

CITY OF MONTEBELLO
January 15, 2013

TO: Planning Commission
FROM: Planning Division
SUBJECT: Conditional Use Permit 3-12 and Zone Variance 1-12
LOCATION: 1200 South Greenwood Avenue
APPLICANT: Olympic Meat Market and Deli (Scott Chung)
CASE PLANNER: Lovell Williams, Assistant Planner

STAFF RECOMMENDATION: Acknowledge the Environmental Determination and approve Conditional Use Permit 3-12 and Zone Variance 1-12 with the specific findings and conditions in the Draft Resolution (Attachment 1).

PROJECT DESCRIPTION

The applicant, Scott Chung, is requesting a Conditional Use Permit to establish the off-site sale of beer and wine (ABC License Type 20) in conjunction with the relocation of a market (Olympic Meat Market and Deli) within an existing commercial shopping center (Greenwood Plaza) and a Zone Variance to allow an alcoholic beverage establishment to be located within 300 square feet from residential uses. Section 17.61.040 of the Montebello Municipal Code prohibits a new alcoholic beverage establishment to locate within 300 feet from any residential use, religious facility, or healthcare facility and 1,000 feet from a school, public park, playground or other similar uses.

The case was originally noticed for the August 21, 2012, Planning Commission meeting. A few days prior to the meeting the applicant requested that the case be continued to allow the applicant time to meet with the property owner, the Police Department and City Officials to discuss some of the draft conditions of approval recommended by City staff. Primarily, the applicant objected to the conditions restricting the sale of single cans/bottles of alcoholic beverages. The applicant met with staff from the Planning Division and the Police Department, however the recommended conditions are standard conditions of approval for all off-sale alcoholic establishments in the City and staff is maintaining its position on the matter. On December 17, 2012, the applicant informed staff that they are ready for the case to be heard by the Planning Commission.

The case was re-noticed for the January 15th public hearing. The Staff Report, Draft Resolution and Development Plans from the August 21st Planning Commission meeting are attached as part of this report.

ATTACHMENTS & EXHIBITS

Attachment 1: August 21, 2012, Planning Commission Staff Report, Draft Resolution and Development Plans

CITY OF MONTEBELLO
August 21, 2012

TO: Planning Commission
FROM: Planning Division
SUBJECT: Conditional Use Permit 3-12 and Zone Variance 1-12
LOCATION: 1200 South Greenwood Avenue
APPLICANT: Olympic Meat Market and Deli (Scott Chung)
CASE PLANNER: Lovell Williams, Assistant Planner

STAFF RECOMMENDATION: Acknowledge the Environmental Determination and approve Conditional Use Permit 3-12 and Zone Variance 1-12 with the specific findings and conditions in the Draft Resolution (Attachment 2).

**REQUESTED
ENTITLEMENTS**

Conditional Use Permit - To allow an existing market with the off-site sale of alcohol (beer & wine) to relocate into a different tenant space within an existing commercial shopping center.

Zone Variance - To allow the off-site sale of alcohol within 300 feet of a residential use.

**ENVIRONMENTAL
DETERMINATION**

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Division 6, Chapter 3, Class 1 §15301 (Existing Facilities). This exemption applies to additions, expansions, or alterations to existing structures where there is negligible or no expansion of the use.

SITE CHARACTERISTICS

Site Location and Size

The subject site is located on the southeast corner of Greenwood Avenue and Date Street. The parcel is approximately 1.9 acres in size and is developed with an existing 26,515 square-foot commercial shopping center with 84 off-street parking spaces.

Zoning

Subject Site: C-2 (General Commercial)
North: R-3 (Multiple-Family Residential)
South: R-3 (Multiple-Family Residential)
East: R-3 (Multiple-Family Residential)
West: C-2-SP (General Commercial-Specific Plan) and
R-3 (Multiple-Family Residential)

Land Use

Subject Site: Commercial
North: Residential
South: Residential
East: Residential
West: Commercial and Residential

Previous Land Use Entitlements

None.

Application Submitted: May 22, 2011
Application Deemed Complete: June 21, 2012

PROJECT DESCRIPTION

The applicant, Scott Chung, is requesting a Conditional Use Permit to establish the off-site sale of beer and wine (ABC License Type 20) in conjunction with the relocation of a market (Olympic Meat Market and Deli) within an existing commercial shopping center (Greenwood Plaza) and a Zone Variance to allow an alcoholic beverage establishment to be located within 300 square feet from residential uses. Section 17.61.040 of the Montebello Municipal Code prohibits a new alcoholic beverage establishment to locate within 300 feet from any residential use, religious facility, or healthcare facility and 1,000 feet from a school, public park, playground or other similar uses.

