

## REPORT TO THE PLANNING COMMISSION

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**DATE:** May 14, 2019

**TITLE:** Conditional Use Permit No. 01-19 for a Type 41 Alcohol License which allows for the sale of alcoholic beverages (beer and wine) for on-premise consumption at Las Brisas Restaurant located at 13180 Palm Drive.

**Prepared by:** Jocelyn Torres, Contract Planner

**Reviewed by:** Rebecca Deming, Community Development Director

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### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) Planning Commission Discussion and Questions to Staff; and
- 9) Recommendation from staff to approve Conditional Use Permit No. 01-19 and adopt a Resolution of Public Convenience or Necessity for a Type 41 Alcoholic Beverage Control (ABC) License which will allow the sale of alcoholic beverages for on-premise consumption located at 13180 Palm Drive.

### EXECUTIVE SUMMARY

On March 18, 2019, the applicant Patricio Salazar, submitted a Conditional Use Permit application for a Type 41 (On-Sale Beer and Wine) license. The project is located within a multi-tenant commercial building that has been remodeled from a Chinese buffet to a restaurant. A Resolution of Public Convenience or Necessity needs to be approved for the Type 41 liquor license since the census tract is over-concentrated. Only five (5) on-sale Alcoholic Beverage Control (ABC) licenses are allowed within Census Tract No. 445.1 and there are currently eight (8) in existence. Staff is recommending approval of the applicant's request because the site is located within the General Commercial (C-G) zone intended for such use, subject to review and approval of a Conditional Use Permit.



## **BACKGROUND & DISCUSSION**

The project site is located in a commercial tenant space within the Stater Bros shopping center and is surrounded by commercial uses. The tenant space was formally occupied by a Chinese buffet that has now closed, and the new owners have completed the internal tenant improvements (electrical and minor repairs) to remodel the space into a restaurant use. Las Brisas, a seafood restaurant, occupies 4,833 sq. ft and has 94 total seating spaces. Las Brisas restaurant will provide a new spin on local dining experience by offering a variety of menu items. The restaurant will offer specialty sandwiches such as lobster po boy, deep fried baskets, traditional American seafood dishes such as fried clams, shrimp, and fish baskets, as well as an assortment of other dishes. Overall, the Type 41 ABC license will serve as an ancillary component to Las Brisas food sales.

The applicant has filed a Conditional Use Permit application for a Type 41 Alcoholic Beverage Control (ABC) license with the City. The proposed alcoholic beverages will be stored in a walk-in cooler and the dry storage will be on wired shelving located within the storage area (as shown on Exhibit No. 4). The applicant will utilize 44 square feet for alcohol storage and about 33 square feet for the proposed bar area which is about 1.6% of the total floor area. The applicant proposes to have a bar area (with 4 seats) that is adjacent to the service area and seating area. The bar area will have a refrigerator direct draw beer dispenser, blender station, a soda gun dispensing system, etc. in accordance to National Sanitation Foundation (NSF) regulations.

## **SITE CONDITIONS**

Existing Zoning/General Plan Land Use:	General Commercial (C-G)
Existing Use:	Vacant Tenant Space (previously Restaurant)
Total Existing Building Area:	4,833 SF
Assessor's Parcel Number:	641-261-012

The project site is within an existing multi-tenant commercial building with a shared parking lot. The surrounding properties for the project site consist of:

**Table 1: Surrounding Land Uses**

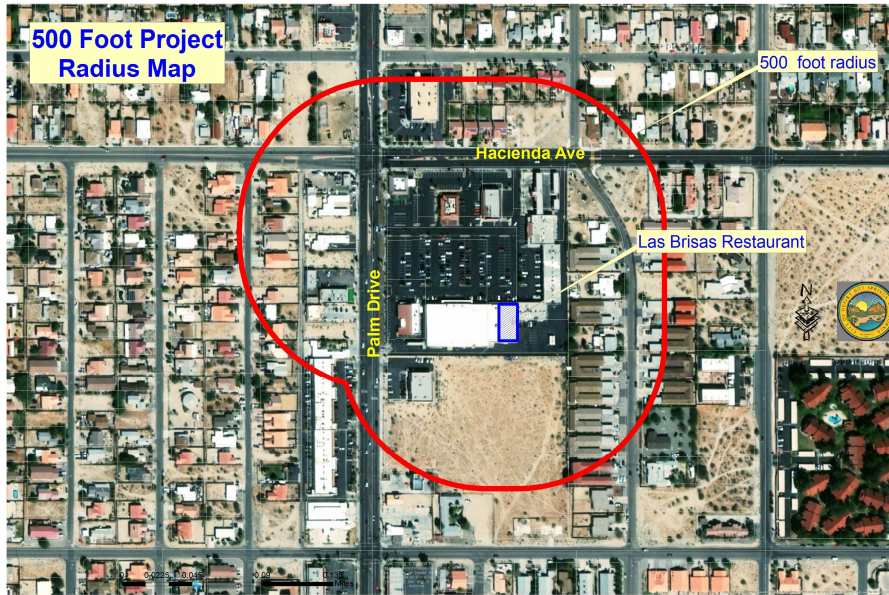
<u>Direction</u>	<u>Jurisdiction</u>	<u>Zoning &amp; General Plan Designations</u>	<u>Current Land Use</u>
North	City	C-G (Commercial)	Commercial
West	City	C-G (Commercial)	Commercial
South	City	C-G (Commercial)	Commercial
East	City	C-G (Commercial)	Commercial

The project site is directly surrounded by commercial zoning designations and developed land in all directions. The existing building has already completed the internal tenant improvements and has been remodeled into a restaurant.

## **CUP ANALYSIS**

The Desert Hot Springs Municipal Code (DHSMC) Section 17.12.020 allows on-site alcohol sales of beer, wine or liquor with a Conditional Use Permit. In addition, Section 17.12.050(A) of the DHSMC prohibits businesses from selling alcoholic beverages within 500 feet of any religious institution, school or public park. Staff has evaluated the ABC license and its proximity to sensitive land uses and has determined that the project site is located away from sensitive land uses. The closest sensitive land uses to the project site are Foursquare Church of Desert (3,863 ft.) and Tedesco Park (2,496 ft.). Overall, the ABC license will not adversely impact the community or the surrounding area because the alcohol license intent is to serve as an added amenity to the restaurant and the community.

**Figure 1: 500 Foot Radius Map**



### General Plan and Zoning Consistency

The project proposes to establish a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) license in accordance with Section 17.12.020 and Section 17.12.050 of the DHSMC, which allows these uses with approval of a Conditional Use Permit. The Type 41 license is designated for businesses that serve food (a bona-fide eating establishment). A restaurant classified as a bona-fide eating place means that the business has to generate at least 51% of all gross sales from food. The proposed development is consistent with zoning allowable use standards and all applicable General Plan policies with the implementations of the Conditions of Approval.

### Census Tract No. 445.1

The applicant will be applying for a Type 41 (On-Sale Beer and Wine) license from the Department of Alcoholic Beverage Control once the Conditional Use Permit is reviewed and approved. The ABC limits the number of on-sale and off-licenses allowed per census tract area. The on-sale limit for Tract No. 445.1 is five (5) licenses. Currently, there are eight (8) on-sale licenses within Census Tract No. 445.1; therefore, the census tract is over-concentrated. The current active on-sale retail licenses are shown below:

**Table 2: Existing On-Sale ABC Licenses**

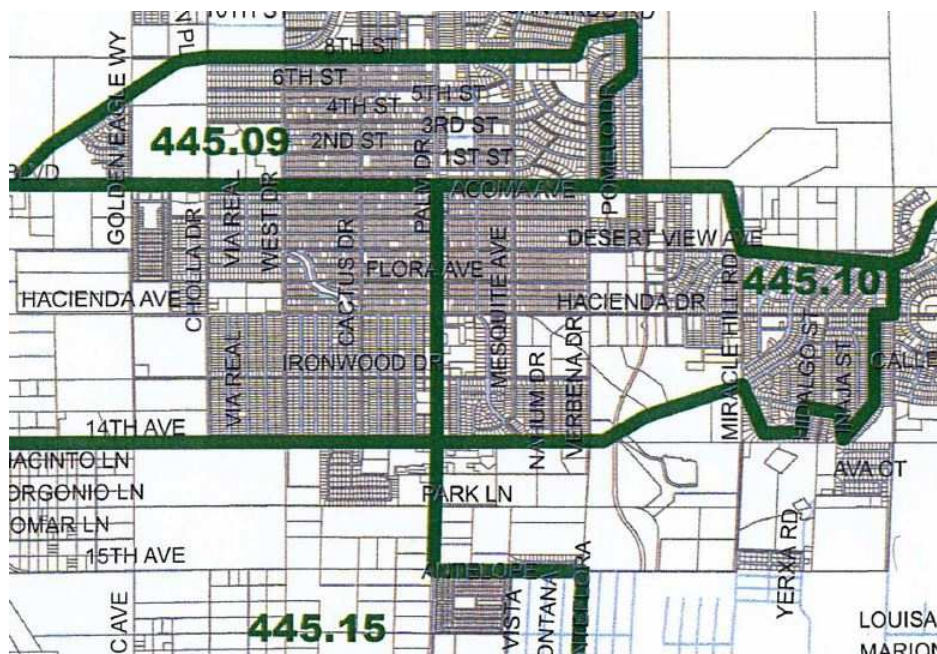
	License Type	Orig. Issue Date	Expiration Date	Business Name	Premises Address
1	41	05/24/1999	08/31/2019	Rocky's Pizzeria	12856 Palm Drive
2	41	03/24/2010	03/31/2020	Thai Palms Restaurant	12070 Palm Drive
3	41	04/12/2010	03/31/2020	Don Tacorriendo Taqueria y Cenaduria	13900 Palm Drive, Suite B & C
4	41	08/01/2011	07/31/2019	Taqueria el Guero #3	13156 Palm Drive



5	41	11/28/2012	10/31/2019	CJ Grand Hotel & Spa, Inc.	67585 Hacienda Ave
6	47	09/06/2013	06/30/2019	El Matador Mexican Restaurant	13450 Palm Drive
7	41	10/19/2017	09/30/2019	Sushi Domo Japanese Restaurant	13440 Palm Drive
8	67	03/14/2018	12/31/2019	Resort & Spa	13699 Reposo Way

The Census Tract (as shown on Figure 2) is bounded by the following streets: Two Bunch Palms Trail to the south, Mountain View Road to the east, Pierson Blvd/Desert View Ave to the north, and Palm Drive to the west.

**Figure 2: Map of Census Tract 445.1**



The census tract is over-concentrated with ABC licenses; however, this area encompasses a majority of the restaurant/commercial uses located along Palm Drive (as shown on Table 2). This has led to an over-concentration of on-sale ABC licenses and staff has prepared a Resolution of Pubic Convenience or Necessity to address the over-concentration.

### **Circulation and Parking**

The Stater Brothers shopping center has a shared parking lot that is used by the various tenants within the commercial center. Ingress and egress to the project site is provided by two driveways on Hacienda Ave (north of the project site) and two driveways on Palm Drive (west of the project site). The existing parking lot on site is compatible for the proposed use.

### **Lighting**

Exterior lighting will illuminate all exterior doors, signs, walkways, entrances, and parking area. Lighting will be oriented downwards and shielded within the property to contain illumination

within the project boundary. No additional lighting is proposed as part of the tenant improvements.

### **Hours of Operation**

The facility proposes to operate from 10:00 AM to 10:00 PM.

### **Projected Employee**

The applicant has indicated that they anticipate six (6) employees once in operation.

