



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: October 7, 2015

PLANNER: Sean Nicholas, Associate Planner *SN*

SUBJECT: Conditional Use Permit 15-124, Wal-Mart Instructional Alcohol Tasting, a request for beer, wine, and hard alcohol tastings within the grocery area of the Wal-Mart located in the Mixed Use designation of the Rancho San Clemente Specific Plan at 951 Avenida Pico.

REQUIRED FINDINGS

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of the project's compliance with these findings.

Conditional Use Permit, Section 17.16.060 to allow for beer, wine, and hard alcohol tastings within the grocery area of Wal-Mart.

- a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of the Zoning Ordinance, Specific Plan, the San Clemente General Plan, and the purpose and intent of the zone in which the use is being proposed.
- b. The site is suitable for the type and intensity of use that is proposed.
- c. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed use will not negatively impact surrounding land uses.

BACKGROUND

Wal-Mart Stores, Inc., is proposing to serve a full range of alcohol for tastings within the grocery area of Wal-Mart. Wal-Mart currently has an Alcohol Beverage Control (ABC) license to sell a full range of alcohol for off-site consumption. The tastings would be a temporary setup within the grocery area of the facility and would be limited to two to three guests at a time, with people waiting in the aisle. The type of ABC license that is associated with this request requires a third party vendor, not Wal-Mart employees, to perform the tastings. There are two other grocery stores that have tastings in San Clemente, Hanson's Market on Avenida Pico near Los Molinos, and Albertsons on Avenida Pico next to San Clemente High School. The existing locations only have approval for beer and wine tasting, and consistent with those approvals, staff is only supportive of beer and wine tasting.

Site Data

The subject site is over 10 acres and is in the Mixed Use Zoning Designation of the Rancho San Clemente Specific Plan. The site is the Wal-Mart in the Plaza Pacifica shopping center. The site is bordered by residential to the north, commercial components of Plaza Pacifica to the east and west, and Avenida Pico and the Rancho San Clemente Business Park to the south. Any activity associated with a full range of alcohol requires a Conditional Use Permit.

Development Management Team Meeting

The City's Development Management Team (DMT) reviewed the project and the Building and Engineering Division's provided conditions of approval.

Noticing

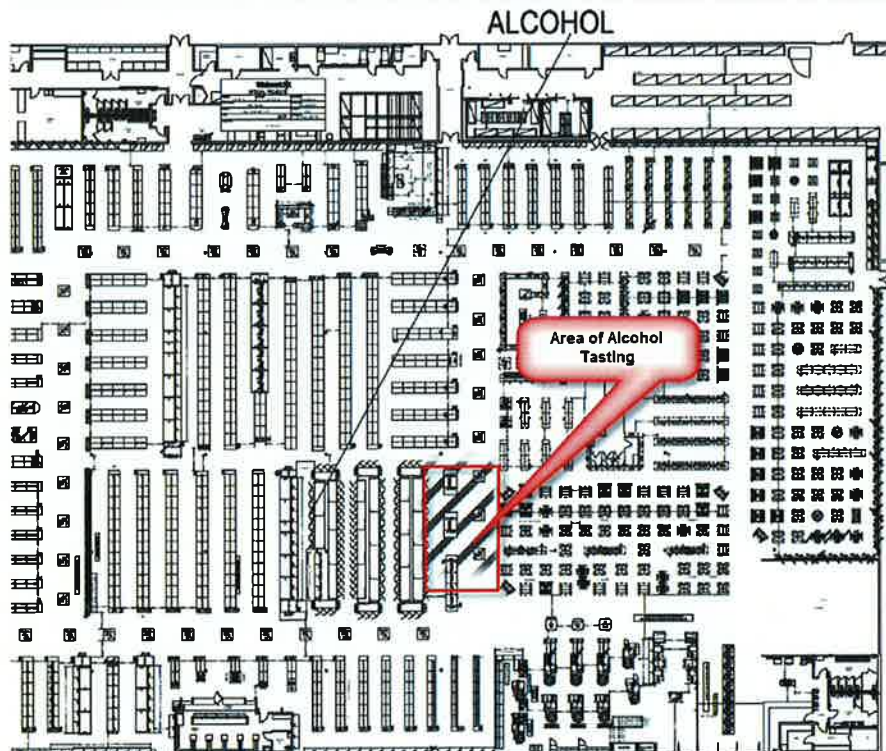
Public notification was completed in accordance with State Law and Municipal Code regulations. Staff has not received public input regarding the proposed request.

PROJECT DESCRIPTION

The applicant is requesting to have beer, wine, and hard alcohol tastings in the grocery area of Wal-Mart. The tasting area would have a temporary service area that will be setup and removed for each tasting event. The type of ABC license being requested by Wal-Mart will require a third party company, to staff the tasting area. No Wal-Mart employees can assist with the tasting, thus Wal-Mart employees will not be impacted by this request.

The tastings are proposed to take place within the grocery aisles, or near the end caps. The tasting areas will be temporary and will be sectioned off from the general public area by rope, similar to what is utilized in the other grocery stores which have beer and wine tasting. The tastings will only occur during normal business hours. Image 1 below is a floor plan provided by the applicant identifying the location of potential tasting location.

Hanson's market and Albertsons on adjacent to San Clemente High School have approval for beer and wine tasting only. Staff is not supportive of the hard alcohol tasting in Wal-Mart or within any grocery/retail store in the community. Staff is working to update the Zoning Ordinance so that only beer and wine tastings will be allowed in grocery/retail locations. The Zoning Ordinance Amendment is not before Planning Commission, and is not tied to this application.

Image 1: Area of Alcohol Tastings within Wal-Mart

PROJECT ANALYSIS

Conditional Use Permit

The applicant is requesting to serve full range of alcohol for the tastings. Based on previous approvals, concerns regarding the expansion of the grocery use, and the accessibility to patrons under 21 years of age, staff is not supportive of the hard alcohol request. Wal-Mart is primarily a retail center and groceries are an ancillary component. Staff is concerned that hard alcohol tasting could become so popular that it will draw patrons that might not typically buy grocery goods and be in the grocery area of Wal-Mart, increasing the grocery use beyond ancillary. The proposal also does not fit in with the character of the center. The center is more of a family oriented center, with none of the other retail locations doing alcohol tastings of any kind, nor do any of the restaurants onsite serve anything more than beer and wine. Approval of hard alcohol tastings would be out of character with every other business in the center, thus negatively impact Plaza Pacifica. Staff is also concerned that the popularity of on-site consumption of hard alcohol in the narrow aisles and locations near the main circulation aisle of Wal-Mart may create exiting issues. Staff is not supportive of hard alcohol tastings because of inconsistency with past approvals for tasting in grocery/retail stores, concerns about the expansion of the ancillary grocery use, inconsistency with the larger shopping center the Wal-Mart is located within, and potential issues of exiting due to narrow aisles and limited area. Staff has informed the applicant of the past approvals, and Wal-Mart requested to move

forward with the recommendation of denial. Staff is recommending denial of hard alcohol for the following reasons:

- The hard alcohol tasting could expand the grocery store use beyond ancillary, which would be inconsistent with the Rancho San Clemente Specific Plan.
- The hard alcohol use is located in an area that due to popularity and the number of people queuing to taste free hard alcohol that it could impact circulation and exiting of the store.
- Staff has concerns about the on-site consumption of hard alcohol and the accessibility of the area to patrons under 21 years of age, and the negative impact it may have on other patrons within Wal-Mart.