BACKGROUND

On May 4, 1990, Olympic Meat Market and Deli established a market at 1222 South Greenwood Avenue within the Greenwood Plaza a commercial shopping center. The business currently possesses a Type 20 license from ABC that allows the off-site sale of alcohol (beer and wine). At the time the use was established, a Conditional Use Permit for alcohol sales was not required by the City. In 2001, the City amended the Municipal Code requiring a Conditional Use Permit for off-site alcohol sales thereby making the existing use legal non-conforming. A Conditional Use Permit is now required to allow the use to relocate to a new tenant space as proposed.

ANALYSIS

The market currently operates within a 1,950 square foot tenant space within the Greenwood Plaza a commercial shopping center that is adjacent to residential properties to the south and east, and is located across the street to residential properties to the north and west. The market provides pre-packaged food, household items, and small produce in addition to the off-site sale of beer and wine. There are no meat or deli counters within the establishment. The market hours of operation are from 8 a.m. to 10 p.m. daily. The applicant is requesting to relocate the business into a 4,230 square foot tenant space within the same shopping center. It is the applicant's intent to expand the market to offer more merchandise to the surrounding community. A Conditional Use Permit is required to allow the establishment of a new use with off-site alcohol sales within the C-2 (General Commercial) zoning district. Additionally, a Zone Variance is necessary to deviate from the Zoning Code requirement that precludes the establishment of a new use with off-site alcohol sales within 300 feet of residential use.

Analysis of Existing Alcohol-Related Establishments in the Area:

The project site is located within Census Tract #5322. According to the State Department of Alcoholic Beverage Control (ABC), a maximum of four alcohol licenses for off-site consumption are allowed in the census tract, while five off-site licenses currently exist. The applicant is requesting to relocate an existing alcohol license and market into a different tenant space within the same shopping center. Even though the number of alcohol licenses is not increasing with this proposal, ABC considers the area to have an "undue concentration" of alcohol licenses. As such, the applicant is required to make findings of public convenience and necessity in order to obtain the alcohol license from ABC. These findings are also required for City approval.

A Conditional Use Permit application for alcohol sales requires the applicant to identify all uses that sell alcohol for either on-site or off-site consumption within 300 feet of the site. Based on the information provided by the applicant, there is only one other establishment (Fiesta Taco) within 300 feet of the subject site that sells alcohol. Fiesta Taco is a bona-fide restaurant that provides the on-site sale of beer and wine in conjunction with sit-down meal service at 1228 South Greenwood Avenue. Fiesta Taco is also located within Greenwood Plaza. The subject site is located along Greenwood Avenue, which is a major road that serves an array of residential, commercial and industrial uses. However, this is the only market use within this radius that provides the sale of alcohol for off-site consumption. In addition, approving this request will not increase the number of alcoholic licenses in the area. Therefore, the proposal is not expected to contribute to the undue concentration of alcoholic establishments in the census tract as recognized by the Alcoholic Beverage Control.

Conditional Use Permit - Off-Site Sale of Beer and Wine. Pursuant to Section 17.61.010 of the Zoning Code, the purpose and intent of the Alcohol Ordinance was established to preserve a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcoholic beverage establishments. It is recognized that alcohol abuse can create environments that jeopardize the continued success of businesses

and seriously affect the health, safety and general welfare in surrounding areas, particularly residential neighborhoods.

The findings that must be made to approve a Conditional Use Permit request must substantiate that (1) the site is adequate in size and shape for the use, that (2) it has sufficient access to streets and highways, that (3) the proposed use will not adversely affect the area, and that (4) the proposal is consistent with the City's General Plan. In addition, findings for all alcoholic beverage establishments include that (5) the proposed use serves the public convenience and necessity, based upon all factors outlined in Section 17.61.060 of the Zoning Code, and that (6) the proposed use will not adversely affect nearby residents and facilities primarily devoted to use by children, families, and the general public, after giving consideration to the distance or proximity of the proposed alcoholic beverage establishment to residential districts, schools (public or private), day care centers, public parks, playgrounds and other recreational facilities, churches and other places of religious worship, hospitals, clinics or other health care facilities.

In relating the required findings to the proposal, the subject site is approximately 1.9 acres and is developed with a 26,515 square foot commercial shopping center and 84 off-street parking spaces. The applicant is proposing to relocate a market from an existing 1,950 square foot into a 4,230 square foot tenant space within the same shopping center to expand the market and provide a needed service to the southern portion of Montebello. No new construction is proposed or required to the existing building or parking lot within the shopping center. Therefore, the subject site will continue to operate as a commercial center, and is adequate in size and shape to accommodate the proposal if operated in association with the conditions of approval.

The site has sufficient access to streets and highways and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use. Parking for the shopping center is located on the northwestern side of the building and along the south and east property lines with two driveway entrances on Greenwood Avenue and another two on Date Street. Greenwood Avenue is a major road that carries traffic north / south and serves as a major commercial corridor in the City. The intensity of the use will not increase to a point where the existing infrastructure will be compromised or require improvements as a result of the proposal. Specifically, the applicant is relocating the market into a larger commercial tenant space within the same shopping center. As such, the site possesses sufficient access to streets and highways, and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use.

