

RESOLUTION NO. 2015-077

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC
CONVENIENCE OR NECESSITY FOR THE TOTAL WINE & MORE PROJECT
PROJECT NO. EG-15-001, ASSESSOR PARCEL NUMBER 116-1160-004**

WHEREAS, the Planning Department of the City of Elk Grove received an application on January 8, 2015 from California Fine Wines and Spirits, LLC, dba Total Wine & More (the Applicant) requesting a Conditional Use Permit and Determination of Public Convenience and Necessity for off-site sale of beer, wine, and liquor and limited on-site tasting of beer and wine for a vacant tenant space located at 7707 Laguna Boulevard, Suite 140 (Total Wine & More (EG-15-001), hereinafter the Project); and

WHEREAS, the proposed Project is located on real property in the incorporated portions of the City of Elk Grove more particularly described as APN: 116-1160-004; and

WHEREAS, the City determined that the Project is subject to the California Environmental Quality Act; and

WHEREAS, Section 15301 (Existing Facilities) of the California Code of Regulations, Title 14, Chapter 3 (State CEQA Guidelines) State exempts projects that involve negligible or no expansion of an existing use; and

WHEREAS, the Planning Commission held a duly noticed public hearing on March 19, 2015 as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting; and

WHEREAS, the Planning Department considered the Project request pursuant to the General Plan, Title 23 of the Elk Grove Municipal Code (Zoning Code), and all other applicable State and local regulations, and voted 5-0 to recommend approval of the Project to the City Council; and

WHEREAS, Chapter 4.54, Article 5 of the Elk Grove Municipal Code establishes the City Council as the appropriate authority to hear and decide on all Determination of Public Convenience or Necessity requests; and

WHEREAS, the City Council held a duly noticed public hearing on April 8, 2015, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Elk Grove hereby approves the Conditional Use Permit and Determination of Public Convenience or Necessity for the Total Wine & More Project (EG-15-001), as described in Exhibit A and illustrated in Exhibit B, subject to the Conditions of Approval contained in Exhibit C (all incorporated herein by this reference), based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines section 15301.

Evidence: A Categorical Exemption Section 15301 (Existing Facilities) exempts projects that involve negligible or no expansion of an existing use. This project consists of the sale of alcoholic beverages within an existing commercial shopping center. Total Wine & More neither proposes to physically expand the existing commercial tenant space, nor does its use represent a significant expansion of the site's current commercial use. Based on staff's review of the project, no special circumstances exist that would create a reasonable possibility that granting a CUP and PCN to sell alcohol from this location will have a significant effect on the environment. Therefore, the proposed project qualifies for the exemption under CEQA Guidelines Section 15301 and no further environmental review is required.

Conditional Use Permit

Finding: The proposed use is consistent with the General Plan and all applicable provisions of Zoning Code.

Evidence: The Elk Grove Zoning Code allows for liquor stores within the SC zone subject to the approval of a Conditional Use Permit. Staff has analyzed Total Wine & More's proposal and determined that it is consistent with the development provisions established in Title 23, Zoning of the Elk Grove Municipal Code. Since Title 23 establishes land use provisions that enable the General Plan's policies to be achieved, this project can be found consistent with the goals, objectives and policies of the General Plan.

Finding: The establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of such use, or general welfare of the City.

Evidence: As proposed, the Applicant's sale of alcohol within an existing commercial tenant space will not be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of Total Wine & More, nor to the general welfare of the City. The closest playground (Zimbelman Park) is located over 1,000 feet to the northeast behind the Parkside at Laguna II residential subdivision. The nearest school (Harriett Eddy Middle School) is located approximately 1,500 feet south of the site behind the Village Crossing Apartment Complex. Neither of these would be considered directly accessible from the Project site. Additionally, Total Wine & More will implement security measures at the store to ensure the safe sale of alcohol, including the use of security cameras and employee training. Total Wine & More also requires employees to undergo extensive training and to participate fully in the store's strict operational policies regarding the sale of alcohol. Further, the Elk Grove Police Department has stated that it does not have a public safety related objection to approval of the Project.

Letter of Public Convenience or Necessity

Finding: The proposed use is compatible with neighborhood character.

Evidence: The application was routed to the Elk Grove Police Department, the Code Enforcement Department, and the Building Department. No violations against the property or Applicant were identified that would discourage the issuance of a Type 21 and Type 42 alcohol license for Total Wine & More. The Project site is located within a commercial area, and is near other commercial uses. Therefore, the sale of alcohol for off-site consumption and limited sampling of beer and wine at this location is compatible with the uses in the surrounding area.

Finding: The proposed use will be of benefit to the neighborhood.

Evidence: Because the location is within an existing commercial shopping center that does not contain an existing liquor store, the sale of alcohol will increase convenience to shoppers. Total Wine & More facilities typically carry a wide variety of distilled liquor, wine, beer, and malt-based wine coolers. The national chain currently has over 110 stores in 16 states, including 12 within the State of California. The stores are designed to be large, clean, and comfortable to provide an up-scale shopping environment. The stores are designed to be safe and require that employees undergo extensive training to increase both product knowledge and to prevent sale of alcoholic beverages to minors.

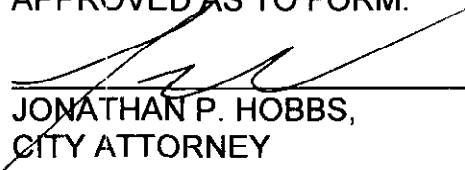
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 8th day of April 2015.



GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Exhibit A
TOTAL WINE & MORE (EG-15-001)
Project Description

PROJECT DESCRIPTION

The proposed Project, **Total Wine & More**, involves a Conditional Use Permit (CUP) and a Determination of Public Convenience or Necessity (PCN) to allow for sale of beer, wine, and liquor for off-site consumption (Type 21 license), as well as a permit for on-site consumption of beer and wine in three (3) separate sanctioned-off areas for limited wine and beer tasting (Type 42 license) within an existing 21,332 square foot retail store.

Conditional Use Permit (CUP)

Chapter 23.26 of the Elk Grove Municipal Code classifies a retail establishment which has fifty percent (50%) or more of the shelving or gross floor area devoted to the public display and sale of alcoholic beverages for off-site consumption as a "liquor store". According to Chapter 23.27, Table 23.27-1 (Allowed Uses and Required Entitlements for Base Zoning Districts) this use requires approval of a CUP in the SC (Shopping Center) zoning district. The CUP allows the approving authority to evaluate individual uses that are supported by the General Plan, though due to certain operating characteristics or site development features may need further review to ensure their compatibility with surrounding development and uses.

Determination of Public Convenience or Necessity (PCN)

The State Department of Alcoholic Beverage Control (ABC) requires an applicant to obtain a PCN from the affected jurisdiction when the establishment is located within a "high crime" area or when the census tract is deemed "over-concentrated" by ABC's standards. According to ABC, two licenses are allowed in this census tract before it is considered to be over-concentrated. Since ten active licenses exist (this store would be the eleventh), this location is deemed "over-concentrated" by ABC.

Exhibit B

TOTAL WINE & MORE (EG-15-001)

Project Floor Plan

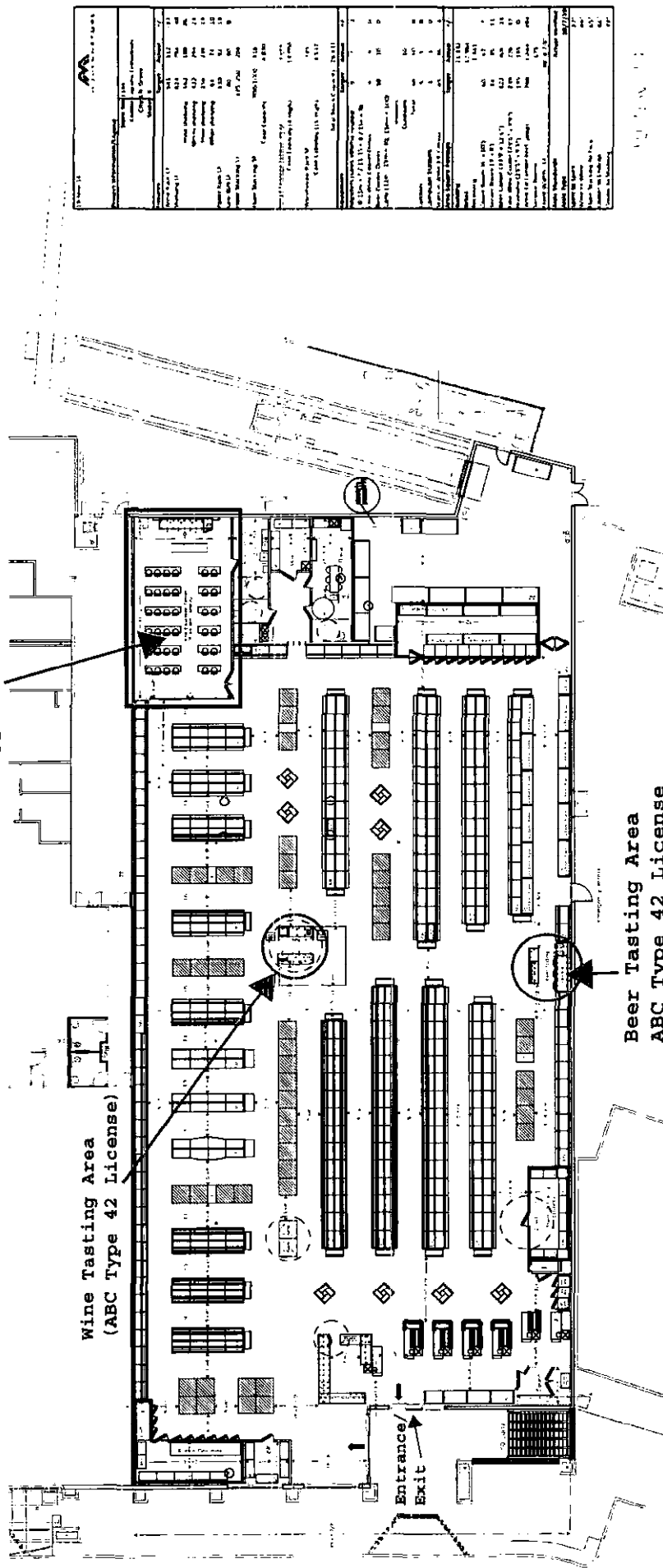
Total Wine & More #1114- Floor Plan

7707 Laguna Blvd, Ste 140, Elk Grove, CA

Wine Education Area
(ABC Type 42 License)

Wine Tasting Area
(ABC Type 42 License)

Beer Tasting Area
ABC Type 42 License



**Exhibit C
TOTAL WINE & MORE (EG-15-001)
Conditions of Approval**

<u>Conditions of Approval</u>		<u>Timing/ Implementation</u>	<u>Enforcement/ Monitoring</u>	<u>Verification (date and Signature)</u>
On-Going				
1.	Development and operation of the proposed Project shall be consistent with the Project Description and Project Plans as provided in Exhibits A and B, incorporated herein by this reference. Deviations from the approved plans shall be reviewed by the City for substantial compliance and may require amendment by the appropriate hearing body.	On-Going	Planning	
2.	The Applicant/Owner or Successors in Interest (hereby referred to as the Applicant) shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	On-Going	Planning	
3.	This action does not relieve the Applicant of the obligation to comply with all laws, statutes, regulations, and procedures.	On-Going	Planning	
4.	Beer, malt beverages, and wine coolers in containers of 16 oz. or less cannot be sold by single containers from a refrigerator or cooler, but may be sold from non-refrigerated shelves. If beer, malt beverages, or wine coolers in containers of 16 oz. or less are sold from refrigerators or coolers they must be sold in manufacturer pre-packaged multi-unit quantities.	On-Going	EGPD	
5.	On-Sale consumption of wine or beer by permission of the ABC Type 42 licenses shall only occur between the hours of 10:00 AM and 9:00 PM.	On-Going	EGPD	
6.	The areas sectioned off for Type 42 On-Sale consumption shall be set up in a designated area and separated by a temporary barrier. A sign will be displayed stating only individuals over the age of 21 years old are permitted in these areas.	On-Going	EGPD	
7.	All Type 42 On-Sale beer or wine consumption shall be conducted as tastings only. A single tasting of wine shall not exceed one ounce. No more than three tastings of wine shall be provided to any person on any day. The tasting of beer is limited to eight ounces of beer per person per day.	On-Going	EGPD	

Exhibit C
TOTAL WINE & MORE (EG-15-001)
Conditions of Approval


	<u>Conditions of Approval</u>	<u>Timing/Implementation</u>	<u>Enforcement/Monitoring</u>	<u>Verification (date and Signature)</u>
8.	Only one type of alcohol (beer or wine) may be served in a designated tasting area at one time. Multiple tastings can occur in each of the three designated tasting areas simultaneously, however only one type of alcohol may be served in each one.	On-Going	EGPD	
9.	A person under 21 years of age shall not serve, or be served, wine or beer within the establishment.	On-Going	EGPD	
10.	Persons serving beer or wine shall not consume any alcohol while operating the tasting area.	On-Going	EGPD	
11.	Consumers shall not be permitted to leave the designated tasting areas with an open container of alcohol.	On-Going	EGPD	
12.	The cashier area shall be equipped with either a CCTV camera system with recording and playback capability or a 35mm demand camera to discourage criminal acts and aid in criminal apprehension. The recorder should be housed in a secure room away from the cash register area.	On-Going	EGPD	
13.	Total Wine & More corporation shall implement robbery, theft and crime prevention programs at this location. Applicant is strongly encouraged to participate in the Elk Grove Police Department's Shoplifting Program. If proper crime prevention standards are not implemented or utilized effectively, the Police Department will reserve the right to require a security guard on site.	On-Going	EGPD	
14.	Signage shall be posted on the property to discourage loitering and alcohol consumption in the parking lot, citing the authority of the penal code section regarding trespassing, and municipal code sections. Potential loitering problems will be minimized by an active concerned attitude projected by store personnel. If loitering does become a problem on the site, the Police Department will reserve the right to require a security guard on site.	On-Going	EGPD	

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2015-077**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 8, 2015 by the following vote:

AYES : COUNCILMEMBERS: Davis, Hume, Detrick, Ly, Suen
NOES: COUNCILMEMBERS: None
ABSTAIN : COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None



**Jason Lindgren, City Clerk
City of Elk Grove, California**