Staff is supportive of beer and wine tasting, and has reviewed the required findings necessary for approval and believes the findings can be made to support beer and wine, in that:

- Beer and wine tasting is consistent with previously approved grocery/retail establishments in the community.
- Beer and wine approval is consistent with the other alcohol service within Plaza Pacifica.
- Based on previous approvals, beer and wine tasting in similar environments operate without issue.
- Beer and wine tastings in other similar grocery/retail establishments operate as an ancillary use to the primary grocery use.

GENERAL PLAN CONSISTENCY

Table 1 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

Table 1 - General Plan Consistency

Policies and Objectives	Consistency Finding
LU-2.01. Quality. We require that new development protect community character by providing architecture, landscaping and urban design of equal or greater quality than surrounding development, and by respecting the architectural character and scale of adjacent buildings.	Consistent. With the denial of hard alcohol tasting and approval of beer and wine, it is consistent with similar uses within the community.

Policies and Objectives	Consistency Finding
<p>ED-4.08. Other Commercial Districts. We require initiatives, investments, and development approvals for commercial districts other than those described in policies ED 4.01 through 4.05 to contribute to the vision of these areas as primarily serving the day-to-day retail shopping, services, and dining needs of residents of adjacent and nearby neighborhoods.</p>	<p>Consistent. With the denial of hard alcohol tasting and approval of beer and wine, it is consistent with similar uses within the community. Since ABC requires a third party to conduct the tastings, this application will not affect current Wal-Mart employees.</p>

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

The Planning Division processed and completed an initial environmental assessment for this project in accordance with the California Environmental Quality Act (CEQA). The Planning Division has determined the project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301 because the project consists of negligible expansion of an existing use.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and approve the project as conditioned.

This action would result in the applicant being able to have beer and wine tastings only. The applicant may appeal the decision to the City Council.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

The Planning Commission can add, delete, or modify conditions. This action would result in any modifications being incorporated accordingly into the Resolution. Certain changes may result in the applicant appealing the decision to the City Council.

3. The Planning Commission can disagree with staff and approve hard alcohol with beer and wine tastings.

This action would allow the applicant to proceed forward with tastings as they have proposed for the facility.

4. The Planning Commission can deny all tastings for the Wal-Mart facility.
This action would result in no tastings to occur within the Wal-Mart. The applicant may appeal the decision to City Council.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve Conditional Use Permit 15-124, Wal-Mart Instruction Alcohol Tastings, for beer and wine tasting for Wal-Mart only, and denying the request for hard alcohol tastings, subject to the attached Resolution and Conditions of Approval.

Attachments:

1. Resolution No. PC 15-051, Approval of Beer and Wine Tasting
Exhibit A - Conditions of Approval
2. Resolution No. PC 15-053, Denial of Hard Alcohol Tasting
3. Location Map
4. Letter and information from applicant

RESOLUTION NO. PC 15-051

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF SAN CLEMENTE, APPROVING A REQUEST FOR BEER AND WINE
TASTINGS ASSOCIATED WITH CONDITIONAL USE PERMIT (CUP) 15-124, WAL-
MART INSTRUCTIONAL ALCOHOL TASTING, WITHIN THE GROCERY AREA OF
WAL-MART LOCATED AT
951 AVENIDA PICO**

WHEREAS, on April 15, 2015, an application was submitted, and deemed complete on September 9, 2015, by Brent McManigal, Wal-Mart Stores, Inc., 702 SW 8th Street, Bentonville, Arkansas, 72716, a public hearing to consider a request for beer and wine tastings within the grocery area of the Wal-Mart located within the Mixed Use zoning designation of the Rancho San Clemente Specific Plan at 951 Avenida Pico. The legal description is Lot 10, of Tract 15786, Assessor's Parcel Number 688-021-15; and

WHEREAS, on May 7, 2015, June 25, 2015, and August 6, 2015 the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that the Planning Commission determine the project categorically exempt from CEQA pursuant to Guidelines Section 15301, as a Class 1 exemption because the project consists of minor expansion to an existing facility, involving negligible or no expansion of use beyond that existing at the time of the determination; and

WHEREAS, on October 7, 2015, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: The project is categorically exempt from CEQA Pursuant to Section 15301, as a Class 1 exemption because the project consists of minor expansion and alterations to an existing facility, involving negligible or no expansion of use beyond that existing at the time of the determination.

Section 2: With regard to Conditional Use Permit 15-124 ("CUP 15-124"), the Planning Commission finds as follows:

- A. The proposed on-site tasting of beer and wine are permitted within the subject zone pursuant to the approval of a Conditional Use Permit. The

proposed tasting of beer and wine does comply with all the applicable provisions of the Zoning Ordinance, Specific Plan, and the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed in that the community has two similar approved uses in other such grocery stores in the community, and Planning Commission finds that this request should be consistent with past precedence. The other two grocery store/ retail locations in San Clemente only have approval for beer and wine. Additionally, the license the applicant is requesting requires an outside agency with applicable ABC licenses to perform the tastings, not Wal-Mart employees.

- B. The site is suitable for the type and intensity of the beer and wine tasting in that the beer and wine tastings would be consistent with past approvals for other grocery stores and be consistent as an ancillary use of the grocery component of Wal-Mart, which is meant to be ancillary to the retail. Planning Commission finds that beer and wine tastings, consistent with past approvals, would be ancillary to the grocery portion of Wal-Mart and not expand the grocery use.
- C. The proposed beer and wine tasting use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity. The beer and wine tasting is something that has been approved in the past in the community and has operated without issues, and Planning Commission is supportive of the ancillary use for Wal-Mart consistent with those past approvals.
- D. The proposed beer and wine tasting use will not negatively impact surrounding land uses, in that consistent with the low scale beer and wine tasting that the community has seen be successful with past approvals, staff is supportive of beer and wine as it has historically been ancillary to the grocery use and will maintain the grocery use as ancillary.