## **AGENCY & PUBLIC REVIEW**

### **Public Agency Review**

The proposed project was routed to all relevant public agencies and departments for review. The Chief of Police currently has no comments/concerns regarding the ABC license.

### **Public Hearing Notice**

The project was noticed to neighboring owners within a 300-foot radius of the project site (on May 2, 2019) and was advertised in the Desert Star on Friday, May 3, 2019 per state noticing requirements. No public comments have been received as of this writing.

## **ENVIRONMENTAL ANALYSIS**

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), this project is Categorically Exempt from environmental review pursuant to Section No. 15301, Class No. 1 (Existing Facilities), of the California Environmental Quality Act.

## **FISCAL IMPACT**

The addition of beer and wine sales to the proposed Las Brisas, will generate additional sales tax revenues for the City once the restaurant becomes operational.

## **RECOMMENDATION**

Staff recommends that the Planning Commission approve Conditional Use Permit No. 01-19, subject to the Conditions of Approval and including the following findings:

1. *That the proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Zoning Ordinance.*

The City of Desert Hot Springs Zoning Ordinance Section 17.12.020 allows a restaurant to sell beer, wine or liquor with review and approval of a Conditional Use Permit application. The General Commercial (C-G) zoning designation that the restaurant is located is intended for such use and is compatible with the surrounding commercial neighborhood. The applicant has applied for a Type 41 (On-Sale) ABC license that allows a bona-fide eating establishment to sale alcoholic beverages for on-sale consumption. Las Brisas restaurant will operate from 10 a.m. to 10 p.m. and will be compliant with all applicable provisions of the Zoning Ordinance. Conditions of Approval have been prepared and are recommended to assure that the proposed use will comply with the applicable Zoning Ordinance provisions. Staff recommends this finding.

2. *That the proposed use would not impair the integrity and character of the land use district in which it is to be located.*

The Census Tract No. 445.1 in which Las Brisas restaurant will be located is over-concentrated with on-sale ABC licenses. The Department of Alcoholic Beverage Control

allows five (5) on-sale licenses and there are eight (8) existing licenses in the census tract. Staff has prepared a Resolution of Public Convenience or Necessity and has attached Conditions of Approval to ensure that the on-sale ABC license for Las Brisas restaurant will not impair the integrity and character of the land use district. The commercial zoning district is intended for commercial uses such as restaurants and the sale of alcohol will be incidental or secondary to the sit-down restaurants main use. Conditions of Approval have been prepared. Staff recommends this finding.

3. *That the subject site is physically suitable for the type and intensity of land use being proposed.*

The subject site (a commercial shopping center) is physically suitable for the proposed restaurant use since the zone allows a wide range of retail uses in the C-G zone. The site is located away from sensitive land uses such as schools, parks, religious institution, etc. Currently, the closest sensitive land uses to the project site is Foursquare Church of Desert (3,863 ft.) and Tedesco Park (2,496 ft.). The site already has existing amenities such as parking, lighting, pedestrian circulation, and other features since the site is already developed and operational. Therefore, the proposed Type 41 (On-Site) ABC license is physically suitable for the restaurant. Staff recommends this finding.

4. *That the proposed use is compatible with the land uses presently on the subject property.*

The proposed Type 41 ABC license for the on sale of beer and wine at an eating place is allowed within the General Commercial land use. Currently, the existing land uses within the subject project are a range of commercial uses. The applicant has completed the internal tenant improvements and remodeled the former Chinese buffet into a restaurant. The addition of beer and wine is compatible with the surrounding uses and will serve as an additional amenity to the restaurants main use. Staff recommends this finding.

5. *That the proposed use would be compatible with existing and future land uses within the general area in which the proposed use is to be located.*

The proposed use will be compatible with existing and future land uses within the general area of the proposed ABC license since the majority of the surrounding uses have a commercial land use. Land to the north, east, south, and west are developed and zoned for a commercial land use. The project site is within the Stater Brother shopping center which has on-site amenities that service the entire commercial center. The ABC license is for on-premise alcoholic beverage consumption which will be contained within the proposed building and the operation of the restaurant appears to be consistent with the intent of the commercial zone. Overall, the proposed Type 41 (On-Site) ABC license for sale of beer and wine is expected to be compatible with the existing and future commercial uses in the surrounding area. Staff recommends this finding.

