



Agenda Report

MEETING DATE: Tuesday, December 7, 2021

TO: Planning Commission

FROM: COMMUNITY DEVELOPMENT DIRECTOR MERRIAM
ASSOCIATE PLANNER WIKLE

SUBJECT: SPECIAL USE PERMIT (APPLICATION NO. 1318) TO ALLOW THE
ESTABLISHMENT OF AN ON-SALE BEER (TYPE 40 ABC
LICENSE) UNDER NEW OWNERSHIP FOR AN EXISTING 1,425
SQUARE FOOT BAR WITH LIVE ENTERTAINMENT, LOCATED AT
118 MAIN STREET (APN 017-681-08)

STATEMENT OF ISSUES

The project is for establishment of an existing Type 40 ABC License under to new ownership for an existing 1,425± square foot bar with live entertainment. The Project requires approval of a Special Use Permit because of the City's alcohol related use ordinance.

RECOMMENDED ACTION

Staff recommends that the Planning Commission adopt a resolution approving Special Use Permit (Application No. 1318) to allow for the establishment of an existing Type 40 ABC License under new ownership for an existing 1,425± square foot bar with live entertainment, located at 118 Main Street (APN 017-681-08), based on the attached findings and subject to the attached conditions of approval.

BASIC PROJECT DATA

Application: App #1318
Location: 118 Main Street
Lot Size: 0.96± acres (41,904± square feet)
APN: 017-681-08 (portion of)
General Plan: Central Commercial
Zoning: Central Commercial (CC)
Surrounding: Residential High Density in the Multiple Residential – High Density (RM-3) Zoning District to the north. Central Commercial in the CC Zoning District to the east, west, and south.

Existing Use: Bar with On-Sale Beer (Type 40 ABC License) with live entertainment

Proposed: Same use under new ownership

Surrounding: Multifamily residential development and various commercial uses

Flood Zone: The site is within the 100-year floodplain (Zone AH) with a base flood elevation of 32± feet (FEMA Flood Map Panel 0392E, Map No. 06087C0392E, revised May 16, 2012)

Applicant: Jorge Gustavo Hernandez, 5614 Calmor Avenue, Apt 4, San Jose, CA 95123, Juana I Ortiz, 1735 Lily Court, Tracy, CA 95376

Property Owner: Reyna Sanchez, 13801 Hutchings Court, Watsonville, CA 95076

BACKGROUND

According to the Santa Cruz County Assessor's Office, the parcel is developed with a 22-unit boarding house fronting Union Street and a commercial building fronting Main Street. The commercial building consists of three tenant spaces, one of which is 118 Main Street.

On October 1, 1975, the Department of Alcohol and Beverage Control (ABC) issued Isabel Garza a Type 40 ABC License to allow for on-site consumption of beer at a bar located at 118 Main Street.

On September 10, 2002, the Council adopted the Alcohol Related Use Ordinance (Ordinance 1135-02 [CM]), codified as Chapter 14-25 of the Watsonville Municipal Code (WMC). The Ordinance details requires an alcohol related uses application, permits required for various ABC licenses, and specified conditions of approval for alcohol related uses. The process to permit existing alcohol related establishments was that all alcohol related establishments operating as of October 10, 2002 (the effective date of, after the adoption of Ordinance No. 1135-02 [CM] creating Chapter 14-25 of the Watsonville Municipal Code), but without a valid Use Permit approved specifically for the purpose of alcohol sales, were required to file an application to obtain a conditional use permit no later than January 1, 2003.¹

The City developed a No-Fee Special Use Permit, form approved without a public hearing for alcohol related businesses not declared a "public nuisance" or on probationary status with ABC.² To comply with this update, Isabel Garza doing business as El Tenampa Club Bar, obtained a No-Fee Special Use Permit (PP2003-121) on September 5, 2003 subject to standard alcohol related use conditions of approval as follows:

1. The Alcohol and Beverage Control (ABC) Conditions of Approval are incorporated by reference as Conditions of Approval of this Use Permit.
2. No exterior pay phone(s) may be placed on the premises.
3. Interior pay phone(s) shall not allow incoming calls.
4. Permittee shall comply with the requirement to obtain and conditions relating to entertainment, amplified music and Special Events Permits.