Section 3: The Planning Commission of the City of San Clemente hereby approves CUP 15-124, Wal-Mart Instructional Alcohol Tasting, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein in full by reference.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on October 7, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on October 7, 2015, and carried by the following roll call vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSTAIN:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

Secretary of the Planning Commission

EXHIBIT A

CONDITIONS OF APPROVAL*

CONDITIONAL USE PERMIT 15-124, Wal-Mart Instructional Alcohol Tastings

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PInG.)_____
2. Thirty (30) days after project approval, the owner or designee shall submit written consent to all of these imposed conditions of approval to the Community Development Director or designee. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PInG.)_____
3. Prior to the issuance of building permits, if any are necessary, the applicant or designee shall include within the first four pages of the working drawings a list of

all conditions of approval imposed by the final approval for the project. *[Citation – City Quality Assurance Program]* (PIng.) (Bldg.)_____

- 4. The project shall be develop in conformance with the site plan, floor plans, elevations, details, and any other applicable submittals approved by the Planning Commission on October 7, 2015, subject to the Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, details, or other approved submittal shall require that the owner or designee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the Zoning Administrator. *[Citation - Section 17.12.180 of the SCMC]* (PIng.)_____

- 5. CUP 15-124 shall become null and void if the use is not commenced within three (3) years from the date of the approval thereof. Since the use does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date that the ABC permit is issued. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)_____

A use shall be deemed to have lapsed, and CUP 15-124 shall be deemed to have expired 90 days after the use ceases operation. *[Citation - Section 17.12.150.C.1 of the SCMC]* (PIng.)_____

- 6. The owner or designee shall have the right to request an extension of CUP 15-124 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval by the final decision making authority that ultimately approved or conditionally approved the original application. *[Citation - Section 17.12.160 of the SCMC]* (PIng.)_____

- 7. The hours in which instructional beer and wine tasting can be served is during normal business hours, unless approved for extended hours through the Special Activity Permit process. ■■ (PIng.)_____

- 8. The owner or designee shall obey all rules, regulations and conditions imposed upon the project through, but not limited to, the Alcoholic Beverage Commission (ABC) and relevant State laws. Revocation of, or sale of said ABC license to another person at another location, shall render this Use Permit null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (PIng.)_____

9. The owner or designee shall be responsible for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Orange County Health Care Agency and Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]* (PIng.)_____

- * All Conditions of Approval are Standard, unless indicated as follows:
- Denotes a modified Standard Condition of Approval
 - ■ Denotes a project-specific Condition of Approval

RESOLUTION NO. PC 15-053

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF SAN CLEMENTE, DENYING A REQUEST TO ALLOW DISTILLED SPIRITS
TASTING ASSOCIATED WITH CONDITIONAL USE PERMIT (CUP) 15-124, WAL-MART
INSTRUCTIONAL ALCOHOL TASTING, WITHIN THE GROCERY AREA OF
WAL-MART LOCATED AT
951 AVENIDA PICO**

WHEREAS, on April 15, 2015, an application was submitted, and deemed complete on September 9, 2015, by Brent McManigal, Wal-Mart Stores, Inc., 702 SW 8th Street, Bentonville, Arkansas, 72716, a public hearing to consider a request for hard alcohol tastings within the grocery area of the Wal-Mart located within the Mixed Use zoning designation of the Rancho San Clemente Specific Plan at 951 Avenida Pico. The legal description is Lot 10, of Tract 15786, Assessor's Parcel Number 688-021-15; and

WHEREAS, on May 7, 2015, June 25, 2015, and August 6, 2015 the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that since the project is a recommendation of denial, it is thus a no project in terms of CEQA and according to CEQA Guidelines Section 5270, if there is no project there is no CEQA; and

WHEREAS, on October 7, 2015, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: An initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and finds that since the project is a recommendation of denial, it is thus a no project in terms of CEQA and according to CEQA Guidelines Section 5270, if there is no project there is no CEQA.

Section 2: With regard to Conditional Use Permit 15-124 ("CUP 15-124") for hard alcohol tasting at Wal-Mart, the Planning Commission finds as follows:

- A. The proposed on-site tasting of hard alcohol is permitted within the subject zone pursuant to the approval of a Conditional Use Permit, but the proposed tasting of hard alcohol does not comply with all the applicable provisions of the Zoning Ordinance, Specific Plan, and the San Clemente

General Plan and the purpose and intent of the zone in which the use is being proposed in that the use is a retail establishment with a small grocery area and providing tastings of hard alcohol would be out of character with the primary use. Additionally, because the grocery use is meant to be ancillary to the retail portion of the development, the expanded tasting to include hard alcohol would further increase the grocery portion by being a draw for people to come to Wal-Mart for the alcohol tasting, thus the use and would be inconsistent with the Specific Plan. The proposal also does not fit in with the character of the center. The center is more of a family oriented center, with none of the other retail locations doing alcohol tastings of any kind, nor do any of the restaurants onsite serve anything more than beer and wine. Approval of hard alcohol tastings would be out of character with every other business in the center, thus negatively impact Plaza Pacifica. The license the applicant is requesting requires an outside agency with applicable ABC licenses to perform the tastings, not Wal-Mart employees, thus the denial of hard alcohol tastings will not negatively impact jobs.

- B. The site is not suitable for the type and intensity for the hard alcohol tastings as the expanded use would be an expansion of the grocery use of Wal-Mart creating a larger demand on the grocery area and draw people to the center with the explicit intent of receiving free hard alcohol tastings. Approval of hard alcohol tastings is not consistent with previous approvals for other grocery stores, and would increase the grocery store use within the Wal-Mart. Additionally, with the limited area for the proposed tastings, and the purpose of it being ancillary to the grocery use within the Wal-Mart, there is concern the hard alcohol tasting could become a larger draw and create additional impacts to store circulation and exiting. The proposal also does not fit in with the character of the center. The center is more of a family oriented center, with none of the other retail locations doing alcohol tastings of any kind, nor do any of the restaurants onsite serve anything more than beer and wine. Approval of hard alcohol tastings would be out of character with every other business in the center, thus negatively impact Plaza Pacifica.
- C. The proposed hard alcohol tastings has the potential to be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity. The hard alcohol would be an expansion of the tasting use that no other grocery store has in the community and would expand the grocery use drawing people to the Wal-Mart with the sole intention of receiving free alcohol, and could impact circulation and exiting due to the number of people in the small aisles and adjacency to the primary circulation aisle of the store. In addition, staff has concerns about on-site consumption of hard alcohol and the accessibility of the area to patrons under 21. While patrons under 21 will not be able to enter the temporary tasting area, it will be open to the public to view while people are

tasting hard alcohol. The proposal also does not fit in with the character of the center. The center is more of a family oriented center, with none of the other retail locations doing alcohol tastings of any kind, nor do any of the restaurants onsite serve anything more than beer and wine. Approval of hard alcohol tastings would be out of character with every other business in the center, thus negatively impact Plaza Pacifica.

