



County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

June 1, 2018

Maurice L. Anderson, Director
707 Nevada Street, Suite 5
Susanville, CA 96130-3912
Phone: 530 251-8269
Fax: 530 251-8373
email: landuse@co.lassen.ca.us
website: www.co.lassen.ca.us

TO: Board of Supervisors
Agenda Date: June 12, 2018

FROM: Maurice L. Anderson, Director

Zoning & Building
Inspection Requests
Phone: 530 257-5263

SUBJECT: Consideration of public convenience or necessity for purposes of licensure before the Department of Alcoholic Beverage Control at the Sierra Energy Gas Station, Westwood CA (301 Third Street, Westwood CA 96137, APN: 125-153-07).

ACTION REQUESTED:

1. Adopt resolution; and/or
2. Provide direction to staff

SUMMARY:

The above referenced application has been referred to the Board of Supervisors by the Alcoholic Beverage Control (ABC) to allow the Board to determine if the “public convenience or necessity” would be served by the sale of liquor at the Sierra Energy Gas Station (301 Third Street, Westwood CA 96137). Said finding is required for issuance of the license. Beer and wine are already sold at this location. Tom’s Sierra Company, Inc. is proposing to transfer the liquor license currently being used at the Eagle Lake RV Park (687-125 Palmetto Way, Spaulding).

The ABC is prohibited from approving the application itself (as they do in some instances) because one or both of the following applies (pursuant to Business and Professions Code section 23958.4):

- The premises are located in a crime reporting district that has a 20 percent or greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency; or
- The ratio of off-sale retail licenses to population in the census tract or census division in which the premises are located exceeds the ratio of off-sale retail licenses to population in the county where the premises are located.

The ABC has indicated that the first bullet (20 percent or greater number of reported crimes) is not applicable in any of the districts in Lassen County, but that the second bullet (ratio of licenses to population) is applicable to this application. For this reason, the ABC was not authorized to issue the license on its own authority without additional findings being made. That

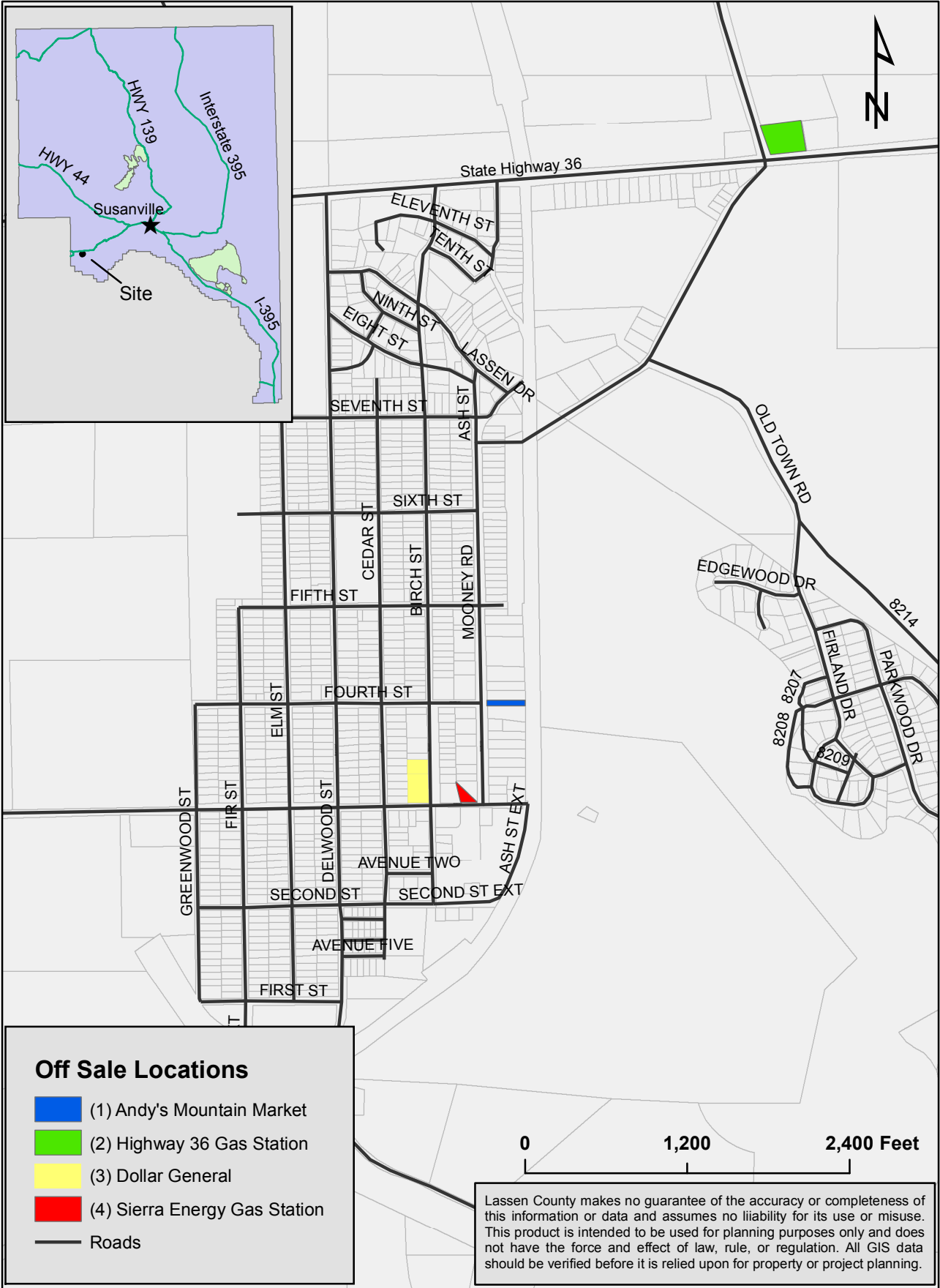
said, in accordance with Business and Professions Code section 23958.4, subsection “(b)”, the ABC is nonetheless authorized to issue the license if the Board determines that “public convenience or necessity” is served by the application. If the Board fails to act within 90 days of notification of a completed application (notification was given on April 9, 2018), the applicant will have an opportunity to demonstrate to the ABC that “public convenience or necessity” is served by the application. The decision on the application would then be made by the ABC.

