City of Calistoga Staff Report

TO:

Honorable Mayor and City Council

FROM:

Erik V. Lundquist, Associate Planner

DATE:

June 3, 2008

SUBJECT:

Consideration of a request for a Determination of Public

Convenience and Necessity (PCN)

APPROVAL FOR FORWARDING:

James C. McCann, City Manager

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ISSUE: Consideration of a request for a Determination of Public Convenience and Necessity (Application No. PCN 2008-01) authorizing beer and wine sales in the City of Calistoga at 207 Wappo Avenue (APN 011-101-016) within the "CC-DD", Community Commercial — Design District. The applicant/business operator is Gilberto Garcia of the Wappo Market.

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use would serve the public's convenience and necessity.

RECOMMENDATION: Adopt a Resolution making a determination that the proposed

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BACKGROUND: The Wappo Market has recently changed ownership. The current business operator is in the process of transferring all of the appropriate documents, permits and licensing regarding the existing retail store into the names of the current business operator.

The State Department of Alcoholic Beverage Control requires that the current business operator receive an Alcoholic Beverage License prior to the sale of beer and wine. On July 21, 1998, the City Council adopted Resolution 98-113 (attached) establishing the procedures for consideration of alcoholic beverage licenses in Calistoga. Under this Resolution, businesses requesting a license to sell alcohol for on- or off-site consumption would be required to first obtain clearance from the City of Calistoga before the State Department of Alcohol Beverage Control (ABC) would consider the license. City clearance would be provided in the form of a "Determination of Public Convenience and Necessity," wherein an applicant must meet certain local standards. This process is applied in areas where ABC has determined that there is an over-

concentration of businesses selling alcoholic beverages, and in some instances is

PCN 2008-01, The Wappo Market City Council Staff Report June 3, 2008 Page 2 of 3

associated with inner-city areas where alcohol-related businesses can have a deleterious effect on the quality of life. However, in Calistoga this over-concentration of alcohol-related businesses is a reflection of the positive and symbiotic relationship that Calistoga has with the Napa Valley (e.g. wineries, restaurants, visitor industry, and convenience operations providing retail to various demographics, etc.).

In addition, the market is located in the "CC-DD", Community Commercial—Design District, which allows retail stores as a principally permitted use by simply receiving approval of a business license. Although, Section 17.22.060(B)(21) of the Calistoga Municipal Code states that wine and liquor sales require a conditional use permit, this retail store has been in operation, including beer and wine sales, prior to the adoption of this Ordinance. A change in ownership will not trigger the conditional use permit requirement and the business operator has already obtained the necessary Business License. No further land use entitlement is required at this time. Therefore, the operator is only requesting the City Council make a "Determination of Public Convenience and Necessity" for the sale of beer and wine at the existing retail store.

<u>DISCUSSION</u>: Resolution No. 98-113 requires an applicant to meet certain guidelines, which are used by the City Council in making a judgment whether the proposed use (in this instance the continuation of an existing business offering beer and wine sales) qualifies as a Public Convenience and Necessity. These guidelines include:

 Input and recommendation from the Police Department prior to consideration of the use;

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Evidence provided by the applicant addressing the public convenience or necessity that would be served by the alcohol license;
The nature of the proposed use;

 The extent to which alcohol sales are related to the function of the proposed use and the possibility of the use operating in a viable fashion without alcohol sales;

 The proximity of the proposed licensed premises to sensitive land uses such as residences, schools, churches, and parks, and the effect that existing and proposed licensed businesses may have on such sensitive land uses;

• The compatibility and suitability of the proposed use with the use and/or character of the surrounding area;

The effect that the proposed use may have on the welfare of the area residents;
 and

PCN 2008-01, The Wappo Market City Council Staff Report June 3, 2008 Page 3 of 3

 The public convenience or necessity which would serve the community by the issuance of an additional license both in the immediate area and in Calistoga in general.

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Staff has reviewed the proposed request and has determined that an alcohol license for this business will not adversely affect the public welfare of the immediate vicinity or community in general. Beer and wine sales are incidental to the primary use of the business as a retail store offering convenience store items and specialty goods. Moreover, the location of this business will not impact sensitive land uses as defined above, and the sales of beer and wine is compatible with the uses and character of other neighborhood retail businesses. The proposed beer and wine sales provide a convenient and necessary business to Calistoga that reflects a diverse mix of businesses for locals and visitors alike. Therefore, staff recommends the PCN be approved with the conditions to address general issues raised by the establishment of an additional licensed business in Calistoga. These conditions address loitering and the maintenance of the business premises and the requirement that future expansion of alcohol related components of the business will require a subsequent PCN Determination. These conditions are more specifically defined in the attached Resolution 2008-##.