- D. The proposed hard alcohol tasting use may negatively impact surrounding land uses in that providing the opportunity for people to drink hard alcohol for on-site consumption may negatively impact the shopping experience of other patrons in the store, as well as may create circulation and exiting issues with the popularity of hard alcohol tasting. The potential popularity of the hard alcohol tasting would potentially expand the grocery portion of Wal-Mart meant to be ancillary to the retail portion of the development and thus would be inconsistent with the Rancho San Clemente Specific Plan. In addition, staff has concerns about on-site consumption of hard alcohol and the accessibility of the area to patrons under 21. While patrons under 21 will not be able to enter the temporary tasting area, it will be open to the public to view while people are tasting hard alcohol. The proposal also does not fit in with the character of the center. The center is more of a family oriented center, with none of the other retail locations doing alcohol tastings of any kind, nor do any of the restaurants onsite serve anything more than beer and wine. Approval of hard alcohol tastings would be out of character with every other business in the center, thus negatively impact Plaza Pacifica.

Section 3: The Planning Commission of the City of San Clemente hereby denies the hard alcohol tasting request associated with CUP 15-124, Wal-Mart Instructional Alcohol Tasting, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on October 7, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on October 7, 2015, and carried by the following roll call vote:

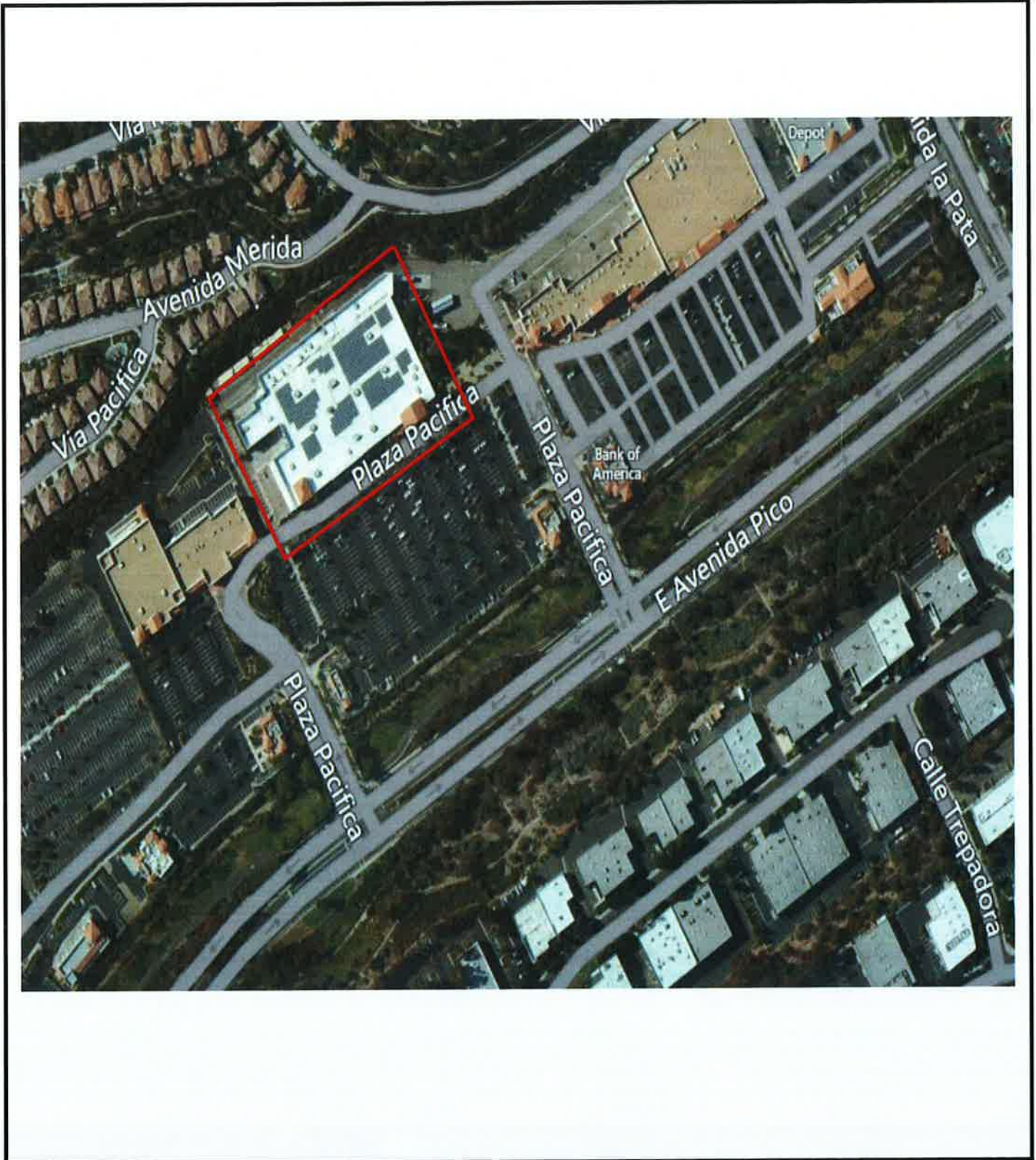
AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Secretary of the Planning Commission



LOCATION MAP

Conditional Use Permit 15-124, Wal-Mart Instruction Alcohol Tastings
951 Avenida Pico

