

NOTICE OF DECISION
Development Services Department

Project Name:	Jacksons Food Stores #229 Public Convenience or Necessity Findings
Request:	Allow a Type 21 Alcoholic Beverage Control (ABC) License for a convenience store
Ministerial Actions:	Finding of Public Convenience or Necessity (PCN)
CEQA Determination:	Exempt
DECISION:	APPROVED
Project Number:	SRVQST-007522-2024
DSD Number:	2024-129
Location:	633 Birmingham Dr.
Community:	Cardiff-by-the-Sea
APN:	260-316-04
Applicant:	Shaw Youngblood
Representative:	Rawlings Consulting
Project Planner:	Charlotte Brenner, Assistant Planner, cbrenner@encinitasca.gov
Decision Date:	November 18, 2024
Report Approval:	<input checked="" type="checkbox"/> Christina Bustamante, Senior Planner <input checked="" type="checkbox"/> Katie Innes, Planning Manager

PROJECT DESCRIPTION

The applicant requests that the city make a finding of public convenience for a proposed Type 21 (Off-Sale General) Alcoholic Beverage Control (ABC) license for Jacksons Food Store. The finding of public convenience would authorize Jacksons Food Store to sell beer, wine, and distilled

spirits for consumption off the premises. The Type 21 ABC license privileges allow minors to be on the premises.

PROJECT ANALYSIS

Background

On May 15, 1996, in accordance with Business and Professions Code Section 23958.4(b)2, the City Council adopted Resolution No. 96-37, which enabled the city to make findings of public convenience or necessity prior to the State Alcohol Beverage Control Board granting certain ABC license.

The applicant’s representative applied (on behalf of Thrifty Oil Company/Jacksons Food Store #229), to the California Department of Alcoholic Beverage Control (ABC) for a Type 21 License (Off-Sale General license). On August 29, 2024, the applicant submitted a service request to the city’s planning division to process a request for the city to make a finding of public convenience or necessity for the requested license.

Jacksons Food Store is located at an existing service station between Interstate 5 Highway and Carol View Drive. This site was developed under the County of San Diego under a Major Use Permit (MUP) (82-011 MUP) as a Thrifty Oil Service Station and Convenience Center. This location has maintained their existing Type 20 ABC license with the California Department of ABC since September 11, 1980.

Project Site Characteristics:

The table below summarizes the characteristics of the project site:

General Plan:	Visitor-Serving Commercial (VSC)
Specific Plan:	None
Zoning District:	Visitor-Serving Commercial
Zoning Overlay:	Coastal Zone, Special Study, Scenic/Visual Corridor, Hillside/Inland Bluff Overlay Zone
Other Key City Plan:	None
Notable State or Regional Plan and Law:	None

Adjacent Area:

The table below summarizes the characteristics of the adjacent area:

Direction	General Plan & Zoning District	Land Use
North	LVSC/ Limited Visitor – Service Commercial	Commercial
South	Residential/ Residential-15	Multi-family residential
East	TC /Transportation Corridor	Interstate 5 Highway
West	Residential / Residential-11	Single-family residential

General Plan Consistency

The City of Encinitas General Plan includes a number of goals and policies that guide development and land use within the city. A discussion of how the project is consistent with applicable General Plan policies is summarized below:

General Plan Goal or Policy	Explanation of Project Conformance
<p>Land Use Policy 1.8: Encourage the types of commercial activities which will supply the community with a diverse economic base.</p>	<p>The request for the Type 21 ABC license will contribute to the variety of retail sales within the city that support a diverse economic base.</p>
<p>Land Use Policy 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses such as:</p> <ul style="list-style-type: none"> - Tourist lodging, including campgrounds - Eating and drinking establishments - Specialty shops and personal services - Food and beverage retail sales (convenience) - Participant sports and recreation - Entertainment <p>The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses and required off-street parking shall not occupy or utilize more than 30 percent of the ground floor area.</p>	<p>This store is located within the visitor-serving commercial zoning district. The Type 21 ABC license will not intrude on the existing residential community. The existing store is a convenience establishment serving both visitors and residents. The off-premise sale of alcoholic beverages is permitted “by-right” within the visitor-serving commercial zone.</p>
<p>Land Use Goal 6: Every effort shall be made to ensure that the existing desirable character of the communities is maintained.</p>	<p>The proposed Type-21 ABC license will not change the character of the community. There are no physical changes proposed to the existing convenience store and the license request is to upgrade an existing Type-20 ABC license (off-premise beer and wine) to a Type-21 ABC license (off-premise general), which will allow the off-premise sale of distilled spirits (in addition to the existing privileges allowing for the off-premise sale of wine and beer).</p>