In reviewing the proposal, staff has determined that the proposed use will not have an adverse effect upon adjacent or abutting properties because a market use is compatible with the surrounding commercial area and the subject business has been operating as a market on the site for many years. The current proposal does not expand the existing building footprint, the required number of off-street parking spaces will be provided as required, and the proposal will not significantly change the existing site conditions. Additionally, the number of alcohol licenses in the area will not increase as a result of this proposal. Any new use with alcohol sales that proposes to occupy the existing tenant will require the Planning Commission's approval of a Conditional Use Permit.

It is the policy of the General Plan Land Use Element that commercial development in the City should be sited in appropriate locations according to need and that the City should contain ample commercial facilities to meet the needs of its residents as well as provide taxable revenue to the City. The southern portion of the city is lacking in markets, and the proposed location is an appropriate site for the proposed use to help fulfill this need. Therefore, granting approval of the proposed use is consistent with the policies of the General Plan.

The proposed market is a public convenience and necessity to the community. The market does not duplicate services or contribute to an over-concentration of alcoholic beverage establishments in the immediate area. There is not another market within 300 feet of the subject site. Although, ABC identifies the proposed use as being in an area of over-concentration of alcoholic beverage establishments within the census tract, the relocation of the proposed use will not increase the number of existing alcoholic licenses in the area.

Lastly, there are residential uses, a city park (Chet Holifield Park) with a county library (County of Los Angeles Chet Holifield Library) and a church (Primera Iglesia Bautista) within 1,000 feet of the subject property. Given the proximity of these uses, the impacts associated with the proposal are important and should be evaluated as part of the Conditional Use Permit request. The existing market with incidental alcohol sales did not have a history of being a problematic

use within the shopping center and does not expect to adversely impact surrounding sensitive uses when operated responsibly. Additionally, the use will now have a Conditional Use Permit to regulate its operation as opposed the absence of one currently. The proposed hours of operation for the market are from 8:00 a.m. to 10:00 p.m. daily. As proposed, the off-site sale of beer and wine will be incidental to pre-packaged food, household items, and produce sales. There is only one other alcoholic beverage establishments within a 300 foot radius from the subject site that sells alcohol, the Fiesta Taco, a restaurant which provides beer and wine sales for on-site consumption only. Granting the entitlement would not duplicate services or over-concentrate alcoholic beverage establishments in the surrounding area to impact sensitive uses. A number of recommended conditions of approval are included in the Draft Resolution to accomplish this if the Planning Commission decides to approve this Conditional Use Permit request (i.e., single sales, no malt liquor, no fortified wines, etc.).

Zone Variance - Distance Requirements. Section 17.61.040 of the M.M.C. states that a new alcohol related use shall not be located within 300 feet of a residential use. The proposed use is located within 300 feet of residential uses and the applicant is requesting a Variance from the distance requirement. The M.M.C. allows the Planning Commission to grant Variances from any provisions of the Zoning Code relating to the development of land when practical difficulties, unnecessary hardships, or results inconsistent with the general intent and purpose of the Zoning Code would deprive property owners of reasonable usage of their property. In granting the Zone Variance, the Planning Commission is required to make findings to justify deviating from a development standard of the Zoning Code.

The required findings for a Variance are that (1) there are special or unusual circumstances applicable to the property involved, such as size, shape, topography, location or surroundings which do not generally apply to other properties in the vicinity, that (2) due to such special or unusual circumstances, the strict application of the Zoning Code would result in practical difficulties or unnecessary hardships which would deprive the property of privileges enjoyed by other properties in the vicinity, that (3) the Variance is necessary for the preservation of a substantial property right of the applicant to facilitate a reasonable use of the subject property that is possessed by other property in the same vicinity and zoning, that (4) granting of the Variance shall not cause an adverse effect on the public welfare or surrounding properties, and that (5) the granting of such Variance shall be consistent with the general purpose and intent of the Zoning Code and with the goals, policies, and objectives of the General Plan.

In relating the required findings to the proposal there are special circumstances applicable to the size, shape and location of the property that would warrant the approval of the Variance. In this case, the special circumstance is that the existing market use has operated at the commercial shopping center since May 4, 1990. Although the subject site is within 300 feet of residential uses, the existing business provides a service to the community and has operated with an alcoholic license with no reported problems or calls for service.

Prohibiting the applicant's right to off-site alcohol sales in conjunction with the existing use would deprive the applicant of a right that they currently possess at the smaller tenant space on the subject site. The subject site is located on a major road that contains a variety of other commercial and industrial uses. Allowing the off-site sale of alcohol at this location, and with this type of use, would be typical and appropriate with certain regulations.

