

CITY OF YUBA CITY
STAFF REPORT

Date: August 16, 2022
To: Honorable Mayor & Members of the City Council;
From: Development Services Department
Presentation By: Doug Libby, Deputy Director of Development Services

Summary

Subject: Heng's Cafe - Department of Alcoholic Beverage Control Application
Recommendation: Adopt a Resolution making a finding of public convenience or necessity for the issuance of a Type 41 restaurant (beer and wine) Alcoholic Beverage Control (ABC) License at 1270 Stabler Ln. Suite 320 (Heng's Café)
Fiscal Impact: No direct fiscal impact would result from recommending approval of the proposed Alcoholic Beverage Control application

Purpose:

Consideration to make a finding of public convenience or necessity for the issuance of a Type 41 (restaurant beer and wine) Alcoholic Beverage Control License at 1270 Stabler Ln., Suite 320 (Heng's Café).

Council's Strategic Goal:

Business Friendly.

Background:

The City has received an application from Patrick Fong, who is the owner of Heng's Café, an Asian cuisine restaurant located in the Feather Down (Bel Air) Shopping Center, requesting a Type 41 restaurant (beer and wine) license with the Department of Alcoholic Beverage Control. The applicant states the previous business owner did have a beer and wine license at this location. When ABC receives an application for a location where a high concentration of licenses exists, and/or a crime rate exceeding 25% of the average, the local government must then approve the application, prior to ABC approving it. In this instance, Heng's Café is located at 1270 Stabler Lane, Suite 320 and the census tract in which it is located, currently has five (5) active ABC Type 41 licenses. This location is in Yuba City Police Beat No. 2 but this location is not in a higher crime area.

Analysis:

Heng's Cafe is an Asian Cuisine restaurant with business hours of 11am to 9pm and the owner would like to provide beer and wine as part of their restaurant operation. The ABC and State Business and Professions Code, Section 23958, states the governing body must determine that the approval of this

license would provide public convenience or necessity, in order for the license application to be approved by ABC in this location due to the number of existing licenses that exist within the Census block.

Development Services staff and Police Chief Baker have reviewed the application and letter and believe this restaurant, including the sale of beer and wine beverages, is standard in this type of business and that a public convenience is provided through the sale of beer and wine at this business location.

Fiscal Impact:

No direct fiscal impact will result from making a finding of public convenience and necessity for the issuance of a Type 41 restaurant (beer and wine) Alcoholic Beverage Control License at 1270 Stabler Lane, Suite 320 (Heng's Café).

Alternatives:

Do not making a finding of public convenience and necessity for the issuance of a type 41 restaurant beer and wine Alcoholic Beverage Control License at 1270 Stabler Lane, Suite 320 (Heng's Café).

Recommendation:

Adopt a Resolution making a finding of public convenience and necessity for the issuance of a Type 41 restaurant (beer and wine) Alcoholic Beverage Control (ABC) License at 1270 Stabler Lane, Suite 320 (Heng's Café).

Attachments:

1. Attachment 1 - Proposed Resolution Finding of Convenience and Necessity
2. Attachment 2 Heng's Cafe ABC License Application
3. Attachment 3 Heng's Cafe ABC Applicant letter of Support

Prepared By:

Doug Libby
Deputy Director of Development Services

Submitted By:

Diana Langley
City Manager

ATTACHMENT 1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
MAKING A FINDING OF PUBLIC CONVENIENCE AND NECESSITY FOR
THE ISSUANCE OF A TYPE 41 (RESTAURANT BEER AND WINE)
ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE AT 1270
STABLER LN., SUITE 320 (HENG'S CAFÉ)**

WHEREAS, pursuant to applicable provisions of the Business and Professions Code, the Department of Alcoholic Beverage Control (hereinafter the "ABC") is charged with the responsibility of reviewing applications and issuance of licenses for the sale and/or manufacture of alcoholic beverages in the State of California; and

