



# AGENDA REPORT

**Department:** Community Development  
**Prepared by:** David Welch, Associate Planner  
**Meeting Date:** Tuesday, September 6, 2022  
**Approved by:** Brad Raulston, City Manager

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**SUBJECT:**

Public hearing for a request for a Conditional Use Permit (CUP) for on-site distilled spirits sales and live entertainment at an existing beer and wine-licensed bar (Machete Beer House) located at 2325 Highland Avenue.

**RECOMMENDATION:**

Staff recommends approval of the request for on-site distilled spirits sales and live entertainment, subject to the attached recommended conditions. The sale of distilled spirits and live entertainment are conditionally-allowed uses in the Major Mixed-Use Corridor (MXC-2) zone.

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

The Planning Commission recommended approval of the Conditional Use Permit by unanimous vote of those present. Commissioner Miller was absent.

**EXPLANATION:**

Case File No.: 2022-08 CUP

Location: East side of Highland Ave between E. 23<sup>rd</sup> St. and E. 24<sup>th</sup> St.

Assessor's Parcel Nos.: 561-312-02

Staff report by: David Welch – Associate Planner

Applicant: Eduardo Trejo

Zoning designation: MXC-2 (Major Mixed-Use Corridor)

Adjacent use and zoning:

North: El Cubilete Tires / MXC-2

East: Single-family residences across the alley / RS-3 (Medium-Low Density Residential)

South: Birria Kings Street Tacos and Keg N Bottle / MXC-2

West: ARCO gas station and vacant restaurant across Highland Ave. / MXC-2

Environmental review: The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and has been determined to be categorically exempt from environmental review pursuant to Class 1, Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit.

### Executive Summary

The property has been a bar serving beer and wine for several years and is requesting to upgrade their current ABC Type 42 license (on-sale beer and wine-public premises) to a Type 48 (on-sale general-public premises). The applicant also proposes to add live entertainment in the form of jazz, mariachi, and DJs. Proposed hours of operation are from 6:00 a.m. to 2:00 a.m. daily. The business operates a walk-up coffee window until 2:00 p.m. every day.

### Site Characteristics

The subject property is approximately 0.19 acres in size and is developed with an approximately 2,800 square-foot building. The subject suite is 1,400 square feet in size and occupies approximately half of the building, with the remaining space occupied by El Cubilete Tires. Four parking spaces are available on site.

The area is mostly commercial in nature, with single-family residences located to the east across an alley. The property is in census tract 116.01, which includes the area from East 18<sup>th</sup> Street north to East 24<sup>th</sup> Street, and between National City Boulevard and 'L' Avenue. The attached census tract map shows the location of the subject tract (Attachment 6).

### Proposed Use

The applicant is proposing to sell distilled spirits in conjunction with existing beer and wine sales in the existing 1,400 square-foot bar (ABC Type 48). The business will continue to operate a coffee window as an accessory use until 2:00 p.m. in the afternoon daily. Hours of operation for the business are currently 6:00 a.m. to 2:00 a.m. daily.

The applicant also proposes to offer live entertainment in the form of jazz, mariachi, and DJs. Live entertainment will only be indoors. The occupancy of the bar is 49 people, which would place a limitation on the number of patrons at all times, including during live performances.

Seating is currently provided on the exterior of the bar to serve patrons of the coffee window. No alcohol sales or consumption are permitted outside. The rear of the property is currently used for screened, outdoor storage.

### Analysis

Section 18.30.050 of the Land Use Code allows for on-site alcohol sales and live entertainment with an approved Conditional Use Permit (CUP). Additional requirements for alcohol CUPs include expanded notification, a community meeting, and distance requirements. In addition, City Council Policy 707 regulates alcohol sales in the City.

### Mailing

All property owners and occupants within a distance of 660 feet are required to be notified of a public hearing for alcohol-related CUP applications. Notice of this public hearing was sent to 654 occupants and owners.