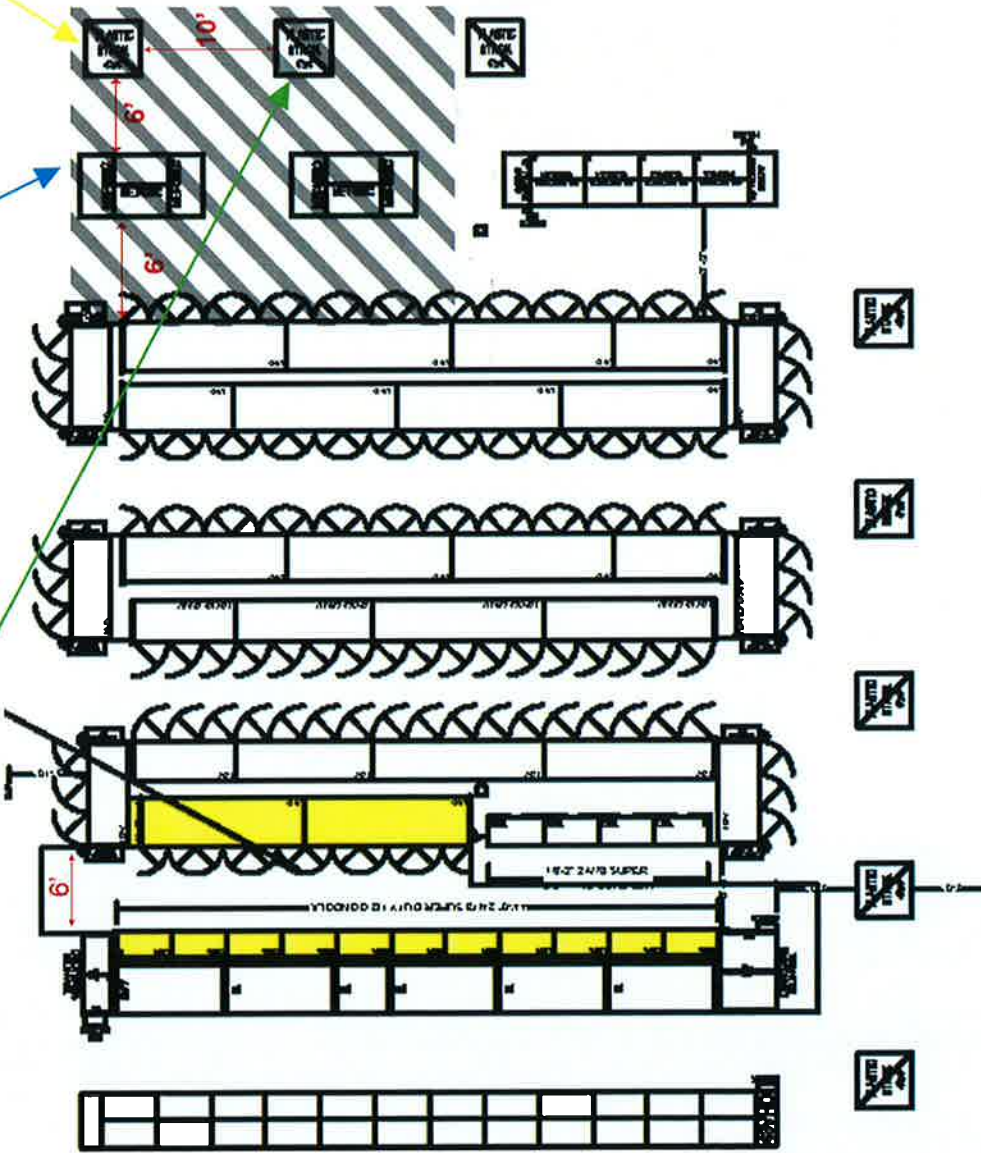
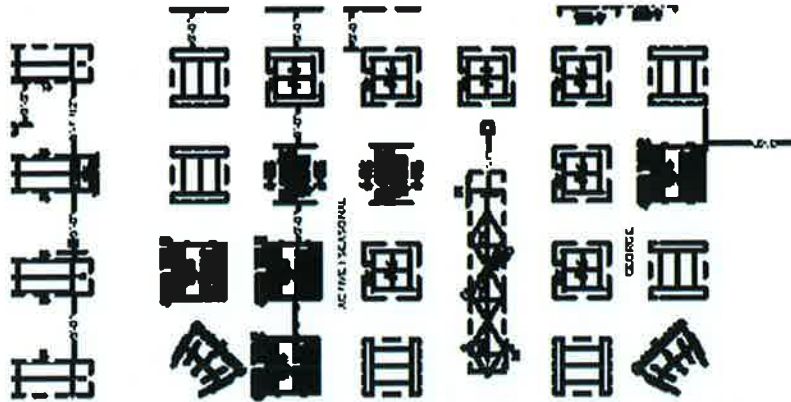




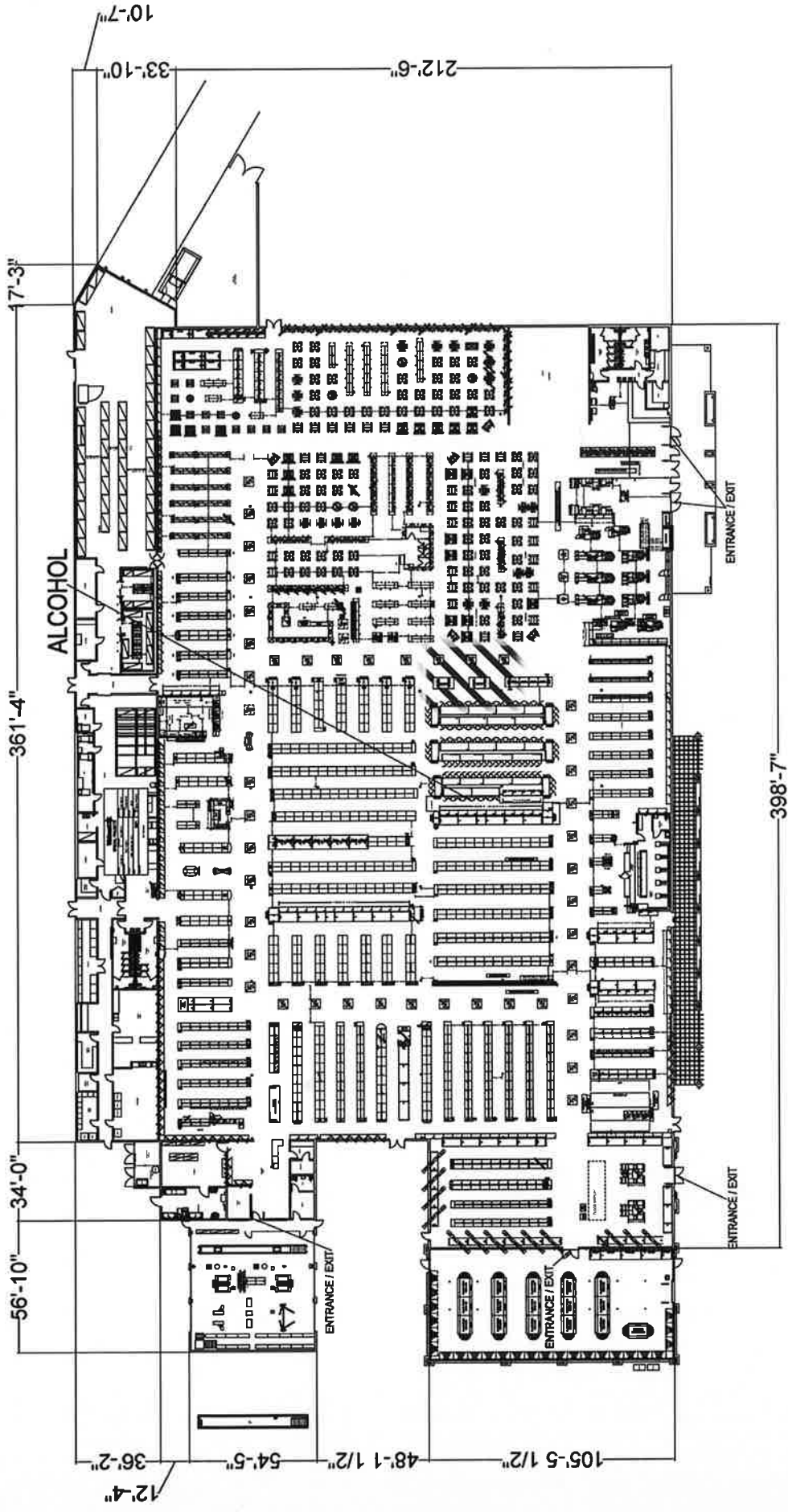
Temporary displays will be moved for tasting



Temporary displays will be moved for tasting



Walmart Store #2527
951 Avenida Pico
San Clemente, CA 92673



Walmart
951 Avenida Pico
San Clemente, CA

Information In Support of
Conditional Use Permit
For A Type 86 License

This application is a request by Wal-Mart Stores, Inc. ("Walmart") for a Conditional Use Permit ("CUP") for a Type 86 "Instructional Tasting" License ("Proposed Use") at the Walmart located at 951 Avenida Pico, in the City of San Clemente (the "Store").

