

CITY OF YUBA CITY
STAFF REPORT

Date: November 15, 2022
To: Honorable Mayor & Members of the City Council;
From: Development Services Department
Presentation By: Doug Libby, Deputy Director of Development Services

Summary

Subject: Millennium Family Entertainment - Department of Alcoholic Beverage Control Application

Recommendation: Adopt a Resolution making a finding of public convenience or necessity for the issuance of a Type 40 (on-sale beer) Alcoholic Beverage Control (ABC) License at 901 Spiva Avenue, Suite A (Millennium Family Entertainment Center)

Fiscal Impact: No direct fiscal impact will 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 40 (on-sale beer) Alcoholic Beverage Control License at 901 Spiva Avenue, Suite A (Millennium Family Entertainment Center).

Council's Strategic Goal:

This item aligns with City Council's Strategic Goal of being Business Friendly.

Background:

The City has received an application from John and Patricia Buckland, who own the Millennium Family Entertainment Center located at 901 Spiva Avenue, Suite A, which is approximately 796 feet east of the intersection of Gray and Spiva Avenues and approximately 800 feet east of the Gray Avenue Middle School property. They are requesting a Type 40 (on-sale beer) license from the Department of Alcoholic Beverage Control. The application states the applicant has a current Type 41 (Restaurant Beer and Wine) license that will be inactivated in exchange for the Type 40 license. The reason for the change is a Type 41 license requires food service (similar to a restaurant) whereas the operation is moving to snack-based food offerings. This change will eliminate wine as a potential offering to customers, and if approved, the Type 40 (on-site beer) license sales are anticipated to amount to less than 1 percent of gross sales. Since the Type 41 License is only being inactivated, they may choose to reactivate it in the future depending on customer food service needs. The current proposal allows Millennium Family Entertainment's operation to be consistent with ABC requirements.

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 is required to approve the application, prior to ABC approving it. In this instance, Millennium Family Entertainment Center's application states the census tract in which it is located currently has eleven (11) active ABC licenses where three (3) are allowed. This location is in Yuba City Police Beat No. 4.

Analysis:

Millennium Family Entertainment is open until 10pm on Fridays and Saturdays and 8pm on other evenings. 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 believe this facility, including the sale of beer, is standard in this type of business and that public convenience is provided through the sale of beer 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 40 (on-sale beer) Alcoholic Beverage Control License at 901 Spiva Avenue, Suite A in Yuba City.

Alternatives:

Do not make a finding of public convenience and necessity for the issuance of a Type 41 restaurant beer and wine Alcoholic Beverage Control License at 901 Spiva Avenue, Suite A in Yuba City (Millennium Family Entertainment).

Recommendation:

Adopt a Resolution making a finding of public convenience or necessity for the issuance of a Type 40 (on-sale beer) Alcoholic Beverage Control (ABC) License at 901 Spiva Avenue, Suite A (Millennium Family Entertainment Center).

Attachments:

1. Attachment 1 - Combined coversheet and resolution
2. Attachment 2 Combined cover sheet and ABC application

Prepared By:
Doug Libby, AICP
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 40 (ON-SALE BEER) ALCOHOLIC
BEVERAGE CONTROL (ABC) LICENSE AT 901 SPIVA AVENUE, SUITE
A, YUBA CITY (MILLENNIUM FAMILY ENTERTAINMENT)**

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 John and Patricia Buckland, the ("Applicant") who is the owner of Millennium Family Entertainment located at 901 Spiva Avenue, Suite A, in Yuba City, requesting a letter of Public Convenience and Necessity to allow a Type 40 (on-sale beer) License in a census tract that has surpassed the number of allotted licenses and is located in Police Beat 4 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 40 (on-sale beer) License for the location at 901 Spiva Avenue, Suite A, 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 40 (on-sale beer) License for the location at 901 Spiva Avenue, Suite A (Millennium Family Entertainment).

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 establishment's service with limited hours from until 10:00pm on Fridays and Saturdays and earlier on other nights and subject to supervision as specified in the applicants letter which is incorporated by reference.
 - b. The request to permit beer sales for on-premise consumption in conjunction with this establishment 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 18th day of October, 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

1. APPLICANT'S NAME: BUCKLAND, JOHN & PATRICIA (Geo Code: 5102)

2. PREMISES ADDRESS (Street number and name, city, zip code): 901 SPINA AVE, STE A, YUBA CITY, CA 95991

3. LICENSE TYPE: 40

4. TYPE OF BUSINESS

<input 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 checked="" type="checkbox"/> Other - describe:	Family Entertainment Center		

5. COUNTY POPULATION: 101289

6. TOTAL NUMBER OF LICENSES IN COUNTY: 13913

7. RATIO OF LICENSES TO POPULATION IN COUNTY: 13.913

8. CENSUS TRACT NUMBER: 502.01

9. NO. OF LICENSES ALLOWED IN CENSUS TRACT: 3

10. NO. OF LICENSES EXISTING IN CENSUS TRACT: 11

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) YUBA CITY POLICE DEPT

13. CRIME REPORTING DISTRICT NUMBER: BEAT 4

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: 1621

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:

YUBA CITY PLANNING DEPT
1201 CIVIC CENTER BLVD
YUBA CITY, CA 95993

FOR DEPARTMENT USE ONLY

PREPARED BY (Name of Department Employee):

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 due to convenience or necessity, it could 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.

APPLICANT HAS A CURRENT TYPE 41 ABC LICENSE. THE TYPE 41 LICENSE WILL BE SURRENDERED WHEN/IF THE TYPE 41 IS EXCHANGED FOR THE TYPE 40 LICENSE. FOOD WILL BE AVAILABLE WITH THE TYPE 40 LICENSE AND SERVICES. THE TYPE 40 LICENSE WILL REMOVE SALES OF WINE AND LIMIT SALES TO BEER ONLY. SALES PURSUANT TO THIS LICENSE WILL AMOUNT TO LESS THAN 1% OF GROSS SALES.

22. APPLICANT SIGNATURE

23. DATE SIGNED

9/16/2022

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