WHEREAS, Section 23958 of the Business and Professions Code provides that the ABC shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4 of said Business and Professions Code; and

WHEREAS, Section 23958.4 of the Business and Professions Code provides that, notwithstanding the limitations of Section 23958, the ABC shall issue a license if the applicant shows that "public convenience or necessity" would be served by the issuance of such license; and

WHEREAS, the City of Yuba City has received an application for a Public Convenience and Necessity determination that was filed by Patrick Fong, the ("Applicant") who is the owner of Heng's Café located at 1270 Stabler Lane, Suite 320 in Yuba City, requesting a letter of Public Convenience and Necessity to allow a Type 41 restaurant (beer and wine) License in a census tract that has surpassed the number of allotted licenses and is located in Police Beat 2 which is not have a higher-than-average crime rate; and

WHEREAS, said Section 23958.4 further provides that the determination of "public convenience or necessity" shall be made by the local governing body of the area in which the applicant's premises are located with regard to certain applications, including on-site sales of alcohol at family entertainment center; and

WHEREAS, the City Council has considered this matter, and desires to find that the public convenience and necessity would be served by granting an additional Type 41 restaurant (beer and wine) Sale License for the location at 1270 Stabler Lane, Suite 320 in Yuba City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Yuba City as follows:

1. The recitals and findings set forth above are true and correct and incorporated herein by this reference.
2. The City Council finds that this matter is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it is merely a determination whether the public convenience and necessity would be served by the issuance of a Type 41 restaurant (beer and wine) Sale License (Beer) for the location at 1270 Stabler Lane, Suite 320 (Heng's

Café). It does not have a potential for resulting in a reasonably foreseeable physical change to the existing environment.

3. The City Council finds and determines the public convenience and necessity is met in the present circumstances for reasons including the following:
 - a. The alcohol sales for on-site consumption would be a limited, part of the overall restaurant service with limited hours from 11:00 am to 9:00 pm, and subject to supervision as specified in the applicants letter which is incorporated by reference.
 - b. The request to permit beer and wine sales for on-premises consumption in conjunction with a restaurant operation will not adversely affect the surrounding land uses and the growth and development of the area because the use is compatible with the nearby developments, and consumption is limited to on-site.
 - c. The determination of Public Convenience or Necessity, under the conditions imposed, will not be detrimental to the health and safety of the citizens of the City of Yuba City.
4. This resolution shall take effect immediately.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 16th day of August, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dave Shaw, Mayor

ATTEST:

Ciara Wakefield, City Clerk Administrator

APPROVED AS TO FORM:

Shannon L. Chaffin, City Attorney

ATTACHMENT 2

INFORMATION AND INSTRUCTIONS -

SECTION 23958.4 B&P

- Instructions This form is to be used for all applications for original issuance or premises to premises transfer of licenses.
- Part 1 is to be completed by an ABC employee, given to applicant with pre-application package, with copy retained in holding file or applicant's district file.
 - Part 2 is to be completed by the applicant, and returned to ABC.
 - Part 3 is to be completed by the local governing body or its designated subordinate officer or body, and returned to ABC.

