

**CITY OF ENCINITAS
505 South Vulcan Avenue
Encinitas, California 92024**

***APPLICATION FOR DETERMINATION OF PUBLIC CONVENIENCE OR
NECESSITY (PURSUANT TO BUSINESS AND PROFESSIONS CODE
SECTION 23058.4(b)4)***

For information regarding City of Encinitas processing of the application, please contact Tom Curriden, City Planner at (760) 633-2712.

APPLICANT PREMISES:

APPLICANT: _____

LOCATION: _____

APPLICANT MAILING ADDRESS:

APPLICANT DAYTIME PHONE NUMBER:

Indicate by signing applicants initials after the form of request (either public convenience or necessity) whether this application is for findings of **public convenience** _____ or **necessity** _____.

***INFORMATION TO SUPPORT THE REQUESTED FINDINGS MUST BE
SUBMITTED BY THE APPLICANT:***

1. Review attached Resolution 96-37 which was adopted by the City Council on May 15, 1996.
2. List the documents you are submitting to support the criteria discussed in Section B of Resolution 96-37 for your specific application and attach the supporting information to this application.

3. Attach a copy of your application submitted to the State of California Alcohol Beverage Control Board.

APPLICANT, PLEASE READ THE FOLLOWING STATEMENT. SIGN AND DATE THE APPLICATION IN THE SECTION PROVIDED:

As applicant for a determination of public convenience or necessity, I hereby certify that the information presented in this application (including all attachments submitted with the application) is true and correct to the best of my knowledge. I further understand that this application is being reviewed in order to evaluate my application for an alcohol beverage license in an area designated by State of California code as either an area of undue concentration or a high crime area.

APPLICANT SIGNATURE AND DATE:

FOR CITY USE ONLY:

On, _____, this application was reviewed pursuant to Resolution 96-37. The findings to support the determination are attached. The determination was mailed to the applicant on _____ and to ABC on _____.

Authorized
signature: _____

(PLEASE SEE NEXT PAGE FOR CITY COUNCIL STAFF REPORT AND RESOLUTION)

**CITY OF ENCINITAS
CITY COUNCIL
AGENDA REPORT
Meeting Date: May 15, 1996**

TO: Mayor and City Council

VIA: Lauren Wasserman, City Manager

FROM: Community Development Department
Sandra Holder, Director
Bill Weedman, City Planner

SUBJECT: Consideration of Resolution 96-37, A Resolution Adopting Criteria and Authorizing a committee composed of staff from the Sheriff's Department, City Manager and Community Development Department to Render Determinations for Public Convenience and Necessity for Alcohol Beverage Licenses pursuant to Section 23958.4(b)2 of the Business and Professions Code.

BACKGROUND:

Business and Professions (B & P) Code Section 23958.4(b)2 stipulates that the State Alcohol Beverage Control Board (ABC) may grant a license to an applicant premise 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" of the license. ABC has notified staff that they will not process an application for alcohol beverages without a finding of public convenience or necessity by the City of Encinitas. The local agency review is a program, which is mandated by State codes as a recently enacted change to the Business and Professions Code.

ANALYSIS:

The finding of public convenience or necessity is to be made in areas of "undue concentration" which, pursuant to the attached copy of Section 23958.4, is related to reported crime within the crime reporting districts of the law enforcement agency. Encinitas reporting is confined to 16 beats within the city. Any beat is considered to be a high crime area when the number of crimes exceeds the city average by over 20%. It is important to note that only six beats have a higher than average crime rate. These beats are generally located within the commercial areas of the city.

Pursuant to the B & P Code, the ABC places the burden of the public convenience and necessity upon the applicant in nonretail (wholesale) licenses, retail on-sale bona fide eating places (restaurants), lodging (hotel/motel), beer manufacturers and winegrowers. Other licenses, such as off sale beer and wine (retail commercial where customers buy containers for consumption at other locations), off sale general (retail of all alcohol beverages for off site consumption) and on sale (bars, nightclubs) with the exception of bona fide eating places may be subject to the findings by the City. It is necessary to make the determination of *either* public convenience *or* necessity, not both.

