



AGENDA REPORT

Meeting Date: June 19, 2012
Item Number: D-1
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS REQUIRING CONVENIENCE STORES TO OBTAIN A CONVENIENCE STORE CONDITIONAL USE PERMIT AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE

Attachments:

1. Ordinance
2. Recommendation from the Planning Commission
3. Beverly Hills Municipal Code - Extended Hours Permits
4. Staff Reports

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "An Ordinance of the City of Beverly Hills requiring Convenience Stores to obtain a Convenience Store Conditional Use Permit and amending the Beverly Hills Municipal Code" be introduced and read by title only.

BACKGROUND

On April 21, 2011 the City Council adopted Interim Ordinance 11-O-2608 prohibiting High Impact Convenience Stores unless specifically approved by the City. On May 24, 2011, the City Council adopted Interim Ordinance 11-O-2609 extending Ordinance 11-O-2608 up to one year and amending the definition of High Impact Convenience Stores to exclude newsstands, coffee shops, or any retail store containing a licensed pharmacy. On February 7, 2012, the City Council considered an ordinance that would have amended the Municipal Code to include a permanent definition for "High Impact Convenience Stores", and to

establish a requirement that any new business that met the definition of a high impact convenience store obtain a Conditional Use Permit (CUP) prior to establishment. A question on the Planning Commission's intent regarding one of the proposed conditional use permit findings prompted the City Council to return the ordinance to the Planning Commission for restudy. The Planning Commission restudied the ordinance at a special meeting on February 9, 2012 and held a public hearing on April 12, 2012.

The ordinance currently proposed differs from the ordinance originally reviewed by the City Council on February 7, 2012 in the following ways:

Original Ordinance

- Required only new stores that met the definition of "high impact convenience stores" to obtain a CUP;
- Provided an exemption for coffee shops, as well as pharmacies and newsstands;
- Included a finding that addressed gateway locations, anchor locations, and prominent intersections.

Proposed Ordinance

- Requires all new convenience stores to obtain a CUP;
- Expands the exemption to include specialty food stores (e.g. coffee shops, cheese stores, chocolate shops), tobacconists and convenience stores located in the interior of buildings, as well as pharmacies and newsstands;
- Requires revised findings to be made that better address potential neighborhood impacts that could be associated with convenience stores.

DISCUSSION

Convenience stores tend to have a high volume of customers that can result in unwanted intrusions into established neighborhoods. Some convenience-type store, however, can be beneficial to neighborhoods, providing a variety of items, close at hand. Initially, the City attempted to identify and regulate only convenience stores that were more likely to generate high volumes of vehicle traffic. This was proposed by developing a definition for what has been termed "High Impact Convenience Store". Under the High Impact Convenience Store definition, any new convenience-type businesses that had extended hours, and either had a parking lot, was part of a fueling station, or was near a residential neighborhood would be required to obtain a CUP. On further review of that definition, however, the Planning Commission found that the potential impacts from convenience stores could occur regardless of whether the business kept late hours, or met the other criteria that would qualify the business as being "High Impact". To better regulate the potential impacts from convenience stores, and to therefore make certain that all potential neighborhood impacts that could be

caused by a new convenience store are addressed, the Planning Commission has proposed the following changes to the ordinance. These changes provide the City with a greater ability to review and regulate convenience stores by doing the following:

1. Allows the City to review any new convenience store;
2. Allows exceptions if the business is located in the interior of a building;
3. Specifies that this ordinance does not apply to pharmacies, newsstands and specialty shops such as tobacconists, and specialty food stores;
4. Uses the City's existing Extended Hours Permit process to regulate hours of operation;
5. Establishes findings that allow the Planning Commission to ensure that convenience stores approved under a CUP would not have an impact on neighborhoods.
6. Addresses congregation at convenience stores by allowing the City to place conditions on the property that would restrict such activities.

The following discussion focuses on the changes to the proposed ordinance. Functionally, the components in the proposed ordinance are 1) Definitions, and 2) Findings, and each is discussed separately.

Convenience Store Definition

The City's current Interim Ordinance 11-O-2609 provides a definition for convenience stores. That definition was developed to identify types of convenience stores that would have a high probability of impacting neighborhoods. The definition was termed "High Impact Convenience Stores" and was included in the ordinance reviewed by the City Council on February 7, 2012:

Original 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, 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."

Definition Currently Proposed:

On further review, the Planning Commission recommended revising the definition to apply to all new convenience stores, not just those that are likely to generate a high volume of regional traffic.

“CONVENIENCE STORE: Any retail business selling general food and drink products not intended for home preparation and consumption with more than half the square footage of the retail sales floor area dedicated to the sale of such foods and drinks, tobacco, magazines, toiletries, or any combination thereof. ‘Convenience Store’ does not include a retail business occupying a tenant space whose primary entrance opens into the interior of a commercial building. ‘Convenience Store’ does not include newsstands, tobacconist, specialty food stores, or retail store containing a licensed pharmacy.

Exemptions provided in the original definition have been retained so the current definition would not apply to pharmacies or newsstands. Additional exemptions to the definition are proposed and include: specialty food stores, tobacconists, and businesses occupying tenant spaces in commercial buildings. This would exempt businesses like Sprinkles Cupcakes, and The Cheese Store from being subject to the provisions of the ordinance.

“SPECIALTY FOOD STORE: Any retail business dedicated to the sale of specialized types or classes of food and drink products, including but not limited to import food stores, bakeries, and chocolatiers.

“TOBACCONIST: Any retail business with at least ninety percent of its retail floor area dedicated to the sale of tobacco products such as cigarettes, tobacco, and pipes.

Coffee stores, such as Starbucks, The Coffee Bean and Tea Leaf, and Peet’s Coffee would be considered specialty food stores for the purposes of this ordinance as these businesses specialize in a specific drink product.

Convenience stores which have their main entrance opening into the interior of the building are primarily serving the other tenants of the building and would not have the same street presence or customer draw as businesses located in tenant spaces opening directly to the street or located in free-standing buildings. As a result, the potential to cause higher levels of traffic or other neighborhood impacts is greatly reduced; therefore, the current definition also proposes to exempt such businesses from the CUP requirement. Exempt businesses located in the interior of a building may have a secondary entrance onto the street, however, for the business to be exempt from this ordinance the business would need to be oriented to primarily draw customers from the interior of the building.

Findings for a Convenience Store Conditional Use Permit (CUP)

The revised ordinance requires a higher threshold for approval of any new business that meets the definition of a convenience store. The revised findings have been modeled after the findings required in the Medical Use Overlay Zone.

Original Findings Proposed to the City Council on February 7, 2012:

The City shall not approve a convenience store conditional use permit 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. If proposed at a Gateway, Anchor Location, or prominent intersection, as determined by the decision-making authority, that the use will be appropriate for the location.

Findings Currently Proposed:

The City shall not approve a conditional use permit for a Convenience Store unless it makes all of the following findings:

1. The proposed use will contribute to and enhance the character of the neighborhood and location, will promote harmonious development in the area, and will contribute positively to the branding and image of the city;
2. The proposed use will have adequate buffering between the use and residential areas, schools, parks, and locations where

children gather, and will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;

3. The proposed use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, and loading or manner of operation;
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.

ANALYSIS

If adopted by the City Council, the proposed ordinance would replace the requirements currently in force under Interim Urgency Ordinance 11-O-2608 and 11-O-2609 requiring high impact convenience stores to obtain a conditional use permit. With approval from the City Council, this ordinance will be prepared for a second reading. Once adopted, the ordinance would become effective in 31 days.

Planning Commission Discussion

After restudying the issues and concerns regarding convenience stores, the Planning Commission came to the conclusion that the definition for High Impact Convenience Stores excludes locations in the City that warrant review and regulation, specifically in the business triangle, where convenience stores could be established by-right. Therefore, rather than try to define certain types of convenience stores that could potentially create greater neighborhood impacts versus stores that would not create impacts, the Planning Commission based the definition for convenience stores on the types of products sold. The Planning Commission also refined the CUP findings to allow the City greater certainty that a proposed convenience store would not impact neighboring properties.

Rather than limit the definition based on the new convenience store being open before or after certain hours or on the stores location or whether it has parking, as the previous High Impact Convenience Store definition does, the Planning Commission developed a definition that applies to all new convenience stores. Under this new definition any new convenience store would be reviewed by the City and would be subject to the CUP findings proposed.