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<u>FISCAL IMPACT</u>: The proposed beer and wine sales is not anticipated to have a fiscal impact upon the City.

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ATTACHMENTS:

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- 1. Draft City Council Resolution
- 90 2. PCN Application and written submittal received from Gilberto Garcia on May 2, 2008
- 91 3. Resolution 98-113

RESOLUTION OF THE CITY OF CALISTOGA MAKING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY FOR A BEER AND WINE AND SALES LICENSE FOR A RETAIL STORE AT 207 WAPPO AVENUE WITHIN THE "CC-DD", COMMUNITY COMMERCIAL — DESIGN DISTRICT (APN 011-101-016)

WHEREAS, State law regulating the concentration of alcoholic beverage licenses issued within any one census tract requires local jurisdictions to make Determinations of Public Convenience and Necessity for new businesses where the State Department of Alcoholic Beverage Control (ABC) has concluded that an undue concentration of these businesses exists; and

WHEREAS, ABC has determined that there is an over-concentration of businesses selling alcoholic beverages for on- and off-site consumption in Calistoga; and

WHEREAS, the City Council has adopted Resolution 98-113 establishing guidelines for making Determinations of Public Convenience and Necessity; and

WHEREAS, on May 2, 2008, Gilberto Garcia applied to the City for a Public Convenience and Necessity Determination for an off-sale beer and wine sales license for the Wappo Market located at 207 Wappo Avenue; and

WHEREAS, on June 3, 2008 the City Council determined that the granting of a license for beer and wine sales establishment at 207 Wappo Avenue will serve as a public convenience and necessity based on the following findings:

- The Police Department has reviewed the call history for the subject property and the surrounding businesses and residences. The Police Chief indicated that there has been some history of police actions related to the existing beer and wine sales on or around the subject. However, the Police Chief stated that the history of property is related to the previous operators business practices and he further understands that the current owner will diligently follow the provisions of their licenses, which will not result in problems within the adjacent neighborhood.
- 2. The applicant has provided evidence in support of the proposed application and has addressed the public convenience or necessity that would be served by the additional license.
- 3. The retail store is intended to be residential serving and provide the surrounding residential neighborhood with the convenience of a variety of merchandise and/or goods. Beer and wine sales are related to the functionality of the retail establishment. Generally, the customers shop at the market for only a limited number of items, beer and wine are typically among these items.
- 4. This business could not operate in a viable fashion without alcohol sales. Beer and wine are a large percent of the daily revenue.
- 5. The proximity of the proposed licensed premises to sensitive land uses and the effect that existing and proposed license may have on such sensitive land uses has been considered. The subject property is located on Wappo Avenue, which is peripheral commercial area offset from the commercial core along Lincoln Avenue. The Calistoga High School is in the vicinity of the establishment. The Monhoff Center is the closest park and it is located around the corner off of Grant Street and Stevenson Avenue approximately 300 feet to the northwest. The High School and City Park are surrounded by substantial fencing and are separated away

from the market by distance and location around the corner. The existing market has not had an impact on these sensitive land uses and the change in ownership should not result in an impact on the sensitive land uses in the vicinity.

55 56 6. The proposed use is compatible with the uses and character of the surrounding area. Beer and wine sales as an ancillary use to the retail convenience store is compatible with both the surrounding commercial land uses and the character of the City of Calistoga given the symbiotic relationship that Calistoga has with various demographics.

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7. The proposed use will not have a significant impact upon the welfare of the area residents.

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8. The public, both local Calistoga residents and tourists, convenience or necessity would be served by the issuance of the expanded license for beer and wine sales. There is a public demand for conveniently located beer and sales in Calistoga. Presently, there are a couple of other establishments that provide beer and wine sales along the Lincoln Avenue corridor. However, these facilities are not located near the northwestern quarter of the City (i.e. north of Grant Street) nor do they provide the same mix of local retail services.

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BE IT FURTHER RESOLVED that based upon substantial evidence presented to this Council during the referenced meeting, including written and oral staff reports and public testimony, and subject to the provisions of the staff recommendations, the City Council has made a Determination of Public Convenience and Necessity for beer and wine sales at a retail business located at 207 Wappo Avenue, subject to the following conditions:

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76 77 1. This Public Convenience and Necessity Determination authorizes beer and wine sales on the Any proposed expansion of sales or consumption of alcoholic beverages associated with this property, in addition to what is entailed with this approval, will require subsequent Determinations of Public Convenience and Necessity. For the purposes of these conditions, the premises means the entire property, including the interior of the building, the parking lot, and the sidewalk in front of the building.