¹ subdivision (b) of WMC §14-25.050

² subdivision (b) of WMC §14-25.050

5. Drive-through or take out service of alcohol is prohibited,
6. Businesses proposing the use of pool tables are subject to Section 5-16.7 of the Watsonville Municipal Code.
7. Exterior security camera shall be installed and maintained in good working order. Chief of Police directs camera to be placed at rear of the business facing the parking lot and Union St.
8. Except as may be specifically allowed by this Code, no portion of the ground floor windows shall be obscured by paint, walls, window tinting, or other masking device. This subsection is intended to facilitate views of the interior from the exterior for public safety and does not prohibit neon signs, minimal window borders, or other signs or decorations that are consistent with City sign regulations and do not obscure views.

On September 4, 2007, the Planning Commission of the City of Watsonville adopted Resolution No. 15-07 (PC), approving Special Use Permit (PP2007-264) to establish a Type 40 ABC License under new ownership for an existing bar located at 118 Main Street.

On March 4, 2008, the Planning Commission of the City of Watsonville adopted Resolution No. 03-08 (PC) to deny a Major Modification (PP2008-32) to Special Use Permit (PP2007-264) to allow for extended hours of operation and amended operational standards for El Tenampa Bar at 118 Main Street.

On July 11, 2019, the City Council adopted Ordinance Nos. 1384-19 (CM) and 1385-19 (CM), modifying Alcohol Related Uses Ordinance.

On March 12, 2021, El Malecon Inc, on behalf of Reyna Sanchez, property owner, submitted a Special Use Permit application (Application No. 1318) to establish an existing Type 40 ABC License under new ownership at 118 Main Street.

PROCESS

Special Use Permit

An On-Sale Beer – Bar/Tavern (Type 40) ABC License is conditionally permitted in the CC Zoning District with issuance of a Special Use Permit.³ A conditional use permit is required when there is a transfer of an established regulatory license to new ownership.⁴ Establishing an existing Type 40 ABC License under new ownership therefore requires issuance of a Special Use Permit.

The Planning Commission is authorized to approve Special Use Permits in accordance with the procedures set forth in WMC Sections [14-12.509](#) through [14-12.512](#) if it can make the findings required by [14-12.513](#).

The purpose of the Special Use Permit is to ensure the proper integration of uses which, because of their special nature, may be suitable only in certain locations or zoning districts or only provided that such uses are arranged or designed in a particular manner⁵. This special

³ Subdivision (b) of WMC Section [14-16.1104](#)

⁴ Subdivisions (c) and (d) of WMC Section [14-16.1104](#)

⁵ [WMC § 14-12.500](#)

review shall be for the purpose of determining that the proposed use is, and will continue to be, compatible with surrounding, existing, or planned uses; and for the further purpose of establishing such special conditions as may be necessary to ensure the harmonious integration and compatibility of uses in the neighborhood and with the surrounding area⁶.

Alcohol Related Uses Application

In accordance with WMC Section 14-25.011, an application to allow an alcohol sales establishment must provide the following materials:

- Locational information;
- Business plan;
- Safety and security plan;
- Neighborhood compatibility plan; and
- Community benefits.

Application Review and Scoring

Once the applicant submits a complete application, City staff (consisting of the Police Chief, Fire Chief, Community Development Director, Finance Director, City Manager or their designees) review the application, and interview applicant(s) within 60 days.⁷ Successful applications shall receive a score of at least 80 percent of all available points on the rubric. If an application fails, a new application for an alcohol sales permit may be submitted after 90 days of notice of rejected application. The Planning Commission shall consider each application for a Special Use Permit and shall approve or conditionally approve the permit upon making each of the following seven findings required by [WMC Section 14-12.513](#) and [WMC Section 14-25.013](#).

