



AGENDA REPORT

Meeting Date: April 21, 2011
Item Number: E-1
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING HIGH IMPACT CONVENIENCE STORES UNLESS SPECIFICALLY APPROVED BY THE CITY, AND DECLARING THE URGENCY THEREOF.

Attachments:

1. Interim Urgency Ordinance
2. April 5, 2011 Study Session Report

RECOMMENDATION

The City Council will consider adoption of an interim ordinance prohibiting high impact convenience stores and establishing a discretionary review process for the City to allow certain convenience stores to be established if findings can be made. Staff recommends that Council adopt the urgency ordinance and direct staff to return with an interim ordinance extension within 45 days.

INTRODUCTION

At the April 5, 2011 City Council study session, staff presented a report on regulations that apply to convenience stores in the City (Attachment 2). City Council considered the report and requested an interim urgency ordinance be brought back for consideration during the April 21, 2011 session. Convenience stores can be a benefit to neighborhoods; however, more regional serving, or "high impact", convenience stores may cause undesirable conditions to develop or increase in nearby areas. Undesirable conditions could include increased traffic, commercial intrusions into residential areas such as patrons parking on residential streets, increased litter, and noise.

DISCUSSION

Convenience stores are currently permitted “by-right” in most commercial areas of the City except in the Multiple-Family Residential-Commercial Parking Zone (RMCP)¹ and at gas stations². The attached urgency ordinance prohibits the establishment of convenience stores anywhere in the City unless the convenience store can either meet findings specified in the ordinance, or does not meet the definition of a “High Impact Convenience Store” based on the following definition:

“High Impact Convenience Store: Any retail store with the following characteristics: (1) more than half the square footage is dedicated to the sale of general food and drink products not intended for home preparation and consumption, tobacco, magazines, and toiletries, (2) the store is open to customers before 7:00 a.m. or after 9:00 p.m. Monday through Friday and before 9:00 am or after 9:00 pm on Sunday, and (3) meets one of the following – the store is located in a fuel station, or is served by on site surface parking, or is located within three hundred feet of a residential zone.”

Staff arrived at the hours of operation in the definition by contacting local convenience stores, as well as considering the City’s standards for normal business operating hours for transitional areas between commercial and residential uses in the Municipal Code³.

Convenience stores that do not meet this definition would not be subject to this ordinance. Stores that do meet this definition would be prohibited. A prohibited store could be allowed by the City with issuance of a “Convenience Store Conditional Use Permit” that would be reviewed by the Planning Commission, and subject to appeal to the City Council. The convenience store conditional use permit is a CUP established with the following findings:

1. The proposed use is compatible with the surrounding area and uses;
2. The proposed use will have adequate buffering between the use and residential areas, schools, parks, and other locations where children gather;
3. The proposed use will not create an adverse traffic impact or a traffic safety hazard to pedestrians or to vehicles, including, but not limited to, an adverse impact on traffic circulation or parking;
4. The proposed use will not create excessive noise, unpleasant odors, noxious fumes, excessive lighting, increased litter, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation;

¹ The RMCP zone is the properties along the westside of N. Crescent Dr. approximately from Brighton Way to Wilshire Blvd.

² BHMC Sec. 10-3-1613

³ BHMC 10-3-1951:Definitions: Extended Hours: The hours between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. on the following weekday, and the time between the hours of ten o'clock (10:00) P.M. and nine o'clock (9:00) A.M. on the following weekend day or holiday.

5. The proposed use will not create an overconcentration of convenience stores in the area.

Interim Urgency Ordinance

Urgency ordinances protect the community by immediately addressing uses that may be in conflict with general plan and zoning policies. An urgency ordinance requires a 4/5 vote to be adopted and is effective immediately, for up to 45 days. Urgency ordinances can be extended twice, for up to a maximum of two years. To allow adequate time to study the issues and develop a balanced review process, Staff proposes to return within the 45 day effective period with an interim ordinance extending the urgency ordinance for up to 10 months and 15 days. This will allow the City time to adopt the permanent ordinance.

Analysis

The impacts of high impact convenience stores, which primarily serve commuters, differ from the impacts of neighborhood convenience stores, which primarily serve local residents and pedestrians. Without regulation, high customer turnover and the vehicle-focused nature of high impact convenience stores will likely result in increased localized traffic, parking problems, and unwanted commercial intrusions into established residential neighborhoods. Associated impacts may include commercial parking on residential streets, increased litter, and excessive noise that would deteriorate the quality of life for those in the immediate vicinity. In addition, high impact convenience stores would not promote the City's brand and for the reasons discussed above would harm neighborhood character.

ENVIRONMENTAL ASSESSMENT

The urgency ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Staff has determined that it can be seen with certainty that there is no possibility that the adoption and implementation of this ordinance may have a significant effect on the environment. The proposed ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. The proposed regulations are therefore exempt from the environmental review requirements of CEQA pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations. Further, the proposed ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for protection of the environment because it will protect residential neighborhoods and commercial uses from impacts associated with intensification of commercial uses, and thereby qualifies as a Class 8 exemption pursuant to Section 15308 of Title 14 of the California Code of Regulations.

FISCAL IMPACT

Fiscal impacts at this time include staff hours to prepare the required ordinances.

PUBLIC NOTICE AND COMMENTS

This item was noticed in accordance with State law as part of the agenda.

Susan Healy Keene, AICP, Director of
Community Development

Approved By

A handwritten signature in black ink that reads "Susan Healy Keene". The signature is written in a cursive style with a large initial 'S' and 'K'.

Attachment 1

ORDINANCE NO. 11-O-_____

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING HIGH IMPACT CONVENIENCE STORES UNLESS SPECIFICALLY APPROVED BY THE CITY, AND DECLARING THE URGENCY THEREOF.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. On April 5, 2011, the Director of Community Development recommended that the City Council study the City's regulations regarding the operation and development of convenience stores.

Section 2. The Director has reported that prohibiting high impact convenience stores, as defined below, is necessary to protect against an immediate threat to the public health, safety or welfare and to avoid a conflict with any future potential regulation. The Director has also recommended that the interim ordinance include discretionary review in order to allow certain convenience stores to be approved during the interim ordinance period if the Planning Commission, after reviewing the specific project, can make the findings set forth in Section 8 below, thus concluding that the convenience store will not adversely affect the public health, safety or welfare.

Section 3. The impacts of high impact convenience stores, which primarily serve commuters, differ from the impacts of neighborhood convenience stores, which primarily serve local residents and pedestrians. Without regulation, high customer turnover and the vehicle-focused nature of high impact convenience stores will likely result in increased localized traffic,

parking problems, and unwanted commercial intrusions into established residential neighborhoods. Associated impacts may include commercial parking on residential streets, increased litter, and excessive noise that would deteriorate the quality of life for those in the immediate vicinity. In addition, high impact convenience stores would not promote the City's brand and for the reasons discussed above would harm neighborhood character.

Section 4. Section 65858 of the California Government Code authorizes the adoption of an interim ordinance as an urgency measure to prohibit any usage of land that may be in conflict with zoning proposals being considered or studied by a legislative body, Planning Commission, or Planning Department.

Section 5. In light of the findings stated in Section 3, the Council has directed staff to prepare an interim ordinance to prohibit high impact convenience stores, allowing them only pursuant to a convenience store conditional use permit.

Section 6. Pursuant to Government Code Section 65858, the City Council finds and determines that the immediate preservation of the public health, safety, and welfare requires the adoption of this interim Ordinance. As described in Section 3, high impact convenience stores pose a significant threat to the health, safety and welfare of the community. Without regulation, the high customer turnover and the vehicle-focused nature of high impact convenience stores will likely result in increased localized traffic, parking problems, and unwanted commercial intrusions into established residential neighborhoods. Associated impacts may include commercial parking on residential streets, increased litter, and excessive noise that would deteriorate the quality of life for those in the immediate vicinity. In addition, high impact

convenience stores would not promote the City's brand and for the reasons discussed above would harm neighborhood character. The City Council finds that allowing the unregulated development of high impact convenience stores during the City's consideration of how to properly regulate such stores would result in the negative impacts described above, would erode the existing character of the City's neighborhoods and would frustrate the purpose of any regulations ultimately adopted. To ensure that the development of convenience stores during this period of study is consistent with the goals and objectives of protecting the City's character, the City Council finds it necessary to adopt this Interim Ordinance to both respect property rights and protect the public health, safety and general welfare. Absent the passage of this interim Ordinance, inconsistent development of high impact convenience stores poses a current and immediate threat to the public health, safety, or general welfare, and approval of additional entitlements for any development inconsistent with the provisions of this Ordinance would frustrate the City's ability to protect the public health, safety, and welfare. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

Section 7. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, this Ordinance is exempt

from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for protection of the environment because it will protect residential neighborhoods and commercial uses from impacts associated with intensification of commercial uses, and thereby qualifies as a Class 8 exemption pursuant to Section 15308 of Title 14 of the California Code of Regulations.

Section 8. No lot, premises, building, or portion thereof in the City of Beverly Hills shall be used for any “high impact convenience store” as that term is defined in Section 9 of this Ordinance, unless the City issues a convenience store conditional use permit. The City shall process an application for a convenience store conditional use permit in the same manner that it would process an application for a conditional use permit pursuant to Article 38 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code. The City may impose any conditions on a convenience store conditional use permit that are necessary to preserve the public health, welfare or safety, or to mitigate any potential adverse impacts resulting from the establishment of a high impact convenience store. The City shall not approve a convenience store conditional use permit unless it makes each of the following findings:

1. The proposed use is compatible with the surrounding area and uses;
2. The proposed use will have adequate buffering between the use and residential areas, schools, parks, and other locations where children gather;
3. The proposed use will not create an adverse traffic impact or a traffic safety hazard to pedestrians or to vehicles, including, but not limited to, an adverse impact on traffic circulation or parking;

4. The proposed use will not create excessive noise, unpleasant odors, noxious fumes, excessive lighting, increased litter, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation;
5. The proposed use will not create an overconcentration of convenience stores in the area.

Section 9. For the purposes of this Ordinance, “high impact convenience store” shall be defined as follows:

“High Impact Convenience Store: Any retail store with the following characteristics: (1) more than half the square footage is dedicated to the sale of general food and drink products not intended for home preparation and consumption, tobacco, magazines, and toiletries, (2) the store is open to customers before 7:00 a.m. or after 9:00 p.m. Monday through Friday and before 9:00 am or after 9:00 pm on Sunday., and (3) meets one of the following – is served by on site surface parking, or is located within three hundred feet of a residential zone.”

Section 10. This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption, and remain valid for forty-five (45) days, unless extended in accordance with Government Code Section 65858.

Section 11. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect. To the extent that the discretionary process to approve a convenience store conditional use permit, or

any part thereof, is determined to be invalid, the prohibition against high impact convenience stores shall remain valid.

Section 12. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

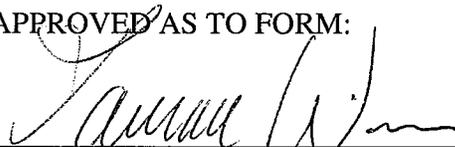
Adopted:

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE
Director of Community Development

Attachment 2



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: April 5, 2011
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: Regulations Concerning Convenience Retail Stores

INTRODUCTION

The purpose of this report is to update the City Council on regulations that currently apply to convenience stores and to report on recent interest in developing such uses in the city. Staff requests the City Council consider directing the preparation of an ordinance that would require expanded discretionary review of such uses.

DISCUSSION

Convenience stores offer local residents, businesses and regional commuters convenient access to a variety personal items, including; over the counter medicine; pre-packaged food; tobacco; alcohol; magazines; and other goods. Neighborhood serving convenience stores can be well received and supported in some neighborhoods. However, more regional serving establishments, such as those found in gas stations or freestanding buildings could result in unwanted impacts due to higher parking and traffic generated by those uses.

The City's zoning regulations do not make a distinction between the neighborhood- and regional-serving stores. Convenience retail is also identified as a permitted 'by right' land use in the city's commercial zones, but requires a conditional use permit (CUP) in the city's RMCP zone. A CUP is a discretionary application requiring review by the Planning Commission.

For new building construction, the City requires a Development Plan Review permit, which can be approved administratively if the building is between 2,500 and 15,000 square feet. New buildings larger than 15,000 square feet require review before the Planning Commission. New buildings under 2,500 square feet do not require any review other than the review required to issue a building permit.

Recently, the Planning Division reviewed a conceptual application to locate a new free-standing, regional-serving convenience store. Because of this interest, staff is advising the Council of potential impacts associated with stores.

Notably, convenience stores tend to have a high volume of customers because of the convenience it offers to commuters. A high customer turnover results in increased localized traffic and could result in unwanted commercial intrusions into established

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localized traffic and could result in unwanted commercial intrusions into established residential neighborhoods. Associated impacts related to commercial parking on residential streets, increased litter, and noise could deteriorate the quality of life for those in the immediate vicinity. While there may be incremental value in having a convenience store nearby, it is anticipated that most residents may regard a regional-serving convenience store as not promoting the city's brand and may harm neighborhood character.

While the conceptual application reviewed by the Planning Division would require discretionary review for the size of the new building, requiring a CUP application offers the opportunity to consider operational aspects of the use and, as appropriate, approve the project with conditions or deny the project based on identified impacts. However, a scaled down version of the project (less than 2,500 square foot), based on current regulations, would not be subject to any land use-related discretionary review and, therefore, could be established with the issuance of a building permit. The Architectural Commission would review the design of the building, but this would not address the potential impacts noted above.

If the City Council shares the concerns regarding the potential impacts of convenience stores, it would be appropriate to direct the preparation an interim ordinance that would establish a discretionary review process for convenience stores. If the City Council considers the concerns above to rise to a level of urgency, it would be appropriate to direct the preparation of an urgency ordinance, which would require at least a four/fifths approval from the City Council. The urgency ordinance would have the added benefit of immediately establishing the new regulatory standards once adopted, as opposed to waiting for first and second reading of interim ordinance and a thirty day delay before the interim ordinance becomes effective.

FISCAL IMPACT

The recommendation in this report has no significant budget or fiscal impacts.

RECOMMENDATION

It is recommended that the City Council:

1. Consider the appropriateness of establishing a discretionary review requirement for convenience stores throughout the city and, if appropriate, direct one of the following actions:
 - Proceed with a standard ordinance amendment process, which would require planning commission and city council hearings, first and second readings, and then 30 days until the Ordinance would take effect.
 - If urgent, adopt an Interim Ordinance pursuant to Govt. Code Section 65858 which would prohibit convenience stores unless approved through a discretionary review process, such as a conditional use permit. The ordinance would take effect immediately, be in effect for 45 days and eligible for extensions thereafter for up to an additional 22 months and 15 days. This approach would require a 4/5 vote.


Susan Healy Keene, AICP
Director of Community Development