It is at the discretion of the Board to determine what constitutes public convenience or necessity. A potential finding that public convenience would be served by this application is that Young’s Market, which sold liquor, recently closed. Currently, Andy’s Mountain Market is the only establishment that sells liquor in Westwood (beer and wine are sold at other locations as shown on the attached graphic).

A resolution approving the application and a resolution disapproving the application are attached for the consideration of the Board.

MLA:km
Attachment

Toms Sierra Company, Inc., Westwood Vicinity Map



RESOLUTION NO. _____

RESOLUTION OF THE LASSEN COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, APPROVING ABC APPLICATION FOR SIERRA ENERGY GAS STATION LOCATED AT 301 THIRD STREET, WESTWOOD CALIFORNIA (ASSESSOR'S PARCEL NUMBER 125-153-07-11)

WHEREAS, sale of liquor at convenience stores throughout California is a highly regulated affair administered by the California Department of Alcoholic Beverage Control (ABC); and

WHEREAS, prior to being legally able to sell liquor at a convenience store one must apply to and be approved for licensure by the ABC; and

WHEREAS, there are limitations imposed by law on how many licenses may be issued by the ABC dependent on population, crime statistics, ect; and

WHEREAS, application has been made for the transfer of an "off-sale" liquor license to the Sierra Energy Gas Station in Westwood (301 Third Street, Westwood CA 96137). (Assessor's Parcel Number 125-153-07); and

WHEREAS, the parcel on which the Sierra Energy Gas Station in Westwood is located is zoned C-1 (Retail Business District), and would allow the proposed use; and

WHEREAS, ABC has notified the applicant that licensure may not be granted unless the applicant complies with Business and Professions Code section 23958.4; and

WHEREAS, Young's Market was previously located on the adjacent block as the proposed sales site but recently closed, resulting in the removal of one nearby location which sold beer, wine, and liquor; and

WHEREAS, Business and Professions Code 23958.4(b) (2) allows transfer of a license if "the local governing body of the area in which the applicant premises are located...determines that public convenience or necessity would be served by the issuance."

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT the Lassen County Board of Supervisors has considered the application of Sierra Energy Gas Station and hereby determines that public convenience would be served by the sale of, among other things, liquor at the Sierra Energy Gas Station and makes the finding required by 23958.4(b)(2) of the Business and Professions Code.