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2. The City Council may revoke the permit in the future if the Council finds that the use to which the permit is put is detrimental to the health, safety, comfort and welfare of the public, or constitutes a nuisance.

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The business operator shall use all of its civil law authority to prevent loitering on the premises. 3. Signs shall be provided prohibiting loitering both in English and in Spanish subject to the review and approval of the Planning and Building Director.

4. The business operator shall maintain all site improvements according to City standards and in a clean and orderly manner on a daily basis.

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The business operator shall comply with all local, State, and Federal laws applicable to its 5. business.

Sales, or service of alcoholic beverages shall be permitted only between the hours of 6:00

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PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this 3rd day of June, 2008, by the following vote:

99 100 a.m. and 10:00 p.m. each day of the week.

Page Two AYES: 101 102 NOES: ABSTAIN/ABSENT: 103 104 105 106 JACK GINGLES, Mayor 107 108 ATTEST: 109 110 111 SUSAN SNEDDON, City Clerk 112

Resolution No. 2008-##



FILE NO.:	<u> </u>	2008-0	
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ASSESSOR'S PARCEL NO .: 011-101-016

FINAL ACTION & DATE:

City of Calistoga

Planning & Building Department Application Form

1232 Washington Street Calistoga CA 94515 707.942.2827 707.942.2831 fax

PLANNING APPLICATION FORM

Applicant Information

Applicant's Name:	Phone:	Fax: E-Mail Addre
GILBERTO GARCI	942-5172	E-Mail Addres
Applicant's Mailing Address:	City:	State/Zip Code:
1739 N. OSK	CALISTOGA	
Property Owner's Name: (if different from	Phone:	
Applicant)	, model	Fax: E-Mail Address
	·	
Property Owner's Mailing Address:	City:	Charles Co. L
		State/Zip Code:
Agent's Name: (if different from Applicant)	Phone:	
,	Thories	Fax: E-Mail Address
Agent's Mailing Address:		
Agence Maining Address:	City:	State/Zip Code:
Other Representative: (Engineer/Architect)	Phone:	Fax: E-Mail Address:
		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Representative's Mailing Address:	City:	State/Zip Code:
		State/Elp Code.
Project Name and Address:	WAPOC 01 - 016	
Site of site (acreage and/or square footage):		
General Plan designation:	el/commety zonion	CC - PD
Growth Management Allocation number or except	- ·	
and the language ment Anocation number of except	ion status:	
Application Type (For Staff Us	e)	
□ Appeal	☐ General Plan Amendment	☐ Subdivision
☐ Certificate of Compliance	☐ Lot Line Adjustment	☐ Tentative Map
☐ CEQA Compliance	☐ Municipal Code Amendment	☐ Tentative Parcel Map
☐ Conceptual Design Review/Pre-	☐ Planned Development Plan	☐ Amendment Tentative Map
Application Conference		☐ Amendment Tentative Parcel Map
☐ Conditional Use Permit	Public Convenience and Necessity	☐ Modification to Final Map
☐ Administrative ☐ Amendment	☐ ABC License	☐ Variance
	☐ Rent Vehicles	☐ Voluntary Merger
☐ Major	☐ Rezone	
		Li Zoning Ordinance Amendment
Design Review Development Agreement	☐ Sign Permit	☐ Zoning Ordinance Amendment ☐ Other:

Detailed Project Description (required): A typed, detailed project description is required that describes the proposed development or use(s); the existing site conditions/uses; the number, size, type and nature of any proposed residential dwelling units or total amount of new non-residential square-footage by type of use. Please see specific submittal handouts for details to describe.

Conditions of Application

- 1. All materials and representations submitted in conjunction with this form shall be considered a part of this application.
- 2. The owner shall inform the Planning Division in writing of any changes.
- 3. Agent authorization: The property owner authorizes the listed agent(s) and/or other representative(s) to appear before staff, the Planning Commission and City Council to file applications, plans and other information on the owner's behalf.
- 4. Indemnification: The applicant agrees to defend, indemnify and hold the City, its agents, officers and employees harmless from any claim, action or proceeding to attack, set aside, void or annul and approval of the City concerning the project, as long as the City promptly notifies the applicant of any such claim, action or proceedings and the City cooperates fully in the defense.
- 5. I hereby authorize employees of the City of Calistoga to enter upon the subject property, as necessary, to inspect the premises and process this application.

