial
LOT SIZE:	4,200 square feet
BUILDING SIZE:	Approx. 800 square feet
PARKING PROVIDED:	1 Space
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The building is located on the corner portion of a lot that contains five businesses, including three Pier Avenue, and another two on Monterey Boulevard. The subject building is currently being used as a market specializing in wine sales, and has been previously occupied by convenience and food markets with off-sale beer and wine. A Conditional Use Permit for off-sale beer and wine was granted in 1990 as part of the City's program to amortize existing business selling alcohol without Conditional Use Permits. The C.U.P. allows the off-sale business to be open after 11:00 P.M. until midnight. A C.U.P. is only required for off-sale markets if they are open past 11:00 P.M. Since the applicant is proposing on-sale consumption, no matter how limited it may be, a C.U.P. amendment is required for the "on-sale" beer and wine pursuant to the City's permitted use list.

The State Alcoholic Beverage Control (ABC) currently licenses the business with a Type 20 license, which allows only for off site consumption of packaged beer and wine sold on the premises. The applicant's proposal for limited on-site consumption will require a Type 42 license, to allow on-site consumption.

The property with its multiple buildings is nonconforming to current parking requirements as only 4 off-street parking spaces exist, with one available for the subject business and three spaces located in front of the two business on Monterey Boulevard.

**Analysis**

In the application narrative (attached), the applicant is proposing to offer customers wine sampling for a small fee as part of their normal business operations in conjunction with the existing wine market. The plans show that an 80 square feet portion of the business will be sectioned off for wine sampling during regular business hours. The sampling section will be cordoned off by low-level barriers to prohibit

access to persons younger than 21 years of age. The sampling section includes two stand-up tables (no seating) and wine storage for the sampling. The wine sampling will be for one-ounce sips of wine, and a maximum of 5 samplings, with all pouring done by market employees. The applicant is willing to limit their market and wine sampling hours to 10:00 P.M. The applicant is modeling this concept after the "Sepulveda Wine Company" which also is a wine specialty shop, which recently obtained approval from the City of Manhattan Beach for limited wine sampling. The City of Manhattan Beach approved the request subject to several conditions to clearly limit the location for and the amount of wine consumption, and to ensure that sampling is secondary to the primary use of the premises as a market (attached).

Based on the applicant's description, and pursuant to the permitted use matrix contained in Section 17.26.030, staff is considering the proposed on-premises consumption of wine, although limited to sampling, as an "alcohol beverage establishment, on-sale." The proposed use does not fit into any other category, and this is clearly the most similar use. Pursuant to the City's permitted use list this business may therefore only be permitted with a Conditional Use Permit. However, staff believes that the primary permitted use is as a permitted "off-sale" market, so the subject C.U.P. request relates to the addition of this secondary use of the business for sale and consumption of alcohol on the premise.

No other interior changes to the premises are proposed at this time. Based on the information and plans submitted, it is not clear if this proposal to consume alcohol as "samples" can be considered incidental to the retail market with respect to the Uniform Building Code, or the requirements of the L.A. County Department of Health. The applicant is proposing the use of disposable plastic cups, and is requesting that this sampling area be considered as secondary or incidental to the primary use of the property as a market, similar to sampling snack foods or other food items, and therefore be excepted from certain requirements, including Title 24 for handicapped accessibility. They believe that incidental beverage sampling does not change the business, and thus is not subject to health and safety and/or building code upgrades to bathroom facilities and/or washing facilities that would otherwise be required for food and beverage establishments that offer on-site consumption. The City will get clarification on these issues during the plan check process should the Commission approve the request.

In order to offer wine sampling the applicant will be also applying to the State Alcoholic Beverage Control to obtain a Type 42 ABC license, which allows on-site beer and wine consumption. This is the same license that ABC provides for bars that do not serve food, and is distinguished from the more common type 41 license for most restaurants in the downtown area. This Type 42 license applies only to the sectioned-off portion of the business, and the rest of the market operates under a Type 20 off-sale license.

Based on the request that wine sampling be considered secondary to the primary use as a market, the applicant also is requesting a determination that this not be considered an intensification of the existing use. If the project were considered as intensifying the use, the proposed new use classification would require additional parking. For example if this were considered a bar, the required increased parking would be substantial as 10 parking spaces would be required (1 space per 80 square feet of floor area.) Given the proposed limitation on hours, limited area for sampling, it would seem reasonable to consider the proposed sampling area as incidental, and causing no intensification of the existing market use or any material effect on parking demand.

If the Commission makes a favorable decision on this request, and determines that this use is secondary to the primary use, staff recommends the following special conditions to limit the intensity of the wine

consumption, and to ensure that this business or any future business operating with this C.U.P. retains its primary character as a retail market.

1. On premises consumption of alcohol limited to wine sampling only, within the 80 square foot area per plan
2. Sampling area to be separated from retail market by non-portable (low wall, shelving, etc.) that are affixed to a clearly marked location on the floor and noted on project plans.
3. Hours for the market and wine sampling limited to no later than 10:00 P.M. daily.
4. No seating to be allowed in wine sampling area, and tables appropriate for standing only, and noted on project plans.
5. Limit to one-ounce sampling sizes, maximum of 5 samples per customer, and pouring by employees only.
6. No serving or preparation of food or meals (other than minimum associated with wine sampling such as small pieces of cheese, bread, or fruit)
7. Prohibition of exterior signs for advertising wine sampling
8. The proposed sampling area, and other improvements must be in compliance with requirements of the LA County Department of Health, the State Alcohol Beverage Control, and the Hermosa Beach Municipal Code.
9. The operation of the business shall be reviewed by the Commission in 6 months.