In addition to the CUP findings, any new convenience store that would be open early or close late and was located within 180 feet of residential property would be required to obtain a permit for extended operating hours. This is an existing City requirement for all businesses located with 180 feet of residences and operating outside of the hours of 7:00am to 10:00pm weekdays, and 9:00am to 10:00pm on weekends. The extended hours permit requirements are provided at Attachment 3.

California Environmental Quality Act

This 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 restrictions on certain types of 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.

PUBLIC NOTICE

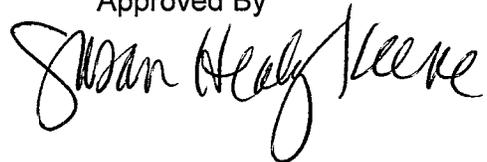
Notice of this public hearing was advertised in the Beverly Hills Courier on Friday, June 8, 2012 and in the Beverly Hills Weekly on Thursday, June 14, 2012. As of the writing of this agenda report no public comments had been received.

FISCAL IMPACT

The recommendation in this report has no fiscal or budgetary impacts.

Susan Healy Keene, AICP
Director of Community Development

Approved By



Attachment 1

Ordinance

ORDINANCE NO. 12-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REQUIRING 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. 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 has been assessed with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. This Ordinance does not authorize construction, and in fact imposes the same restrictions on development as already exist under Urgency Ordinances 11-O-2608 and 11-O-2609 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 2. 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 3. 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 “Common Property Line” and “Corner Lot” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“CONVENIENCE STORE: Any retail business selling general food and drink products not intended for home preparation and consumption with more than half the square footage of the retail sales floor area dedicated to the sale of such foods and drinks, tobacco, magazines, toiletries, or any combination thereof.

‘Convenience Store’ does not include a retail business occupying a tenant space whose primary entrance opens into the interior of a commercial building.

‘Convenience Store’ does not include newsstands, tobacconist, specialty food stores, or retail store containing a licensed pharmacy.

Section 4. 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 “small family daycare home” and “story” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“SPECIALTY FOOD STORE: Any retail business dedicated to the sale of specialized types or classes of food and drink products, including but not limited to import food stores, bakeries, and chocolatiers.

Section 5. 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 “though lot” and “Trousdale estates” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“TOBACCONIST: Any retail business with at least ninety percent of its retail floor area dedicated to the sale of tobacco products such as cigarettes, tobacco, and pipes.

Section 6. 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 “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” 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 7. The City Council hereby amends Section 10-3-1702 of Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses conditionally permitted in the C-3A Zone by adding “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” between the uses “Clubs” and “Drive-up, drive-in and drive-through facilities, subject to the provisions of section 10-3-1612 of this chapter” as they presently appear in 10-3-1702, with all other uses in the Section remaining as previously adopted.

Section 8. The City Council hereby amends Section 10-3-1802 of Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses conditionally permitted in the C-3B Zone by adding “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” between the uses “Clubs” and “Drive-up, drive-in and drive-through facilities, subject to the provisions of section 10-3-1612 of this chapter” as they presently appear in 10-3-1802, with all other uses in the Section remaining as previously adopted.

Section 9. The City Council hereby amends Section 10-3-2003 of Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses conditionally permitted in the C-5 Zone by adding “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” between the uses “Car washes that: A. Are enclosed in a building; B. Exclusively serve a business whose operation is primarily devoted to the sales, long term leasing or rental of automobiles or other motorized vehicles; C. Are located on the site of the business being served; and D. Do not exceed twenty feet (20') in width or forty feet (40') in length. When reviewing the conditional use permit application for such car washes, the planning commission shall consider the conditional use permit criteria set forth in section 10-3-1613 of this chapter” and “Educational institution uses teaching grade levels one through twelve (12)” as they presently appear in 10-3-2003, with all other uses in the Section remaining as previously adopted.

Section 10. 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:

“10-3-3800.1 CONVENIENCE STORE CONDITIONAL USE PERMIT. Where authorized in the zone, the City may permit Convenience Stores as a conditional use 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 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 Convenience Store including impacts associated with congregation. The City shall not approve a conditional use permit for a Convenience Store unless it makes all of the following findings:

1. The proposed use will contribute to and enhance the character of the neighborhood and location, will promote harmonious development in the area, and will contribute positively to the branding and image of the city;
2. The proposed use will have adequate buffering between the use and residential areas, schools, parks, and locations where children gather, and will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;
3. The proposed use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to

traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, and loading or manner of operation;

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.”

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 require a convenience store conditional use permit, or any part thereof, is determined to be invalid, a convenience store use shall be construed as prohibited in the commercial zones.

Section 12. Repeal of Interim Ordinance. The City Council hereby repeals Interim Ordinance No. 11-O-2608 and Ordinance No. 11-O-2609 as last extended by Ordinance No. 12-O-2621, which repeal shall become effective only upon this Ordinance taking effect

Section 13. Publication. 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 14. Effective Date. 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:

Effective:

WILLIAM W. BRIEN, MD
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

**Recommendation from the
Planning Commission**

RESOLUTION NO. 1637

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REQUIRING 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 finds, resolves, and determines 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 in Section 2 below, was 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. High impact convenience stores, which primarily serve commuters, were thought to differ from neighborhood convenience stores, which primarily serve local residents and pedestrians.

Section 3. High impact convenience stores were thought to have higher rates of turnover and, without regulation, it was anticipated that the vehicle-focused nature of high impact convenience stores would likely result in increased localized traffic, parking problems, and unwanted commercial intrusions into established residential neighborhoods. Impacts associated with high impact convenience stores were thought to also include commercial parking on residential streets, increased litter, and excessive noise that would deteriorate the quality of life for those in the immediate vicinity. High impact convenience stores were not seen as

promoting the City's brand, and for the reasons discussed above could harm neighborhood character.

Section 4. On April 21, 2011, The City Council adopted Urgency Ordinance No. 11-O-2608 prohibiting high impact convenience stores in the City unless specifically allowed by a convenience store conditional use permit. On May 24, 2012, the City Council adopted Extension Ordinance No. 11-O-2609 extending Urgency Ordinance No. 11-O-2608 and amending the definition of a high impact convenience store.

Section 5. On January 12, 2012, the Planning Commission held a duly noticed public hearing to consider a draft ordinance making permanent the regulation of high impact convenience stores provided in Urgency Ordinances No. 2608 and 2609 and amending the City of Beverly Hills Municipal Code.

Section 6. On February 7, 2012, the City Council held a duly notice public hearing to consider a draft ordinance requiring high impact convenience stores to obtain a convenience store conditional use permit prior to establishment, and at the end of that meeting directed the Planning Commission to restudy convenience stores and their potential impacts.

Section 7. The Planning Commission held a special meeting on February 9, 2012 and a duly notice public hearing on April 12, 2012 to restudy convenience stores and the potential impacts associated with such businesses, and at the end of the public hearing introduced this resolution and zoning text amendments included in Exhibit A.

Section 8. After analyzing the issues, the Planning Commission determined that potential impacts thought to be associated only with high impact convenience stores could be experienced from both high impact convenience stores, and other convenience stores, including those that could be neighborhood serving. Therefore, allowing the unregulated

development of convenience stores, regardless of whether the business would serve commuters or local residents and pedestrians, could result in the negative impacts described in section 3 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 Planning Commission concluded that it is necessary to require all convenience stores to obtain a condition use permit prior to establishing in the City.

Section 9. As proposed, the zoning text amendments in Exhibit A would amend the City of Beverly Hills Municipal Code to incorporate definitions for "convenience store" and for "specialty food store", and allow convenience stores in the City with a convenience store conditional use permit.

Section 10. The zoning text amendments are 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.

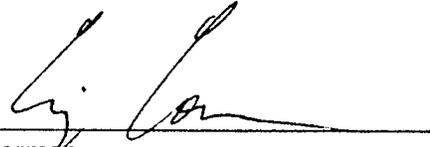
Section 11. The Amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It can be seen with certainty that there is no possibility that the adoption and implementation of 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 Ordinances 11-O-2608 and 11-O-2609 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. The records related to this determination are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210.