I have read and agree with all of the above. The above information and attached documents are true and correct to the best of my knowledge. All property owners holding a title interest must sign the application form. If there are more than two property owners, list their names, mailing addresses, phone numbers and signatures on a separate sheet of paper.

If you wish notice of meetings/correspondence to be sent to parties other than those listed on page 1, please list them on a separate piece of paper.

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Property Owner's Signature and Date

Owner/Agent Statement

I am either the legal owner of record of the land specified in this application or am authorized and empowered to act as an agent on behalf of the owner of record on all matters relating to this application. I declare that the foregoing is true and correct and accept that false or inaccurate owner authorization may invalidate or delay action on this application.

Signature and Date

Date Received/Staff Initials:

RECEIVED
MAY 0 2 2008

BY:
Check No.

PCN Supplemental Application
Have you ever been convicted of a felony, or the violation of a narcotic law, or of any penal law involving moral turpitude?: Yes ☐ No ☒ If Yes, provide details:
AFFIDAVIT - READ VERY CAREFULLY
All answers and statements in this application are true and complete to the best of my knowledge and belief. I understand that untruthfulness or misleading answers are cause for rejection of this application.
I hereby authorize any and all individuals, firms or corporations to furnish the City of Calistoga with information they may have concerning me, whether or not on record. I hereby release any and all individuals, firms or corporations from any liability for any damages whatsoever in furnishing said information.
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RECEIVED
MAY 0 2 2008
BY:

QUESTION 1.

THE BUSINESS WILL BE OWNED BY TWO BROTHERS, AS INDIVIDUALS. NO CORPORATION OR LIMITED LIABILITY COMPANY.

- 1. GERARDO S. GARCIA, 1615 FOOTHILL BLVD., CALISTOGA DOB: 10/11/71
- 2. GILBERTO S. GARCIA, 1739 N. OAK, CALISTOGA DOB: 06/09/69

QUESTION 2.

THE PROPOSED BUSINESS IS A SMALL GROCERY STORE, WITH FRUIT AND VEGETABLE WITH VARIOUS SUNDRY ITEMS INCLUDING MILK AND OTHER DIARY ITEMS IN A REFRIGERATED AREA. DRY GOODS ARE ALSO AVAILABLE.

IF THE ADDITION OF THE BEER AND WINE IS APPROVED, THERE WILL BE A REFRIGERATED 5' CASE UTILIZED FOR DISPLAY AND POINT OF SALE. WE INTEND TO SELL BOTH WINE AND BEER. WE INTEND TO ATTEND THE ABC'S SERVER CLASS TO BETTER EDUCATE US ON OUR RESPONSIBILITY FOR ALCOHOL SALES.

HOURS WILL BE FROM 8 A.M. TO 8 P.M.; SUNDAY 8 A.M. TO 6 P.M. THERE IS NO PLAN TO CHANGE THE HOURS, POSSIBLY SUNDAY MIGHT GO TO 8 P.M.

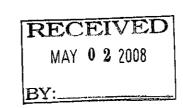
THE BUSINESS WILL BE RAN BY US AS WELL AS THE WIVES. THERE IS NO PLAN TO HIRE ANY EMPLOYEES.

THIS BUSINESS SERVES THE NEEDS OF LOCAL CALISTOGA RESIDENTS IN PROVIDING ANOTHER CHOICE IN PURCHASING THEIR GROCERY'S AS WELL AS A CONVENIENT AND CLOSE BY STORE FOR AT LEAST FOUR MOTELS IN CLOSE PROXIMITY.

THE HOURS OF OPERATION DO NOT SURPASS ANY OTHER GROCERY STORE IN TOWN,

QUESTION 3.

THE EXPERIENCE OF RUNNING THIS TYPE OF OPERATION COMES FROM THE OWNERS PAST EXPERIENCE WITH RUNNING A RETAIL BUSINESS IN NAPA. BOTH OF THE WIVES ARE EMPLOYED WITH COMPANY'S THAT HAVE STRONG CUSTOMER CONTACT EVERY DAY.



QUESTION 4.

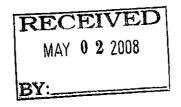
NONE OF THE OWNER'S OR SPOUSES HAS HAD ANY CONVICTION OF FELONY OR VIOLATION OF A NARCOTIC LAW OR ANY PENAL LAW INVOLVING MORAL TURPITUDE.

AFFIDAVIT READ VERY CAREFULLY

ALL ANSWERS AND STATEMENTS IN THIS APPLICATION ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT UNTRUTHFULNESS OR MISLEADING ANSWERS ARE CAUSE FOR REJECTION OF THIS APPLICATION.