The Store currently sells general retail products, grocery products, and fresh produce, as well as alcoholic beverages pursuant to a Type 21 License issued by the California Department of Alcoholic Beverage Control ("ABC") and a CUP approved by the City (CUP 94-56).

The proposed Type 86 License would allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the Store. These Instructional Tasting Events are intended to inform Walmart's customers on the subject of wine, beer or distilled spirits, including (but not limited to) the history, nature, values, and characteristics of the beverage, along with preferred methods of presentation and serving of the featured wine, beer or distilled spirits. No charge will be made for tastings at an Instructional Tasting Event. Although the store is open from 9am to 9pm, the ABC only allows Instructional Tasting Events to be held between the hours of 10:00am and 9:00pm. The actual tasting event within the Walmart will occur during peak shopping hours approximately 2-3 times per month.

The Type 86 License allows for on-site consumption of alcohol, but the events are temporary, the number of samples a customer may have and the quantity of each sample is very limited and is nothing like a "wine tasting" facility. The 3rd party company responsible for the tastings will set up a temporary table and boundaries that

limit the number of people in the sampling area and will check identification to ensure all people in the tasting area are at least age 21.

The following information has been provided to support the findings required by the City's Zoning Code to approve the CUP for the Proposed Use.

- a) **The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed.**

The Store is within the Rancho San Clemente Specific Plan, and is located within the Mixed Use (MU1.2) zone. The "uses" for this zone are governed by the CC1 zone in the San Clemente Municipal Code. Permitted uses in the CC1 zone include grocery stores, and other retail establishments. Alcoholic beverage sales and consumption are permitted in the zone with an approved CUP. The approval of this CUP will not impair the integrity, character or intent of the CC1 zoning district. The zoning district is commercial and the overall predominant land uses in the surrounding area are commercial and retail in nature.

The site's general plan land use designation is Community Commercial. According to the General Plan, the goal of the commercial land uses is to achieve and maintain a healthy employment base with diverse retail uses that meet citizens' needs and help generate municipal revenues that improve quality of life.¹

The approval of this CUP is consistent with this policy in that the Store currently offers its customers a "one-stop shopping" experience by allowing them to simultaneously shop for general merchandise, fresh produce, groceries, and alcoholic beverages. The addition of Instructional Tastings will enhance the customer experience by allowing customers to learn about and sample, in limited quantities, alcohol that they are interested in purchasing. Further, the Instructional Tastings are used for marketing purposes. As such, Walmart expects to see increases in its alcoholic beverage sales, which in turn increases the amount of sales tax to the City.

- b) **The site is suitable for the type and intensity of use that is proposed.**

¹ San Clemente General Plan pg. LU-15

The proposed Instructional Tastings do not require any changes to the location, size, or design of the existing building. In order to accommodate the Proposed Use, Walmart will create a temporary space for the Instructional Tasting events within the existing Store, and these events will not hinder the retail purpose of the store or unduly impact Walmart's customers. The existing Store has sufficient space for the events and is physically suitable for such activities.

- c) The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.**

The CUP to allow Instructional Tastings will not be contrary to public health, safety or general welfare. First, Walmart has a Responsible Vendor of Alcohol Policy, which it currently implements in connection with its existing sales of beer, wine and liquor in order to prevent sales to minors or sales during prohibited hours. In addition to these policies, consistent with the ABC's regulations regarding Instructional Tastings, the following policies for Instructional Tasting Events will be implemented by Walmart to ensure the on-site consumption will not be detrimental to the community:

- The instructional tasting event will be conducted in a separate area ("Tasting Area") within the alcohol display area. The Tasting Area will be approximately Twelve Feet by Twelve Feet (12'X12') and will be separated by a rope, cable, cord, chain, fence, or other permanent or temporary barrier. (Please see the attached floor plan). Walmart will prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area, and all entrants will be required to show identification.
- No person under 21 years of age may serve, or be served, wine, beer, or distilled spirits at the instructional tasting event.
- Walmart will not permit any consumer to leave the instructional tasting area with an open container of alcohol.
- Walmart anticipates having approximately of 2-3 events per month at the Store, initially, during peak shopping days and peak shopping hours. Pursuant to state law, instructional tasting events can only take place between the hours of 10:00 a.m. and 9:00 p.m.

- Each instructional tasting event will be limited to a single type of alcoholic beverage (distilled spirits, wine, or beer) and will be limited only to those products which are sold by Walmart under its Type 21 license.
- Quantity: State law limits the number and size of the portions that may be provided to the customer. The state's rules are listed below:
 - **Operational note: The vendor will mark the customer's hand with a marker to ensure the customer has not received more than the allowed limit.**
 - Wine samples will not exceed one ounce. A maximum of three servings are allowed per day.
 - **Operational Note: Walmart restricts the wine tastings to one- half an ounce.**
 - Distilled spirit samples will not exceed one-fourth of one ounce. A maximum of three servings are allowed per day.
 - Beer will not exceed eight ounces of beer per person per day.

d) The proposed use will not negatively impact surrounding land uses.

Both the Responsible Vendor of Alcohol Policy that Walmart implements for alcohol sales and the ABC restrictions outlined above will ensure that the Instructional Tastings will not negatively impact surrounding land uses. In addition, as noted above, all of the Instructional Tastings will occur inside the store.

Attached is an ABC Advisory that provides additional details regarding the Type 86 License.



INDUSTRY ADVISORY

Instructional Tasting License for Off-Sale Licensees

Recently enacted legislation (Assembly Bill 605, Statutes 2010, effective January 1, 2011) created sections 23396.6 and 25503.56 of the Business and Professions Code. In addition to providing for a new license, these sections include carefully crafted exceptions to California's three-tier system of alcohol regulation. As such, they are nuanced and contain many detailed provisions, not all of which are specifically addressed in this advisory.

Section 23396.6 provides for a new "instructional tasting license" to be issued to holders of certain, qualified off-sale retail licensed businesses. Off-sale premises where motor vehicle fuel is sold and those with a total of less than 5,000 square feet of interior retail space are *generally* not eligible to apply for the instructional tasting license.

Application procedures for an instructional tasting license will be similar to those currently established for other retail businesses, although some ABC Act provisions (such as those related to numbers limitations within counties and public convenience or necessity) are not applicable. The premises of the instructional tasting license will be recognized as being the same area designated and approved for the accompanying off-sale license, although areas used for instructional tasting events will need to be appropriately separated and posted while events are taking place. Eligible off-sale retailers will be able to apply for the instructional tasting license at the Department's district and branch offices beginning Monday, January 3, 2011, and applications shall be subject to a \$300 original fee and \$261 annual renewal fee. The license has been designated as "Type 86" by the Department.