The Commission must make the basic determination and findings that this proposal will be compatible with the surrounding commercial and residential uses, and decide if it warrants the granting of a Conditional Use Permit. In addition, given the unique nature of this proposal, the Commission must decide if the detailed operational conditions to limit the on-sale portion of the business are reasonable and will prove to be practical and enforceable. Otherwise, opening the option for on-site consumption of wine has the potential to transform this location into something unforeseen at this time, such as a wine bar or other type of use that may not be appropriate for this location, and will place an unnecessary burden on City staff to monitor and enforce the proper behavior of employees at this location.

Based on the direction of the Planning Commission, staff will return with a resolution at the next meeting.

CONCUR:

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Ken Robertson  
Senior Planner

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Sol Blumenfeld, Director  
Community Development Department

Attachments

1. Proposed Resolution
2. Applicant narrative
3. Manhattan Beach staff report/approval resolution
4. Location Map
5. Photographs
6. 1975 Conditional Use Permit

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Department of Alcoholic Beverage Control  
Inglewood District Office  
1 Manchester Blvd, Sixth Floor  
Post Office Box 6500  
Inglewood, CA 90306  
Phone: 310-412-6311  
Fax: 310-673-4082

State of California



# FAX TRANSMISSION

Total Number of Pages 3 (Including this cover sheet)

Original:  To follow by regular mail  Will not follow

To: Mr. Steven Burrell

Firm/Office: City of Hermosa Beach

Fax: \_\_\_\_\_ Date: 11/30/05 Time: 1:50 PM

cc('s): \_\_\_\_\_

From: Margot Hoffman Phone: 310-412-6344

Subject: Request for Public Convenience or

Comments: Necessity

Mr. Burrell,  
Per our District Administrator,  
we have no letter from ABC requesting  
Public Convenience or Necessity.  
Please provide a letter based on  
Section 23958.4. (See attached).  
Thank you. Margot Hoffman

### NOTICE

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"Be Energy Efficient"

23958.3. **Investigation of off-sale beer and wine applications.** *Repealed by Stats. 1982, Ch. 1189, in effect January 1, 1984.*

**23958.4 Undue concentration; public convenience or necessity.** (a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The

population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.

History.—Added by Stats. 1994, Ch. 850, in effect January 1, 1995. Amended by Stats. 1996, Ch. 811 and 869, in effect January 1, 1997, to require governing bodies to make determination of public convenience and necessity within 90 days. Amended by Stats. 1995, Ch. 91, in effect January 1, 1996, to make technical, non-substantive changes.

~~23959. Fee refund. If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes then due from the applicant under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.~~

History.—Stats. 1955, Ch. 1648, in effect September 7, 1955, substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division." Stats. 1967, Ch. 2207, in effect July 16, 1967, revised refund fee. Stats. 1978, Ch. 856, in effect January 1, 1979, substituted \$50 for \$25. Stats. 1992, Ch. 900, in effect September 25, 1992, increased amount to \$100 and provided that it be deposited in ABC Fund.

~~23960. Partial fee refund. Repealed by Stats. 1992, Ch. 838.~~

~~23961. Drawing for priority. (a) If, at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of on-sale general licenses or off-sale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds that there are more applicants for the particular type of license than there are licenses available for issuance or transfer under Sections 23821 and 24070, the department shall, within 60 days following the conclusion of said period, conduct a~~

December 6, 2005

City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, CA 90254  
Attn: Mr. Stephen R. Burrell, City Manager

Dear Mr. Burrell,

My name is Lara L. Sowinski, owner of Smokey Hollow, a wine shop located at 302 Pier Avenue.

On February 15, 2005, I appeared before the Hermosa Beach Planning Commission to request an amendment to my Conditional Use Permit in order to serve one-ounce wine samples (maximum five samples) to my customers as a way to help sell the boutique and small-production wines in which my shop specializes.

During that time, I explained that my customer base is comprised largely of Hermosa Beach residents, most of whom are in the 30-year and older age group, and are enthusiastic about patronizing a local business and discovering wines that are new to them. Furthermore, I emphasized that my intention is to provide sampling as a way to sell wines that customers are unfamiliar with. Therefore, the sampling would be limited to an 80 square foot area on the main floor, where customers would stand at a serving station for a one-ounce sample. The limited sample size and 'standing only' requirement would underscore my intention to have customers sample a wine then purchase the bottle.

That evening, the Planning Commission voted 5-0 in favor of my request. I then proceeded to file the necessary paperwork with the state Alcoholic Beverage Control board to for a Type 42 license, which I need to conduct wine samplings.

At this point, all of my ABC paperwork has been processed except the letter of Public Convenience or Necessity, which I must secure from the City Council. I am scheduled to appear before the Council next Tuesday, December 13, 2005.

Throughout this process, I have come to appreciate the sensitivity of my request to serve wine samples in my shop.

As a Hermosa Beach resident and parent, I am aware of the concerns regarding a proliferation of establishments that serve alcohol in our community. Likewise, as a business owner, it's important to me to participate in the enhancement of Hermosa Beach by creating a retail environment that city officials and residents view as a positive contribution to the community and whose products and services are unique.



I believe it's important to note that when I bought the business (previously operated as a convenience store), I chose to not sell tobacco products, adult magazines, or other products that are typically associated with convenience stores. Rather, my business plan focuses primarily on showcasing eclectic wines, mostly from California. And, in addition to the wine accessories I currently sell, such as picnic baskets, wine totes, art and cards by local artists, I will soon be introducing artisan cheeses, chocolates, tapanades, and other food items found in upscale gourmet food markets.

Thank you in advance for your consideration, as well as the City Council's, for a letter of Public Convenience or Necessity.

Sincerely,

Lara L. Sowinski