6. *That there are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.*

The subject site is currently developed with water, sanitation, public utilities, and has access to all necessary services to ensure that the proposed uses will not be detrimental to public health and safety. Staff recommends this finding.

7. *That there will be adequate provisions for public access to serve the site.*

The subject site is already developed with vehicular and pedestrian access, both from public rights-of-way as well as within and throughout the site. The site has an existing parking lot

which is currently being utilized by the various tenants within the commercial center. The proposed project will not create any additional demand for access than what

will be provided by the associated parking and drive aisle, subject to the recommended Conditions of Approval. Staff recommends this finding.

8. *That there will not be an adverse effect upon desirable neighborhood characteristics.*

Desirable neighborhood characteristics include long-range views from existing properties and businesses of surrounding mountains, and the future development of businesses and surrounding area. The proposed Type 41 ABC License is for the sale of beer and wine and not for a new development, the project site is already developed, so there would be no adverse effect on desirable neighborhood characteristics by granting a Type 41 ABC License. Staff recommends this finding.

9. *That the proposed use is necessary and essential to the community.*

The proposed use can be considered necessary and essential to the community to the extent that it is supported by guests and residents of the City. The sale of alcoholic beverages will serve as an additional amenity as part of the restaurant's operations and will contribute to the success of the restaurant. The Type 41 license is for beer and wine and is designated as an on-premises license. With the Type 41 license alcohol may be sold and served for on-premise consumption but the business may not sell closed containers to be consumed elsewhere. The sale of alcoholic beverages will help strengthen the economic prosperity of the restaurant and allow Las Brisas restaurant to compete with similar establishments that sell beer and wine. Staff recommends this finding.

10. *That the proposed use is consistent with applicable goals and policies of the General Plan.*

Staff has identified the following General Plan goals and policies applicable to the application and provides responses to each.

Administration

*Goal: Comprehensive and integrated administration and implementation of all elements of the Desert Hot Springs General Plan through consistent and effective policies and programs.*

The City has adopted a zoning ordinance to implement the General Plan and provide for review and approval of ABC Licenses. The proposed project will be subject to all requirements of this Conditional Use Permit, as prescribed by the zoning ordinance, and the proposed Conditions of Approval.

*Policy 7: The City shall encourage in-fill development within already urbanized areas of the corporate boundaries of the City, and expansion of new development shall be logically phased and, as appropriate, guided by the development of existing and new Specific Plans.*

The proposed Type 41 ABC license will be located on a developed property within a developed commercial area located within the General Commercial zoning designation. All public improvements are in place.

*Policy 8: City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of property located at least within 300 feet of development proposal sites.*

The project was noticed to neighboring owners within 300 feet of the project (on May 2, 2019), and in the Desert Star Weekly on May 3, 2019, per state noticing requirements. No comments have been received at the time of this writing and the Planning Commission will open the public hearing and take public comments and/or testimony on the dais and prior to any action.

### Community Design

*Goal 2: Variety of community design, architecture and landscaping compatible with the City's desert setting and surrounding development.*

The proposed restaurant will be in a vacant tenant space within the Stater Brothers shopping center (a multi-tenant shopping center). Internal tenant improvements were completed to transform the interior space into a restaurant. The applicant did not propose any exterior changes/modifications. Any proposed/future improvements shall adhere to applicable development standards and guidelines. Additionally, any existing buildings exterior and onsite improvements will be designed with materials, colors, and other design elements that are compatible with the City's desert setting and surrounding commercial development.