Based upon discussions with ABC, it is staff's understanding that some local governments have the review completed by the law enforcement agency. After review by City management staff, it was determined that the review should be handled in a fashion which would have input from law enforcement, planning and the City Manager. Thus, a staff committee composed of representatives from the Sheriff, Community Development and City Manager is recommended; the staff serving on the committee would either be department heads or management staff appointed by the department director.

FISCAL AND STAFF IMPACTS:

The impacts upon resources are not known since staff does not know how many reviews would need to be conducted in a fiscal year. Staff anticipates that the committee reviewing the applications would meet for a short time every month, or, as needed. THIS IS A PROGRAM MANDATED BY THE STATE LEGISLATURE.

ENVIRONMENTAL STATUS:

Establishment of procedures for the processing of applications are exempt pursuant to Sections 15273(a)1 and 15378(b)3 of the California Environmental Quality Act Guidelines.

RECOMMENDATION:

Adopt Resolution 96-37 which establishes standards and procedures for processing of applications relative to public convenience or necessity findings in association with an application for an alcohol beverage license.

RESOLUTION NO. 96-37

PASSED AND ADOPTED May 15, 1996

A RESOLUTION OF THE CITY OF ENCINITAS, CALIFORNIA, ADOPTING CRITERIA TO ENABLE THE CITY TO MAKE FINDINGS OF PUBLIC CONVENIENCE OR NECESSITY PURSUANT TO SECTION 23958.4(b)2 OF THE STATE OF CALIFORNIA BUSINESS AND PROFESSIONS CODE AND GRANTING REVIEW AUTHORITY TO THE CITY MANAGER

WHEREAS, Business and Professions Code Section 23958.4(b)2 stipulates that the State Alcohol Beverage Control Board may grant a license to an applicant premise 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” of the license;
and**

WHEREAS, there is no definition of “Public Convenience or Necessity” in State or Municipal Codes and the City Council needs to provide direction to staff relative to the review of license applications as the findings for public convenience or necessity may be determined;

NOW THEREFORE, BE IT RESOLVED BY the City Council of the City of Encinitas, California, as follows:

A. AUTHORITY TO RENDER DETERMINATIONS OF PUBLIC CONVENIENCE OR NECESSITY

1. The City Manager or the City Manager’s designated representative(s) shall review applications pursuant to the standards set forth in Section B of this resolution.

2. Any determination made by the City Manager or the City Manager’s designated representative(s) may be appealed to the City Council in accordance with Municipal Code Chapter 1.12.

B. STANDARDS TO REVIEW IN RENDERING DETERMINATIONS OF PUBLIC CONVENIENCE OR NECESSITY

1. PUBLIC CONVENIENCE

An applicant must provide evidence to the authorized agency that the applicant premises are intended to provide consumers with merchandise or services separate from alcohol beverages and that consumers visiting the premises would purchase alcohol beverages as a secondary item to other merchandise or service. Evidence to consider may include, but shall not be limited to:

a. Factual data showing that the premises will have a majority of floor space devoted to food or other merchandise with a minority of floor space devoted to alcohol beverages. A typical use meeting this criteria would be a supermarket or other food store with alcohol beverages offered as one of many products.

b. Information from the Encinitas Substation of the San Diego County Sheriff that similar establishments within the City of Encinitas have not contributed significantly to the crime rate within the City of Encinitas.

2. NECESSITY

An applicant must provide evidence to the authorized agency that a substantial public demand for the product cannot otherwise be satisfied unless applicant’s permit is approved. Information to be considered may include, but shall not be limited to:

a. Factual data showing that the applicant premises will provide a unique experience, which could not otherwise be met within the City of Encinitas. Aspects of the unique experience may include ambiance, aesthetics or provisions of specialized services at the applicant premises.

b. Information from the Encinitas Substation of the San Diego County Sheriff that similar establishments within the City of Encinitas have not contributed significantly to the crime rate within the City of Encinitas.

C. PROCESSING PROCEDURES

The application for determination of public convenience or necessity is to be submitted to the Community Development Department. Following a review of all factual data, the determination shall be mailed to the applicant, ABC and any interested party. The determination may include specific conditions to insure that the use of the applicant premises will be maintained in a manner consistent with any approved findings of public convenience or necessity.