The granting of the Variance will not cause an adverse effect on the public welfare or surrounding properties in that the relocation of the market will allow the existing business to offer more commercial goods to the surrounding residents and allow the City to place restrictions on the market use, hours, safety, loitering, and lighting that are intended to mitigate any impacts caused by the use. Recommended conditions of approval from various City Departments have been included to alleviate any potential impacts to not cause an adverse effect on the surrounding properties.

Lastly, the proposal is consistent with the General Plan and the intent of the Zoning Code. It is a policy of the General Plan Land Use Element to allow a commercial development in the City that is sited in an appropriate location according to need. In this case, the proposed use is located in a commercial shopping center that is compatible with the surrounding area. It is the only alcoholic beverage establishment within a 300 foot radius from the subject site that provides beer and wine sales for off-site consumption and it will do so as incidental sales to the primary market use.

DEPARTMENT COMMENTS

The Montebello Police Department and Code Enforcement Division reviewed the proposal to determine if the use would generate an inordinate amount of calls for service thereby impacting police resources and reducing the quality of life in the area. Based on the Police Department review, it was determined the proposed relocation of the market is not expected to be a detriment to the public health, safety, or the general welfare of the nearby commercial and residential uses. The Police Department has provided conditions of approval that address noise, safety, security, and property maintenance of the subject site. In addition, the Montebello Building and Safety Division provided conditions that the applicant's new location meet ADA requirements. Therefore, it is the staff assessment that this project would not have significant impact to the surrounding properties.

As required by the MMC, all the adjacent property owners within a 300-foot radius were notified of this proposal. As of August 16, 2012, staff has not received written letters or phone calls of opposition to this proposal.

RECOMMENDATION

Pending public testimony and Planning Commission input:

1. Find that Conditional Use Permit 3-12 and Zone Variance 1-12 is categorically exempt from the California Environmental Quality Act (CEQA) guidelines under Class 1 of Section 15301 and approve the Notice of Exemption.
2. Approve the findings listed in the attached Draft Resolution; and
3. Approve Conditional Use Permit 3-12 and Zone Variance 1-12, subject to the Conditions of Approval as contained in the Draft Resolution.

ATTACHMENTS & EXHIBITS

1. Exhibit "A" – Development Packet
2. Draft Resolution (PC 10-12)
3. Location Map
4. Environmental Document - Notice of Exemption

Resolution No. PC 10-12

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO ESTABLISH THE OFF-SITE SALE OF ALCOHOL (BEER AND WINE) IN CONJUNCTION WITH THE RELOCATION OF AN EXISTING MARKET AND A ZONE VARIANCE TO ALLOW OFF-SITE ALCOHOL SALES WITHIN 300 FEET OF A RESIDENTIAL USE.

Case No: Conditional Use Permit 3-12 & Zone Variance 1-12
Applicant: Olympic Meat Market and Deli (Scott Chung)
Location: 1200 South Greenwood Avenue

THE PLANNING COMMISSION OF THE CITY OF MONTEBELLO DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the Planning Commission of the City of Montebello does find, determine, and declare as follows:

1. The applicant, Olympic Meat Market and Deli, is requesting a Conditional Use Permit to allow the off-site sale of beer and wine in conjunction with the relocation of a market (Olympic Meat Market and Deli) within an existing commercial shopping center (Greenwood Plaza). A Zone Variance is also requested to allow the requested off-site sale of beer and wine within 300 feet from a residential use. A Conditional Use Permit is required to allow alcohol sales in the C-2 zone, and a Zone Variance is necessary to deviate from section 17.61.040 of the Zoning Code prohibiting off-site alcohol sales within 300 feet of a residential use. The property is located at 1200 South Greenwood Avenue ("Subject Site");
2. That the Planning Commission conducted a duly noticed public hearing upon said application on August 21, 2012, and, based on evidence presented in the staff report, the Planning Commission being familiar with the subject site, has determined that the facts necessary to support the approval of Conditional Use Permit 3-12, and Zone Variance 1-12 can be made, subject to the conditions of approval hereinafter set forth.

SECTION 2. Based on the entire record before the Planning Commission and all written and oral evidence presented, the Planning Commission finds that the proposed project complies with the California Environmental Quality Act (CEQA) and hereby adopts the Notice of Exemption for the following reason:

1. Pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Division 6, Chapter 3, Class 1 §15301 (Existing Facilities), the proposed project is exempt from environmental review. This exemption applies to additions, expansions, or alterations to existing structures where there is negligible or no expansion of the use. In this case, the off-site sale of beer and wine in conjunction with the relocation of a market within an existing commercial shopping center.