Municipal Code Analysis

The subject property is located within the Visitor-Serving Commercial (VSC) Zone. A convenience store use with off-premises sales of alcoholic beverages (such as that being proposed by Jacksons Food Store) is a permitted use within the VSC Zone. No physical site improvements or other operational changes are proposed as part of this request.

Development Standard	Project Proposed	Complies?
<p>Zone/Land Use: Visitor-Serving Commercial (VSC)</p> <p>The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City.</p>	<p>The Jackson Food Store establishment is currently selling wine and beer for offsite consumption, as authorized by their existing Type-20 ABC license. The establishment now proposes to provide the sale of premade or distilled alcoholic beverages for offsite consumption, through the issuance of a Type-21 ABC license. The store currently serves and is intended to continue to serve both local and visiting customers.</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>

Other Policy or Plan Consistency

Business and Professions Code Section 23958.4(b)2 stipulates that the State Alcoholic Beverage Control Board may grant a off-sale ABC license to an applicant if the local governing body determines that a public convenience or necessity would be served by the issuance of the license. Pursuant to this Business and Professions Code section, the City Council adopted Resolution 96-37, which provided direction to staff relative to what factors or evidence is to be considered when determining findings for public convenience or necessity.

When the city is making a “finding of public convenience,” it considers factual data/information that demonstrates that the facility will have a majority of floor space devoted to food and other merchandise, with the minority of the floor space devoted to alcoholic beverages. Additionally, the city considers the information and analysis obtained from the San Diego County Sheriff’s Department that determines that similar establishments have not contributed significantly to the crime rate in the city.

When the city is making a “finding of public necessity,” it considers factual data that demonstrates that the establishment would provide a unique experience or products that cannot be satisfied unless the applicant’s permit were approved. Similar to the “finding of public convenience” described above, the city also considers information and analysis obtained from the San Diego County Sheriff’s Department determining that similar establishments within the city have not contributed significantly to the crime rate in the city.

Finding of Public Convenience or Necessity - Analysis

Staff reviewed the request in accordance with the criteria established by Resolution 96-37, which provides the regulatory framework for rendering determinations of public convenience or necessity. Several factors were considered in determining whether a public convenience or public necessity would be served. These factors include census tract data, crime data, the amount of floor space devoted to alcohol (versus other merchandise), and the establishment’s unique, or specialized experience.

Census Tract Data Analysis

Jacksons Food Store is located within census tract 174.08. The current allowable San Diego County census tract ratio is one off-sale license to 1,600 residents within a census tract. Census tract 174.08 has a population of 2,417, which would allow one (1.51 rounded down) license before it meets the census tract limit. Currently, there are two off-sale licenses within the subject census tract, including the existing Type-20 ABC license for Jacksons Food Stores. The two existing off-sale ABC licenses result in an overconcentration of allowable off-sale licenses in the census tract. Although there are other off-sale licenses within the census tract to purchase alcohol, this proposed business would be the only Type-21 license and retail store open to the public. The second off-sale license in this census tract is for the off-premise sale of wine with sales restricted to direct mail, internet, or telephone only.

Business	ABC License Type	Limited off-sale wine	Beer and wine	Beer, Wine and Distilled Spirits	Type of Establishment
Starkland Cellars 2382 Oxford Ave, Encinitas, CA 92007	85	X	-	-	Wine consulting and online wine sales
Jacksons Food Stores INC 633 Birmingham Dr Cardiff-by-the-Sea, CA 92007	20	-	X	-	Retail convenience store

Crime Data Analysis

Within a 0.25-mile radius surrounding the proposed location, there has been 46 alcohol related incidents in four years from 2020-2024 (nine in 2020, six in 2021, 11 in 2022, 10 in 2023, and 10 to-date in 2024). The Sheriff’s department provided planning staff an email dated September 26, 2024, specifically stating they do not foresee any issues with allowing a Type-21 ABC license at this location.