PART 1 - TO BE COMPLETED BY ABC **GEO CODE :5102**

1. APPLICANT'S NAME

PATRICK RUIHUA FONG - 638753

2. PREMISES ADDRESS (Street number and name, city, zip code)

1270 STABLER LN, STE 320, YUBA CITY, CA 95993-2626

3. LICENSE TYPE

41

4. TYPE OF BUSINESS

- | | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> Full Service Restaurant | <input type="checkbox"/> Hofbrau/Cafeteria | <input type="checkbox"/> Cocktail Lounge | <input type="checkbox"/> Private Club |
| <input type="checkbox"/> Deli or Specialty Restaurant | <input type="checkbox"/> Comedy Club | <input type="checkbox"/> Night Club | <input type="checkbox"/> Veterans Club |
| <input type="checkbox"/> Cafe/Coffee Shop | <input type="checkbox"/> Brew Pub | <input type="checkbox"/> Tavern: Beer | <input type="checkbox"/> Fraternal Club |
| <input type="checkbox"/> Bed & Breakfast: | <input type="checkbox"/> Theater | <input type="checkbox"/> Tavern: Beer & Wine | <input type="checkbox"/> Wine Tasting Room |
| <input type="checkbox"/> Wine only <input type="checkbox"/> All | | | |
| <input type="checkbox"/> Supermarket | <input type="checkbox"/> Membership Store | <input type="checkbox"/> Service Station | <input type="checkbox"/> Swap Meet/Flea Market |
| <input type="checkbox"/> Liquor Store | <input type="checkbox"/> Department Store | <input type="checkbox"/> Convenience Market | <input type="checkbox"/> Drive-in Dairy |
| <input type="checkbox"/> Drug/Variety Store | <input type="checkbox"/> Florist/Gift Shop | <input type="checkbox"/> Convenience Market w/Gasoline | |
| <input type="checkbox"/> Other - describe: | | | |

5. COUNTY POPULATION

101289

6. TOTAL NUMBER OF LICENSES IN COUNTY

N/A

7. RATIO OF LICENSES TO POPULATION IN COUNTY

On-Sale Off-Sale 1-913 On-Sale Off-Sale

8. CENSUS TRACT NUMBER

506.03

9. NO. OF LICENSES ALLOWED IN CENSUS TRACT

5

10. NO. OF LICENSES EXISTING IN CENSUS TRACT

On-Sale Off-Sale 5 On-Sale Off-Sale

11. IS THE ABOVE CENSUS TRACT OVERCONCENTRATED WITH LICENSES? (i.e., does the ratio of licenses to population in the census tract exceed the ratio of licenses to population for the entire county?)

- Yes, the number of existing licenses exceeds the number allowed
- No, the number of existing licenses is lower than the number allowed

12. DOES LAW ENFORCEMENT AGENCY MAINTAIN CRIME STATISTICS?

- Yes (Go to Item #13)
- No (Go to Item #20)

13. CRIME REPORTING DISTRICT NUMBER

BEAT 2

14. TOTAL NUMBER OF REPORTING DISTRICTS

5

15. TOTAL NUMBER OF OFFENSES IN ALL REPORTING DISTRICTS

5786

16. AVERAGE NO. OF OFFENSES PER DISTRICT

1157

17. 120% OF AVERAGE NUMBER OF OFFENSES

1389

18. TOTAL NUMBER OF OFFENSES IN REPORTING DISTRICT

1034

19. IS THE PREMISES LOCATED IN A HIGH CRIME REPORTING DISTRICT? (i.e., has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency)

- Yes, the total number of offenses in the reporting district equals or exceeds the total number in item #17
- No, the total number of offenses in the reporting district is lower than the total number in item #17

20. CHECK THE BOX THAT APPLIES (check only one box)

- a. If "No" is checked in both item #11 and item #19, Section 23958.4 B&P does not apply to this application, and no additional information will be needed on this issue. Advise the applicant to bring this completed form to ABC when filing the application.
- b. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for a non-retail license, a retail bona fide public eating place license, a retail license issued for a hotel, motel or other lodging establishment as defined in Section 25503.16(b) B&P, or a retail license issued in conjunction with a beer manufacturer's license, or winegrower's license, advise the applicant to complete Section 2 and bring the completed form to ABC when filing the application or as soon as possible thereafter.
- c. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license, advise the applicant to take this form to the local governing body, or its designated subordinate officer or body to have them complete Section 3. The completed form will need to be provided to ABC in order to process the application.