SECTION 3. That the following findings are hereby adopted as the Findings of the Planning Commission as follows:

Conditional Use Permit - Off-Site Sale of Beer and Wine

1. *The site for the proposed use is adequate in size and shape* in that the subject site is approximately 1.9 acres and is developed with a 26,515 square foot commercial shopping center and 84 off street parking spaces. The applicant is proposing to relocate a market from an existing 1,950 square foot into a 4,230 square foot tenant space within the same shopping center. No new construction is proposed or required to the existing building or parking lot within the shopping center. As such, the subject site will continue to operate as a commercial center,

and is adequate in size and shape to accommodate the relocation of the market with the off-site sale of beer and wine if operated in association with the conditions of approval.

2. *The site has sufficient access to streets and highways, and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use.* The parking for the shopping center is located on the northwestern side of the building and along the south and east property lines with two driveway entrances on Greenwood Avenue and another two on Date Street. Date Street serves as a local road that carries traffic east/west while Greenwood Avenue is a major road that carries large volumes of traffic north/south and serves as a major commercial corridor in the City. The intensity of the use will not increase to a point where the existing infrastructure will be compromised or require improvements as a result of the proposal since the applicant is relocating the market into a larger commercial tenant space within the same shopping center. As such, the site possesses sufficient access to streets and highways, and is adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use.
3. *The proposed use will not have an adverse effect upon adjacent or abutting properties.* The proposed use is subject to the review and approval of a Conditional Use Permit to evaluate the compatibility of the proposal to the surrounding properties. Since 1990, the proposed use has operated as a market within the existing commercial shopping center. The current proposal does not expand the existing building footprint, the required number of off-street parking spaces will be provided as required, and the proposal will not significantly change the existing site conditions. The site is located on Greenwood Avenue, which is a major commercial corridor into the City, and a market use is compatible with the surrounding area. Furthermore, the conditions of approval place restrictions on the market use, hours, safety, loitering, lighting, and are intended to mitigate any impacts caused by the proposed use to lessen any impacts to the adjacent properties.
4. *The location of the conditional use and the conditions under which it would be operated or maintained will be consistent with the General Plan.* Its is a policy of the General Plan Land Use Element that commercial development in the City should be sited in appropriate locations according to need, and that the City should contain ample commercial facilities to meet the needs of its residents as well as provide taxable revenue to the City. In this case, the market use is located within a commercial shopping center that is compatible with the surrounding area. The southern portion of the city is lacking markets, and the proposed location on Greenwood Avenue is an appropriate site to fulfill this need. Therefore, granting approval of the proposed use is consistent with the policies of the General Plan.
5. *The proposed use serves the public convenience and necessity, based upon all factors outlined in Section 17.61.060 of the Montebello Municipal Code, including whether the public convenience or necessity is being served.* Findings of Public Convenience and necessity apply to the approval of new alcohol related uses. The existing market is a public convenience and necessity to the community in that the market does not duplicate services or contribute to an over-concentration of alcoholic beverage establishments in the immediate area. There is not another market within 300 feet of the subject site that offers the off-site sale of alcohol in conjunction to providing food, household items, and produce. There is only one other business within 300 feet of the subject site that provides on-site alcohol sales, which is a bona-fide restaurant located within the same commercial shopping center. Although, ABC identifies the market use as being in an area of over-concentration of alcoholic beverage establishments within the census tract, there will not be an increase to the number of existing alcoholic licenses in the area. Therefore, approval of this entitlement will allow the applicant to continue provide a service and public convenience to the surrounding neighborhood.
6. *The proposed use will not adversely affect nearby residents and facilities primarily devoted to use by children, families, and the general public, after giving consideration to the distance or proximity of the proposed alcoholic beverage*

establishment to residential districts, schools (public or private), day care centers, public parks, playgrounds and other recreational facilities, churches and other places of religious worship, hospitals, clinics or other health care facilities. There are residential uses, a city park (Chet Holifield Park) with a county library (County of Los Angeles Chet Holifield Library) and a church (Primera Iglesia Bautista) within 1,000 feet of the subject property. There is only one other establishment, Fiesta Taco Restaurant, within a 300 foot radius that sells alcohol. However, Fiesta Taco provides beer and wine sales for on-site consumption only in conjunction with a restaurant. The market with the off-site sale of alcohol has operated at this location in good standing since 1990. As such, granting the entitlement would not duplicate services or over-concentrate alcoholic beverage establishments in the surrounding area to impact sensitive uses. In addition, the conditions of approval affects the proposed use, hours of operation, safety, parking, lighting, and property maintenance of the subject site to ensure minimal impacts to neighboring uses and surrounding properties.