Unique/Specialized Experience and Floor Plan

Jacksons Food Store currently sells fuel, snacks, sandwiches, candies, limited groceries, beer and wine. Jacksons Food stores have an established customer base that have shown interest in purchasing distilled spirit products from this location. Jacksons Food Store plans to sell “ready to drink” beverages containing distilled spirits from the same cooler as the beer, wine, and seltzer products. These “ready to drink” beverages are typically the same size as the beer and seltzer products currently being sold. All distilled spirits, which will range from 375 ml to 750 ml, will only

be displayed behind the cashier in a locked glass cabinet, totaling approximately six square feet. This location will not sell the mini “airline” sized bottle of distilled spirits.

ENVIRONMENTAL CONSIDERATIONS

The project has been determined to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15300.1 which exempts projects that public agencies exercise only ministerial authority. The request for public convenience is a ministerial action. The project meets the criteria for the exemption. The project does not qualify for the exceptions prescribed under Section 15300.2 of the CEQA Guidelines and no historic resources are affected by the proposed project.

DISCUSSION

Staff assessed the census tract data, crime data, the amount of floor space devoted to alcohol (versus other merchandise), and the unique characteristics of the proposed establishment. In addition, staff received correspondence from the Sheriff’s department indicating no objections to the application or license request

Staff finds that a public convenience would be served by issuance of the license, as outlined in the findings below.

FINDINGS

Based on the findings for a Public Necessity per Resolution 96-37 and the aforementioned analysis, the Development Services Department has made the following findings to support the approval:

Finding for Public Convenience	Explanation of Finding
Factual data showing that the premises will have a majority of floor space devoted to food or other merchandise with a minority of floor space devoted to alcohol beverages. A typical use meeting this criteria would be a supermarket or other food store with alcoholic beverages offered as one of many products.	The display area of all alcohol (beer, wine, and distilled spirits) will be approximately 2.5% (30 square feet) of the overall store size (1,182 square feet). Jackson Food Store devotes the majority of its retail floor area to the sale of food and other merchandise.
Information from the Encinitas Substation of the San Diego County Sheriff that similar establishments within the City of Encinitas have not contributed significantly to the crime rate within the City of Encinitas.	The San Diego County Sheriff’s department has reviewed the request and stated they do have concerns with allowing a Type-21 ABC license (and the associated sale of beer, wine and distilled spirits for off-premise consumption) at this location.

CONCLUSION

The proposed Type 21 ABC license meets the criteria for findings for public necessity. Therefore, staff finds that a public necessity would be served by issuance of the license (with conditions to be imposed and enforced by ABC).

DISCLOSURES

ITEM NAME: JACKSONS FOOD STORE #229 TYPE 21 LICENSE

PROJECT NUMBER: 007522-2024 SRVRQST

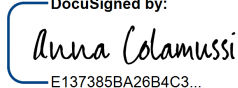
NOVEMBER 18, 2024

This notice constitutes a decision of the Development Services Department for the discretionary entitlement only. Additional permits, such as building and grading permits, may be required by the Development Services Department, or other City Departments or Divisions. It is the property owner's and applicant's responsibility to obtain all necessary permits required for the type of project proposed.

In accordance with the provisions of Municipal Code Section 1.12, the decision of the Development Services Department may be appealed to the City Council within 10 calendar days of the date of this determination. The appeal must be filed, accompanied by a \$453 filing fee, prior to 5:00 pm on the 10th calendar day following the date of this Notice of Decision. Any filing of an appeal will suspend this action as well as any processing of permits in reliance thereon in accordance with Encinitas Municipal Code Section 1.12.020(D)(1), until such time as an action is taken on the appeal. **The action of the Development Services Department may not be appealed to the Coastal Commission.**

SIGNATURE

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for

Katie Innes
Planning Manager

Certificate Of Completion

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	Encinitas, CA 92024
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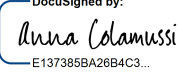
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