### Community Meeting

Pursuant to Section 18.30.050(C) of the National City Zoning Code, a community meeting was held Saturday, March 5, 2022 at 10:00 a.m. at the subject bar. The meeting advertisement is attached (Attachment 8); there was one attendee.

### Distance Requirements

Chapter 18.030.050(D) of the National City Zoning Code requires a 660-foot distance from any public school and a 1,000-foot distance from any other bar or cocktail lounge. The property is both within 660 feet of Olivewood Elementary School and 1,000 feet of Aja Lounge, a lounge with an existing Type 48 license. However, the commercial suite housing Machete Beer House has been in use as a bar prior to the distance requirements in the code and, therefore, is not subject to these requirements unless the use is discontinued.

### City Council Policy 707

The Council-adopted policy on alcohol-related businesses provides standard conditions of approval for off-sale, on-sale with purchase of food, and brewery tasting rooms. The two conditions specific to on-sale businesses only require the sale of food to exceed the sale of alcohol and for alcohol to only be available with the purchase of food. The policy does not anticipate a new CUP for a bar or similar alcohol businesses that does serve food even though they are permitted in the Code. Furthermore, Machete Beer House is an existing bar that precedes the requirements of Policy 707. Staff concludes that this business is not subject to the requirements for the sale of food in conjunction of alcohol.

### Hours of Operation

The most recent CUPs for on-site alcohol consumption have had varying hours of operation (see following table). In addition, the Planning Commission recently recommended approval of 2022-18 CUP with hours until 1:00 a.m. daily for on-site consumption, although the City Council has yet to approve the item. This proposal would be the first CUP in National City for a Type 48 license. Machete Beer House currently has

alcohol sales until 2:00 a.m. daily under a Type 42 license. Aja Lounge, with a Type 48 license at 2305 Highland Avenue, also operates until 2:00 a.m. without a CUP.

<b>Business</b>	<b>Address</b>	<b>CUP type</b>	<b>End time</b>
Grill House at Big Ben	108 E 8 <sup>th</sup> St	Beer & Wine	10 p.m.
Denny's	1904 Sweetwater Rd	Beer & Wine	11 p.m.
Royal Mandarin	1132 E Plaza Blvd	Beer & Wine	10 p.m.
Chipotle	404 Mile of Cars Way	Beer	11 p.m.
Hooters (closed)	Westfield Plaza Bonita	Beer/Wine/Spirits	12 a.m.
Yi Sushi	1430 E Plaza Blvd	Beer & Wine	11 p.m.

Conditions of approval for alcohol sales hours reflect what the applicant has requested (6:00 a.m. to 2:00 a.m.). The requested hours would allow the applicant to continue operating under its current hours.

Live entertainment

As mentioned above, the applicant is proposing live entertainment indoors from 6:00 a.m. to 2:00 a.m. daily. There have been three CUPs in recent years that included live entertainment as follows:

<b>Business</b>	<b>Address</b>	<b>Year</b>	<b>Entertainment hours</b>
Tita's II	3421 Plaza Blvd.	2010	5 p.m. to 12 a.m. W-Sa
Big Ben Market	108 East 8 <sup>th</sup> St.	2015	12 p.m. to 10 p.m. F-Sa
			12 p.m. to 9 p.m. Su
Gerry's Grill	Westfield Plaza Bonita	2021	7:30 p.m. to 10 p.m. Th
			8:30 p.m. to 11:30 p.m. F-Sa

In addition, City Council recently approved 2022-18 CUP (Market on 8<sup>th</sup>) with indoor live entertainment from 12:00 p.m. to 10:00 p.m. Sunday through Thursday and 12:00 p.m. to 11:30 p.m. Friday and Saturday. The hours are also modified to begin at 3 p.m. when the adjacent school is in session.