*Policy 1: Private and public sector development projects shall equally apply City community design standards, thereby protecting the community's scenic viewsheds, providing community cohesion and enhancing the image of Desert Hot Springs as a resort residential community.*

The site is currently developed with an existing commercial building that conforms to existing buildings in the vicinity. All onsite improvements currently exist on the Project site.

*Policy 9: Signs shall be limited to the minimum size, scale and number needed to provide functional identification and exposure necessary to convey messages, while minimizing impacts on traffic safety, streetscape and scenic viewsheds.*

All exterior signs shall be subject to approval under the Desert Hot Springs Zoning Code. The city sign regulations do not permit signs to exceed the height of building eave lines which will result in no impacts on scenic viewsheds. Signage will be reviewed under a separate permit.

*Policy 10: Lighting shall be limited to the minimum height, number and intensity of fixtures needed to provide security and identification in residential, commercial and industrial development, taking every reasonable measure to preserve the community's night skies.*

All exterior lighting shall comply with Section 17.40.170 (Outdoor Lighting) to assure that only the minimum level of lighting necessary to provide the needed security and safety is installed. The existing exterior lighting is downward shielded to project the night skies, no new lighting is proposed.

### Economic Development:

*Goal 1: A broadly based, healthy and balanced economy that provides a full range of economic and employment opportunities.*

The proposed Type 41 (On-Site) ABC License will help strengthen the proposed restaurant by providing opportunities for new employment and providing additional tax revenues to the City. The granting of the ABC license will attract additional patrons from



surrounding neighborhoods and contribute to the overall economic success of the restaurants. Having alcoholic beverages within Las Brisas restaurant will enhance the economic viability of the restaurant, while creating new eating opportunities for visitors and the community.

*Goal 2: Continued growth, which assures the maintenance of revenue, base adequate to support present and future public services and facilities needs.*

The Type 41 (On-Site) ABC License will strengthen the proposed seafood restaurant by providing additional revenues to the City to support present and future public needs.

*Policy 11: Make every effort to expedite the processing of development proposals, which address the economic development goals of the community and take the initiative to incubate new programs and projects.*

The application for a Conditional Use Permit is required by the Desert Hot Springs Zoning Code to assure compatibility with surrounding land uses and to develop project-specific conditions to assure successful operation with the City's development goals. The application has been processed expeditiously.

#### *Fire and Police Protection*

*Goal: A high level of police and fire protection and service.*

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

*Policy 1: All new and improved developments shall be reviewed for their impact on safety and the provision of police and fire protection services.*

All plans and improvements for internal or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

*Policy 2: Enforce fire standards and regulations in the course of reviewing building plans and conducting building inspections.*

All plans and improvements for internal or exterior building improvements will be subject to review and enforcement under building codes and regulations.

*11. That there will not be significant harmful effects upon environmental quality and natural resources.*

The proposed Type 41 ABC license allows the on-sale of beer and wine at an eating place and will not have any significant harmful effects on environmental quality and natural resources. The project site is already developed and currently zoned for commercial. No significant adverse or harmful effects on the environment or on any natural resources are anticipated from the ABC license. Staff recommends this finding.

*12. That the negative impacts of the proposed use are mitigated, and/or a mitigated negative declaration may be filed.*

The proposed project will be operated in accordance with all applicable regulations and Conditions of Approval. A review of the proposed project has identified no negative impacts, subject to the implementation of specific Conditions of Approval. Staff recommends this finding.

13. *That the proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.*

The proposed project has been reviewed by City departments and other public agencies for any potential detrimental effects on public interests, health, safety, convenience or welfare of the City. Any potential concerns have been addressed by recommended Conditions of Approval, and no unresolved concerns remain. Staff recommends this finding.

### **EXHIBITS**

- Exhibit No. 1 – Draft Conditions of Approval
- Exhibit No. 2 – Draft Resolution of Public Convenience or Necessity
- Exhibit No. 3 – Site Plan
- Exhibit No. 4 – Floor Plan
- Exhibit No. 5 – Site Photos
- Exhibit No. 6 – Applicant's Request for Convenience or Necessity Letter