

DEPARTMENT: Planning

BY: Kris Schenk  
PHONE: 209-966-5151

**RECOMMENDED ACTION AND JUSTIFICATION:**

Approve issuance of a "Letter of Public Convenience and Necessity" to the Department of Alcohol Beverage Control for the operation of a Tea Room located at 5022 A Highway 140 in Mariposa.

This action will enable Main Street Flower, Gift & Tea Room to offer beer and wine to their patrons. This is allowed by zoning.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

See Attached Memorandum

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

A Negative Action would result in no issuance of a "Letter of Public Convenience and Necessity" and the facility would not be able to offer On Sale Beer and Wine to its customers.

Financial Impact? ( ) Yes ( X ) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively
Additional Funding Needed: \$ _____		1. Memo to Board with attachments
Source:		2. Request from Applicant
Internal Transfer _____		3. Draft Letter to ABC
Unanticipated Revenue _____ 4/5's vote		
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
( ) General ( ) Other		

**CLERK'S USE ONLY:**

Res. No.: 09-22 Ord. No. \_\_\_\_\_  
Vote - Ayes: 5 Noes: \_\_\_\_\_  
Absent: \_\_\_\_\_  
*MW* Approved  
( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

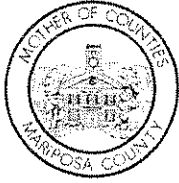
Date: \_\_\_\_\_  
Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California  
By: \_\_\_\_\_  
Deputy

**COUNTY ADMINISTRATIVE OFFICER:**

Requested Action Recommended  
 No Opinion  
Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAO: *[Signature]*



# MARIPOSA PLANNING

COUNTY OF MARIPOSA

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## MEMORANDUM

Date: January 20, 2009

To: Mariposa County Board of Supervisors

From: Eileen Collins, Planning Technician

Topic: Issuance of a "Letter of Public Convenience and Necessity" for 5022 A Highway 140, Mariposa, Virginia Carol Reardon Applicant

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### Requested Action:

The applicant has requested that the Board of Supervisors authorize the issuance of a "Letter of Public Convenience and Necessity" to the Department of Alcohol Beverage Control (ABC) to allow an additional On-Sale Beer and Wine license for 5022 A Highway 140, Mariposa, Main Street Flower, Gifts & Tea Room. The letter will allow the applicant to offer the sale of beer and wine for consumption on or off the premises where sold. Food Service is not required. This request is necessary as the ABC considers the area "over concentrated with On-Sale alcohol licenses" and requires Board approval to increase the number.

### Background:

The Department of Alcoholic Beverage Control (ABC) regulates the issuance of alcohol licenses. The ABC has established a limit of eleven (11) On-Sale licenses in Mariposa County, Census Tract 001, without the issuance of a "Letter of Public Convenience and Necessity", by the Board of Supervisors. The area does have a total of twenty-one (21) On-Sale licenses issued. Please see attached list of issued permits. By requiring this letter, the ABC is providing the local jurisdiction the ability to permit alcohol licenses above the number outright permitted by the ABC. The applicant has been required by the ABC to receive a "Letter of Public Convenience and Necessity" due to the number of On-Sale licenses, which exist within Census Tract 06-043-010-001. That area encompasses the Mariposa TPA, portions of Midpines, Mt. Bullion, Bear Valley, Hornitos, and runs to the westerly county line, including Catheys Valley. This is a primary tourism serving development area in Mariposa County, outside of Yosemite Valley. The Board has the opportunity to determine whether the increase of Off-Sale Licenses is detrimental to the area.

### Zoning Designation:

The subject property is zoned General Commercial and is located within the Mariposa Town Planning area. The on site sale of alcohol is consistent with the zoning.

## **On-Sale Liquor Licenses in Mariposa County for Census Tract 06-043-010-0001**

The following information is from the Alcohol Beverage Control (ABC) and is current as of 12/29/08.

- Type 40 = On Sale Beer (Bar, Tavern)
- Type 41 = On Sale Beer & Wine – Eating Place
- Type 42 = On Sale Beer & Wine – Public Premises
- Type 47 = On Sale General – Eating Place
- Type 48 = On Sale General – Public Premises
- Type 49 = On Sale General - Seasonal

The number of On-Sale Licenses in Census Tract 06-043-010-0001 is currently Twenty-One (21). The area encompasses Mariposa TPA, portions of Midpines, and runs to the westerly county line, including Catheys Valley. The following are the holders of those permits.

1. Type 40 – Tap Room – Hwy 140, Catheys Valley
2. Type 40 – Airport Inn & Bar & Grill – 6065 Hwy 49N
3. Type 41 – Castillo’s – 4995 5<sup>th</sup> Street
4. Type 41 – Pizza Factory – 5005 5<sup>th</sup> Street
5. Type 41 – River Rock Inn – 4993 7<sup>th</sup> Street
6. Type 41 – Charles Street Dinner House – 5043 Charles Street
7. Type 41 – The Oaks – 4993 Hornitos Road
8. Type 41 – The Yosemite Bug LLC, 6979 Hwy 140
9. Type 41 – Coyote Springs Ranch, 2412 Old Hwy, Catheys Valley
10. Type 41 – The Oasis, 2675 Hwy 140
11. Type 41 – China Station Restaurant, 5004 Hwy 140
12. Type 41 – Pizza Plus, 5004 Hwy 140
13. Type 41 – Savory’s Restaurant LLC, 5034 Hwy 140
14. Type 41 – New Red Fox, 5114 Hwy 140
15. Type 41 - Happy Burger, 5120 Hwy 140
16. Type 41 – Valencia’s Bon Ton Café, 7307 Hwy 49N
17. Type 42 – The 49er Pub, 5026 Hwy 140
18. Type 42 – 6<sup>th</sup> Street Alley, 5031 Hwy 140
19. Type 47 – Meadows Ranch Café, 5024 Hwy 140
20. Type 47 – Miners Inn Restaurant and Lounge, 5159 Hwy 140
21. Type 48 – Main & Plaza Streets, S/W Corner Hornitos

The ABC provides local jurisdiction the ability to permit alcohol licenses above the number permitted by ABC per Section 23958 and 23958.4 of the Business and Professions Code. The number of on-sale licenses allowed in Census Tract 06-043-010-001 is 11. The addition of one will bring the total to 22.

A “Letter of Public Convenience and Necessity” is required from the local governing body due to the over saturation of liquor licenses in this Census Tract area.

## BUSINESS AND PROFESSIONS CODE

### SECTION 23950-23962

23950. Application for a license shall be made to the department upon a form prescribed by the department and shall be accompanied by such other information as the department may require to assist it in determining whether the applicant and the premises qualify for a license.

23951. The application shall contain the following information:

- (a) The name of the applicant.
- (b) For a general partnership, the names of the individual partners.
- (c) For a limited partnership, limited liability company, or a corporation, the name of the entity.
- (d) The location of the premises for which the license is applied.

23952. The application shall also contain a statement to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the department applicable to the applicant or pertaining to the manufacture, sale, or distribution of alcoholic beverages, particularly any of the provisions of Sections 25500 to 25504, inclusive, or Sections 25611 to 25615, inclusive. If the applicant cannot make this statement the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

23953. (a) The application shall be signed by the applicant.

(b) For a general partnership, the application shall be signed by each of the partners, and for the purposes of this division the partners shall be deemed the applicant for any license and the licensees under any license issued pursuant to that application.

(c) For a limited partnership, the application for any license shall be signed by each of the general partners.

(d) For a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.

(e) For a corporation, the application shall be signed by two officers of the corporation, one from each of the following categories:

- (1) The chairperson of the board, the president, or a vice president.
- (2) The secretary, assistant secretary, chief financial officer,

or assistant treasurer.

23954. The application shall be verified under oath and accompanied by the license fee.

23954.5. (a) An applicant for an original on-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. At the time of filing an application for a license, an applicant for an original on-sale general license for seasonal business shall accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original on-sale beer and wine license shall accompany the application with a fee of three hundred dollars (\$300). An applicant for an original on-sale beer license shall accompany the application with a fee of two hundred dollars (\$200). An applicant for an original off-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original off-sale beer and wine license or an original license not specified in this section, shall accompany the application with a fee of one hundred dollars (\$100).

"Original on-sale general license," "original on-sale general license for seasonal business," "original on-sale beer and wine license," "original on-sale beer license," "original off-sale general license," and "original off-sale beer and wine license," as used in this division, do not include a license issued upon renewal or transfer of a license.

(b) The fee for an original on-sale general license or an original off-sale general license shall be twelve thousand dollars (\$12,000).

(c) All money collected from the fees provided for in this section shall be in the Alcohol Beverage Control Fund as provided in Section 25761.

23954.6. As used in Section 23954.5, "original onsale general license" includes an original special onsale general license; provided, that the fee prescribed in Section 23954.5 shall not be required in connection with the exchange of an onsale general license for a special onsale general license, or for the exchange of a special onsale general license for an onsale general license.

23954.7. An applicant for an original on-sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement shall, at the time of filing the application for the license, accompany the application with a fee of two thousand dollars (\$2,000), but such fee shall not be payable upon the renewal or transfer of such license.

23955. Any applicant for a wine grower's license shall, at the time of filing application for license, accompany the application with a

license fee based upon a reasonable estimate of the amount of wine gallonage to be produced by the applicant.

23956. Any applicant for an offsale general license shall, at the time of filing application for such license, accompany the application with the minimum license fee required or such larger fee as the applicant elects.

23957. Applications for licenses for the retail sale of alcoholic beverages for premises which are to be constructed or which are in the process of construction shall contain the information required by this article and such other information concerning the proposed premises as the department may require to assist it in determining whether the proposed premises will qualify for a license.

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

23958.1. Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications of a licensed beer and wine wholesaler who applies for additional beer and wine wholesaler licenses.

23958.2. Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications or premises of a currently licensed person when a license is being transferred between partners and no new partner is being licensed.

23958.4. (a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the

jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.

23959. If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes then due from the applicant under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.

23961. (a) If, at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of onsale general licenses or offsale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds that there are more applicants for the particular type of license than there are licenses available for issuance or transfer under Sections 23821 and 24070 the department shall, within 60 days following the conclusion of said period, conduct a drawing to determine the priority in which all of such applications filed with it shall be considered. No more than one such drawing shall be made in any county in any one year, and no person will be entitled to more than one opportunity to participate in such a drawing in any county with respect to an application for issuance or transfer of any one type of license. The number drawn by any applicant shall indicate the priority to be given to the consideration of his application but shall not insure the issuance of a license by the department.

(b) If a drawing is not conducted as provided in subdivision (a) of this section, applications for issuance of original onsale general licenses and offsale general licenses in a county or transfer of such licenses into such county shall be made and considered as



otherwise provided in this article.

(c) No person shall be qualified to participate in such a drawing unless such applicant is a resident of California for at least 90 days prior to the drawing. Prior to the issuance of any license, pursuant to such a drawing, the applicant shall present proof of such residency status. A corporation incorporated in a state other than California, but registered with the Secretary of State to do business in California for 90 days, shall be deemed to have satisfied the residency requirement for the purpose of this section.

(d) The department shall advertise, in connection with a drawing conducted pursuant to this section, that participation in such a drawing is available only to California residents.

23962. Notwithstanding the provisions of subdivision (b) of Section 23961, if at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of on-sale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds there are less applicants than there are on-sale general licenses available for issuance or transfer under Sections 23821 and 24070, the department may, within 90 days of the conclusion of the period, publish pursuant to Section 6061 of the Government Code in the county where such new original on-sale general licenses may be issued or into which on-sale general licenses may be transferred, notice of the department's intention to receive applications for the issuance of such new original licenses or for the intercounty transfer of such licenses, setting forth the date, time, manner, and place of acceptance of such applications within the county.

If at the conclusion of the period prescribed by the department pursuant to this section, the department finds there are more applicants for such licenses than there are licenses available for issuance or transfer under Sections 23821 and 24070, the provisions of subdivision (a) of Section 23961 requiring priority drawings shall apply.

No person who has applied in any county for a new original on-sale general license or for intercounty transfer of an on-sale general license during the period prescribed by the department in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, shall be permitted to file application for such new original license or for the intercounty transfer of such license in that county during the period prescribed for receiving applications pursuant to this section.

**V. CAROL REARDON**  
4641 Bridgeport Drive  
Mariposa, CA 95338  
(209) 742-4102

January 5, 2009

BOARD OF SUPERVISORS  
Mariposa County  
Mariposa, CA 95228

**Re: Main Street Flower, Gift & Tea Room**

Dear Board of Supervisors:

My name is Carol Reardon and I have resided in Mariposa County for the last two years. Approximately one year ago I opened a flower and gift shop on the corner of Fifth Street and Highway 140.

I am now looking to expand my business to include a tea room. This would also involve the sale of wine and champagne. As a result I am applying for an Alcoholic Beverage Control (ABC) license type 42 to allow for the sale of beer, wine, and champagne on my business premises.

I believe that the operation of the Tea Room would result in a public benefit and convenience for the following reasons: First, there is currently no other similar type of business in the city of Mariposa. The nearest Tea Room is now located in Oakhurst. Second, I believe that this is the type of business that would be of interest to the many tourists who stop and visit our city on their way to Yosemite and other points of interest, thereby drawing tourists to other downtown businesses. Third, I believe that this type of business would also be frequented by local residents looking for something not already offered in downtown Mariposa. Lastly, this is now what I do full time and I have and I remain willing to put all my effort into this business to make it a success and a positive addition to the town of Mariposa.

Thank you for your time and consideration in this matter. It is greatly appreciated.

Sincerely,

*V. Carol Reardon*  
V. CAROL REARDON

**RECEIVED**

JAN 06 2009

Mariposa County Planning Dept.