Operational Standards and Conditions of Approval

The Planning Commission may condition the alcohol related use with the 11 minimum operational standards of WMC Section 14-25.020 and the seven operational standards for on-sale alcohol establishments (Types 40, 41, 47, 48) of WMC Section 14.25.022.

STANDARD OF REVIEW & APPEAL PROCESS

The decision whether to approve this Special Use Permit is adjudicative, sometimes referred to as quasi-judicial. The Commission is called upon to determine whether this project complies with local ordinances.

Whether a particular decision is adjudicative or legislative affects the requirements for findings to support the decision. Legislative decisions involve the adoption of broad policies applicable to many situations (for example, general plan amendments and zoning ordinance changes). Legislative decisions need not be accompanied by findings, unless a State law or City ordinance requires them.

⁶ [WMC § 14-12.501](#)

⁷ [WMC § 14-25.012](#)

Adjudicative (or “quasi-judicial”) decisions, on the other hand, are not policy decisions. Adjudicative/quasi-judicial decisions apply already adopted policies or standards to individual cases, such as a variance or conditional use permit application. Adjudicative/quasi-judicial decisions are based on evidence and must always be supported by findings.⁸

The decision before the Planning Commission—a Special Use Permit—is an adjudicative/quasi-judicial decision and requires findings, either for denial, or as recommended, for approval that is supported by substantial evidence. *Toigo v Town of Ross* (1998) 70 Cal App 4th 309; see also *Petrovich v. City of Sacramento* (2020) 48 Cal App 5th 963

If the Planning Commission’s decision is appealed, the City Council will consider whether the action taken by the Planning Commission was erroneously taken and may sustain, modify or overrule the action. In order for an official action to be overturned by an appeal, the City Council must find that the action taken by the Planning Commission was taken erroneously and was inconsistent with the intent of the Zoning District regulations that regulate the proposed action. [WMC § 14-10.1106](#)

A lawsuit is required to challenge a Council’s decision. A reviewing court will consider whether an adjudicative/quasi-judicial decision by the Council was supported by adequate findings. Courts scrutinize adjudicative/quasi-judicial decisions closely. An action may be overturned if the City (1) exceeded its authority, (2) failed to provide a fair hearing⁹, or (3) made a decision not supported by substantial evidence (also called “a prejudicial abuse of discretion”).

Another important difference between legislative and adjudicative/quasi-judicial decisions is the substantial evidence standard: in weighing evidence of what happened at the Council meeting, courts go beyond whether a decision was “reasonable” (the legislative standard). Court’s reviewing adjudicative/quasi-judicial decisions look to make sure the decision is supported by substantial evidence. Denied applicants argue the there is no substantial evidence to support the decision. Cities usually assert there is substantial evidence to support the decision and rely on (1) the written words in the staff findings, (2) the statements by those presenting at the hearing, and (3) the words of the Planning Commission or Council.

DISCUSSION

Existing Site

The 0.96± acre site is developed with a 22-unit boarding house fronting Union Street and a commercial building fronting Main Street with three commercial tenant spaces. The tenant space for El Malecon (118 Main Street) is located adjacent to a seafood restaurant with a Type 41 ABC License, Mariscos El Rincon Nayarit (120 Main Street). The third commercial tenant space is currently vacant. Access to the site is provided from a 20± foot driveway approach along East Front Street and a 30± foot driveway approach on Union Street. To the north and south of the project site are various residential uses. To the east and west of the site are

⁸ Quasi-judicial decisions require the decision-making body to take evidence and use its judgment to make factual as well as legal determinations about whether a particular property or project meets the standards established by the land use ordinance.

⁹ *Petrovich*, supra

various commercial uses. See Figure 1 for an aerial view of the project site and surrounding properties.



FIGURE 1 Aerial View of Project Site (blue marks parcel boundary)

Source: Santa Cruz County GIS, 2020

Proposed Project

The applicant proposes to transfer an existing Type 40 ABC License (On-Sale Beer – Bar/Tavern) to new ownership for an existing 1,425± square foot bar. In addition, the applicant seeks to obtain an Entertainment Permit from the Watsonville Police Department to host live events, including DJs and live music on Fridays, Saturdays, and Sundays.

As shown in Figure 2, patrons can enter the bar off Main Street and through an entrance to the rear of the tenant space. Adjacent to the entrance off Main Street is the bar area. Adjacent to the bar area is the stage for live events and a separate DJ booth. Two bathrooms and an office area are towards the rear entrance of the tenant space.

During live entertainment events, the applicant proposes to have security guards at both entrances who will check the IDs of patrons and one additional security guard for the main floor area. See Attachment 2 for El Malecon's Business Plan.

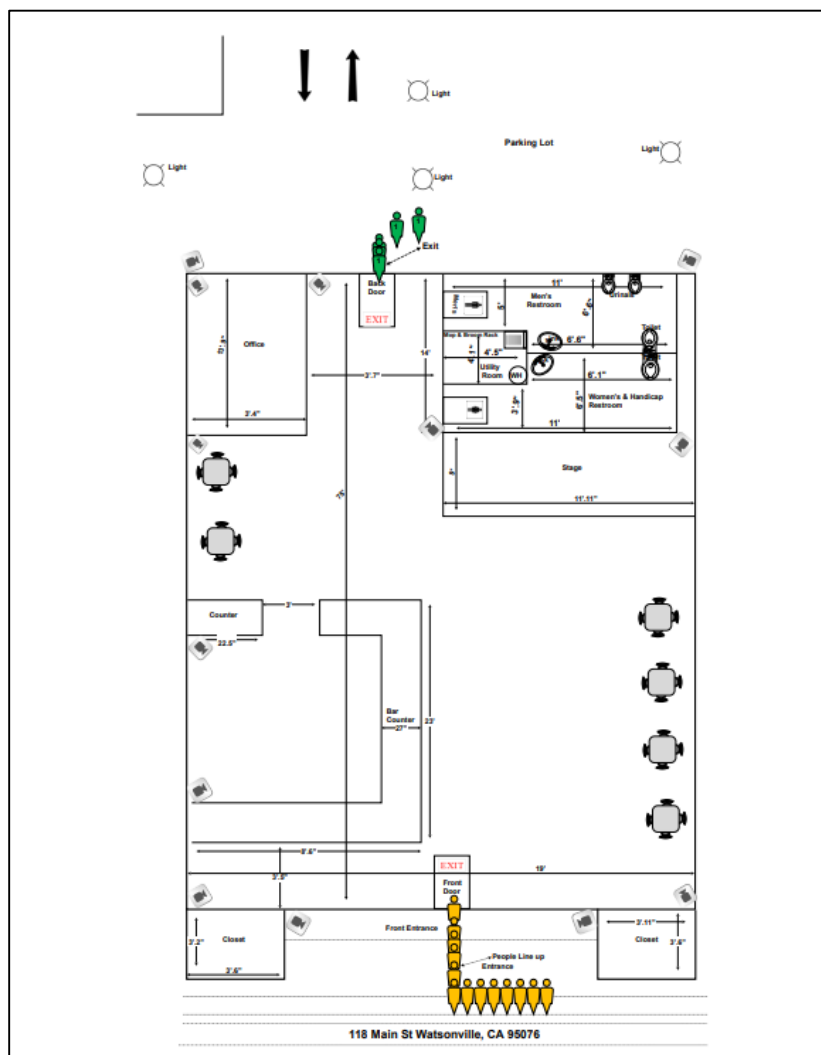


FIGURE 2 Project Floor Plan

Source: El Malecon Business Plan (received July 29, 2021)

Hours of Operation

The proposed hours of operation for El Malecon are 12:00PM to 12:00AM, 7 days a week with live entertainment proposed on Friday, Saturday and Sunday. The hours have been reviewed by the Watsonville Police Department and were found to be acceptable. The applicant is required to obtain an Entertainment Permit from the Watsonville Police Department to allow for live entertainment. Last call shall be 11:30 p.m., with a hard-closure of the bar at midnight.

Police Review

The Watsonville Police Department tracks all alcohol licenses in the City and the reported crime associated with these sites. The Police Department also confirms whether alcohol license holders comply with ABC regulations.

Police Department Review indicates that the location is not located in a high crime area and is located in an area of over-concentration of On-Sale ABC licenses.¹⁰ The request is to transfer an existing Type 40 ABC license to new ownership and does not result in the establishment of an additional On-Sale ABC license. As such, the request does not result in additional On-Sale ABC licenses in the census tract.

Type 40 ABC License

ABC issues various licenses for the sale of alcohol for different types of establishments. A Type 40 On-Sale Beer License authorizes the sale of beer for consumption on or off the premise where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be made available.

The proposed use has been conditioned with:

- the City's standard conditions for alcohol establishments
- the City's standard 7 conditions for on sale beer sales

These conditions are so an alcohol establishment with on-sale beer sales will conform with applicable regulations and not have negative impacts to the surrounding neighborhood.

LEAD Training

A condition of approval requires all service staff, managers and owners attend Licensee Education on Alcohol and Drugs (LEAD) training within ninety (90) days of approval of this Use Permit and/or employment at the restaurant to ensure they understand responsible beverage service practices and procedures regarding the sale and service of alcohol. The applicant is required to submit verification of LEAD training attendance to the Community Development Department.

Compliance with Alcohol Ordinance

WMC Chapter 14-25 regulates the location and operation of alcohol establishments within the City. This Chapter is intended to reduce alcohol-related environmental and social problems by regulating the use, operation, and location of new alcohol establishments selling alcoholic beverages in relation to existing alcohol licensees and their proximity to sensitive uses and facilities customarily used by children and families. Below is a summary of the information provided in the interview conducted by City Staff on October 28, 2021.

In accordance with [WMC Section 14-25.011](#), the applicant provided the following information regarding their Business Plan for El Malecon:

The applicant proposes to have three staff available seven days a week from 12:00PM to 8:00PM with 5 staff members from 8:00PM to 12:00AM Monday through Thursday, and 10 staff members (including three security guards) from 8:00PM to 12:00AM Friday,

¹⁰ The term "overconcentration" (also referred to as "undue concentration") is specifically defined in Business & Professions Code § 23958.4 Business & Professions Code § 23958.4 as simply a ratio of *the number of licenses in a census tract* compared to *the average number of licenses in a County*, as a whole. It does not mean that a particular census tract necessarily has too many licenses for the needs or convenience of residents in that tract.

Saturday, and Sunday. A manager will be on-site at all hours of operation. The business plans to hire staff with prior experience at on-sale alcohol establishments.

Staff will be LEAD certified and trained to identify false identification. On nights with Live Entertainment, one security guard will be at the front entrance and one security guard will be at the rear entrance. The security guards will be responsible for checking IDs of patrons prior to entering El Malecon.

The proposed menu includes sandwiches and other snacks as required for Type 40 ABC licenses. The applicant hopes to collaborate with local businesses and provide additional food service through contracting with mobile food vendors.

Also in accordance with [WMC Section 14-25.011](#), the applicant provided the following information in its Neighborhood Compatibility Plan:

The parking lot behind the bar has four light posts with two lighting fixtures each, which were recently replaced and help keep the parking lot well lit. The applicant has also installed new lighting fixtures within the facility to keep it well lit.

The business manager will provide his personal contact information to surrounding neighbors should any noise complaints arise. During nights with live entertainment, the live entertainment will take place inside the establishment to limit noise to inside the bar. The applicant expressed that they would install noise attenuation material should complaints arise related to the live events. Staff will be trained to contact Watsonville Police Department should any crime or issues with patrons occur.

In terms of closing operations, on nights with live entertainment, security guards will maintain the front and rear of the property. On nights without live entertainment, management staff will maintain the front and rear of the property. As the business closes, patrons are required to vacate as soon as possible. After all customers have left the facility, staff will pick up garbage and secure the premise. El Malecon wants to have a good relationship with neighbors and do not want to create any nuisances for surrounding properties/businesses.

Additionally, the applicant provided the following information for their Safety and Security Plan:

On nights with live entertainment, El Malecon will have three security guards (one for the front entrance, one for the rear entrance, and one inside the facility) through a contract with Ilyria Security Corporation. Security will check IDs and will check patrons prior to entering the bar.

Staff will receive training on how to check IDs, flag illegal IDs, and to notice signs of intoxication so that staff does not over-serve patrons. El Malecon will encourage alternative modes of transportation and will be in communication with Watsonville Police Department if patrons attempt to drive while intoxicated.

The floor plan provided by the applicant notes that two cameras are proposed on the exterior of the building at the front and rear entrances with 10 security cameras proposed inside the bar. Specifications for the security cameras note that footage will be retained for a minimum of 30 days, as required by the Watsonville Police Department.

In accordance with [WMC Sections 14-25.021](#) and [14-25.022](#), all operational standards applicable to an off sale general ABC License are incorporated as Conditions of Approval. For more information on the Alcohol Related Uses Application, see Attachment 2.

Interview Scoring

The application was initially reviewed in July 2021 for completeness. After the application was deemed complete, the applicant was interviewed by a selection committee consisting of the Police Chief, Fire Chief, Community Development Director, Finance Director, and City Manager or their designees. The applicant was then interviewed and scored based on four main categories: location (200 points), business plan (350 points), neighborhood compatibility plan (375 points), and a safety and security plan (450 points). There are bonus points that applicants may receive for community benefits (50 points), labor and employment (25 points), and local enterprise/qualifications of principals (75 points). The maximum possible score for an alcohol related use application for a bar with live entertainment is 1,375 points, excluding the bonus points. An applicant must receive a minimum score of points (80%) to be approved.

On October 28, 2021, Jorge Gustavo Hernandez and Juana I Ortiz, appeared for the applicant El Malecon, Inc., on behalf of property owner Reyna Sanchez, and were interviewed by City Staff and received a score of 1,280. With bonus points included the application received a score of 1285 out of 1,375 points. A summary related to the interview scoring follows each interview category can be found in Attachment 4.

Special Use Permit and Alcohol Related Uses Findings

The Planning Commission shall make the findings required in WMC Sections 14-25.013 and 14-12.513 to approve or conditionally approve the Special Use Permit allowing the operation of an

existing on sale beer license under new ownership. The applicant has demonstrated through their Alcohol Related Uses Application and Alcohol Related Uses Interview conformance with the City of Watsonville's Alcohol Related Uses Ordinance. As such, the Planning Commission may make required findings to approve the requested Special Use Permit.

Environmental Review

The proposed project is eligible for a Class 1 Categorical Exemption per Section 15301 of the State CEQA Guidelines as it involves establishing an alcohol license (ABC Type 40) under new ownership and involves no expansion of the existing use. The project will not involve any interior or exterior modifications.

STRATEGIC PLAN

The project follows Goal 04 (Economic Development) of the City's Strategic Plan in that it involves the establishment of a Type 40 ABC License under new ownership for an existing

bar with live entertainment for El Malecon. The establishment of an existing business under new ownership provides new job and workforce development opportunities.

FINANCIAL IMPACT

The establishment of an existing Type 40 ABC License under new ownership will provide continued sales tax revenue. The City received a onetime fee from the applicant to process the permit application.

ALTERNATIVE ACTION

The Planning Commission may deny the request to establish a Type 40 ABC License under new ownership for an existing 1,425± square foot bar with live entertainment (El Malecon) but must make findings for denial.

ATTACHMENTS

1. Site and Vicinity Map
2. Alcohol Related Uses Application and Floor Plan (received March 12, 2021, resubmitted July 19, 2021)
3. Letters of Recommendation (received March 12, 2021)
4. LEAD Certificates (received July 19, 2021)
5. Alcohol Related Uses On-Sale Rubric
6. Alcohol Related Uses Interview Scoring Rubric (interview conducted October 28, 2021)