An application for the Type 86 license should be prepared using forms required for an original retail license (available on the Department's website at www.abc.ca.gov) and submitted, along with all required fees, to the appropriate District Office. As the license is to be issued to an off-sale licensee

“at the premises” of the underlying off-sale license, form ABC-257 will not be required at the time of application. Forms ordinarily required for the purpose of establishing the qualification of a person or entity (ABC-208, ABC-243, ABC-256, ABC-256-LLC, ABC-140) need not be submitted at the time of application for a Type 86 license. However, in cases where such information is deemed necessary for completion of a full licensing investigation, any of the above described forms and any other supporting documents or information may be subsequently requested by District Office licensing staff.

Section 25503.56 authorizes certain, qualified suppliers (i.e.; “authorized licensees”) or their designated agents to conduct “instructional tasting events” at off-sale retail locations holding the instructional tasting licenses, and to provide tastes of alcoholic beverages to consumers under very specific conditions, restrictions and limitations. Some provisions related to supplier participation at instructional tasting events are similar to those for existing “consumer instruction” activities at on-sale premises. However, other supplier allowances and limitations are unique to the Type 86 license.

A unique aspect of the instructional tasting license is that, while it will be applied for and held by a retail licensee, its core privileges require the involvement or participation of a qualified supplier. With that in mind, suppliers and retailers alike should be fully aware of existing tied-house laws that otherwise restrict or limit business relationships between the supply and retail tiers. A supplier shall in no way, directly or indirectly, pay, reimburse, or assist a retail licensee with any efforts associated with obtaining a type 86 license, nor shall instructional tasting events be used to, in any way, circumvent existing tied-house laws. Any payment made by a supplier to or on behalf of a retailer, directly or indirectly, in connection with an instructional tasting event, except as authorized or required for alcoholic beverage products to be used during the tasting event, shall be considered a violation of tied-house laws.

Off-sale retailers interested in applying for instructional tasting licenses and suppliers interested in conducting instructional tasting events should familiarize themselves with all details of the applicable statutes, paying close attention to provisions related to licensee eligibility and operating requirements, restrictions and limitations. The Department believes that it is the responsibility of all participating parties to be fully aware of the detailed provisions set forth in Assembly Bill 605 and to conduct instructional tasting events in full compliance with the ABC Act.

The following addendum to this advisory highlights *some* of the unique aspects and restrictions associated with the Type 86 license and instructional tasting events. The full text of the chaptered bill and detailed legislative analysis is available at www.leginfo.ca.gov.

Addendum (detailing specific provisions set forth in Business and Professions Code sections 23396.6 and 25503.56):

- *Type 86 licenses shall not be issued to off-sale licensees at locations where motor vehicle fuel is sold, unless the licensee operates a fully enclosed off-sale retail area encompassing at least 10,000 square feet, nor to off-sale licensees at locations with a total of less than 5,000 square feet of interior retail space, unless the calendar quarterly gross sales of alcoholic beverages at the licensed location comprise at least 75 percent of the total gross sales of all products sold at the licensed premises. A licensee that is issued an instructional tasting license pursuant to this paragraph shall maintain records that separately reflect the gross sales of alcoholic beverages and the gross sales of all other products sold on the licensed premises.*
- *“Authorized licensee” means a winegrower, California winegrower’s agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer, distilled spirits importer general, distilled spirits rectifier, distilled spirits general rectifier, out-of-state distilled spirits shipper’s certificate holder, distilled spirits wholesaler, brandy manufacturer, brandy importer, California brandy wholesaler, beer manufacturer, or an out-of-state beer manufacturer certificate holder.*
- *“Authorized licensee” shall not include an entity that solely holds a combination of a beer and wine wholesale license and an off-sale beer and wine retail license or holds those licenses solely in combination with any license not listed in this paragraph.*
- *No charge of any sort shall be made for tastings at an instructional tasting event.*
- *A person under 21 years of age shall not serve, or be served, wine, beer, or distilled spirits at the instructional tasting event.*
- *Unless otherwise restricted, an instructional tasting event may only take place between the hours of 10 a.m. and 9 p.m.*
- *The type 86 license shall not authorize any on-sale retail sales to consumers attending the instructional tasting event.*
- *The type 86 licensee shall not permit any consumer to leave the instructional tasting area with an open container of alcohol.*

- *A type 86 licenseholder that permits a person under 21 years of age to enter and remain in the instructional tasting event area during an instructional tasting event is guilty of a misdemeanor. Any person under 21 years of age who enters and remains in the instructional tasting area during an instructional tasting event is guilty of a misdemeanor and shall be punished by a fine of not less than \$200.00, no part of which shall be suspended.*
- *At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. The type 86 licenseholder shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area.*
- *An instructional tasting event shall be limited to a single type of alcoholic beverage. "Type of alcoholic beverage" means distilled spirits, wine, or beer.*
- *A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. No more than three tastings of distilled spirits or 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. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the holder of the type 86 license under its requisite off-sale license.*
- *No more than one "authorized licensee" or its designated representative may conduct an instructional tasting event that includes the serving of tastes of wine, beer, or distilled spirits at any individual type 86 licensed premises per day.*
- *All tastes shall be served by an employee or the designated representative of the "authorized licensee."*
- *The "authorized licensee" or its designated representative shall either supply the wine or distilled spirits to be tasted during the instructional event or purchase the wine or distilled spirits from the holder of the type 86 at the original invoiced cost.*
- *The "authorized licensee" or its designated representative shall purchase beer to be tasted during the instructional event from the holder of the type 86 at the original invoiced cost.*
- *Any unused wine, beer, or distilled spirits remaining from the tasting shall be removed from the off-sale license licensed premises by the "authorized licensee" or its designated representative.*
- *If the instructional tasting event is conducted by a designated representative, the designated representative shall not be owned, controlled, or employed directly or indirectly by the holder of the type 86 on whose premises the instructional tasting event is held.*

