



AGENDA REPORT

Meeting Date: February 7, 2012

Item Number: D-2

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REQUIRING HIGH IMPACT CONVENIENCE STORES
TO OBTAIN A CONVENIENCE STORE CONDITIONAL
USE PERMIT AND AMENDING THE BEVERLY HILLS
MUNICIPAL CODE

Attachments:

1. Planning Commission Recommendation
2. Ordinance

RECOMMENDATION

The Planning Commission and Staff recommend that the City Council convene a public hearing and introduce an ordinance requiring high impact convenience stores to obtain a convenience store conditional use permit and amending the Beverly Hills Municipal Code.

INTRODUCTION

Certain regional-serving convenience stores have the potential to adversely impact residential neighborhoods.

On April 5, 2011, the City Council received an update on the City's convenience store regulations and directed Staff to put in place an urgency ordinance temporarily prohibiting certain convenience stores from establishing in the City without first obtaining a use permit.

On April 21, 2011, the City Council adopted Urgency Ordinance 11-O-2608 which defined "High Impact Convenience Stores" as a prohibited use and established a Convenience Store Conditional Use Permit by which such uses could be established in the City, subject to a discretionary process.

On May 24, 2011, the effective period for Urgency Ordinance 11-O-2608 was extended to one year to allow time for the City to develop permanent language that would be incorporated into the Beverly Hills Municipal Code.

On January 12, 2012, the Planning Commission studied the issues and concerns associated with High Impact Convenience Stores, as defined in the Urgency Ordinances, and at a duly noticed public hearing recommended that the City Council amend the Beverly Hills Municipal Code to make the provisions of the Urgency Ordinance permanent.

The draft ordinance proposed (Attachment 2) would codify the "Convenience Store Use Permit" currently required for any High Impact Convenience Store use as described and defined in Interim Urgency Ordinances 11-O-2608 and 11-O-2609.

DISCUSSION

The potential impacts of High Impact Convenience Stores, which primarily serve commuters, differ from the potential 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 could result in:

- Increased localized traffic;
- Parking problems;
- Unwanted commercial intrusions into established residential neighborhoods; and
- Increased litter and noise.

In addition to the impacts identified above, High Impact Convenience Stores would not promote the City's brand.

The Urgency Ordinance currently in effect is set to expire in April of this year and without permanent regulation, High Impact Convenience Stores would be permitted "by-right" in

commercial areas of the City, except in the Multiple-Family Residential-Commercial Parking Zone (RMCP)¹ and at fuel stations.²

Draft Ordinance

The definition of a “High Impact Convenience Store” in the draft ordinance is 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, toiletries, or any combination thereof; (2) the store is open to customers before 7:00 a.m. or after 10:00 p.m. Monday through Friday or before 9:00 am or after 10:00 pm on Saturday or Sunday; and (3) has one of the following characteristics – is served by on site surface parking, is located in a fuel station, or is located within three hundred feet of a residential zone. ‘High Impact Convenience Stores’ do not include newsstands, coffee shops, or any retail store containing a licensed pharmacy that is devoted to dispensing prescription medicine.”

The hours of operation in the definition above are limited to times that would not be defined in the City’s Municipal Code as “Extended Hours” of business operation in transitional areas between commercial and residential properties.³

Convenience stores that do not meet the definition of a “High Impact Convenience Store” would not be subject to the draft ordinance. Convenience stores that meet the definition would be required to obtain a Convenience Store Conditional Use Permit prior to establishing in the City. The Convenience Store Conditional Use Permit would be reviewed by the Planning Commission, and would be subject to appeal to the City Council.

¹ The RMCP zone covers the properties along the west side of North Crescent Drive, approximately from Brighton Way to Wilshire Boulevard.

² BHMC § 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.”

The reviewing body would need to make the following findings before issuing a Convenience Store Conditional Use Permit:

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 vicinity;
6. If proposed at a Gateway, Anchor Location, or prominent intersection, as determined by the decision-making authority, the use will be appropriate for the location.

These findings are the same findings in effect under the interim ordinance except for Finding Six which was added by the Planning Commission to assure that development at prominent intersections, gateways, and anchor locations was appropriate to the location and consistent with any relevant development standards.

ENVIRONMENTAL ASSESSMENT

The draft 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. It can be seen with certainty that there is no possibility that the adoption and implementation of the Ordinance may have a significant effect on the environment. The Ordinance does not authorize construction and, in fact, imposes greater restriction 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 CEQA pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations.

Meeting Date: February 7, 2012
High Impact Convenience Stores

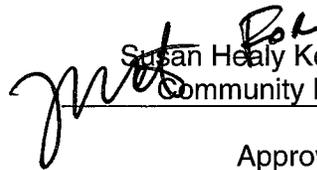
PUBLIC NOTICING

The public hearing on this item was duly noticed and as of the writing of this report no public comments have been received.

FISCAL IMPACT

Fiscal impacts at this time include staff hours to prepare the required ordinances and contractor costs to amend the Beverly Hills Municipal Code.

A fee to cover the City's processing costs would be charged for Convenience Store Conditional Use Permit applications consistent with fees charged for other conditional use permit applications. Currently the fee charged is \$16,292.60.


Susan Healy Keene Director of
Community Development

Approved By

Attachment 1

RESOLUTION NO. 1629

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REQUIRING HIGH IMPACT CONVENIENCE STORES TO OBTAIN A CONVENIENCE STORE CONDITIONAL USE PERMIT AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE.

The Planning Commission of the City of Beverly Hills hereby resolves as follows:

Section 1. 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 2. The Planning Commission hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes the same restrictions that already exist under Urgency Ordinance 11-O-2608 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 3. On December 30, 2011, notice of the public hearing was published in *The Beverly Hills Courier*.

Section 4. On January 12, 2012, the Planning Commission held a duly noticed public hearing to consider the draft Ordinance set forth in Exhibit A to this Resolution.

Section 5. Based on the evidence presented in the record, including the staff report and oral and written testimony, the Planning Commission hereby finds that allowing high-impact convenience stores to operate with a convenience store conditional use permit is compatible with the City's existing land uses so long as the necessary findings can be made.

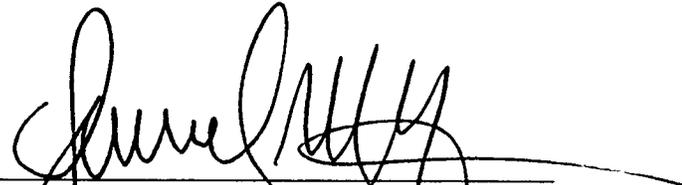
Section 6. Based on the evidence presented in the record, including the staff report and oral and written testimony, the Planning Commission hereby finds that requiring High-Impact Convenience Stores to obtain a Convenience Store Conditional Use Permit prior to establishment is consistent with the General Plan. The Planning Commission finds that the Ordinance is consistent with the following Land Use Goals and Policies: (1) "LU1 Long-term Stability," which addresses the need for unique qualities to set the City of Beverly Hills apart from

other communities; (2) "LU2 Community Character and Quality," which addresses site planning in general, and (3) Policy "LU2.7 City Gateways," which encourages the exploration of opportunities at gateway areas to enhance the sense and quality of entry into the City. Thus, the Planning Commission hereby finds that the Ordinance is consistent with the General Plan.

Section 7. The Planning Commission hereby recommends that the City Council adopt an Ordinance with provisions substantially in the form set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 8. The Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **January 12, 2012**



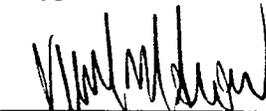
Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

ATTEST:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

Attachment 2

ORDINANCE NO. 12-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS REQUIRING
HIGH IMPACT CONVENIENCE STORES TO OBTAIN A
CONVENIENCE STORE CONDITIONAL USE PERMIT AND
AMENDING THE BEVERLY HILLS MUNICIPAL CODE

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. The Director 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.

Section 2. On January 12, 2012, the Planning Commission held a duly noticed public hearing to consider regulations for high impact convenience stores, and adopted Resolution No. 12-R-1629 recommending approval of this Ordinance.

Section 3. High impact convenience stores, which primarily serve commuters, differ from 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. The City Council finds that allowing the unregulated development of high impact convenience stores would result in the negative impacts described above and would erode the existing character of the City's neighborhoods. To ensure that the development of convenience stores is consistent with the goals and objectives of protecting the City's character, the City Council finds it necessary to adopt this Ordinance to protect the public health, safety, and general welfare.

Section 4. The City Council considered this Ordinance at a duly noticed public hearing on February 7, 2012, and at the conclusion of the hearing introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 5. 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 the same restrictions on development as already exist under Urgency Ordinance 11-O-2608 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 6. The Ordinance is consistent with the objectives, principles, and standards of the General Plan. General Plan Policy LU 5.8 “Encroachment of Incompatible Land Uses” strives to protect residential neighborhoods from intrusion of incompatible uses and disruptive traffic.

Section 7. The City Council hereby amends Section 10-3-100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding the following definition between the terms “Height of Wall, Fence or Hedge” and “Highest Element of a Building” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“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, toiletries, or any combination thereof; (2) the store is open to customers before 7:00 a.m. or after 10:00 p.m. Monday through Friday or before 9:00 a.m. or after 10:00 p.m. on Saturday or Sunday; and (3) has one of the following characteristics – is served by on site surface parking, is located in a fuel station, or is located within three hundred feet of a residential zone. ‘High Impact Convenience Stores’ do not include newsstands, coffee shops, or any retail store containing a licensed pharmacy that is devoted to dispensing prescription medicine.”

Section 8. The City Council hereby amends Section 10-3-1604 of Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses conditionally permitted

in the C-3 Zone by adding “High Impact Convenience Stores” between the uses “Educational Institutions” and “Hotels, subject to the provisions of article 28.6 of this chapter” as they presently appear in 10-3-1604, with all other uses in the Section remaining as previously adopted.

Section 9. The City Council hereby adds a new Section 10-3-3800.1 to Article 38 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code establishing a Convenience Store Conditional Use Permit:

““The City may authorize High Impact Convenience Stores as a conditional use in the C-3 zone in the same manner that it would process an application for a conditional use permit pursuant to this Article 38. The City may impose any conditions on a High Impact Convenience Store conditional use permit that are necessary to preserve the public health, safety, or welfare, or to mitigate any potential adverse impacts resulting from the establishment of a High Impact Convenience Store. The City shall not approve a conditional use permit for a High Impact Convenience Store unless it makes all 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 vicinity; and
6. The Proposed use will not be: (1) at a location that is an entry to the City, where the City has, or intends to develop, substantial landscaping or other improvements to mark the entrance to the City, (2) at a prominent intersection, or (3) at an anchor location. For the purposes of this finding, “anchor location” means the type of location described in the General Plan as a location appropriate for higher intensity development not otherwise provided in the community.”

Section 10. 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 11. 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.

Section 12. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

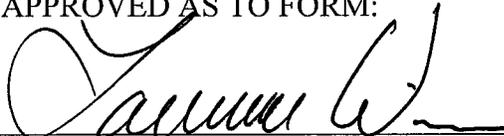
Adopted:

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