Zone Variance

1. *There are special or unusual circumstances applicable to the property involved, such as size, shape, topography, location or surroundings, which do not generally apply to other properties in the vicinity included in the same zone as the subject property.* The special circumstance in this case is that the existing use has operated at the shopping center since May 4, 1990 and the number of alcohol licenses will not increase as result of this proposal. Although the subject site is within 300 feet of residential uses, the existing business has operated with an alcoholic license in good standing at this location since 1990. The applicant is proposing to relocate business into a larger tenant space within the same shopping center.
2. *Due to such special or unusual circumstances, the strict application of the provisions of the code would result in practical difficulties or unnecessary hardships, or would deprive such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.* In this case, strict application of the Zoning Code precludes the use from providing off-site alcohol sales (beer and wine) at the subject site, even though the proposal is to relocate a business on the same property and there will be no increase in the number of business licenses.
3. *The Variance is necessary for the preservation of a substantial property right of the applicant to facilitate a reasonable use of the subject property which right is possessed by other properties in the same vicinity and zoning as the subject property.* In this case, prohibiting the applicant's right to off-site alcohol sales in conjunction with the relocation of the existing use would deprive the applicant of a right that they currently possess at the smaller tenant space on the subject site. The subject site is located on a major road that contains a variety of other commercial and industrial uses. Allowing the off-site sale of alcohol at this location, and with this type of use, would be typical and appropriate with certain regulations. A number of recommended conditions of approval are included in the Draft Resolution to accomplish this if the Planning Commission decides to approve this Conditional Use Permit request (i.e., single sales, no malt liquor, no fortified wines, etc.).
4. *The granting of the Variance will not cause an adverse effect on the public welfare or surrounding properties* in that the relocation of the market will allow the existing business to offer more commercial goods to the surrounding residents and allow the City to place restrictions on the market use, hours, safety, loitering, and lighting that are intended to mitigate any impacts caused by the use. Recommended conditions of approval from various City Departments have been included to alleviate any potential impacts to not cause an adverse effect on the surrounding properties.
5. *The granting of such Variance will be consistent with the general purpose and intent of this code and will not adversely affect the General Plan.* It is a policy of the Land Use Element of the General Plan to allow a commercial development in the City that is sited in an appropriate location according to need. In this case, the market use is located in a commercial shopping center that is compatible

with the surrounding area. It is the only alcoholic beverage establishment within a 300 foot radius from the subject site that provides beer and wine sales for off-site consumption, and it will do so as incidental sales to the primary market use. The applicant is proposing to relocate an existing market with off-site alcohol sales from one tenant space to another within the shopping center, and the use will continue to provide quality services to all residents within the City of Montebello.

SECTION 4. That the Planning Commission approves Conditional Use Permit 3-12 and Zone Variance 1-12, subject to the following conditions of approval:

1. The development and utilization of the subject site shall substantially conform to the site plan labeled Planning Commission Exhibit "A" dated August 21, 2012, including the uses as shown, except as provided for herein, and by subsequent revisions found by the Planning Manager to be in substantial compliance with these provisions.
2. Development of the site shall be consistent with all of the provisions of the Montebello Municipal Code (MMC) and the specifications of the Planning Division, including but not limited to:
 - a. The Planning Manager, at any time, can call for a review of the Conditional Use Permit at a duly noticed public hearing. At that time, the Conditions of Approval may be modified or new conditions may be added to reduce any impacts of the use. The Planning Commission may revoke the Conditional Use Permit if sufficient cause is given.
 - b. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
 - c. In the event the applicant violates or fails to comply with any conditions of approval of this permit, no further permits, licenses, approvals, or certificate of occupancy shall be issued until such violation(s) has been fully remedied.
 - d. The operation shall at all times be conducted in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking, and other actions.
 - e. The permitted hours of operation shall be between the hours of 8:00 a.m. to 10:00 p.m. daily.
 - f. All employees of the business shall be out of the premises no later than one hour after closing. No "after hours" operations shall be permitted.
 - g. Management shall patrol the business premises and the surrounding vicinity, including the public rights-of-way to the property, during all hours of operation. Management shall ensure that no littering, loitering, or consumption of alcohol occurs in and around the project site.
 - h. The owner of the establishment shall maintain all required permits and/or licenses for the sale of alcoholic beverages in good standing.
 - i. No person shall sell alcoholic beverages for off-site consumption if there has been any lapse or breach in good standing of any one or more of the permits and/or licenses required for such sale.
 - j. There shall be no pay telephone maintained on the interior or exterior of the premises.
 - k. The operator of the establishment shall take the necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises.
 - l. Any outstanding violations of the Montebello Municipal Code shall be remedied prior to the issuance of a Certificate of Occupancy.