- *A beer and wine wholesaler may conduct an instructional tasting event but shall not serve tastes of beer unless the beer and wine wholesaler also holds a beer manufacturer's license, an out-of-state beer manufacturer's certificate, or more than six distilled spirits wholesaler's licenses.*
- *The holder of the type 86 may conduct an instructional tasting event that includes the serving of tastings only when an "authorized licensee" or its designated representative is unable to conduct an instructional tasting event previously advertised pursuant to Section 25503.56 and scheduled by the authorized licensee or its designated representative, provided the holder of the type 86 supplies the wine, beer, or distilled spirits in the instructional tasting event and provides or pays for a person to serve the wine, beer, or distilled spirits. Instructional tasting events conducted by the holder of the type 86 pursuant to the applicable subdivision of Section 25503.56 are subject to the provisions of Sections 25503.56 and 23396.6.*
- *A holder of a type 86 license that also holds an on-sale beer and wine license, an on-sale beer and wine eating place license, or an on-sale general license shall not allow an "authorized licensee" or its designated representative, to conduct an instructional tasting event on the same day and at the same location as any instructional tasting event held pursuant to subdivision (b) of Section 23386, Section 25503.4, subdivision (c) of Section 25503.5, or Section 25503.55.*
- *A holder of a type 86 license shall not condition the allowance of an instructional tasting event upon the use of a particular designated representative of an "authorized licensee".*
- *An "authorized licensee" or its designated representative, in his or her absolute discretion and with permission of the holder of the type 86 license where the instructional tasting event will be held, may list in an advertisement to the general public the name and address of the type 86 licensee, the names of the alcoholic beverages being featured at the instructional tasting event, and the time, date, and location of, and other information about, the instructional tasting event, provided that BOTH of the following apply:*
 1. *The advertisement does not contain the retail price of the alcoholic beverages.*
 2. *The listing of the type 86 licensee's name and address is the only reference to the type 86 licensee in the advertisement.*

NOTE: Pictures or illustrations of the type 86's licensed premises and laudatory references to the type 86 licensee in these advertisements are not authorized. An "authorized licensee" or its designated representative cannot share in the costs, if any, of the type 86 licensee.

- *A type 86 licensee may advertise an instructional tasting event to the general public. The costs of this advertising shall be borne solely by the type 86 licensee. Permitted advertising includes flyers, newspaper ads, Internet communications, and interior signage.*

- *Except as otherwise provided in the ABC Act or rules of the department, no premium, gift, free goods, or other thing of value shall be given away by an “authorized licensee” or its designated representative in connection with an instructional tasting event that includes tastings of an alcoholic beverage.*
- *The type 86 licensee or the “authorized licensee” or its designated representative are authorized to perform set up and break down of the instructional tasting event area.*
- *The “authorized licensee” or its designated representative may provide, free of charge to the type 86 licensee, the equipment, materials, and utensils as may be required for use in connection with the instructional tasting event.*
- *The type 86 licensee shall not require, or enter into a collusive scheme with an “authorized licensee” or its designated representative to conduct one or more instructional tasting events as a condition of carrying or continuing to carry a brand or brands of the “authorized licensee” or as a condition for display or other merchandising plan which is based on an agreement to provide shelf space.*
- *An “authorized licensee” or its designated representative shall not require any preferential treatment or benefit from, or enter into a collusive scheme with, a holder of a type 86 license as a condition of conducting one or more instructional tasting events, require to carry or continue to carry a brand or brands of the “authorized licensee” as a condition of conducting one or more instructional tasting events, or condition display or other merchandising plans that are based on agreements for the provision of shelf space on the conducting of one or more instructional tasting events.*
- *Any agreement, whether written or oral, entered into by and between a type 86 licensee and an “authorized licensee” or its designated representative that precludes the conducting of instructional tasting events on the licensee’s type 86 premises by any other “authorized licensee” is prohibited.*
- *A type 86 licenseholder or “authorized licensee” or its designated representative, shall not use an instructional tasting event to circumvent any other requirement in the ABC Act.*

June 3, 2015

VIA EMAIL Nicholas@San-Clemente.org

Sean Nicholas, Associate Planner
City of San Clemente Planning Division
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Re: **Responses to City of San Clemente Incomplete Letter
CUP 15-124, Walmart Alcohol Tasting**

Sean:

Thank you for letter regarding the above referenced project. Please see below for our responses to your questions and comments.

- 1. Why do you need to serve a full range of alcohol for tastings? Only beer and wine tastings have been supported in facilities such as this, never a distilled spirit. Please provide more information as to why this should be supported, or request only beer and wine tasting as part of the application.**

A: The Department of Alcoholic Beverage Control ("ABC") allows retailers with a Type 21 or Type 20 License to pursue a Type 86 License to allow instructional tastings of alcoholic beverages including beer, wine and spirits. The ABC has strict quantity limits in place to ensure safe serving of these products. A single spirit sample is only one-fourth of an ounce and a customer is only allowed a maximum of three servings per day. A single wine sample is only one ounce and a customer is only allowed a maximum of three samples per day. A customer may have a maximum of eight ounces of beer per day.

Walmart currently sells beer, wine and spirits for off-site consumption in a responsible and safe manner. The instructional tastings would provide customers with limited samples of selected products, as well as information regarding those products, in a safe and responsible manner.

Since 1910

SAN BERNARDINO 550 East Hospitality Lane, Suite 300 • San Bernardino, California 92408
RIVERSIDE 3750 University Avenue, Suite 250 • Riverside, California 92501
SAN DIEGO 550 West C Street, Suite 1810 • San Diego, California 92101
LOS ANGELES 333 South Hope Street, 35th Floor • Los Angeles, California 90071

2. How many people do you expect at one time?

A: Based upon its experience with Instructional Tastings at Sam's Clubs throughout the state, Walmart anticipates having 2-3 people at a time in the Instructional Tasting area, depending on the product; however, that number may vary. Typically, there are not lines of customers waiting to enter.

3. How are you keeping people under 21 out of the area?

A: The 3rd party Tasting Coordinator will verify everyone's identification to ensure no one under the age of 21 is allowed into the instructional tasting area. No one under the age of 21 will be permitted into the Tasting area, including minors accompanied by people over 21.

4. Where will this be set up in the store?

A: The tastings will take place within the grocery area, as outlined in the attached floor plan.

5. Is this a mobile or permanent setup? What are the barriers?

A: This is a temporary setup. The vendor will setup the tasting area which will include a table, rope, and small trash can (See attached "Tasting Set-Up") prior to the events, then dismantle the setup once the event is over.

6. Please show a floor plan that does not impede internal circulation, especially addressing accessibility issues.

A: The Instructional Tasting Event will be conducted in a separate area ("Tasting Area") within the Grocery Area. The Tasting Area will be separated from the remainder of the premises by a rope, cable, or other temporary barrier.

- The "Grocery Area" is outlined on the floor plan (see attached floor plan). This area represents where the tastings may occur. The location will vary based upon the day, store traffic, store stocking, visibility, etc. Some of the grocery aisles are wider, have more open space, and provide more access for ADA and Fire Code compliance.
- The "Tasting Set-Up" is shown in the photos (see attached "Tasting Set-Up"). The Tasting Set-Up will be separated from the remainder of the

Sean Nicholas
June 3, 2015
Page 3

premises by a rope, cable, or other temporary barrier and will include a table and a small trash can.

7. Number of people serviced by this facility

A: The number of customers serviced by the store varies based upon the time of the day, hour, and time of year. Based upon its experience with other tasting areas at Sam's Club stores, Walmart anticipates having 2-3 customers at the Instructional Tasting area at a time, depending on the product; however, that number may vary.

Very truly yours,



Lisa B. Kolieb, for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

LBK:
Enclosures
cc: