



## AGENDA REPORT

**Meeting Date:** February 19, 2013  
**Item Number:** C-4  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**Subject:** A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS DENYING AN APPLICATION FOR A CONDITIONAL USE PERMIT AND EXTENDED HOURS PERMIT ASSOCIATED WITH THE ESTABLISHMENT OF A 7-ELEVEN CONVENIENCE STORE ON THE PROPERTY LOCATED AT 401 SOUTH ROBERTSON BOULEVARD  
**Attachments:** Resolution

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### RECOMMENDATION

The City Attorney recommends that the City Council adopt the resolution.

### INTRODUCTION

This resolution denies an application for a conditional use permit and extended hours permit associated with the establishment of a convenience store on the property located at 401 South Robertson Boulevard.

### DISCUSSION

At the City Council meeting of February 5, 2013, the City Council directed the City Attorney to draft a resolution of findings denying the application for a conditional use permit and extended hours permit to establish a convenience store at 401 South Robertson Boulevard.

### FISCAL IMPACT

There is no fiscal impact.

Department Approval:

Laurence S. Wiener  
City Attorney

# **Attachment 1**

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS DENYING AN APPLICATION FOR A CONDITIONAL USE PERMIT AND EXTENDED HOURS PERMIT ASSOCIATED WITH THE ESTABLISHMENT OF A 7-ELEVEN CONVENIENCE STORE ON THE PROPERTY LOCATED AT 401 SOUTH ROBERTSON BOULEVARD

The City Council of the City of Beverly Hills hereby finds, and resolves as follows:

Section 1. 7-Eleven Inc. (the "Applicant") submitted an application for a Conditional Use Permit and Extended Hours Permit associated with a 7-Eleven convenience store located at 401 South Robertson Boulevard. A convenience store is a conditionally permitted use within the City's commercial zones and therefore, a Conditional Use Permit (CUP) was requested along with an Extended Hours Permit to allow the convenience store to operate 24 hours per day, 7 days per week.

The project includes construction of an approximately 2,477 square foot single-story convenience store. A total of 15 on-grade parking spaces (8 compact spaces, 7 standard spaces) and one loading space are proposed on the site. Access to the site would be provided from a driveway on Olympic Boulevard, a driveway on Robertson Boulevard, and a driveway on the alley. The building would be located in the southwest corner of the lot (set back from the adjacent streets), parking spaces would be located on the northern half of lot, and a loading space would be located on the southeastern corner of the lot. Landscaping would be provided throughout the site, but predominantly along its borders.

Section 2. On October 11, 2012 the Planning Commission considered the application at a duly noticed public meeting. Evidence, both written and oral, was presented at said meeting. On November 8, 2012, the Planning Commission adopted a resolution denying the request for a CUP and Extended Hours Permit.

Section 3. An appeal of the Planning Commission's decision was filed by David Sabin on behalf of the Applicant.

Section 4. Notice of the appeal hearing was mailed on January 25, 2013 to the Applicant, and all parties who received notice of the Planning Commission hearing, and was published in the *Beverly Hills Courier* and the *Beverly Hills Weekly*, two newspapers of local circulation. On February 5, 2013, the City Council held a de novo public hearing to consider the application for the CUP and Extended Hours Permit.

Section 5. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA")), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*, the "State Guidelines"), and the City's Local CEQA Guidelines (the "City Guidelines"). However, the Project is exempt from CEQA pursuant to Section 15270(a) of Title 14 of the California Code of Regulations, which states that CEQA does not apply to projects which a public agency rejects or disapproves.

Section 6. In order to approve the application for the CUP, the City Council is required to make each of the following findings:

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

2. The Project 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 Project 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 Project 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; and

5. The Project will not create an overconcentration of convenience stores in the vicinity.

Section 7. Based on the evidence presented at the hearing, including the staff report and written and oral testimony, the City Council could not make each of the findings set forth above and hereby finds and determines as follows with respect to the CUP:

As proposed, the Project would be incompatible with existing development in the vicinity of the Project site, and would not contribute to the harmonious development of the area or the branding and image of the city. The proposed Project is auto-oriented and does not engage the street for pedestrian purposes, and is therefore incompatible with the goals and policies of the General Plan and the City's Southeast Taskforce. Furthermore, the City Council could not find that the Project will not result in detrimental impacts to existing residential and commercial development in the area as there has been no analysis of circulation impacts and impacts to the adjacent residential neighborhood due to the use of compact spaces, due to ingress and egress from the alley serving residential and other commercial uses, and due to the difficulty of accessing the site from northbound Robertson and leaving the site to travel westbound. The Project would also result in adverse parking impacts because the Project does not provide a sufficient number of full-size, fully-accessible parking spaces to meet the anticipated parking demand as determined by an empirical parking study. Finally, the Project is anticipated to result in an overconcentration of convenience store uses due to the presence of surrounding gas stations and convenience stores in the nearby area. Therefore the City Council is not able to make each of the findings set forth in Section 6.

Section 8. In considering the request for the Extended Hours Permit, the City Council must consider whether the proposed extended hours will substantially disrupt the peace and quiet of an adjacent residential neighborhood as a result of:

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.

Section 9. Based on the evidence presented at the hearing, including the staff report and written and oral testimony, the City Council hereby finds and determines as follows with respect to the Extended Hours Permit:

As proposed, the Project would operate 24 hours per day, 7 days per week. This extended hours operation is inconsistent with other commercial uses in the area, and would disrupt the peace and quiet of the adjacent residential neighborhood. Deliveries of fresh food will occur between 9:00 p.m. and 6:00 a.m. Additionally, traffic would use the alley and adjacent residential streets twenty-four hours per day, which would result in

increased light and noise in the adjacent residential neighborhood caused by the vehicular traffic.

Section 10. Based on the foregoing, the City Council hereby denies the Conditional Use Permit and Extended Hours Permit.

Section 11. The City Clerk shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his Certification to be entered in the Book of Resolutions of the City.

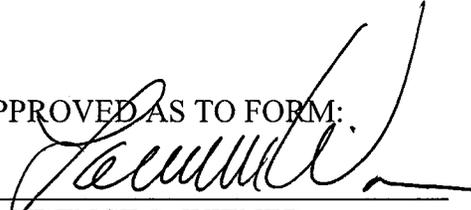
Adopted:

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WILLIAM W. BRIEN M.D.  
Mayor of the City of  
Beverly Hills, California

ATTEST:

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(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
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SUSAN HEALY KEENE  
Director of Community Development