- m. This approval does not authorize any signage for the property. All signage shall be approved under a separate permit as part of the plan check process and subject to review and approval of the Planning Division. All temporary signage (e.g. banners, flags, pennants) is subject to the provisions of Chapter 17.62 of the Zoning code (Signs).
 - n. Window signs advertising brands of alcoholic beverages or other signage advertising alcoholic beverages shall not be visible from the public right-of-way.
 - o. All windows of the facility shall be treated with an anti-graffiti film. It is the responsibility of the property owner and/or applicant to have all graffiti on the establishment removed within 24 hours of its appearance, or be subject to citations from the City Code Enforcement Division.
 - p. All outdoor utilities, machinery and equipment, including roof-mounted equipment, shall be completely screened from public right-of-way, in a manner that is compatible with the structure. The method of screening shall be subject to the review and approval of the Planning Manager and the Building Official prior to the issuance of building permits.
 - q. The approval of the entitlement shall expire if the rights granted are not exercised within one year from the permit's effective date. Exercise of right shall mean issuance of a building permit to commence construction, or similar activities demonstrating the intent to proceed with the project, as determined by the Planning Manager.
 - r. Within 30 days of the City Planning Division transmittal of the Acceptance Form, the operator shall sign and return a copy of the Acceptance Form prepared by the City Planning Division, agreeing to the conditions of approval and acknowledging that failure to comply with such conditions shall constitute grounds for potential revocation of the permit approval. Failure to return the Acceptance Form within 30 days shall constitute grounds for terminating the permit.
 - s. Prior to the issuance of the Certificate of Occupancy, the operator shall post a notice in a conspicuous location at the building entry stating that the site is regulated by a Conditional Use Permit and the Acceptance Form, which includes the establishment's conditions of approval, is available upon request. This notice shall remain posted at all times the establishment is in operation.
 - t. The Planning Commission's approval, conditions of approval, or denial of this application may be appealed to the City Council if the appeal is filed with the City Clerk within 20 days after the Planning Commission decision, or the day after the subsequent City Council meeting (whichever comes first). Any appeal must be made in the form required by the Planning Manager.
 - u. The operator and / or successor of the use shall bear full cost (hereinafter referred to as the "Inspection Fees") of all monitoring and inspection activities to be conducted by City staff or its designated consultant representative(s) as necessary to ensure compliance with the conditions of this Resolution.
 - v. This approval shall not supersede the approval of any other affected agencies. The applicant shall comply with Federal, State, and local requirements.
 - w. A copy of the approved Resolution shall be incorporated onto the construction plans for any improvements prior to the submittal for plan check.
3. The development and utilization of the site shall comply with all the provisions of the all current Building, Plumbing, Mechanical, Electrical Codes and City

Ordinances (ADA 2010; CBC 2010; IRC 2010; NEC 2008; UMC 2010; and UPC 2010) as well as additional requirements from the Montebello Building and Safety Division.

- a. The proposed tenant space shall meet all ADA requirements. The counter shall have an area that is a minimum of 36” wide and a maximum of 34” high.
 - b. A copy of the Los Angeles County Health Department approval shall be submitted to the Building and Safety Division with plans.
 - c. Submitted plans to the Building and Safety Division shall be fully dimensioned.
4. The following on-site requirements shall comply with the security provisions of the Montebello Municipal Code and/or the specifications of the Montebello Police Department:
- a. The sale of alcoholic beverages for on-site consumption shall be prohibited.
 - b. Deliveries to the business must be made during the hours of operation, as defined in condition 2e.
 - c. The operator of the establishment shall take the necessary steps to prevent panhandling and drinking on or around the premises. This shall include: having enough employees and/or security guards on duty to tend to the operations of the store and to regularly “patrol” the premises.
 - d. The consumption of alcoholic beverages is prohibited on any public street or public place within the City, per Section 9.04.010 of the MMC. The management shall take appropriate measures to ensure that there is no consumption of alcoholic beverages outside of the building, in the parking lot, or around the premises.
 - e. The management shall post the property for advising of Section 9.04.010 of the MMC, which states that “No person shall drink any intoxicating liquor in or upon any public street or public place within the City”.
 - f. Alcohol sales shall be for off-site consumption only.
 - g. There shall be no sale of fortified wines or malt liquor.
 - h. Beer shall be sold in a six-pack minimum.
 - i. There shall be no single sales of beer, wine coolers, or mixed alcoholic beverages.
 - j. There shall be no dismantling and sales of pre-packaged beer, wine, coolers, or mixed alcoholic beverages.
 - k. No sale of single large containers of beer and/or malt beverages shall be made. (Example only: 40-ounce containers.) The Montebello Police Department shall have the authority to determine what constitutes a large single container.
 - l. There shall be no sales of wine in less than a 750 ml quantity.
 - m. No display of any alcoholic beverages shall be made from an ice tub.
 - n. No ice in quantities of less than two pounds shall be sold, furnished or given away.
 - o. The applicant shall comply with all terms and provisions of the license issued by the State Department of Alcoholic Beverage Control and/or the terms and provisions of the Alcoholic Beverage Control Act at all times.

