
STAFF REPORT

**AMENDMENTS TO ALLOW THE SALE
OF BEER AND WINE AT GAS
STATIONS**

**AT-23-005
September 21, 2023**



Agenda Item

DATE: SEPTEMBER 21, 2023

TO: PLANNING COMMISSION

FROM: KRISTOPHER J. KOKOTAYLO, CITY ATTORNEY

SUBJECT: TEXT AMENDMENTS (AT-23-005) TO TITLE 18, ZONING, OF THE UNION CITY MUNICIPAL CODE TO UPDATE CHAPTER 18.08 DEFINITIONS, SECTION 18.08.267 GAS STATION MARKETEEER; CHAPTER 18.26 MARKETPLACE MIXED USE (MMU) DISTRICT, SECTION 18.26.030 CONDITIONAL USES; CHAPTER 18.35 CORRIDOR MIXED USE COMMERCIAL (CMU) DISTRICT, SECTION 18.35.030 CONDITIONAL USES; CHAPTER 18.36 COMMERCIAL DISTRICTS, SECTION 18.36.030 CONDITIONAL USES FOR NEIGHBORHOOD COMMERCIAL (CN) AND COMMUNITY COMMERCIAL (CC) DISTRICTS; CHAPTER 18.40 INDUSTRIAL DISTRICTS, SECTION 18.40.020 LAND USE REGULATIONS—INDUSTRIAL DISTRICTS, FOR LIGHT INDUSTRIAL (ML) TO ALLOW THE SALE OF BEER AND WINE AT GAS STATIONS

APPLICANT: THE CITY OF UNION CITY

REQUEST: The City of Union City is proposing amendments to Title 18, Zoning, of the Union City Municipal Ordinance, to allow the sale of beer and wine at gas stations, subject to all existing regulatory and licensure requirements.

LOCATION: Citywide

ENVIRONMENTAL ASSESSMENT:

The amendments are exempt from environmental review in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), the general exemption for projects with no potential for a significant effect on the environment. As a series of text amendments, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment.

I. BACKGROUND

The Union City Zoning Ordinance currently prohibits alcohol sales at service stations (aka gas stations). The City adopted the prohibition when such a prohibition was legal under California law. Currently, cities are prohibited by state law from specifically banning the sale of beer and wine at gas stations.

At the July 25, 2023, meeting, the City Council directed the City Attorney to prepare an ordinance proposing the repeal of the prohibition on alcohol sales at gas stations. Because the prohibition is housed within the Zoning Ordinance, the Planning Commission must first consider the item and provide a recommendation to the City Council.

The proposed amendments will continue Union City's practice of maintaining the City's Zoning Ordinance in compliance with state requirements.

II. DISCUSSION

The Zoning Ordinance prohibits the sale of alcohol at gas stations. The proposed amendments would repeal this prohibition and allow for the sale of beer and wine at gas stations. The sale of liquor would still be prohibited. At the time the City originally adopted the prohibition, such a prohibition was legal under California law. However, Business and Professions Code Section 23790.5 currently prohibits a city from specifically banning the sale of beer and wine at gas stations.

Furthermore, under Section 23790.5(d) of the Business and Professions Code, gas stations that sell beer and wine must not display beer or wine within five feet of a cash register or the front door of a permanently affixed cooler, advertise alcoholic beverages at motor fuel islands, display or sell beer or wine from an ice tub, advertise beer or wine on motor fuel islands, advertise beer or wine on buildings or windows with self-illuminating advertisements, or allow an employee under 21 to sell beer or wine from 10 p.m. to 2 a.m. These provisions are enforced by the California Department of Alcoholic Beverage Control (ABC) through their permitting program.

With approval of these amendments, beer and wine sales would be permitted at gas stations under the Zoning Ordinance. Gas stations are currently conditionally permitted in the Marketplace Mixed Use (MMU), Corridor Mixed Use (CMU), Light Industrial (ML), Neighborhood Commercial (CN), and Community Commercial (CC) Zoning Districts, pursuant to the City's regulations and California law. Any new gas station will continue to require a use permit. Although the amendments would permit the sale of beer and wine at gas stations, any business wishing to sell beer and wine would be required to obtain the necessary permits and authorizations from ABC. One such

approval is the process of public convenience and necessity. When ABC determines there is an oversaturation of alcohol beverage outlets in a particular census tract, state law prohibits ABC from issuing or transferring alcohol licenses in that census tract unless the City finds that the public interest is served and issues a Public Convenience and Necessity (PCN) determination. In 2022, the City amended the Zoning Ordinance to add a process and findings for making this determination. Through this process, the Economic and Community Development Director has been delegated the authority by the City Council for making the PCN determination. For more information regarding the PCN determination, see Section 18.52.084, Public convenience or necessity determination and appeals, of the Zoning Ordinance.

Proposed Amendments

Chapter 18.08 Definitions

An amendment to Chapter 18.08, Definitions, is proposed and includes amending Section 18.08.267 *Gas station marketeer*, for consistency with the proposed amendment. Deleted text is shown with a strikethrough.

18.08.267 Gas station marketeer.

A “gas station marketeer” is:

A. An enclosed area located on a gasoline service station site, where merchandise that is not considered accessory to the normal operation and maintenance of automobiles is sold. This merchandise includes convenience food items such as sodas, ~~nonalcoholic~~ beverages, chips, cookies, ice cream, and other snack items and also nonfood items.

B. Additionally, the use of refrigerated display cases to which the general public has access constitutes a marketeer. However, a service station may have up to four (4) coin-operated vending machines and may sell cigarettes over the counter only without being considered a marketeer.

Other Zoning Districts – Use Classification Update

Service stations and gas station marketeers are only permitted in a limited number of zoning districts in the City and require use permit approval by the Planning Commission pursuant to Chapter 18.56. Amendments to individual zoning district chapters are proposed to the “service station” use classification to specify that service stations can sell beer and wine. Amendments will be made to all chapters where gas stations are a conditionally permitted use. The district chapters proposed for amendments include:

- Chapter 18.26 Marketplace Mixed Use (MMU) District, Section 18.26.030, Conditional uses
- Chapter 18.35 Corridor Mixed Use Commercial (CMU) District, Section 18.35.030, Conditional uses
- Chapter 18.36 Commercial Districts, Section 18.36.030, Conditional uses for Neighborhood Commercial (CN) and Community Commercial (CC)
- Chapter 18.40 Industrial Districts, Section 18.40.020, Land use regulations— Industrial Districts, for Light Industrial (ML)

D. Noticing & Communication

A newspaper notice for the Zoning Text Amendment was published in the Tri-City Voice on August 31, 2023, as required by State Law. To date, staff have not received any public comments.

III. REQUIRED FINDINGS

Section 18.64.060 requires that, when considering zoning text amendments, the Planning Commission shall provide a recommendation to the City Council on the following:

1. Recommending that the application be granted or denied or that the proposal be adopted or rejected, including the reasons for the recommendation;
2. The relationship of the application or proposal to the general plan and any applicable specific plans; and
3. Whether the change is necessary or desirable to achieve the purposes of Title 18.

IV. ALTERNATIVES

1. Recommend approval of the proposed Zoning Text Amendment (AT-23-005) to the City Council as proposed;
2. Recommend approval of the proposed Zoning Text Amendment (AT-23-005) to the City Council with stated modifications;
3. Recommend denial of the proposed Zoning Text Amendment (AT-23-005) to the City Council, stating reasons for denial; and
4. Continue the matter for further consideration.

V. RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of Zoning Text Amendment (AT-23-005) to the City Council based on the following specific findings:

1. That the Zoning Text Amendments are exempt from environmental review in accordance with CEQA Guidelines Section 15061(b)(3), the general exemption for projects with no potential for a significant effect on the environment. As a series of text amendments, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment; and
2. That the proposed Zoning Text Amendments should be granted to ensure that the City's Zoning Ordinance requirements are consistent with State law; and
3. That the proposed Zoning Text Amendments are consistent with the following General Plan policy:

Policy ED-7.3, Remove Regulatory Barriers: *The City shall continually work to identify and remove any unnecessary regulatory barriers that discourage private-sector investment.*

The proposed amendments will remove language from the Zoning Ordinance that prohibits alcohol sales at gas stations, allowing operators an expanded choice of sales items and an expanded source of revenue; and

4. That the proposed Zoning Text Amendments are necessary and desirable to achieve the purpose of Title 18, which seeks to promote and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people. Any business selling alcohol is required to obtain a permit from the California Department Alcohol Beverage Control and is required to comply with any applicable requirements and laws. In addition, the Public Convenience and Necessity process is in place to help protect against the impacts associated with overconcentration of commercial uses, which sell alcohol.

It is further recommended that the Planning Commission adopt the attached resolution confirming this action.

Prepared by

Juliet Vaughn, Associate Attorney

Natalie Dean, Associate Planner

Attachments

Attachment 1 – Planning Commission Resolution

- Exhibit A: Draft Zoning Text Amendment (Clean)
- Exhibit B: Draft Zoning Text Amendment (Redlines)