Section 12. The Planning Commission does hereby recommend that the City Council adopt an Ordinance approving and enacting the proposed Amendments substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

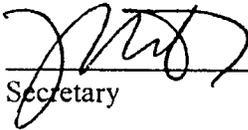
Section 13. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **April 12, 2012**

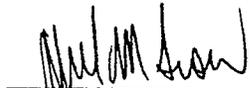


Craig Corman
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:


Secretary

Approved as to form:


David M. Snow
Assistant City Attorney

Approved as to content:


Jonathan Lait, AICP
Assistant Director of Community Development /
City Planner *PN*

Exhibit A – Proposed Amendments to the Zoning Code (BHMC 10-3-32)

[DRAFT] ORDINANCE NO. 12-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REQUIRING 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. 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 Ordinances 11-O-2608 and 11-O-2609 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 2. 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 3. 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 “Common Property Line” and “Corner Lot” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“CONVENIENCE STORE: Any retail business selling general food and drink products not intended for home preparation and consumption with more than half the square footage of the retail sales floor area dedicated to the sale of such foods and drinks, tobacco, magazines, toiletries, or any combination thereof. ‘Convenience Store’ does not include a retail business occupying a tenant space whose primary entrance opens into the interior of a commercial building. ‘Convenience Store’ does not include newsstands, tobacconist, specialty food stores, or retail store containing a licensed pharmacy.

Section 4. 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 “small family daycare home” and “story” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“SPECIALTY FOOD STORE: Any retail business dedicated to the sale of specialized types or classes of food and drink products, including but not limited to import food stores, bakeries, and chocolatiers.

Section 5. 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 “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” 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 6. 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:

“10-3-3800.1 CONVENIENCE STORE CONDITIONAL USE PERMIT. The City may authorize 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 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 Convenience Store including impacts associated with congregation. The City shall not approve a conditional use permit for a Convenience Store unless it makes all of the following findings:

1. The proposed use will contribute to and enhance the character of the neighborhood and location, will promote harmonious development in the area, and will contribute positively to the branding and image of the city;

2. The proposed use will have adequate buffering between the use and residential areas, schools, parks, and locations where children gather, and will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;
3. The proposed use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, and loading or manner of operation;
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.”

Section 7. **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 require a convenience store conditional use permit, or any part thereof, is determined to be invalid, a convenience store use shall be construed as prohibited in the commercial zones.

Section 8. **Repeal of Interim Ordinance.** The City Council hereby repeals Interim

Ordinance No. 11-O-2608 and Ordinance No. 11-O-2609 as last extended by Ordinance No. 12-O-2621, which repeal shall become effective only upon this Ordinance taking effect

Section 9. Publication. 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 10. **Effective Date.** 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:

Effective:

WILLIAM BRIEN
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager

SUSAN HEALY KEENE
Director of Community Development

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1637 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on April 12, 2012, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Fisher, Yukelson, Cole, Vice Chair Rosenstein, and Chair Corman.

NOES: None.

ABSTAIN: None.

ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

Attachment 3

Beverly Hills Municipal Code Extended Hours Permit

BEVERLY HILLS MUNICIPAL CODE

10-3-1958: EXTENDED HOURS PERMITS:

- A. Except as provided in subsection H of this section, it shall be unlawful for any person to commence or conduct, either directly or indirectly, an extended hours operation on a site located in a commercial-residential transition area in the city of Beverly Hills without having procured an extended hours permit pursuant to the provisions of this article. Every person commencing or conducting any extended hours operation shall file an application for an extended hours permit with the department of planning and community development in a form prescribed by that department. The city council may, by resolution, establish fees for the review of such applications.
- B. A public hearing shall be held by the planning commission on all applications for an extended hours permit. The planning commission shall conduct such hearing, and shall issue a decision concerning the application, within ninety (90) days following the date an application is deemed complete. The deadline may be extended upon the request of the applicant. At least ten (10) days prior to such hearing, notice of the time, place, and purpose of the public hearing shall be sent by first class mail to each owner and occupant of a property in a single-family residential zone within a distance of five hundred feet (500') of the exterior boundaries of the subject property, and to each owner and residential occupant of property in a multiple-family residential or a nonresidential zone within three hundred feet (300') of the exterior boundaries of the project site. Such notice shall be sent to the property owners whose names and addresses appear on the latest equalized county assessment roll.
- C. The planning commission shall grant an extended hours permit if it finds that the extended hours operation will not substantially disrupt the peace, and quiet of the adjacent neighborhood as a result of any of the following:
1. The accumulation of garbage, litter, or other waste, both on and off of the subject site;
 2. Noise created by the extended hours operation or by employees or visitors entering or exiting the extended hours operation;
 3. Light and glare;
 4. Odors and noxious fumes;
 5. Pedestrian queuing;
 6. Crime or peril to personal safety and security;

7. Use of residential streets for parking which is likely to cause activity associated with the subject extended hours operation to intrude substantially into a residential area;
 8. Effects on traffic volumes and congestion on local residential streets; and
 9. Cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.
- D. To make the findings set forth under subsection C of this section, the planning commission may impose conditions of approval on a project to ensure that the factors set forth under subsection C of this section will not substantially disrupt the peace and quiet of adjacent residential and commercial uses or create significant environmental impacts on the community within the meaning of the California environmental quality act. Such conditions may include, without limitation, restrictions or modifications to the hours of operation requested by an applicant. The planning commission shall only impose conditions related to the impacts of an operation during extended hours.
- E. The decision of the planning commission shall be by resolution. The applicant or any person aggrieved by the decision may appeal the decision to the city council as provided in title 1, chapter 4, article 1 of this code. The city council shall conduct a hearing on the appeal in a timely manner.
- F. The operative date of the extended hours permit shall be the fifteenth day after the date upon which the applicant receives approval of the permit, provided no appeal has been filed on a timely basis pursuant to subsection E of this section.
- G. In the event that the planning commission has not acted on an application for an extended hours permit in accordance with the time limits specified under subsection B of this section, the application shall be deemed approved upon the expiration of the time limit. An appeal period during which such approval may be appealed to the city council as prescribed in subsection E of this section shall commence upon the expiration and deemed approval date.
- H. The provisions of this section shall not apply to any business that was legally operating during extended hours on December 27, 1996, as part of its customary weekly schedule of business operations. The provisions of this section shall also not apply to any business that was legally operating during extended hours on January 8, 1999, without the requirement of an extended hours permit, as part of its customary weekly schedule of business operations. These exemptions shall not be transferable by the existing business to a different business. For purposes of this section, a business shall be considered different from the existing business if:

1. The business has a different name, and
2. The business offers a product or type or style of service which, in the opinion of the director of planning, may result in additional patrons visiting the site during extended hours or additional vehicle trips to the site during extended hours.

Changes to product or service references in the name of a business shall not be considered a change to the name of the business.

Notwithstanding the foregoing, any business operating during extended hours pursuant to the exemptions set forth herein shall not expand its hours of extended hours operation in effect on January 8, 1999, except as permitted by an extended hours permit issued pursuant to this section, subject to the following exceptions:

- a. Such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding a shorter period of extended hours operation in effect on January 8, 1999;
 - b. For any such business that was subject to and qualified for the exemption specified in this subsection H, as set forth in ordinance 96-O-2270, such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding there being no hours of extended hours operation in effect on January 8, 1999.
- I. Unless otherwise provided in the resolution granting an extended hours permit, the exercise of rights granted in such extended hours permit shall be exercised within one hundred eighty (180) days after the adoption of the final resolution granting such extended hours permit. The planning commission may grant a six (6) month extension of the time limit contained in this subsection, or in any resolution granting a discretionary approval, if an application therefore is made at least thirty (30) days prior to the expiration of the time limit, or any extension thereof. Such extension may be granted after a duly noticed public hearing held pursuant to the same procedures applicable to the approval of the original application, if the planning commission determines that conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and decision made at the time of the original approval. The time limit imposed pursuant to this subsection may not be extended beyond two (2) years after the adoption of the initial final resolution granting the extended hours permit. Any decision regarding an extension pursuant to this subsection may be appealed to the appropriate review authority in the manner provided by the same procedures applicable to the approval of the original application or, if no appeal procedures are specified, to the city council in the manner provided by title 1, chapter 4, article 1 of this code.

Attachment 4

Staff Reports



Planning Commission Report

Meeting Date: April 12, 2012

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

Recommendation: Adopt a resolution recommending that the City Council adopt an ordinance requiring new convenience stores to obtain a Conditional Use Permit

REPORT SUMMARY

In 2011, the City Council adopted an interim ordinance requiring 'High Impact Convenience Stores' to obtain a Conditional Use Permit (CUP) prior to establishing in the City. In January, 2012, the Planning Commission recommended that the City Council adopt High Impact Convenience Store regulations into the City's Municipal Code. On further consideration of the draft ordinance language pursuant to City Council direction, staff recommends refining the definition of 'Convenience Store' in the ordinance. Once the Planning Commission has considered this recommendation and made any additional recommendations regarding the ordinance language, staff will schedule the draft Ordinance for consideration by the City Council.

BACKGROUND

- April 21, 2011 The City Council adopted Interim Ordinance 11-O-2608 Prohibiting High Impact Convenience Stores unless specifically approved by the City.
- May 24, 2011 The City Council adopted Ordinance 11-O-2609 extending the Interim Ordinance 11-O-2608 for up to one year.
- January 12, 2012 The Planning Commission reviewed and recommended that the City Council adopt the draft High Impact Convenience Store Ordinance. The Planning Commission considered capping vehicle trips and limiting convenience stores at gateways and prominent intersections but ultimately neither of these findings was included in the current version of the ordinance. Capping vehicle trips was removed at the January 12, 2012 meeting because it was determined such a finding could be excessively restrictive and difficult to monitor based on staff's previous experience with such

Attachment(s):

1. Draft Resolution
 - Exhibit A. Draft Ordinance
2. Zoning Code Sections
3. Staff & Agenda Reports
 - Planning Commission 2/9/2012
 - City Council 2/7/2012
 - Planning Commission 1/12/2012

Report Author and Contact Information:

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Associate Planner
(310) 285-1127
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caps. Limiting convenience stores at gateways and prominent intersections is discussed below.

February 7, 2012 The City Council directed the Planning Commission to review a revised CUP finding proposed by staff along with other aspects of the High Impact Convenience Store ordinance. More specifically, the City Council directed the Planning Commission to review:

- 1) New language for CUP Finding No. 6 regarding limitation on High Impact Convenience Stores at gateways and prominent intersections;
- 2) Hours of operation in the definition of High Impact Convenience Store;
- 3) Loitering and congregation at High Impact Convenience Stores.

February 9, 2012 The Planning Commission reviewed the draft ordinance for a second time and made the following changes:

- 1) Revised CUP Finding No. 1, regarding compatibility with the surrounding area, thereby negating the need for Finding No. 6 which was deleted.
- 2) Changed the hours of operation in the definition of High Impact Convenience Store from a requirement to one of the secondary criteria that would determine whether a business qualified as a High Impact Convenience Store. The Planning Commission set the hours of operation in the High Impact Convenience Store definition to be consistent with the City's defined "Extended Hours."¹
- 3) Pursuant to the City Council's expressed desire to control loitering and congregation at Convenience Stores, the Planning Commission modified the ordinance language to prohibit loitering and congregation as a condition of approval for a Convenience Store Conditional Use Permit.

After review of the proposed revisions, staff wished to provide an additional opportunity for the Planning Commission to restudy the ordinance because of a concern that the revisions may result in business types not typically considered Convenience Stores being captured in the definition of High Impact Convenience Stores.

March 6, 2012 The City Council adopted Ordinance 2012-O-2621 extending Interim Ordinance 2011-O-2608, which was set to expire on April 20, 2012, for one additional year to assure that there would be no gap in regulations while the draft permanent ordinance was further reviewed and finalized by the City.

DISCUSSION

Without Interim Ordinance No. 2011-O-2608, and Ordinance Nos. 11-O-2609 and 11-O-2621 extending the Interim Ordinance in place, all convenience stores would be permitted "by-right" in most commercial areas of the City except in the Multiple-Family Residential-Commercial Parking Zone

¹ The City's extended hours currently require any businesses located in commercial-residential transition areas wishing to operate before or after the hours of 7:00 am – 10:00 pm, Monday through Friday; or 9:00 am – 10:00 pm on Saturday or Sunday, to obtain an Extended Hours Permit.

(RMCP)² and at gas stations³, in which a conditional use permit (CUP) is required to establish a Convenience Store. Staff was directed to expand the CUP requirement for Convenience Stores so that a CUP would be required citywide because of concerns about the negative impacts from such businesses including traffic and parking congestion on local residential streets, noise, light and glare, crime or peril to personal safety and security and litter. The original intent of developing a High Impact Convenience Store ordinance was not to exclude Convenience Stores from the City, but to establish a means of reviewing proposed Convenience Stores and establishing appropriate regulations to ensure that City neighborhoods are not impacted. While staff has been preparing a permanent ordinance to regulate Convenience Stores citywide, the Interim Ordinance requires any new business wishing to locate in the City and meeting the definition of a High Impact Convenience Store to first obtain a Convenience Store CUP.

The steps in regulating a particular use such as Convenience Stores include:

- 1) Defining the use; and,
- 2) Identifying a process and standards to regulate the use as defined.

Convenience Store Definition

Interim Ordinance

The Interim Ordinance describes 'High Impact Convenience Stores' as primarily serving commuters, and makes a distinction between such types of businesses and 'Neighborhood Convenience stores' which primarily serve local residents and pedestrians. To distinguish Convenience Stores from general retail stores the definition had been focused on stores selling pre-packed ready-to-eat foods and drinks, and sundries. To determine if a store selling such foods and drinks would have a potential to cause negative impacts to neighborhoods, and therefore be classified as a 'High Impact Convenience Store,' at least one of a series of site and operations criteria needed to be met. These criteria were designed to describe site characteristics such as at-grade surface parking, and operating characteristics such as opening early and closing late, that are common among stores that serve commuters. Specific business types were excluded from the definition to reaffirm that the definition should apply to commuter-serving convenience stores and not to businesses such as newsstands or coffee shops.

The current definition for a 'High Impact Convenience Stores' in Interim Ordinance 2011-O-2608 is stated below:

"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 or before 9:00 am or after 9:00 pm on Saturday or Sunday, and (3) has one of the following characteristics – is served by on site surface parking, or is located within three hundred feet of a residential zone. 'High impact convenience stores' do not

² The RMCP zone includes the properties along the west side of N. Crescent Dr., approximately from Brighton Way to Wilshire Blvd.

³ BHMC Sec. 10-3-1613

include newsstands, coffee shops, or any retail store containing a licensed pharmacy that is devoted to dispensing prescription medicine”

Currently, stores that meet the definition of a high impact convenience store are prohibited; however, a prohibited store could be allowed by the City with issuance of a “Convenience Store Conditional Use Permit.”

Permanent Ordinance

After further study of the potential impacts high impact convenience store uses could have on neighborhoods, staff and the Commission considered whether there is a likelihood that all convenience stores have the potential to have the types of impacts that were of concern with respect to the high impact convenience store category. Because the potential impacts are expected to be similar, staff recommends that the proposed regulations should apply to all types of convenience stores, and not just a subset of high impact convenience stores. Staff recommends that “Convenience Store” be defined by the type of food and drink and goods the business sells. By staff’s recommended definition convenience stores would be defined using the rule that at least 50% of the floor area is dedicated to the sale of foods and drinks not intended for home preparation and consumption, tobacco, magazines, toiletries, or any combination thereof.

This approach would also clearly identify the types of convenience-related uses that are not intended to be subject to a discretionary review process.

The definition proposed for convenience stores is as follows:

“CONVENIENCE STORE: Any retail business selling general food and drink products not intended for home preparation and consumption with more than half the square footage of the business dedicated to the sale of such foods and drinks, tobacco, magazines, toiletries, or any combination thereof. ‘Convenience Store’ does not include a retail business occupying a tenant space whose primary entrance opens into the interior of a commercial building. ‘Convenience Store’ does not include newsstands, specialty food stores, or retail store containing a licensed pharmacy.

To assure that certain retail stores that sell prepackaged foods and drinks are not unintentionally caught in the new definition for convenience stores, staff proposes to define these stores (such as wine shops, cheese shops, bakeries, cupcake shops, and chocolatiers) as specialty stores using the following definition. Specialty food stores would remain as uses permitted by right in the various commercial zones.

The definition proposed for specialty food stores is as follows:

“SPECIALTY FOOD STORE: Any retail business dedicated to the sale of specialized types or classes of food and drink products, including by not limited to import food stores, bakeries, and chocolatiers.”

The definitions proposed above would identify those types of uses intended to be subject to a discretionary review process, and would also clearly identify those types of uses that are not. Businesses not intended to be regulated by this ordinance include the following:

- Existing Convenience Stores in the City – Currently there are several convenience type businesses established in the City. These businesses would be considered legally non-conforming and would be allowed to continue operating. If an existing, legally non-conforming convenience store wished to expand, that business would be required to obtain a Convenience Store Conditional Use Permit prior to doing so.
- Retail Businesses with a Licensed Pharmacy – New businesses like Rite-Aid, Walgreen's or other drug store and pharmacy businesses would be able to establish in the City without obtaining a Convenience Store CUP.
- Convenience Stores located in a building with the primary entrance to the business opens into the interior lobby of the building – Although these types of businesses might be construed as within the definition of a convenience store, this ordinance is designed to address potential impacts from free standing convenience stores and not, for example, those that provide an ancillary commercial service within a larger office building. A retail use with its primary entrance opening into the interior of a building is primarily serving the tenants of that building and not the general public, and would not be considered a convenience store for purposes of the proposed regulation.
- Newsstands – The nature of a newsstand suggests that the business is primarily engaged in the sale of newspapers and magazines. This would not preclude a newsstand-type business from also selling prepackaged food and drink products, so long as the primary function of the business is as a newsstand.
- Specialty Food Stores – The ordinance would establish a new definition in the Code for Specialty Food Stores. Specialty food stores are essentially retail businesses engaged in the sale of specialized types of food or drinks such as import food stores (wine, and cheese shops), bakeries (including pastry shops and cupcake shops), and chocolatiers.

Regulation of Convenience Stores

Convenience Store Conditional Use Permit (CUP)

The proposed Convenience Store CUP is different than the City's existing CUP in that the convenience store CUP would require the reviewing authority to make five specific findings to approve the permit, whereas the City's existing CUP requires only one general finding to be made to approve a permit.

A Convenience Store CUP application would be reviewed by the Planning Commission and subject to appeal to the City Council. The findings proposed for the permanent Convenience Store CUP are slightly different than the current CUP findings in the Interim Ordinance with the main change the addition of language to Finding No. 1 regarding the image of the City.

Interim Ordinance 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.

Proposed Permanent Ordinance Findings:

1. The proposed use is compatible with the surrounding area and uses and will contribute positively to the image of the City;
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."

As part of making the findings, conditions can be added to the permit that would ensure that the proposed Convenience Store would not impact its neighborhood. These conditions could include hours of operation.

Extended Hours Permit

The City's Municipal Code currently regulates business operations in commercial-residential transition zones,⁴ including an Extended Hours Permit for businesses that wish to operate beyond regular business hours (See Footnote 1). Most of the commercial areas in the City, with the exception of a large portion of the Business Triangle, are subject to the City's Extended Hours Permit requirements. This Permit would apply to Convenience Stores, in addition to the Convenience Store CUP, for those stores that wish to operate beyond regular business hours. To approve an Extended Hours Permit, the Planning Commission must make the following findings.

- C. The Planning Commission shall grant an extended hours permit if it finds that the extended hours operation will not substantially disrupt the peace, and quiet of the adjacent neighborhood as a result of any of the following:
1. The accumulation of garbage, litter, or other waste, both on and off of the subject site;
 2. Noise created by the extended hours operation or by employees or visitors entering or exiting the extended hours operation;
 3. Light and glare;
 4. Odors and noxious fumes;
 5. Pedestrian queuing;
 6. Crime or peril to personal safety and security;
 7. Use of residential streets for parking which is likely to cause activity associated with the subject extended hours operation to intrude substantially into a residential area;
 8. Effects on traffic volumes and congestion on local residential streets; and
 9. Cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.

Adoption of a CUP process to permit Convenience Stores, along with the Extended Hours Permit process, would protect the City's residential areas from unwanted commercial impacts.

ENVIRONMENTAL ASSESSMENT

The 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. 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)

⁴ The Commercial-Transitional Zone applies to any commercial property within 170 feet of a residential property except for those commercial properties abutting the north side of Little Santa Monica Boulevard

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.

PUBLIC NOTICE

Notice of this public hearing was mailed to all property owners and tenants of commercially zoned property in the City on March 30, 2012, and to the project applicant for a proposed convenience store for the property located at 401 South Robertson Boulevard. Notice of this public hearing was also advertised in the Beverly Hills Courier on March 30, 2012, and in the Beverly Hills Weekly on April 4, 2012. As of the writing of this report staff has not received any public comments.

NEXT STEPS

The Planning Commission's recommendations with regard to the language in the permanent ordinance will be incorporated into the draft Ordinance which is scheduled to return to the City Council in June.

Report Reviewed By:

Michele McGrath
Acting Principal Planner

Attachment 1

Exhibit A

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REQUIRING 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. 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 2. 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 3. 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 “Common Property Line” and “Corner Lot” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“CONVENIENCE STORE: Any retail business selling general food and drink products not intended for home preparation and consumption with more than half the square footage of the business dedicated to the sale of such foods and drinks, tobacco, magazines, toiletries, or any combination thereof. ‘Convenience Store’ does not include a retail business occupying a tenant space whose primary entrance opens into the interior of a commercial building. ‘Convenience Store’ does not include newsstands, specialty food stores, or retail store containing a licensed pharmacy.

Section 4. 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 “small family daycare home” and “story” as they presently appear in 10-3-100, with all other definitions in the Section remaining unchanged:

“SPECIALTY FOOD STORE: Any retail business dedicated to the sale of specialized types or classes of food and drink products, including by not limited to import food stores, bakeries, and chocolatiers.

Section 5. 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 “Convenience Stores not occupying a tenant space whose primary entrance opens into the interior of a commercial building” 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 6. 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:

“10-3-3800.1 CONVENIENCE STORE CONDITIONAL USE PERMIT. The City may authorize 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 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 Convenience Store including impacts associated with congregation. The City shall not approve a conditional use permit for a Convenience Store unless it makes all of the following findings:

1. The proposed use is compatible with the surrounding area and uses and will contribute positively to the image of the City;

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.”

Section 7. **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 require a convenience store conditional use permit, or any part thereof, is determined to be invalid, a convenience store use shall be construed as prohibited in the commercial zones.

Section 8. **Repeal of Interim Ordinance** The City Council hereby repeals Interim Ordinance No. 11-O-2608 as last extended by Ordinance No. 12-O-2621, which repeal shall become effective only upon this Ordinance taking effect

Section 9. Publication. 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 10. **Effective Date.** 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:

Effective:

WILLIAM BRIEN
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager

SUSAN HEALY KEENE
Director of Community Development

Attachment 2

Zoning Code Sections

Table of Contents

10-3-1613: VEHICLE SALES, SERVICE OR FUEL STATIONS; CONDITIONAL USE PERMIT CRITERIA: ..	2
10-3-1958: EXTENDED HOURS PERMITS:.....	2
ARTICLE 38. CONDITIONAL USE PERMITS	5

10-3-1613: VEHICLE SALES, SERVICE OR FUEL STATIONS; CONDITIONAL USE PERMIT CRITERIA:

In addition to the criteria set forth in article 38 of this chapter, the following criteria shall be considered by the planning commission when reviewing conditional use permit applications for vehicle sales, service or fuel station uses:

- A. Whether the proposed use is compatible with the area and surrounding uses;
- B. Whether the proposed use will have adequate buffering between the use and residential areas;
- C. Whether the proposed use will 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;
- D. Whether the proposed use will create excessive noise, unpleasant odors, noxious fumes, excessive lighting, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation.

The planning commission may impose any conditions which are necessary to preserve the public health, welfare or safety, or to mitigate any potential adverse impacts resulting from the establishment of a vehicle sales, service or fuel station use. (Ord. 91-O-2133, eff. 12-5-1991)

10-3-1958: EXTENDED HOURS PERMITS:

A. Except as provided in subsection H of this section, it shall be unlawful for any person to commence or conduct, either directly or indirectly, an extended hours operation on a site located in a commercial-residential transition area in the city of Beverly Hills without having procured an extended hours permit pursuant to the provisions of this article. Every person commencing or conducting any extended hours operation shall file an application for an extended hours permit with the department of planning and community development in a form prescribed by that department. The city council may, by resolution, establish fees for the review of such applications.

B. A public hearing shall be held by the planning commission on all applications for an extended hours permit. The planning commission shall conduct such hearing, and shall issue a decision concerning the application, within ninety (90) days following the date an application is deemed complete. The deadline may be extended upon the request of the applicant. At least ten (10) days prior to such hearing, notice of the time, place, and purpose of the public hearing shall be sent by first class mail to each owner and occupant of a property in a single-family residential zone within a distance of five hundred feet (500') of the exterior boundaries of the subject property, and to each owner and residential occupant of property in a multiple-family residential or a nonresidential zone within three hundred feet (300') of the exterior boundaries of the project site. Such notice shall be sent to the property owners whose names and addresses appear on the latest equalized county assessment roll.

C. The planning commission shall grant an extended hours permit if it finds that the extended hours operation will not substantially disrupt the peace, and quiet of the adjacent neighborhood as a result of any of the following:

1. The accumulation of garbage, litter, or other waste, both on and off of the subject site;
2. Noise created by the extended hours operation or by employees or visitors entering or exiting the extended hours operation;
3. Light and glare;
4. Odors and noxious fumes;
5. Pedestrian queuing;
6. Crime or peril to personal safety and security;
7. Use of residential streets for parking which is likely to cause activity associated with the subject extended hours operation to intrude substantially into a residential area;
8. Effects on traffic volumes and congestion on local residential streets; and
9. Cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.

D. To make the findings set forth under subsection C of this section, the planning commission may impose conditions of approval on a project to ensure that the factors set forth under subsection C of this section will not substantially disrupt the peace and quiet of adjacent residential and commercial uses or create significant environmental impacts on the community within the meaning of the California environmental quality act. Such conditions may include, without limitation, restrictions or modifications to the hours of operation requested by an applicant. The planning commission shall E. The decision of the planning commission shall be by resolution. The applicant or any person aggrieved by the decision may appeal the decision to the city council as provided in title 1, chapter 4, article 1 of this code. The city council shall conduct a hearing on the appeal in a timely manner.

F. The operative date of the extended hours permit shall be the fifteenth day after the date upon which the applicant receives approval of the permit, provided no appeal has been filed on a timely basis pursuant to subsection E of this section.

G. In the event that the planning commission has not acted on an application for an extended hours permit in accordance with the time limits specified under subsection B of this section, the application shall be deemed approved upon the expiration of the time limit. An appeal period during which such approval may be appealed to the city council as prescribed in subsection E of this section shall commence upon the expiration and deemed approval date.

H. The provisions of this section shall not apply to any business that was legally operating during extended hours on December 27, 1996, as part of its customary weekly schedule of business operations.

The provisions of this section shall also not apply to any business that was legally operating during extended hours on January 8, 1999, without the requirement of an extended hours permit, as part of its customary weekly schedule of business operations. These exemptions shall not be transferable by the existing business to a different business. For purposes of this section, a business shall be considered different from the existing business if:

1. The business has a different name, and
2. The business offers a product or type or style of service which, in the opinion of the director of planning, may result in additional patrons visiting the site during extended hours or additional vehicle trips to the site during extended hours.

Changes to product or service references in the name of a business shall not be considered a change to the name of the business.

Notwithstanding the foregoing, any business operating during extended hours pursuant to the exemptions set forth herein shall not expand its hours of extended hours operation in effect on January 8, 1999, except as permitted by an extended hours permit issued pursuant to this section, subject to the following exceptions:

- a. Such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding a shorter period of extended hours operation in effect on January 8, 1999;
- b. For any such business that was subject to and qualified for the exemption specified in this subsection H, as set forth in ordinance 96-O-2270, such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding there being no hours of extended hours operation in effect on January 8, 1999.
- l. Unless otherwise provided in the resolution granting an extended hours permit, the exercise of rights granted in such extended hours permit shall be exercised within one hundred eighty (180) days after the adoption of the final resolution granting such extended hours permit. The planning commission may grant a six (6) month extension of the time limit contained in this subsection, or in any resolution granting a discretionary approval, if an application therefore is made at least thirty (30) days prior to the expiration of the time limit, or any extension thereof. Such extension may be granted after a duly noticed public hearing held pursuant to the same procedures applicable to the approval of the original application, if the planning commission determines that conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and decision made at the time of the original approval. The time limit imposed pursuant to this subsection may not be extended beyond two (2) years after the adoption of the initial final resolution granting the extended hours permit. Any decision regarding an extension pursuant to this subsection may be appealed to the appropriate review authority in the manner provided by the same procedures applicable to the approval of the original application or, if no appeal procedures are specified, to the city council in the manner provided by title 1, chapter 4, article 1 of this code. (Ord. 96-O-2270, eff. 11-27-1996; amd. Ord. 99-O-2324, eff. 3-19-1999; Ord. 02-O-2411, eff. 11-22-2002)

ARTICLE 38. CONDITIONAL USE PERMITS**10-3-3800: AUTHORIZED:**

Pursuant to an application and hearing procedure as provided in article 37 of this chapter for granting a variance, the planning commission may authorize conditional uses as specified in this code if the planning commission finds that the proposed location of any such use will not be detrimental to adjacent property or to the public welfare.

Conditionally permitted uses shall be designated and list in this code under the zone in which they are permitted. Additionally, a list of all uses which may require a conditional use permit shall be maintained in the office of the department of planning and community development and shall be available to the public free of charge. (1962 Code § 10-415; amd. Ord. 69-O-1349, eff. 7-1-1969; Ord. 69-O-1357, eff. 10-16-1969, retroactive to 10-1-1969; Ord. 70-O-1380, eff. 4-2-1970; Ord. 82-O-1866, eff. 11-4-1982; Ord. 83-O-1882, eff. 3-31-1983; Ord. 84-O-1935, eff. 10-11-1984; Ord. 84-O-1937, eff. 11-1-1984; Ord. 87-O-2009, eff. 11-19-1987; Ord. 89-O-2063, eff. 7-6-1989; Ord. 91-O-2133, eff. 12-5-1991; Ord. 95-O-2239, eff. 7-7-1995)

10-3-3801: EXEMPTIONS AND REDUCTIONS:

The height and area requirements set forth in other provisions of this chapter shall not apply to conditional uses for which a conditional use permit application is submitted and later granted. In addition, the parking and loading space requirements set forth in other provisions of this chapter may be reduced by the planning commission for the uses specified in this section upon the presentation of evidence satisfactory to the commission that the parking and loading spaces required by other provisions of this chapter exceed the demand for parking and loading spaces that will be generated by the proposed use. Pursuant to this section, the planning commission may reduce parking and loading space requirements for any of the following uses in conjunction with the granting of a conditional use permit:

A. Childcare uses other than family daycare homes,

B. Religious institution located in the C-5 zone provided all of the following criteria are met:

1. The use of the subject site is limited to religious institutional uses.
2. Except as otherwise permitted by the conditional use permit, no social events shall be allowed at the subject site. For the purposes of this section, "social events" shall include: a) celebrations associated with weddings and other life cycle events; b) fundraising events not involving a religious service, such as bingo games or auctions; c) gatherings of more than five (5) persons to foster interaction among congregation members or among congregation members and other members of the community, including but not limited to events such as dances, discussions, study groups or lectures.
3. The applicant submits evidence satisfactory to the planning commission that establishes that the proposed use will have no traffic or parking related impacts on adjacent streets or land uses as a result of the requested reduction in the parking and/or loading requirements. Such evidence may include, but not be limited to, a traffic and parking utilization study prepared by a certified traffic engineer.

- C. Educational institutions which fulfill the state compulsory education requirements of its pupils and which are registered with the state of California pursuant to California Education Code section 33190, or its successor, and educational institutions located in nonresidential zones providing continuing education and vocational training programs that are accredited by a nationally recognized accrediting agency listed by the United States department of education.
- D. Hotel restaurants that may be established pursuant to a conditional use permit.

The planning commission may require a conditional use permit applicant to provide the commission with any information that the commission believes would be useful for the purpose of determining the parking and loading demand of a proposed use, the impacts of that use, or the appropriate conditions to be imposed on that use. (1962 Code § 10-415; amd. Ord. 95-O-2239, eff. 7-7-1995; Ord. 95-O-2247, eff. 11-10-1995; Ord. 96-O-2256, eff. 4-5-1996; Ord. 99-O-2331, eff. 8-20-1999; Ord. 03-O-2421, eff. 2-7-2003)

10-3-3802: RESTRICTIONS:

In granting a conditional use permit, the planning commission may impose such conditions on the permit as the commission deems necessary or proper to protect adjacent property and the public welfare from potential adverse impacts related to the approved use. Such conditions may include, without limitation, conditions that limit the height or area of buildings and structures that would otherwise be permitted by the provisions of this title and conditions that require an applicant to provide parking and loading spaces in excess of the parking and loading spaces otherwise required by this code. (Ord. 95-O-2247, eff. 11-10-1995)

10-3-3803: REVOCATION OR MODIFICATION:

If the director of planning and community development determines that evidence could be presented to the planning commission which may support grounds for revocation or modification of a conditional use permit, and the director believes that the planning commission may find that such evidence is adequate to support revocation or modification of the conditional use permit, then the director may initiate a revocation proceeding before the planning commission. Upon initiation of a revocation proceeding, the planning commission shall hold a public hearing regarding the possible revocation or modification of the conditional use permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of the conditional use permit. The planning commission, after such hearing, may revoke or modify the conditional use permit if the commission determines that:

- A. The permittee has violated a condition of the conditional use permit approval, or violated any provision of this code that governs, in part, the operation of the conditionally permitted activity or the land on which it is located; or
- B. The conditional use permit was obtained in a fraudulent manner; or
- C. Operation of the conditional use constitutes or creates a nuisance. (1962 Code § 10-415; amd. Ord. 94-O-2212, eff. 9-9-1994; Ord. 95-O-2239, eff. 7-7-1995; Ord. 95-O-2247, eff. 11-10-1995)

10-3-3804: APPEALS:

Any decision made by the planning commission pursuant to this article may be appealed to the city council in the manner provided in title 1, chapter 4, article 1 of this code. (1962 Code § 10-415; amd.

Ord. 85-O-1948, eff. 3-21-1985; Ord. 94-O-2212, eff. 9-9-1994; Ord. 95-O-2239, eff. 7-7-1995; Ord. 95-O-2247, eff. 11-10-1995)

10-3-3805: TIME FOR EXERCISE OF RIGHTS:

Unless otherwise provided in the resolution granting a planned development approval, the exercise of rights granted in such approval shall be commenced in accordance with the time limits imposed by section 10-3-207 of this chapter. (Ord. 02-O-2411, eff. 11-22-2002)

Attachment 3



Planning Commission Report

Meeting Date: February 9, 2012

Subject: High Impact Convenience Store Conditional Use Permit

Recommendation: Provide input on revising language in the High Impact Convenience Store Ordinance

REPORT SUMMARY

The City Council has requested that the Planning Commission revisit the High Impact Convenience Store Ordinance and provide input on three areas.

BACKGROUND

The Planning Commission reviewed and recommended on the draft High Impact Convenience Store ordinance on January 12, 2012. After the Planning Commission had made its recommendation, and before the ordinance was brought before the City Council for consideration, the City's legal department revised the language proposed for Finding No. 6 regarding gateways, prominent intersections, and anchor locations out of concern that the original finding was too vague and would be difficult to administer. The City's legal department proposed, and Staff concurred on, alternative language for the finding, which was incorporated into the draft ordinance presented to the City Council. The Ordinance was moved forward out of concern that the interim ordinance expires on April 20, and that a permanent ordinance would need to be adopted 31 days prior to this date to avoid a gap in the effective period of the City's Convenience Store Conditional Use Permit (CUP) requirement.

On February 7, 2012 the City Council reviewed the draft ordinance and requested that the Planning Commission provide input on alternative language for Finding No. 6 prior to the City Council taking action. The City Council also requested that the Planning Commission look at the hours of operation in the definition of High Impact Convenience Stores, and to factor in a means of addressing any would be loitering or congregation at such uses.

DISCUSSION

The three topics the City Council asked for input on are: 1) new language for Finding No. 6 of the Convenience Store CUP, 2) the hours of operation in the High Impact Convenience Store definition, and 3) restricting loitering and congregation at such uses. Input provided by the Planning Commission will be used to revise the Ordinance prior to returning to the City Council on February 21.

Attachment(s):

1. Ordinance Presented to City Council on February 7, 2012

Report Author and Contact Information:
Peter Noonan, AICP CEP
Associate Planner
(310) 285-1127
pnoonan@beverlyhills.org

ORDINANCE NO. 12 0- ____

AN ORDINANCE 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 3 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.

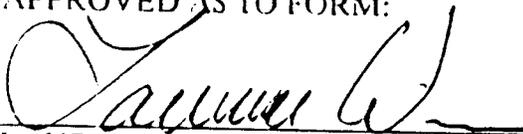
Adopted:

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

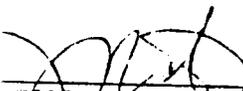
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE
Director of Community Development



AGENDA REPORT

Meeting Date: February 7, 2012

Item Number:

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.

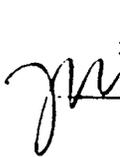
PUBLIC NOTICING

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.

 ^{OK}
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.

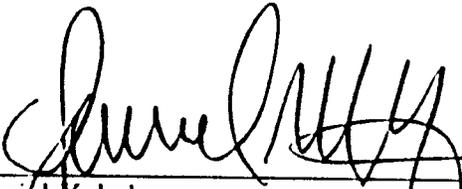
Section 6. Based on the evidence presented in the record, including the staff report and oral and written testimony, the Planning Commission hereby finds that requiring High-Impact Convenience Stores to obtain a Convenience Store Conditional Use Permit prior to establishment is consistent with the General 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.

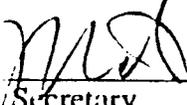
Section 8. The Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: January 12, 2012



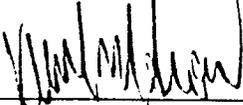
Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

ATTEST:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

ORDINANCE NO. 12-O- _____

AN ORDINANCE 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.

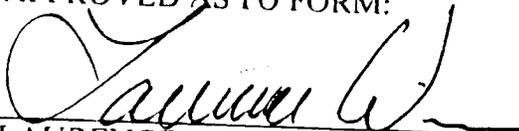
Adopted:

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



Planning Commission Report

Meeting Date: January 12, 2012

Subject: Establishment of a High Impact Convenience Store Conditional Use Permit

Recommendation: Adopt a resolution recommending that the City Council adopt an ordinance requiring High Impact Convenience Stores to obtain a Convenience Store Conditional Use Permit.

REPORT SUMMARY

This is a proposal to codify the "Convenience Store Conditional 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.

BACKGROUND

The City is concerned about possible impacts to residential neighborhoods from certain convenience retail uses. On April 5, 2011, the Director of Community Development updated the City Council on regulations applying to convenience stores and requested direction to prepare an ordinance that would require expanded discretionary review of such uses. On April 21, 2011, the City Council adopted an interim urgency ordinance (11-O-2608) prohibiting "High Impact Convenience Stores" unless a new "Convenience Store Conditional Use Permit" was obtained. On May 24, 2011 that urgency ordinance was extended to allow the City time to develop a permanent ordinance (11-O-2609). The interim urgency ordinance is set to expire in April, 2012.

DISCUSSION

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.

Attachment(s):

1. Draft Resolution
Exhibit A. Draft City Council Ordinance
2. City Council Reports for 4/5, 4/21, & 5/24/2011

Report Author and Contact Information:

Peter Noonan, AICP CEP
Associate Planner
(310) 285-1127
pnoonan@beverlyhills.org

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.

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.

Draft Ordinance

The draft ordinance, attached, 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 Conditional Use Permit established in the interim urgency ordinance and proposed to be made permanent by this ordinance.

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.

The Convenience Store Conditional Use Permit currently has 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~~ vicinity.

Additional Findings Proposed

Staff encourages the Planning Commission to consider replacing the word "area" at the end of Finding 5 with the word "vicinity" for added clarity.

Staff also proposes that the Planning Commission consider additional findings in the permanent ordinance. The following draft findings have been provided as a suggestion. Including additional findings for a Convenience Store Conditional Use Permit will ensure that high impact convenience stores would not disrupt residential neighborhoods, and that the City's brand would not be maintained.

Capping vehicle trips. A cap on vehicle trips is proposed that has been modeled on the City's vehicle trip cap for mini-shopping centers (BHMC 10-3-1611). The number of vehicle trips per hour has been set at 1 trip every two minutes, with the maximum trips per day set just below the number of trips that could be generated in a 14-hour day (By definition High Impact Convenience Stores would be open longer than a 14-hour day, or outside of 7:00 am – 9:00 pm)

"6. On average the proposed use will not substantially exceed either of the following per one thousand (1000) gross square feet of floor area:

- a. Thirty (30) vehicle trips per hour; or
- b. Four hundred (400) vehicle trips per day."

Limiting at Gateways and Prominent Intersections. In the interest of maintaining the City as a high-end, luxury market, the following finding would ensure that development proposed at those prominent entries and focal points in the City align with the City's goals for brand development.

"7. The proposed use is not located at a Gateway, or Key Gateway, or other prominent intersection or focal point in the City."

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.

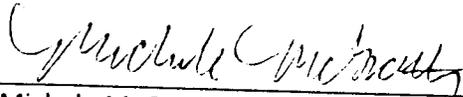
PUBLIC NOTICING

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

NEXT STEPS

Once the Planning Commission has reviewed, revised if necessary, and acted on the draft resolution the matter will be scheduled for a formal hearing before the City Council.

Report Reviewed By:



Michele McGrath
Senior Planner

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:

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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.

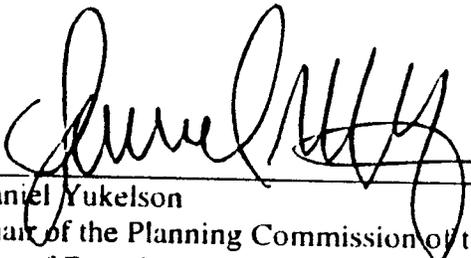
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Section 7. The Planning Commission hereby recommends that the City Council adopt an Ordinance with provisions substantially in the form set forth in Exhibit A, attached hereto and incorporated herein by reference.

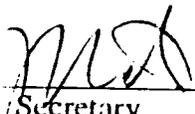
Section 8. The Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: January 12, 2012



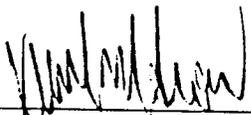
Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

ATTEST:



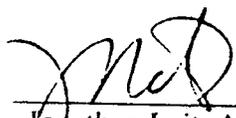
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

EXHIBIT A

[DRAFT]
ORDINANCE NO. 12-O-_____

AN ORDINANCE REQUIRING HIGH IMPACT
CONVENIENCE STORES TO OBTAIN A CONVENIENCE
STORE CONDITIONAL USE PERMIT AND AMENDING THE
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THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS
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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.

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Section 4. The City Council considered this Ordinance at a duly noticed public hearing on _____, 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 City Council hereby amends Section 10-3-100 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 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."

Section 7. The City Council hereby amends Section 10-3-1604 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 8. The City Council hereby adds a new Section 10-3-3800.1 to Chapter 3 of Title 10 of the Beverly Hills Municipal Code establishing a Convenience Store Conditional Use Permit:

"No lot, premises, building, or portion thereof in the City of Beverly Hills shall be used for any 'high impact convenience store,' as defined in 10-3-100 of this Code, 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 this 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, 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 convenience store conditional use permit 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.
6. If proposed at a Gateway, Anchor Location, or prominent intersection, as determined by the decision-making authority, that the use will be appropriate for the location.

Section 9. 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 10. 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

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1629 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on January 12, 2012, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Fisher, Rosenstein, Cole, Vice Chair Corman, and Chair Yukelson.
NOES: None.
ABSTAIN: None.
ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

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

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.

If the City Council shares the concerns identified above 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,
2. if appropriate, direct staff to prepare a either an interim or interim urgency ordinance

Susan Healy Keene, AICP
Director of Community Development



AGENDA REPORT

Meeting Date: April 21, 2011

Item Number:

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



AGENDA REPORT

Meeting Date: May 24, 2011

Item Number:

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, Assistant Director of Community Development
Peter Noonan, AICP, Associate Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS EXTENDING INTERIM ORDINANCE 11-O-2608 PROHIBITING HIGH IMPACT CONVENIENCE STORES UNLESS SPECIFICALLY APPROVED BY THE CITY, AND DECLARING THE URGENCY THEREOF

Attachments: 1. Ordinance

RECOMMENDATION

Staff recommends that the City Council extend Interim Ordinance 11-O-2608, which prohibits high impact convenience stores and establishes a discretionary review process whereby the City may allow certain convenience stores to be established if specific findings can be made. Staff recommends that the City Council extend the urgency ordinance for up to 10 months and 15 days to allow sufficient time to study convenience stores and draft a permanent ordinance for the Council's consideration.

DISCUSSION

On April 21, 2011, the City Council adopted an Interim Ordinance Prohibiting High Impact Convenience Stores Unless Specifically Approved by the City. The ordinance expires on June 5, 2011.

Extending the urgency ordinance would continue the prohibition on high impact convenience stores for up to an additional 10 months and 15 days. This will allow time to prepare and adopt a permanent ordinance in accordance with the State law process for amending the City's zoning code. This process includes duly noticed public hearings before the City's Planning Commission and the City Council.

Since the adoption of the Interim Ordinance, the City has initiated studies necessary and appropriate to evaluate the potential neighborhood impacts that could be associated with high impact convenience stores. As a result of this initial study, the definition provided for "High Impact Convenience Store" has been changed to ensure that it does not include newsstands, coffee shops, and any retail business containing a licensed pharmacy. The current definition is provided below, with the new language underlined.

"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 a.m. or after 9:00 p.m. 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. '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."

Once the City has fully studied the potential impacts associated with high-impact convenience stores, a recommendation will be transmitted to the City Council regarding the appropriateness of developing a zoning mechanism for reviewing new convenience store proposals. The intent of this study and recommendation is to assure that the City has a means of reviewing new convenience store proposals to prevent negative impacts to the surrounding neighborhoods. Staff anticipates that the recommendation will include a mechanism for determining whether a new convenience store should be considered a "high impact" convenience store. Staff also anticipates that the recommendation will include a permanent review process for those new convenience store proposals that have the potential to be high-impact.

Staff anticipates bringing a permanent ordinance to the Planning Commission for consideration within the next eight months. Once the Planning Commission has studied the proposal and recommended a course of action, Staff will return to the City Council with a draft ordinance for the Council's consideration.

ENVIRONMENTAL ASSESSMENT

Extension of 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. It can be seen with certainty that there is no possibility that the adoption and implementation of the Interim Ordinance or extension thereof may have a significant effect on the environment. This extension of the Interim 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 extension 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.

FISCAL IMPACT

Meeting Date: May 24, 2011
Extension of Interim Ordinance 11-O-2608

Fiscal impacts at this time include staff hours to conduct appropriate studies and prepare the required ordinances.

Susan Healy Keene, AICP
Director of Community Development

ORDINANCE NO. 11-O-2609

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
EXTENDING INTERIM ORDINANCE 11-O-2608
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. Legislative Findings.

The City Council of the City of Beverly Hills is concerned that high impact convenience stores as defined by this ordinance may not be compatible with nearby land uses in the City. Such uses can generate excessive noise and litter, increase traffic, exacerbate parking issues, and reduce the value and enjoyment of nearby properties. As such, the City Council wishes to consider permanent regulations regarding the development and operation of convenience stores.

Because the public process of adopting permanent regulations may be lengthy, and because the establishment of high impact convenience stores during the public process might frustrate the ultimate regulation adopted, the City Council adopted Ordinance No. 11-O-2608, an interim ordinance that took effect immediately on April 21, 2011 (the "Interim Ordinance"). The Interim Ordinance defines and then prohibits "high impact convenience stores" in the City, allowing them only pursuant to a convenience store conditional use permit.

Section 2. Authority.

Pursuant to Government Code Section 65858, the City Council may adopt, as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying or intends to study within a reasonable period of time. After public notice, the City Council may extend the interim ordinance by a period of 10 months and 15 days, pursuant to Government Code Section 65858. Notice of the public hearing at which the City Council considered adopting this extension ordinance was duly published on May 13, 2011 in the Beverly Hills Courier and also published on May 12, 2011 in the Beverly Hills Weekly.

Section 3. Urgency Findings.

The City Council finds and determines that the unregulated operation of high impact convenience stores would result in an immediate threat to the public health, safety or welfare. As described in Section 1, the high customer turnover and 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. In addition, high impact convenience stores may increase litter and generate excessive noise that would deteriorate the quality of life for those in the immediate vicinity. The unregulated establishment of high impact convenience stores during the Council's review and consideration of permanent regulations could frustrate the ultimate regulation adopted. Thus, to preserve the public health, safety and welfare, it is necessary that this Ordinance take effect immediately to prevent such harm.

Section 4. Amendment to the Definition of "High Impact Convenience Store."

In order to ensure that the Interim Ordinance does not apply to businesses that do not cause the impacts about which the City Council is concerned, the City Council hereby amends the definition of "high impact convenience store" stated in the Interim Ordinance to read 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 or before 9:00 am or after 9:00 pm on Saturday or Sunday, and (3) has one of the following characteristics – is served by on site surface parking, 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 5. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the Interim Ordinance or extension thereof may have a significant effect on the environment. This extension of the Interim 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 extension 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.

Section 6. 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.

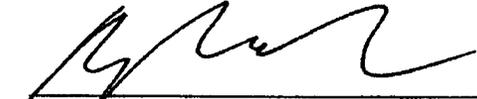
Section 7. Approval and Extension of Ordinance.

This 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 shall amend and extend the effect of the Interim Ordinance for a period of ten (10) months and fifteen (15) days. After notice pursuant to Section 65090 of the California Government Code and public hearing, the City Council may extend the effectiveness of the Interim Ordinance for an additional one year period, as provided in Government Code Section 65858.

Section 8. Publication.

The City Clerk 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: May 24, 2011



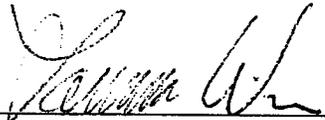
BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:



BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



JEFFREY KOLIN
City Manager



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Director of Community Development