In the City, the times for live entertainment vary and most often have differing times for weekdays as opposed to weekends. Both Tita's II and Gerry's Grill have live entertainment indoors, which assuages noise issues (Tita's has a condition requiring doors be closed during live entertainment times). The Grill House at Big Ben is, for all intents and purposes, an outside venue (there are clear plastic vinyl barriers along 'A' Avenue); their live entertainment hours end 9:00 p.m. on Sundays, and at 10:00 p.m. on Fridays and Saturdays.

The proposed hours of 6:00 a.m. to 2:00 a.m. daily far exceed all active live entertainment CUPs and pose potential noise issues, particularly as there are residences across the alley to the east of the business. The business currently does not have any indoor patrons until after 2:00 p.m. as only the coffee window operates during these hours. The business is also constrained by the occupancy load of the space, which permits a maximum of 49 people. This number is inclusive of both staff and performers. Due to these limitations, staff is recommending live entertainment only as an incidental use to the primary use, which is a bar, for the purpose of the enjoyment of the patrons.

Staff suggests reducing the proposed hours to be more consistent with the current operation of the business, remove conflict with the operating hours of Olivewood Elementary School, and reduce possible noise concerns during later hours. The afternoon session for the school typically ends at 3:00 p.m. while it is in session. Generally, starting after the coffee window concludes operation as well as reducing the hours later in the evening are suggested, depending on the day. An example could be as follows:

Live entertainment inside:

12:00 p.m. to 10:00 p.m. Sunday

2:00 p.m. to 10:00 p.m. Monday through Thursday\*

2:00 p.m. to 11:30 p.m. Friday\*

12:00 p.m. to 11:30 p.m. Saturday

\*From 4:00 p.m. while Olivewood Elementary is in session

Conditions of approval related to live entertainment reflect what the applicant has requested (6:00 a.m. to 2:00 a.m.), but staff invites discussion on the matter, based on what has previously been approved per the table and discussion above.

Regardless of live entertainment hours, conditions have been included to require compliance with noise limitations contained in Title 12 (Noise) of the Municipal Code. Conditions also include requiring doors and windows to remain closed during live entertainment activities. Conditions are also proposed to ensure that live entertainment remains incidental to the bar including a restriction on advertised events.

### Department and Agency Comments

#### Alcohol Sales Concentration/Location

Per the California Department of Alcoholic Beverage Control (ABC), there are currently three on-sale licenses in census tract 116.01, including Machete Beer House, and a maximum of seven are recommended, meaning that the census tract is not considered by ABC to be over-saturated with regard to on-sale alcohol outlets. For reference, the outlets are:

<b>Name</b>	<b>Address</b>	<b>License Type*</b>	<b>CUP</b>
Machete Beer House	2325 Highland Ave	42	N
Aja Lounge	2305 Highland Ave	48	N
Salud	2333 Highland Ave	41	Y

\* Type 41 - On-Sale Beer and Wine

Type 42 - On-Sale Beer and Wine – Public Premises

Type 48 - On-Sale General – Public Premises

Police Department (PD)

The ABC Risk Assessment provided by PD allocated a total of 18 points, which places it in the Medium Risk category. Medium risk is considered 13-18 points. The proposed location has a medium crime rate, an over-concentration of off-sale alcohol businesses, and above average calls for service. PD comments are included as Attachment 7.

Institute for Public Strategies (IPS)

No comments were received from IPS as of the writing of this report, although they usually recommend at least the need for Responsible Beverage Sales and Service (RBSS) training for all staff. This is a standard condition of approval and is included with this report.

Public Comments

Two public comments were submitted in response to the public hearing held by the Planning Commission on August 1, 2022.

Findings for Approval

The Municipal Code contains six required findings for CUPs as follows:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code.

Alcohol sales and live entertainment are allowable within the MXC-2 zone pursuant to a CUP and the proposed use meets the required guidelines in the Land Use Code for alcohol sales, as discussed in the staff report.

2. The proposed use is consistent with the General Plan and any applicable specific plan.

Alcohol sales and live entertainment are allowable, subject to a CUP, by the Land Use Code, which is consistent with the General Plan. There is no Specific Plan in the area.

3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

No expansion of the building is proposed. The proposal involves an existing commercial space, which was previously analyzed for traffic impacts when it was constructed.

4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

The site is occupied by an existing bar serving beer and wine. The addition of distilled spirits and incidental live entertainment would occur within the existing building, which has four off-street parking spaces.

5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located.

The sale and consumption of distilled spirits is in addition to the existing beer and wine sales for on-site consumption. Alcohol consumption would continue to be monitored by staff of the bar. In addition, the proposed use will be subject to conditions that limit the sale of alcohol and restrict the hours that it will be available. Furthermore, live entertainment will be limited to appropriate hours and to maximum noise standards to avoid impacts to nearby residential uses.

6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and has been determined to be categorically exempt from environmental review pursuant to Class 1, Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit. The reason for the exemption is that no expansion of the building is proposed and use would basically be the same as the current use and is similar to other commercial uses in the area, which are permitted by right in the MXC-2 zone.

The following two findings are also included with alcohol CUPs:

7. The proposed use is deemed essential and desirable to the public convenience or necessity.

Distilled spirits, in addition to beer and wine, will contribute to the viability of the bar, an allowed use in the MXC-2 zone, by allowing a greater variety of drink offerings. Live entertainment will also create an enhanced experience for patrons of the establishment. The proposed use is in line with the purpose of the zone, which, among other goals, is to create vibrant places at an urban scale.

8. Based on findings 1 through 7 above, public convenience and necessity will be served by a proposed use of the property for the on-site sales of alcoholic beverages pursuant to law.

### Findings for Denial

Due to there being other on-sale sites in the area, there are also findings for denial as follows:

1. The proposed use is not deemed essential to the public necessity, as there is already one other outlet in the same census tract that serves distilled spirits, there is an over-concentration of off-sale alcohol businesses, and above average calls for service and a medium crime rate, which could increase with the addition of distilled spirit sales.
2. Based on the above finding, public convenience and necessity will not be served by a proposed use of the property for the sale of alcoholic beverages for on-site consumption pursuant to law.

### Conditions of Approval

Standard Conditions of Approval have been included with this permit as well as conditions specific to on-site alcohol sales per Council Policy 707 such as hours of operation and employee training.

### Summary

The proposed use is consistent with the General Plan due to alcohol sales for on-site consumption and live entertainment being conditionally-allowed uses in the MXC-2 zone. The addition of on-site distilled spirits in conjunction with the existing beer and wine sales is not expected to increase the demand for parking, other services on the property, or have any significant effects on the area. The census tract in which the restaurant is located is not considered to be over-concentrated with regard to on-sale alcohol licenses. Options for City Council are provided below, although the Council may bifurcate the two requests (distilled spirits and live entertainment) and approve one or the other, as opposed to both as the applicant is requesting.



### Options

1. Approve 2022-08 CUP subject to the conditions listed within, based on the attached findings, or findings to be determined by the City Council; or
2. Deny 2022-08 CUP based on the attached finding or findings to be determined by the City Council; or,
3. Continue the item to a specific date in order to obtain additional information.

### **FINANCIAL STATEMENT:**

Not applicable

### **RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:**

Not Applicable

### **ENVIRONMENTAL REVIEW:**

This is a project under CEQA subject to a Categorical Exemption. Existing Facilities CCR 15301. This project qualifies for a Notice of Exemption. CCR 15374.

### **PUBLIC NOTIFICATION:**

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

### **ORDINANCE:**

Not Applicable

### **EXHIBITS:**

- Exhibit A – Map - Overhead
- Exhibit B – 2022-08 CUP Staff Report
- Exhibit C – PC Resolution 2022-19
- Exhibit D – Exhibit A to the PC Report – Floor Plan
- Exhibit E – PowerPoint Slides from PC Meeting
- Exhibit F – Resolution