

PUBLIC HEARING

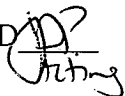
SUBJECT: REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW FOR AN UP-GRADE OF AN OFF-SALE TYPE 20 (BEER AND WINE) LICENSE TO AN OFF-SALE TYPE 21 (BEER, WINE AND DISTILLED SPIRITS) LICENSE FOR THE PORTA VILLA MARKET LOCATED AT 34 E. HENDERSON AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

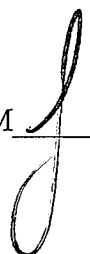
COMMENT: The applicant is requesting approval of a Conditional Use Permit (PRC 2013-008C) to allow for an up-grade of an off-sale Type 20 (beer and wine) license to an off-sale Type 21 (beer, wine and distilled spirits) license for the Porta Villa Market located at 34 E. Henderson Avenue.

BACKGROUND: On August 23, 1976, the Porterville Planning Commission approved Resolution 748 containing findings of support of Conditional Use Permit 14-76 for approval of a self-service gasoline facility at an existing convenience market located at 34 E. Henderson Avenue (Porta Villa Market). On December 3, 2008, the applicant was issued a Type 20 beer and wine license from the California Alcoholic Beverage Control Board (ABC). Per the Zoning Ordinance effective at that time, a conditional use permit was not required for an off-sale license for those establishments not within 600 feet of a sensitive use such as schools, churches, public parks, or playgrounds. As no uses such as the above are within 600 feet of the business, Porta Villa Market was not required to obtain a conditional use permit for approval of the Type 20 license. On March 5, 2013, the applicant submitted an application to the Project Review Committee (PRC) to consider a modification to Conditional Use Permit 14-76 to allow for an up-grade in license type. The applicant was informed that a modification to Conditional Use Permit 14-76 would be required based on the provisions of the City's Development Ordinance.

Porta Villa Market at 34 E. Henderson Avenue is located in Census Tract 37.00. Under the regulations of the Business and Professions Code, Census Tract 37.00 could accommodate five (5) off-sale and five (5) on-sale licenses without being deemed overconcentrated. The ABC allows for a specific number of licenses per census tract, based on population. Whenever the ratio of off-sale licenses to population in a census tract exceeds the average ratio for the county, an "undue concentration" of licenses is determined to exist. According to the ABC, seventeen (17) licenses currently exist in this tract, seven (7) of which are off-sale and ten (10) are on-sale. Because this application is to up-grade an existing license, a Letter of Public Convenience or Necessity is required.

DD 

Appropriated/Funded N/A

CM 

Item No. 14

If allowed to up-grade, the concentration of licenses would not increase since the applicant has an active Type 20 off-sale license at 34 E. Henderson Avenue (Porta Villa Market). It is worth noting that the applicant is also the owner of Family Mini Market located at 575 N. Main Street and is requesting to transfer the Type 21 (beer, wine and distilled spirits) license from 575 N. Main Street (Family Mini Market) to 34 E. Henderson Avenue (Porta Villa Market).

If allowed to up-grade, the applicant will transfer the license from Family Mini Market to Porta Villa Market. This transfer will down-grade the Type 21 (beer, wine and distilled spirits) license, currently established at 575 N. Main Street, to a Type 20 (beer and wine) license, while up-grading the license from a Type 20 license to a Type 21 license at 34 E. Henderson Avenue. Family Mini Market is located in Census Tract 38.02, which currently has nine (9) on-sale licenses and seven (7) off-sale licenses; their license adjustment would not require City Council approval since it will be less intense.

The Police Department has indicated that the Porta Villa site currently has sufficient exterior lighting to illuminate the parking lot and the entire site during business hours. The resolution contains a condition to maintain the existing lighting on the exterior of the building and in the parking lot to allow reasonable surveillance of the site to the satisfaction of the Police Department.

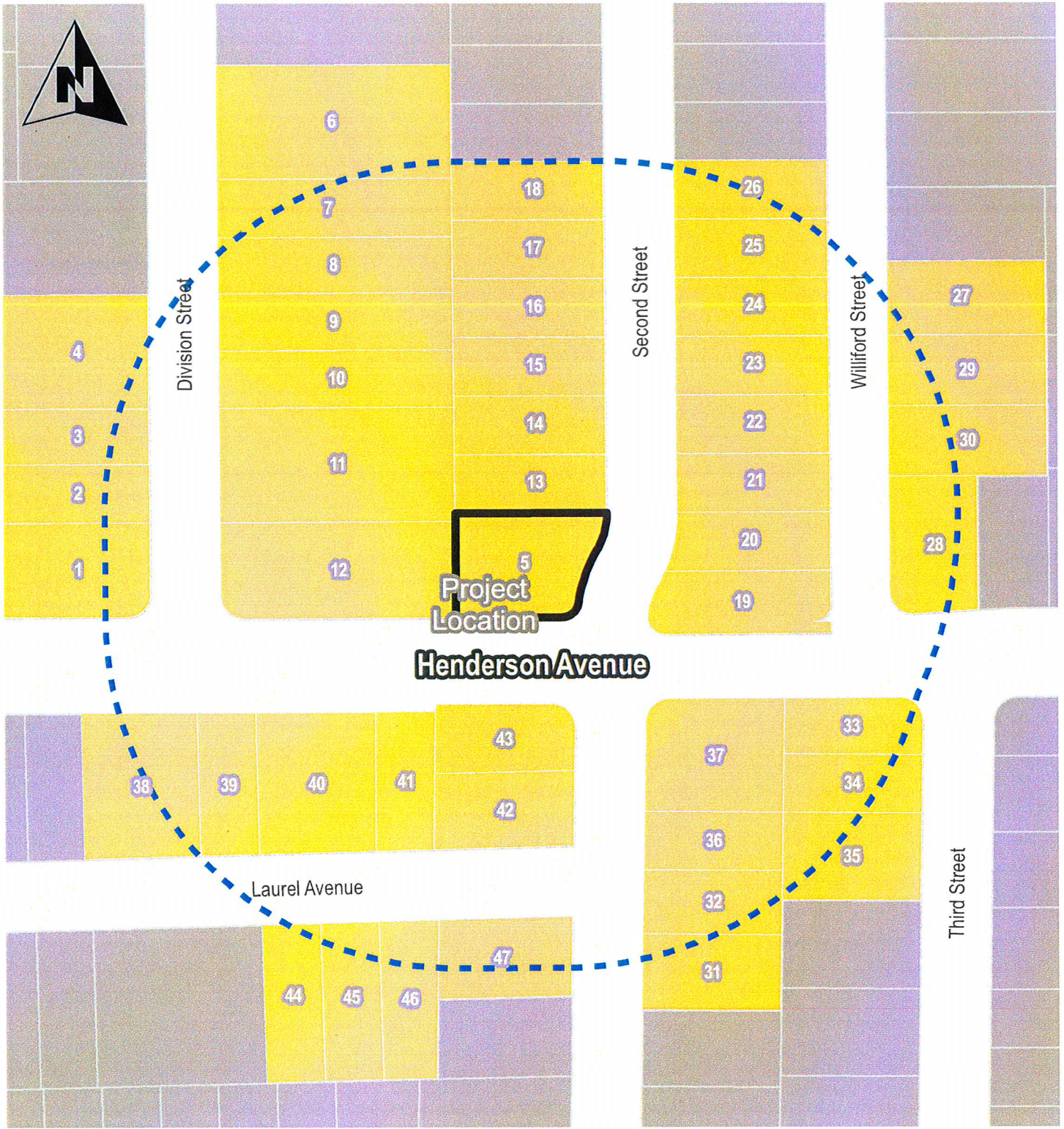
ANALYSIS: Allowing beer, wine and distilled spirits to be sold with other merchandise would provide a service to the area served by the store. It is not anticipated that this use would have a negative impact on the surrounding properties. Conditions of approval are in place to protect the public safety and interest. There are no sensitive uses (schools, public buildings, etc.) in close proximity to the subject site and the project conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. The project site is zoned CN (Neighborhood Commercial). The CN designation is intended to encourage convenience and neighborhood shopping providing day-to-day retail goods and services and to limit auto-oriented uses in order to maintain a pedestrian environment. The proposed upgrade from a Type 20 (beer and wine) license to a Type 21 (beer, wine and distilled spirits) license would suit the purpose of the zone classification as well as meet the economic development guiding policy to retain, improve, and promote existing businesses in Porterville.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit (PRC 2013-008C) subject to conditions of approval; and
2. Authorize the Mayor to sign the Letter of Public Convenience or Necessity.

ATTACHMENTS:

1. 300' Radius/Locator Map
2. Zoning Map
3. Floor Plan
4. Existing licenses in Census Tract 37.00
5. Resolution 748
6. Draft Resolution
7. Letter of Public Convenience or Necessity



G Geographic
I Information
S Systems

A Division of the Community Development Department
 PORTERVILLE
 CALIFORNIA

PRC 2013-008C
 License upgrade from
 Type 20 to Type 21
 300' Radius Map
 1" = 120 ft





ATTACHMENT
ITEM NO. 1



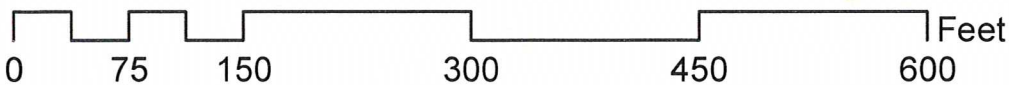
Henderson Ave

Second Street

Legend

-  Project Site/ CN (Neighborhood Commercial)
-  RS-2 (Low Density Residential)
-  RM-2 (Medium Density Residential)
-  RM-3 (High Density Residential)

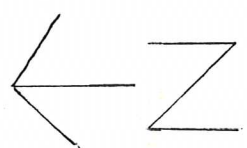
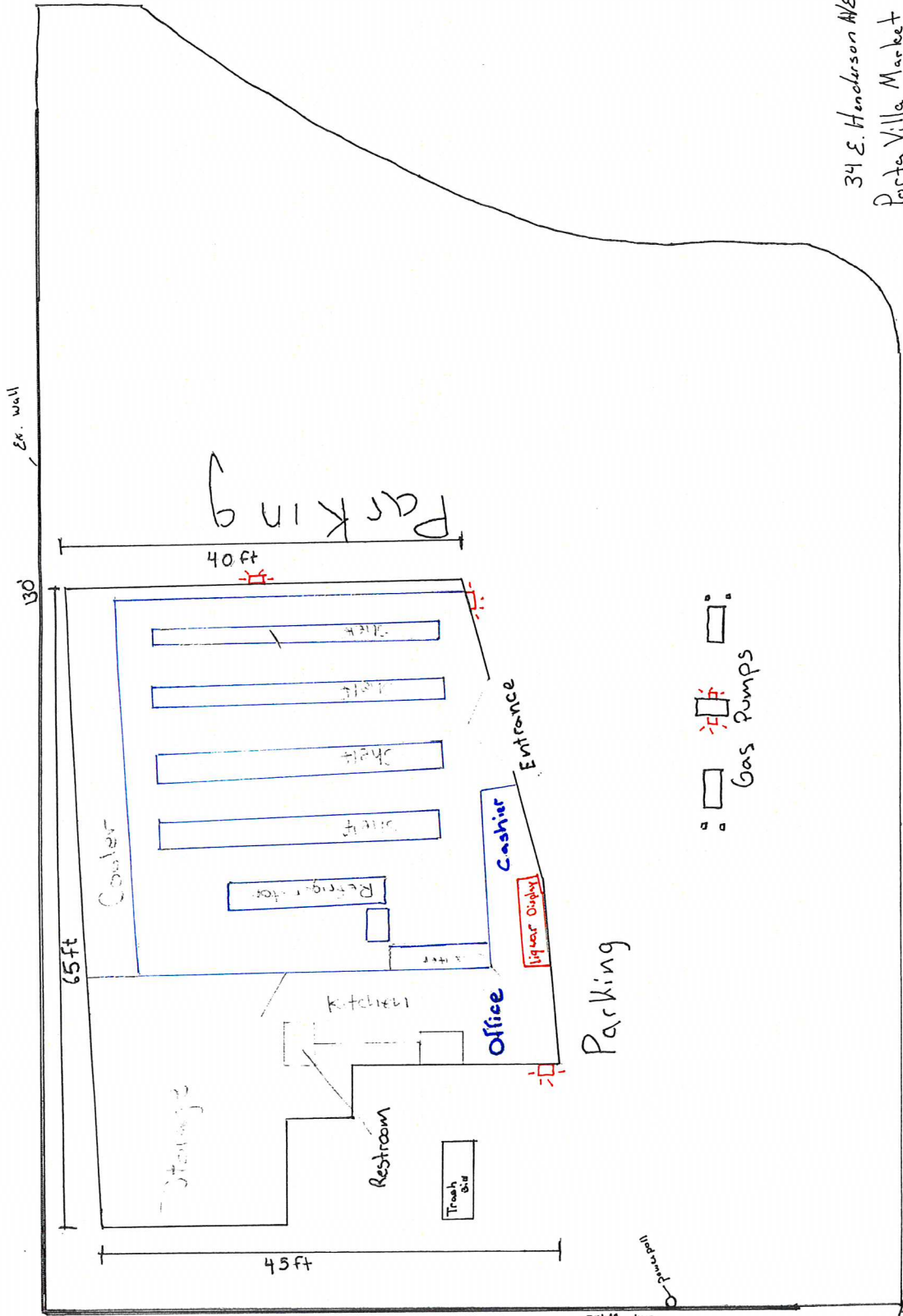
Zoning Map



ATTACHMENT
ITEM NO. 2 S

Scale
1" = 10'

Lighting



Second Street

34 E. Henderson Ave.
Porta Villa Market

Henderson Avenue

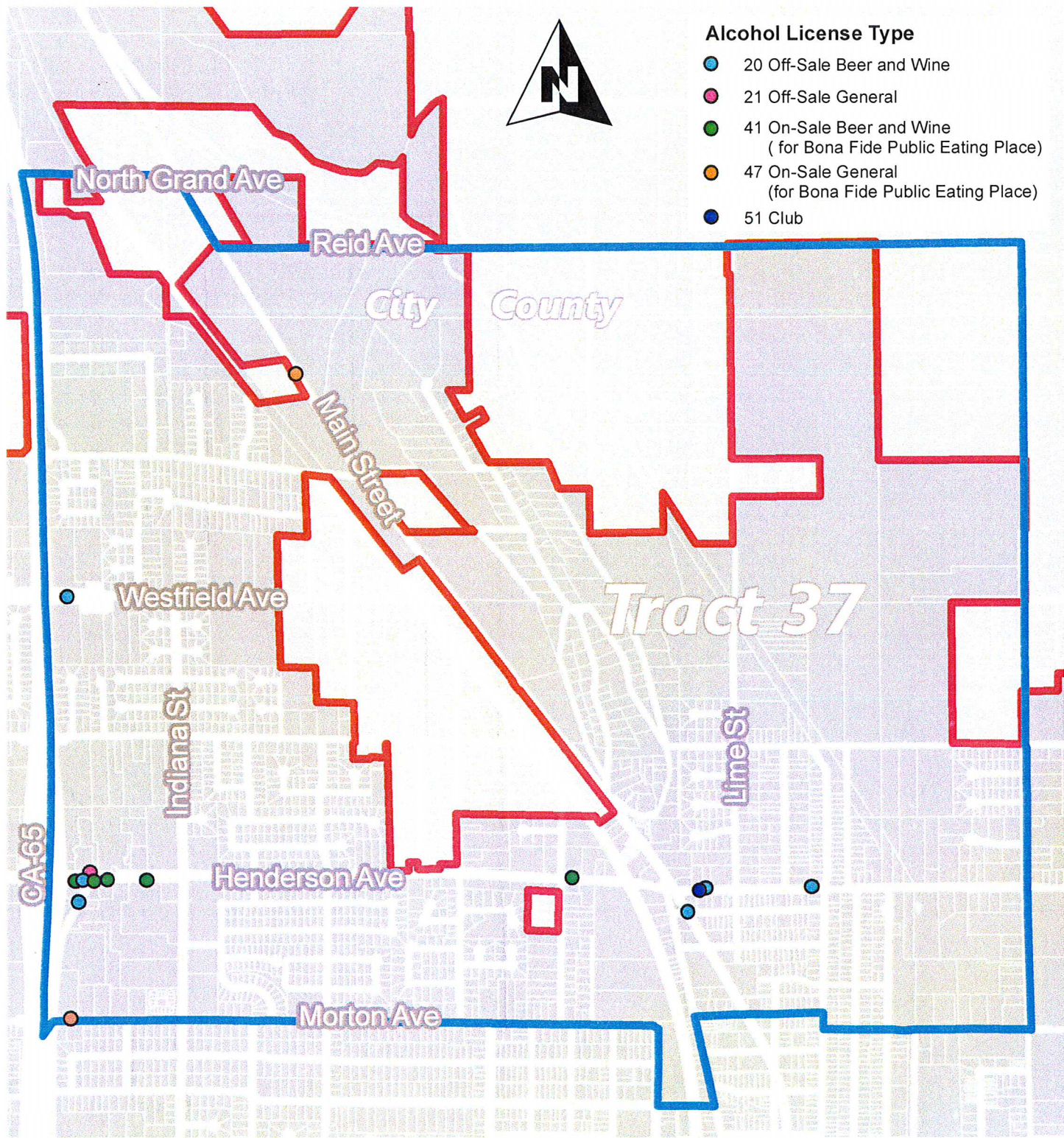
Gas Pumps

ATTACHMENT
ITEM NO. 3



Alcohol License Type

- 20 Off-Sale Beer and Wine
- 21 Off-Sale General
- 41 On-Sale Beer and Wine
(for Bona Fide Public Eating Place)
- 47 On-Sale General
(for Bona Fide Public Eating Place)
- 51 Club



Geographic
Information
Systems

A Division of the Community Development Department

Census Tract 37 ABC Map
1" = 1,300 ft.

ATTACHMENT
ITEM NO. 4

RESOLUTION NO. 748

CONDITIONAL USE PERMIT NO. 14-76

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF THE APPROVAL OF A SELF SERVICE GASOLINE FACILITY AT A CONVENIENCE MARKET AT 34 EAST HENDERSON AVENUE.

WHEREAS: The Porterville Planning Commission at their regularly scheduled meeting of August 23, 1976, held a public hearing to consider the use permit for a self-service gasoline facility at a convenience market at 34 East Henderson Avenue, and

WHEREAS: The Planning Commission received testimony from interested parties relative to the requested use permit, and

WHEREAS: The Planning Commission noted that the applicant proposes to add three remote controlled, self-service gasoline pumps and three underground storage tanks to the existing neighborhood market operation, and

WHEREAS: The Planning Commission reviewed the proposed location of the pumps and also reviewed the parking plan and found it to be adequate for the proposed use.

NOW, THEREFORE, BE IT RESOLVED: That the Porterville Planning Commission does hereby approve Conditional Use Permit No. 14-76 for a self-serve gasoline facility at a convenience market at 34 East Henderson Avenue, subject to the following conditions:

- (1) That all applicable uniform fire code requirements be adhered to, including but not limited to:
 - qualified operator on duty at all times;
 - all pumps must be clearly visible from remote control console at all times;
 - no nozzles with 'lock-open' devices permitted;
 - a 12 BC rated fire extinguisher shall be located within 50 feet of pump island, charged and readily accessible;
 - all electrical work to be in strict conformance with the uniform electrical code;

**ATTACHMENT
ITEM NO. 5**

- (2) That the applicant comply with all applicable air pollution control district requirements for vapor recovery, to include permits to construct and operate such equipment.
- (3) That dedication be offered along the Henderson Avenue frontage effecting a 42' half street width for that thoroughfare across the entire frontage upon Henderson, prior to the issuance of a building permit for the proposed self-serve gasoline facility, unless otherwise specified by the City Engineer.
- (4) That a 20' property line radius be dedicated at the southeast corner of the property prior to the issuance of a building permit.
- (5) That curb, gutter and sidewalk be constructed along the Henderson Avenue frontage. The City will do the excavation and removal.
- (6) That sidewalk and a commercial width driveway be installed upon the Second Street frontage of the subject property.
- (7) That no parking space, or portion thereof, shall be located within the area between the maximum sight line variations of any conceivable parking patterns at the fuel pump island, as viewed from the control console.
- (8) That the line of vision from the control console to the fuel pump island shall not be obstructed, including, but not limited to, signing, decals, decorations, etc., attached to the entrance door.
- (9) That any signing proposed for the identification of the fuel pump island be submitted to the Planning Department for approval prior to its installation.
- (10) That a detailed parking plan be submitted to the issuance of a building permit for the self-serve gasoline facility.
- (11) That off-street parking be provided, based on one (1) space per 200 square feet of gross floor area, and that all parking spaces and drive-ways shall maintain no less than the minimum required design criteria in accordance with City of Porterville standards.
- (12) That a trash enclosure area be positioned upon the subject site in a manner acceptable to the City Engineer and constructed to the requirements of Engineering Standard T-2a or T-2b.
- (13) That in accordance with Section 1919 of the Zoning Ordinance, a masonry block wall 6 feet in height (excepting areas in yard setback height reductions) from finished parking lot grade be installed along the full length of the westerly and northerly property lines of the proposed parcel.
- (14) That the applicant revise the tentative location of the proposed pump islands in a manner that will restrict the location of that island to private property (to keep it out of the proposed street dedication on Henderson Avenue).

MOVED by Commissioner McLaughlin, seconded by Commissioner Sommerfeld and carried unanimously by roll call vote.

DATED: August 23, 1976

ATTEST: Mary Dougherty
 Mary Dougherty, Chairman
 Porterville Planning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF
CONDITIONAL USE PERMIT (PRC 2013-008C) TO ALLOW FOR AN UP-GRADE OF
AN OFF-SALE TYPE 20 (BEER AND WINE) LICENSE TO AN OFF-SALE TYPE 21
(BEER, WINE AND DISTILLED SPIRITS) LICENSE FOR THE
PORTA VILLA MARKET LOCATED AT 34 E. HENDERSON AVENUE

WHEREAS: The Porterville Planning Commission at their regularly scheduled meeting of August 23, 1976, approved Conditional Use Permit 14-76; and

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of May 21, 2013, conducted a public hearing to consider Conditional Use Permit (PRC 2013-008C), to allow for an up-grade of an off-sale type 20 (beer and wine) license to an off-sale type 21 (beer, wine and distilled spirits) license for the Porta Villa Market located at 34 E. Henderson Avenue; and

WHEREAS: A modification to Conditional Use Permit 14-76 was required pursuant to the City of Porterville Development Ordinance; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to the requested up-grade of the alcohol license; and

WHEREAS: The City Council made the following findings:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted.

The project site is zoned CN (Neighborhood Commercial). The CN designation is intended to encourage convenience and neighborhood shopping providing day-to-day retail goods and services and to prohibit auto-oriented uses in order to maintain a pedestrian environment. The proposed up-grade from a Type 20 (beer and wine) license to a Type 21 (beer, wine and distilled spirits) license would suit the purpose of the zone designation as well as meeting the economic development guiding policy needed to retain, improve, and promote existing businesses in Porterville.

2. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included herein to ensure adequate development standards are met. Further, all land owners within the City of Porterville are held to performance standards identified in Chapter 307 of the Development Ordinance. Specifically, Section 307.03 of the Ordinance states "Land or

buildings shall not be used or occupied in a manner creating any dangerous, injurious, or noxious fire, explosive, or other hazard; noise, vibration, smoke, dust, odor, or form of air pollution; heat, cold, dampness, electrical or other disturbance; glare, refuse, or wastes; or other substances, conditions, or elements which would substantially adversely affect the surrounding area.”

3. Pursuant to “General Rule” Exemption Code 15061 (b) (3) of CEQA guidelines the project as proposed is categorically exempt.

The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This activity can be seen with certainty that there is no possibility to have a significant effect on the environment.

4. The subject site is located in Census Tract 37.00 which allows a maximum of five (5) off-sale licenses. Currently, there are seven (7) off-sale licenses issued including the existing off-sale Type 20 at 34 E. Henderson Avenue. Under the regulations of the Business and Professions Code, whenever the ratio of off-sale licenses to population in a census tract exceeds the average ratio for the county, an “undue concentration” of licenses is determined to exist and because this application is to up-grade an existing license, a letter of Public Convenience or Necessity will be required by the Department of Alcoholic Beverage Control.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit (PRC 2013-008C) subject to the following conditions:

1. The developer/applicant shall keep the distilled spirits in a secure place with access only available to the employees, and in all other ways shall comply with Exhibit “A”. Any future changes in operation which substantially alters the condition or nature of the subject business will require approval by the City Council if such modification involves expansion, relocation, or change in accessibility to the conditioned uses.
2. At all times, the facility shall be operated and maintained to comply with applicable State and Federal laws, and the City of Porterville Development Ordinance.
3. The applicant shall maintain the security lighting on the exterior of the building and in the parking lot in a manner to allow reasonable surveillance of the area to the satisfaction of the Police Department and Zoning Administrator.
4. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of

approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.

5. The elements of the conditional use permit approving off-site alcohol sales will be subject to modification or revocation if the off-sale license is sanctioned by the State of California.
6. The entire site shall be permanently maintained free of accumulated dirt and litter and in an otherwise neat and attractive manner.
7. The consumption of alcoholic beverages shall be prohibited on-site.
8. The developer/applicant shall comply with Chapter 305 of the Porterville Development Ordinance and shall assure that all signs and advertising structures, including temporary signs, are designed, erected and maintained in a manner to enhance, rather than detract from, the ultimate design and appearance of the affected locality. All signs must also be permitted.
9. The conditional use permit shall be become null and void if not undertaken actively and continuously pursued within two (2) years.

Virginia R. Gurrola, Mayor

ATTEST:

John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

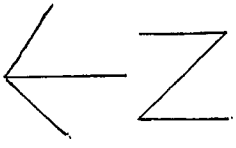
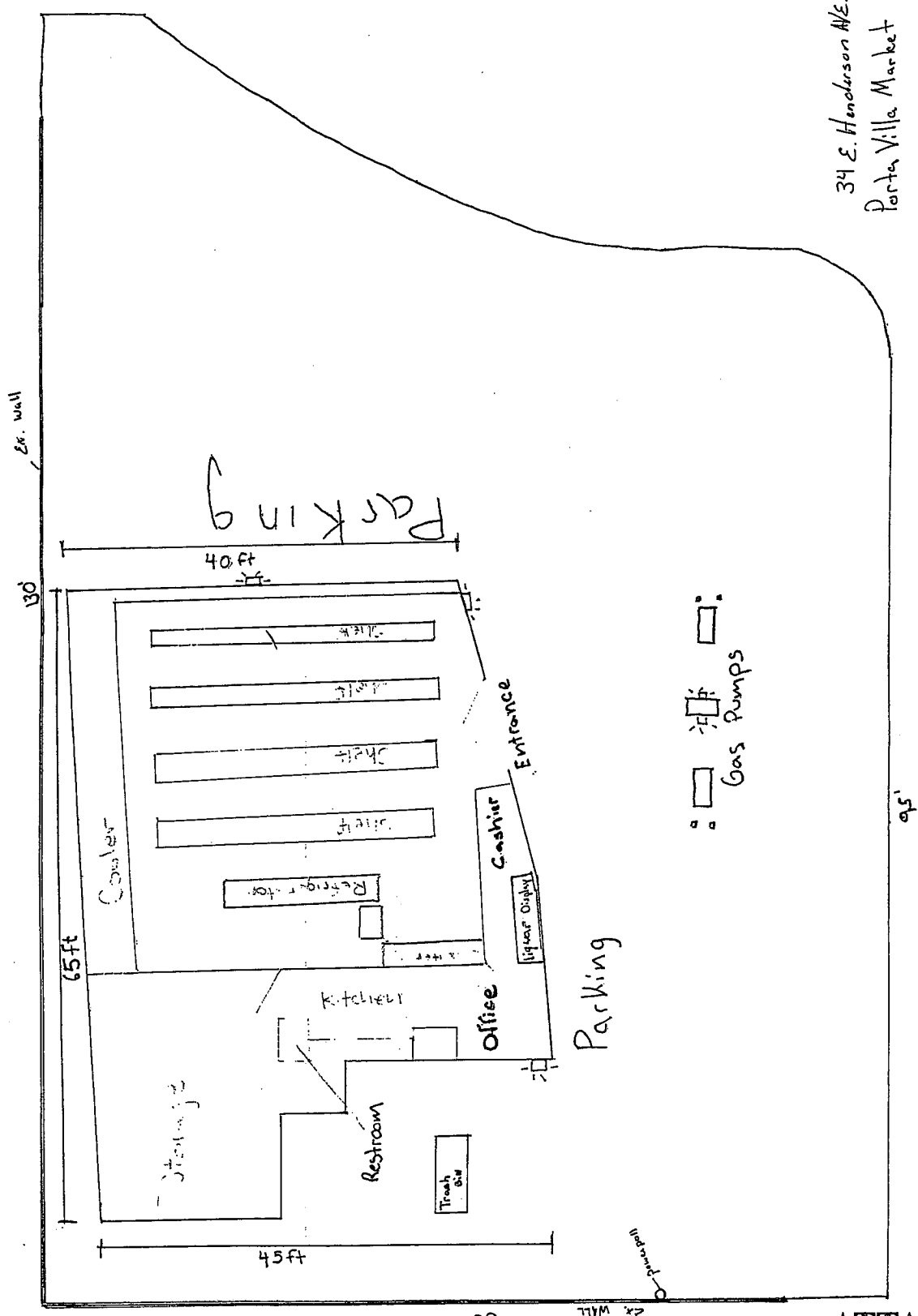
SCALE
1" = 10'

Lighting

85'

Dr. WALL

ATTACHMENT ITEM NO. A

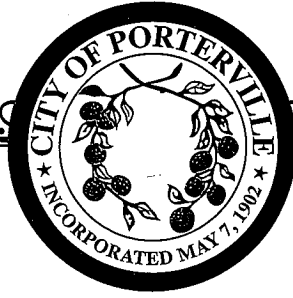


Second Street

34 E. Henderson Ave.
Porter Villa Market

Henderson Avenue

95'



**Community Development
Department**

May 22, 2013

California Alcohol Beverage Control Board
Fresno District Office
3640 East Ashlan
Fresno, CA 93726
ATTN: Susan Medrano

RE: Porta Villa Market - 34 E. Henderson Avenue

Dear Ms. Medrano:

The City Council of the City of Porterville has elected to approve submittal of this letter regarding the public convenience or necessity to be served through issuance of an off-sale Type 21 (beer, wine and distilled spirits) license for the Porta Villa Market located at 34 E. Henderson Avenue. Approval of this letter was based on the following:

1. Per Section 23958.4 of the "Business and Professions Code", the subject site is located within Census Tract 37.00 which allows five (5) off-sale licenses. At present there are seven (7) issued licenses.
2. On May 21, 2013, the City Council conditionally approved Conditional Use Permit (PRC 2013-008C), review attached resolution, to allow the off-sale of beer, wine and distilled spirits located at 34 E. Henderson Avenue. As a condition of approval, a Letter of Public Convenience or Necessity was required to be approved by the City Council.
3. In consideration of the above, the City Council determined that public convenience or necessity would be served by the issuance of an off-sale beer, wine and distilled spirits license.

Further issuance of an off-sale license allowing beer, wine and distilled spirits sales represents a viable economic asset to the community which will contribute tax revenues to the local economy. The project site is zoned CN (Neighborhood Commercial). The CN designation is intended to encourage convenience and neighborhood shopping providing day-to-day retail goods and services and to prohibit auto-oriented uses in order to maintain a pedestrian environment. The proposed up-grade from a Type 20 (beer and wine) license to a Type 21 (beer, wine and distilled spirits) license would suit the purpose of the zone designation as well as meeting the economic development guiding policy needed to retain, improve, and promote existing businesses in Porterville.

**ATTACHMENT
ITEM NO. 7**

Porta Villa Market (continued)

Page 2

May 21, 2013

For these reasons, the City Council of the City of Porterville supports issuance of an off-sale beer, wine and distilled spirits license for the Porta Villa Market located at 34 E. Henderson Avenue.

Sincerely,

Virginia R. Gurrola, Mayor