



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



DATE: February 18, 2011
BOARD MEETING DATE: March 15, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: County Counsel

SUBJECT: Resolution of Public Convenience or Necessity for Application for Alcoholic Beverage License by DT McKee Petroleum Corporation, for the Premises at 743 Marsh Road, Menlo Park, CA

RECOMMENDATION:

Adopt a resolution determining that public convenience or necessity would not be served by issuance of an off-sale beer and wine license to DT McKee Petroleum Corporation for the premises at 743 Marsh Road, Menlo Park.

BACKGROUND:

State law requires that the County make a finding of whether the public convenience or necessity would be served by the issuance of an Alcoholic Beverage License if the granting of the license would result in an “undue concentration” of establishments selling alcoholic beverages. The California Department of Alcoholic Beverage Control has determined that an undue concentration of such establishments exists in the census tract at issue in this case, and has requested that the County consider whether the public convenience or necessity (“PCN”) will be served by issuance of the instant license. This Board has established a process for consideration of such requests that requires that they be referred to the Sheriff and to the affected community council for a recommendation regarding whether the request for PCN should be granted.

DISCUSSION:

This request relates to the Alcoholic Beverage License Application made by DT McKee Petroleum Corporation in connection with a proposal to conduct off-sale of beer and wine at the premises located at 743 Marsh Road, in Menlo Park, California. The Department of Alcoholic Beverage Control has determined that the number of licenses already issued in the census tract in which this premises is located is more than the number allowed under the formula established by law. (Under this formula, three licenses would be allowed, and there are presently four licenses existing.) Therefore, under state law, the Department of Alcoholic Beverage Control may not issue a license to DT McKee Corporation without this Board first determining whether the public convenience or necessity would be served by issuance of the license.

The matter was forwarded to the North Fair Oaks Community Council for its consideration under correspondence of this office dated January 4, 2011. In response, this office received a letter from the Council dated February 3, 2011, wherein it stated that “the [North Fair Oaks Council] does not support the issuance of a license to sell alcohol at the DT McKee Petroleum Corporation at 743 Marsh Road, Menlo Park.” A copy of the Council’s letter is included with this report.

The matter was also forwarded to the Sheriff’s Office for its consideration and this office has been informed by the Patrol Lieutenant responsible for the area in which the facility at issue is located that the Sheriff opposes the application due to the over-concentration of licenses in the census tract.

Based on the foregoing, the recommendation is that this Board deny the applicant’s request and find that the public convenience or necessity would not be served by the issuance of a license. However, in case the Board determines that a different decision is warranted, attached are two forms of resolution, one of which would deny the applicant’s request and the other of which would grant it.

Responding to the request of the Department of Alcoholic Beverage Control will contribute to the Shared Vision 2025 outcome of collaborative community by providing necessary input to the Department to assist it in making a decision on the subject license.

FISCAL IMPACT:

No fiscal impact.

North Fair Oaks Council

February 3, 2011

John D. Nibbelin
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Re: North Fair Oaks Council recommendations regarding off-sale licenses at 743 Marsh Road and 2701A El Camino Real in North Fair Oaks

Dear Mr. John Nibbelin:

This letter is in response to your request where you asked for a recommendation from the North Fair Oaks Council (NFOC) with regards to the businesses in the North Fair Oaks area seeking a license to sell alcohol at their current establishments. The NFOC heard the matter on the January 20th during a regularly scheduled meeting. They heard directly from the applicants of such establishments and from the public. During the public meeting on January 27th, the NFOC made the following recommendations regarding off-sale licenses at 743 Marsh Road and 2701A El Camino Real in North Fair Oaks:

In regards to the application by DT McKee Petroleum Corporation located at 743 Marsh Road, Menlo Park the NFOC voted on the following motion:

The NFOC does not support the issuance of a license to sell alcohol to the DT McKee Petroleum Corporation at 743 Marsh Road, Menlo Park. The NFOC in full quorum voted: Seven in favor of the motion and zero against the motion. Therefore, the motion passed unanimously.

In regards to the application by The Little Store located at 2701A El Camino Real, Redwood City, The NFOC voted on the following motion:

The NFOC does not support the issuance of a license to sell alcohol to the Little Store at 2701A El Camino Real, Redwood City. The NFOC in full quorum voted: Six in favor of the motion and one against the motion. The motion passed on a 6 to 1 vote.

The NFOC felt that based on the fact that the number of alcohol outlets currently exceeds the allowed number for each of the respective census tracts and that neither of these licenses would serve either the public's convenience, or necessity, no more licenses should be issued to either of these census tracts.

Sincerely,



Manuel Ramirez, Jr.
North Fair Oaks Council Chair