Resolution _____

The foregoing resolution was adopted at a regular meeting of the Lassen County Board of Supervisors of the County of Lassen, State of California, held on the ____th day of _____ 20____ by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Chairman of the Board of Supervisors
County of Lassen, State of California

ATTEST:
JULIE BUSTAMANTE, Clerk of the Board

BY _____
MICHELE J. YDERRAGA, Deputy Clerk of the Board

RESOLUTION NO. _____

I, MICHELE J. YDERRAGA, Deputy Clerk of the Board, of The Board of Supervisors, County of Lassen, do hereby certify that the foregoing resolution was adopted by the said Board of Supervisors at a regular meeting thereof held on the _____ day of _____, 20____.

Deputy Clerk of the County of Lassen
Board of Supervisors

RESOLUTION NO. _____

RESOLUTION OF THE LASSEN COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, DISSAPPROVING ABC APPLICATION FOR SIERRA
ENERGY GAS STATION LOCATED AT 301 THIRD STREET, WESTWOOD
CALIFORNIA (ASSESSOR'S PARCEL NUMBER 125-153-07)

WHEREAS, sale of liquor at convenience stores throughout California is a highly regulated affair administered by the California Department of Alcoholic Beverage Control (ABC); and

WHEREAS, prior to being legally able to sell liquor at a convenience store one must apply to and be approved for licensure by the ABC; and

WHEREAS, there are limitations imposed by law on how many licenses may be issued by the ABC dependent on population, crime statistics, ect; and

WHEREAS, application has been made for the transfer of an "off-sale" liquor license to the Sierra Energy Gas Station in Westwood (301 Third Street, Westwood CA 96137). (Assessor's Parcel Number 125-153-07); and

WHEREAS, the parcel on which the Sierra Energy Gas Station in Westwood is located is zoned C-1 (Retail Business District); and

WHEREAS, ABC has notified the applicant that licensure may not be granted unless the applicant complies with Business and Professions Code section 23958.4; and

WHEREAS, Business and Professions Code 23958.4(b)(2) requires that no such license may be granted unless "the local governing body of the area in which the applicant premises are located...determines that public convenience or necessity would be served by the issuance."

NOW, THEREFORE IT BE RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The Board of Supervisors further finds that:
 - a. The applicant has not adequately demonstrated that public convenience or necessity are served through issuance of this permit.
 - b. Other suitable sites to purchase liquor exist within an appropriate distance from the site. Captain Andy's Mountain Market sells "off sale" liquor and

Resolution_____

is approximately 500 feet north west of this location, at 324 Ash St,
Westwood, CA 96137.

3. The Lassen County Board of Supervisors has considered the application of
Sierra Energy Gas Station and hereby determines that public convenience and
necessity would not be served by the sale of, among other things, liquor at the
Sierra Energy Gas Station.

The foregoing resolution was adopted at a regular meeting of the Lassen County
Board of Supervisors of the County of Lassen, State of California, held on the
____th day of _____ 20____ by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Chairman of the Board of Supervisors
County of Lassen, State of California

ATTEST:
JULIE BUSTAMANTE, Clerk of the Board

BY _____
MICHELE J. YDERRAGA, Deputy Clerk of the Board

RESOLUTION NO. _____

I, MICHELE J. YDERRAGA, Deputy Clerk of the Board, of The Board of Supervisors,
County of Lassen, do hereby certify that the foregoing resolution was adopted by the said
Board of Supervisors at a regular meeting thereof held on the _____ day of
_____, 20____.

Deputy Clerk of the County of Lassen
Board of Supervisors



BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.)*

CHAPTER 6. Issuance and Transfer of Licenses [23950 - 24082] (*Chapter 6 added by Stats. 1953, Ch. 152.)*

ARTICLE 1. Applications for Licenses [23950 - 23962] (*Article 1 added by Stats. 1953, Ch. 152.)*

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

(Amended by Stats. 1994, Ch. 630, Sec. 1. Effective January 1, 1995.)



BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 6. Issuance and Transfer of Licenses [23950 - 24082] (*Chapter 6 added by Stats. 1953, Ch. 152.*)

ARTICLE 1. Applications for Licenses [23950 - 23962] (*Article 1 added by Stats. 1953, Ch. 152.*)

23958.4. (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 established by the department on an annual basis.
- (e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued before 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.

(Amended by Stats. 2013, Ch. 76, Sec. 6. (AB 383) Effective January 1, 2014.)