Governing Body/Designated Subordinate Name:

FOR DEPARTMENT USE ONLY

PREPARED BY (Name of Department Employee)

Tiffany Alfaro

Please mail PCN TO:
 Yuba City Planning Dep
 1201 CIVIC CENTER BLVD
 Yuba City, CA 95443

PART 2 - TO BE COMPLETED BY THE APPLICANT (If box #20b is checked)

21. Based on the information on the reverse, the Department may approve your application if you can show that public convenience or necessity would be served by the issuance of the license. Please describe below the reasons why issuance of another license is justified in this area. You may attach a separate sheet or additional documentation, if desired. Do *not* proceed to Part 3.

SEE ATTACHED PCN LETTER

22. APPLICANT SIGNATURE

Patricia Rinkin Feary

23. DATE SIGNED

7/11/22

PART 3 - TO BE COMPLETED BY LOCAL OFFICIALS (If box #20c is checked)

The applicant named on the reverse is applying for a license to sell alcoholic beverages at a premises where undue concentration exists (i.e., an over-concentration of licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code). Sections 23958 and 23958.4 of the Business and Professions Code requires the Department to deny the application unless the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. Please complete items #24 to #30 below and certify or affix an official seal, or attach a copy of the Council or Board resolution or a signed letter on official letterhead stating whether or not the issuance of the applied for license would serve as a public convenience or necessity.

24. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?

Yes

No

See Attached (i.e., letter, resolution, etc.)

25. ADDITIONAL COMMENTS, IF DESIRED (may include reasons for approval or denial of public convenience or necessity):

26. CITY/COUNTY OFFICIAL NAME

27. CITY/COUNTY OFFICIAL TITLE

28. CITY/COUNTY OFFICIAL PHONE NUMBER

29. CITY/COUNTY OFFICIAL SIGNATURE

30. DATE SIGNED

ATTACHMENT 3

Letter Regarding Public Convenience Or Necessity

To Sacramento County
Yuba Planning Department

RE: Applicant: Patrick Ruihua Fong
Address: 1270 Stabler Lane, Yuba City, CA 95993

To the Department:

I am the Applicant, applying for a new On-Sale Beer and Wine – Eating Place license for the above-referenced address. My business is basically a Chinese restaurant, with a modestly priced menu. There are no other such businesses located within 1,000.00 feet of our location, and our business operation hours will be from 11:00 am to 9:00 pm.

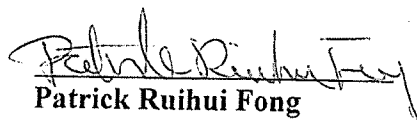
My business is situated in a shopping center in a highly commercialized area, with a parking lot. Our customers come from the other owners and operators within the shopping center and from a wide range of the surrounding areas since our business is the only Chinese cuisine restaurant in the vicinity. I bought this business in December, 2019. For many years, the previous owner of the business had an On-Sale Beer and Wine – Eating Place license in the operation of his business. Many of the same customers have been asking for alcoholic drinks to go with their meals. Some time, they would leave if they find that alcoholic drinks are not served in my restaurant.

There are residences located in the vicinity of our business; however, disturbances due to the sales of alcohol at our business would not be a problem since these residents are separated from the shopping center by a busy street, and are fenced off by high walls so that they are isolated sufficiently from the shopping center. I believe that an alcohol license will enhance the success of my business, helping other businesses in the entire area to recover from the Covid19 pandemic. There is no entertainment of any kind in our operation, just serving good foods.

I am determined to train our staff on the laws relating to the sales of alcohol to the public and to ensure that there would not be undue loitering or noises around my premises or any problem related to the sales of alcoholic beverages in our restaurant. If need to, I shall be employing security to insure that there are no problems relating to the serving of alcohol in our restaurant, making sure that there shall be no unduly gathering or disturbances in and around our restaurant.

I believe that the issuance of the alcohol license at my restaurant is a win-win situation for all the stake holders, my business, my clients and the City of Yuba.

July 11, 2022


Patrick Ruihua Fong