- p. Adequate illumination shall be provided and maintained subject to the review and approval by the Montebello Police Department of a Photometric Plan certified by a licensed lighting engineer, including but not limited to the following:
 - 1) A minimum of 5 foot-candles shall be provided along the alley. The maximum lighting level to average lighting level ratio shall not exceed 2.5 to 1.
 - 2) A maximum of 10 foot-candles along fronts of buildings and along main drive aisles shall be provided. The maximum lighting level to average lighting level ratio shall not exceed 2.5 to 1.
 - 3) Lighting levels shall not exceed 0.5 foot-candles at any common property line with property zoned, used, or planned for a residential use.
 - 4) Security lighting controlled and activated by motion sensor devices for a duration of less than 15 minutes are exempt from these standards.
- q. Light sources that are more than three feet in height above the finished grade shall be a full cutoff so as to not direct light skyward and, shall be arranged by means of filters or shields to avoid reflecting lighting onto adjoining properties or streets.
- r. No gambling of any type is allowed on premises.
- s. The operation of video or any other electronic games is prohibited.
- t. The applicant shall maintain a video surveillance system that captures the entrances and exits of the building, parking lot area, and the interior of the establishment. Placement of cameras shall be approved by the Montebello Police Department. The recordings shall be kept for a minimum period of 30 days. Recordings requested by the Police Department shall be provided immediately. The system shall record during the hours of the business operation and all equipment must be maintained in good working order at all times.
- u. The business owner shall install, maintain, and obtain City permits for a burglary and robbery alarm system. The Police Department shall approve the plans for the alarm system and placement of the panic buttons.
- v. Paper and/or plastic cups shall not be sold or given away in quantities less than their usual and customary packaging.
- w. Outside tables, benches, chairs and/or seating of any nature are prohibited.
- x. Coolers, refrigerators, displays, shelf space, and floor space used for offering alcoholic beverages for sale shall be limited to a maximum of 25% of the retail floor area.
- y. The Montebello Police Department reserves the right to review this CUP at any time if there are excessive calls for service or if the Department feels that the operation of the establishment is a risk to public health, safety, welfare, or morals.
- z. The floor plans and usage shall not change without prior approval from the Planning, Building & Safety, Police and Fire Departments.
- aa. All doors not utilized for customer access shall be kept locked from the outside and have alarmed panic hardware.
- bb. All conditions as outlined in the Montebello Municipal Code Chapter 17.61 as outlined and any future amendments shall be adhered to.
- cc. The management is responsible to ensure that there is no loitering in the parking area, the public right-of-way and neighboring properties during the hours of operation or after the business has closed.

- dd.Noise levels generated by the business shall not exceed 65 DBA between the hours of 7:00 a.m. and 10:00 p.m., and not exceed 60 DBA between the hours of 10:00 p.m. and 7:00 a.m.
- ee.The premises shall be kept clean and the operator of the establishment shall insure that no trash or litter originating form the site is deposited onto neighboring properties or onto the public right-of-way.
- ff. The establishment shall be operated in compliance with all local, state and federal laws and regulations.
- gg.A copy of this CUP shall be kept on the premises at presented to any member of the Montebello Police Department, Fire Department, Code Enforcement Division, and/or any Investigator from California Alcoholic Beverage Control.
- hh.A copy of the ABC license, business license, health permit, seller’s permit and all other required licenses shall be posted and made readily available to any law enforcement officer.
- ii. A responsible person over the age of 21 shall be on the premises during all hours of operation. This person must possess valid identification and present it to any law enforcement officer upon request.
- jj. The premises shall be subject to inspection by members of the Montebello Police Department, Montebello Fire Department, Montebello Code Enforcement, Los Angeles County Department of Public Health and any other on-duty law enforcement officer at anytime without warrant.
- kk. The Police Department reserves the right to close the business if it appears that the continued operation would create an unsafe environment for the employees, patrons, bystanders, or public safety personnel. Examples include, but are not limited to: patrons fighting, overcrowding, unruly crowds, etc.
- ll. If police or fire services are required at the location the applicant will be responsible for reimbursing the City of Montebello for all related costs.

SECTION 5. FINALLY RESOLVED, that the Secretary be instructed to forward a copy of this Resolution to the applicant for his attention, and that the Secretary advise the applicant that this decision, or any part of it, may be appealed to the City Council by the applicant, opponent, or the City Council on its own motion, in the manner specified in Section 17.78.070 of the Montebello Municipal Code.

Victor Cuevas, Chairman

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Planning Commission of the City of Montebello at a regular meeting held on Tuesday, August 21, 2012, and carried by the following vote:

- AYES: Commissioners:
- NOES: Commissioners:
- ABSENT: Commissioner:
- ABSTAIN: Commissioners:

Ariel Socarras, Planning Manager and Secretary to the Planning Commission