I HEREBY AUTHORIZE ANY AND ALL INDIVIDUALS, FIRMS OR CORPORATIONS TO FURNISH THE CITY OF CALISTOGA WITH INFORMATION THEY MAY HAVE CONCERNING ME, WHETHER OR NOT ON RECORD. I HEREBY RELEASE ANY AND ALL INDIVIDUALS, FIRMS OR CORPORATIONS FROM ANY LIABILITY FOR ANY DAMAGES WHATSOEVER IN FURNISHING SAID INFORMATION.

SIGNATURE: (Cosuso)	Cevicice	DATE:	
GERARDO S. GAR	CIA, 1615 FOO	THILL BLVD., CALIST	ΓOGA
SIGNATURE:		DATE:	
GILBERTO S. GAR	RCIA, 1739 N. O	-	



RESOULTION 98- 113

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RESOLUTION OF THE CITY OF CALISTOGA CITY COUNCIL - ESTABLISHING GUIDELINES TO BE UTILIZED IN MAKING DETERMINATIONS OF PUBLIC CONVENIENCE OR NECESSITY PURSUANT TO THE REQUIREMENTS OF THE BUSINESS AND PROFESSIONS CODE SECTION 23958.4

WHEREAS, pursuant to Business and Professions Code Section 23958.4 (b)(2), the Department of Alcoholic Beverage Control (ABC) may grant certain types of alcoholic beverage licenses as set forth in said section; and

 WHEREAS, this section prevents the ABC from issuing new licenses within an area identified as experiencing an undue concentration of licensed facilities unless the City Council (as the local governing body of the area in which the applicant's proposed premises is located) determines that the public convenience or necessity would be served by the issuance of said license; and

WHEREAS, the City Council may delegate the duties of determining whether or not public convenience or necessity are met to a subordinate agency, zoning, planning, or law enforcement official; and

WHEREAS, the City Council and the Planning Commission have indicated that they wish to establish specific criteria and procedures to be followed in fulfilling the requirements of this law; and

WHEREAS, the Planning Commission considered the proposed criteria and procedures during a duly noticed public hearing on June 24, 1998 at which time they recommended adoption of said criteria and procedures; and

WHEREAS, the City Council considered the Planning Commission's recommendation at a public meeting on July 21, 1998.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds that it is necessary to establish guidelines to be utilized in making determinations of public convenience or necessity pursuant to the Business and Professions Code.

BE IT FURTHER RESOLVED that the City Council finds that this action is exempt from the requirements of the California Environmental Quality Act pursuant to the General Rule (Section 15061) and establishes the following guidelines to be utilized in making determinations of public convenience or necessity:

- 1 Determinations of public convenience or necessity required by Section 23958.4 of the
- 2 Business and Professions Code shall be made by the City Council following a noticed
- 3 public hearing.

- 5 Determinations of public convenience or necessity shall be made with the following
- 6 guidelines taken into consideration:

1. Input and recommendation from the Police Department should be obtained. This input should cover the activity area for a period determined by the Chief of Police to be adequate to show history, or lack thereof, of problems within the neighborhood which potentially could be affected by an additional license. The Police Chief should also offer a projection regarding the increased burden, if any, for Police services which might be created by the issuance of an additional license.

2. Evidence and/or arguments provided by the applicant addressing the public convenience or necessity that would be served by the additional license.

18 3. The nature of the proposed use.

4. The extent to which alcohol sales are related to the function of the proposed use and the possibility of the use operating in a viable fashion without alcohol sales.

5. The proximity of the proposed licensed premises to sensitive land uses such as but not limited to residences, schools, churches, parks, etc. and the effect that existing (and proposed) licensed premises (may) have on such sensitive land uses.

6. The compatibility or suitability of the proposed use with the use and/or character of the surrounding area.

7. The effect that the proposed use may have on the welfare of the area residents.

8. The public convenience or necessity which would be served to the community (both immediate and the broader Calistoga area) by the issuance of an additional license.

BE IT FURTHER RESOLVED that based upon substantial evidence presented to this Council during the referenced meeting, including written and oral staff reports and public testimony, and subject to the provisions of the staff recommendation as modified, the City Council:

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this 21st day of July, 1998 by the following vote: AYES: Mayor Callegari and Councilmember Byrne.
NOES: Councilmember Dohring.
ABSTAIN/ABSENT: Councilmember Dunsford. ABSENT: Councilmember Cinocco. Mayor ATTEST: 17 Patt Osborne, City Clerk 21 22 23 Jem/c/resol/CCundue