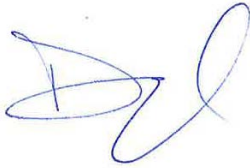


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Erik V. Lundquist, Senior Planner
DATE: January 3, 2017
SUBJECT: Determination of Public Convenience or Necessity W.H. Smith
 Wines – 1367 Lincoln Avenue

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

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- 1
 2 **ISSUE:** Determination of public convenience or necessity for an on-sale and off-sale
 3 alcoholic beverage license at 1367 Lincoln Avenue.
 4 **RECOMMENDATION:** Adopt the attached Resolution.
 5 **BACKGROUND:** On July 21, 1998, the City Council adopted Resolution 98-113
 6 establishing procedures for consideration of new alcoholic beverage licenses in
 7 Calistoga. Under this Resolution, businesses requesting a license to sell alcohol for on-
 8 or off-site consumption are required to first obtain clearance from the City of Calistoga
 9 before the State Department of Alcohol Beverage Control (ABC) considers the license.
 10 City clearance is provided in the form of a “Determination of Public Convenience or
 11 Necessity”, wherein an applicant must meet certain local standards. This process is
 12 warranted because ABC has determined that there is an over-concentration of
 13 businesses selling alcoholic beverages in Calistoga. However, it should be noted that
 14 Calistoga is unique in terms of the number of alcohol-related businesses because of the
 15 positive and symbiotic relationship that Calistoga has with the Napa Valley (e.g.
 16 wineries, wine shops, restaurants, visitor industry, etc.).
 17 On April 13, 2011, the Planning Commission adopted Resolution PC 2011-10 approving
 18 a use permit allowing wine tasting and wine retail sales at 1376 Lincoln Avenue. At the
 19 time of use permit approval, W.H. Smith operated with a 02 ABC license (winegrower),

20 which is exempt from the public convenience or necessity determination requirements
21 because the tasting room is associated with an off-site winery.

22 In November, the physical winery in Angwin was sold to an unaffiliated party. Since
23 W.H. Smith no longer possess the winery and the associated 02 license, a type 42 ABC
24 license is warranted in order to continue the business. A type 42 license for a wine shop
25 with tasting facilities requires a public convenience or necessity determination. The use
26 will remain unchanged with exception of the service of other wines (a requirement of the
27 42 license type). The applicant has indicated all wines served would be from the Napa
28 Valley appellation.

29 **DISCUSSION:** The guidelines required for a public convenience or necessity
30 determination include:

- 31 • Input and recommendation from the Police Department prior to consideration of
32 the use;
- 33 • Evidence provided by the applicant addressing the public convenience and
34 necessity that would be served by the alcohol license;
- 35 • The nature of the proposed use;
- 36 • The extent to which alcohol sales are related to the function of the proposed
37 use and the possibility of the use operating in a viable fashion without alcohol
38 sales;
- 39 • The proximity of the proposed licensed premises to sensitive land uses such as
40 residences, schools, churches, and parks, and the effect that existing and
41 proposed licensed businesses may have on such sensitive land uses;
- 42 • The compatibility and suitability of the proposed use with the use and/or
43 character of the surrounding area;
- 44 • The effect that the proposed use may have on the welfare of the area residents;
45 and
- 46 • The public convenience and necessity that would serve the community by the
47 issuance of an additional license both in the immediate area and in Calistoga in
48 general.

49 The Police Chief has reviewed the request and has indicated that a type 42 license for
50 the proposed business will not adversely affect the welfare of the public in the
51 immediate vicinity or in the community in general. The location of this business is not
52 significantly proximate to sensitive land uses as defined above, with the exception of a
53 church located on the adjacent parcel, which has not indicated any opposition to this
54 use.

55 In addition, the proposed retail wine sales and tasting has proven compatible with the
56 uses and character of other Calistoga businesses. The existing wine tasting would
57 continue to provide a convenient and necessary business to Calistoga that adds to the
58 diverse mix of businesses for locals and visitors alike. Therefore, staff recommends the
59 PCN be approved.

60 If approved, the conditionally-approved use permit will remain effective. The conditions
61 of the use permit address the maintenance of the business premises and a prohibition
62 on the sale of beer. These conditions are more specifically defined in the attached draft
63 resolution.

64 **FISCAL IMPACT:** The proposed change to the nature of the businesses' wine tasting
65 is not anticipated to have a significant fiscal impact upon the City. The business will
66 continue to provide sales tax revenue.

ATTACHMENTS:

1. Draft City Council Resolution
2. Location map
3. Applicant's written narrative dated November 21, 2016
4. Resolution 98-113

RESOLUTION NO. 2017-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, MAKING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR A TYPE 42 LICENSE AT 1367 LINCOLN AVENUE

1 , on April 13, 2011, the Planning Commission adopted Resolution PC 2011-10
2 approving a use permit allowing wine tasting and wine retail sales at 1376 Lincoln
3 Avenue; and

4 **WHEREAS**, at the time of use permit approval, W.H. Smith operated with a 02
5 ABC license (winegrower), which is exempt from the public convenience or necessity
6 determination requirements because the tasting room was associated with an off-site
7 winery; and

8 **WHEREAS**, in November 2016, the physical winery in Angwin was sold to an
9 unaffiliated party. Since W.H. Smith no longer possess the winery and the associated
10 02 license, a type 42 ABC license is warranted in order to continue the business. A type
11 42 license for a wine shop with tasting facilities requires a public convenience or
12 necessity determination; and

13 **WHEREAS**, pursuant to applicable provisions of the Business and Professions
14 Code, the Department of Alcoholic Beverage Control (ABC) is charged with the
15 responsibility of reviewing applications and issuance of licenses for the sale of alcoholic
16 beverages in the State of California; and

17 **WHEREAS**, Section 23958 of the Business and Professions Code provides that
18 ABC shall deny an application for a license if issuance of that license would tend to
19 create a law enforcement problem, or if issuance would result in or add to an undue
20 concentration of licenses, except as provided in Section 23958.4 of said Business and
21 Professions Code; and

22 **WHEREAS**, Section 23958.4 of the Business and Professions Code provides
23 that, notwithstanding the limitations of Section 23958, ABC shall issue a license if the
24 applicant shows that public convenience or necessity would be served by the issuance
25 of such license; and

26 **WHEREAS**, said Section 23958.4 further provides that the determination of
27 "public convenience or necessity" shall be made by ABC with regard to certain
28 applications, and shall be made by the local governing body of the area in which the
29 applicant premises are located with regard to certain other applications; and

30 **WHEREAS**, as a local governing body, the City Council has adopted Resolution
31 No. 98-113 which establishes guidelines for the City Council to utilize in making public
32 convenience or necessity determinations; and

33 **WHEREAS**, at the time and place fixed for said public hearing, the City Council
34 did hold a duly noticed public hearing to consider said application and did receive and

35 consider evidence and testimony for and against the application, and based thereon
36 does hereby make the findings pursuant to the adopted guidelines as follows:

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

44 Finding: The Police Department has been consulted regarding the proposed use
45 and has indicated that a type 42 license for the proposed business will not
46 adversely affect the welfare of the public in the immediate vicinity or in the
47 community in general. The location of this business is not significantly proximate
48 to sensitive land uses as defined above, with the exception of a church located
49 on the adjacent parcel, which has not indicated any opposition to this use.

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

52 Finding: The applicant has provided evidence in support of the proposed
53 application and has addressed the public convenience or necessity that would be
54 served by the additional license.

55 3. The nature of the proposed use.

56 Finding: Wine retail sales and tasting is a convenient and necessary business to
57 Calistoga residents and visitors that will help promote and support local wine and
58 tourism industries.

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

61 Finding: Providing a wine shop in the downtown provides a complementary use
62 that supports the downtown commercial commerce.

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

67 Finding: The proximity of the proposed licensed premises to sensitive land uses
68 and the effect that existing and proposed licenses may have on such sensitive
69 land uses has been considered. The subject property is located in the
70 commercial downtown on Lincoln Avenue, a major arterial for transportation in
71 and out of the City. No schools, parks or places of worship are in close proximity
72 to the project site. Given these conditions, wine retail sales and tasting is not
73 anticipated to result in any conflict with adjacent land uses.

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

76 Finding: The proposed use is compatible with the uses and character of the
77 surrounding area, which includes other commercial retail businesses. The sale of
78 wine to visitors and residents is a service that is incidental to other downtown
79 uses and is part of the symbiotic relationship that Calistoga has with the wine
80 industry in the Napa Valley.

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

82 Finding: The proposed use will not have a significant impact upon the welfare of
83 the area residents.

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

87 Finding: The public convenience and necessity, both for local Calistoga residents
88 and tourists, will be served by the issuance of the license for wine sales. Tourists
89 are attracted to Napa Valley for its wines. Sales of wine produced in Napa helps
90 to promote Napa Valley wines, tourism and those who are employed in a wine-
91 related industry.

92 **WHEREAS**, the City Council has reviewed the project and does find and
93 determine that the proposed project falls within the definition of Categorical Exemptions,
94 Section 15301, Class 1 (Existing Facilities) as defined in the CEQA Guidelines, and is
95 therefore, exempt from the requirement to prepare additional environmental
96 documentation.

97 **NOW, THEREFORE, BE IT RESOLVED** by the City Council, for the reasons
98 hereinstated, that the public convenience or necessity would be served by the proposed
99 wine retail sales (off-sale) and tasting for on-premises consumption on the property
100 located at 1367 Lincoln Avenue.

101 **PASSED AND ADOPTED** by the City Council of the City of Calistoga at a
102 regular meeting held this **3rd day of January, 2017**, by the following vote:

103
104 **AYES:**
105 **NOES:**
106 **ABSTAIN:**
107 **ABSENT:**

108
109

CHRIS CANNING, Mayor

110
111 **ATTEST:**

112
113

114 _____
KATHY FLAMSON, City Clerk