

# CITY OF LA CAÑADA FLINTRIDGE

## PLANNING COMMISSION STAFF REPORT October 14, 2014 Public Hearing

**Applicant:**

City of La Cañada Flintridge

**Case Type/No.:**

Zone Change 14-03

**Project Address:**

City-wide

**Project Planner:**

Fred Buss, Senior Planner

- 1. Request:** Section 11.14.040.B.2 of Chapter 11.14.040 of the City's Zoning Code limits the sales of alcoholic beverages by facilities with an "off-sale" license issued by the Department of Alcoholic Beverage Control ("ABC") in the Community Planned Development ("CPD") zone to the hours between six a.m. and twelve a.m. of each day. This section further provides that facilities with an "off-sale" license issued by ABC and legally operating in the CPD zone prior to January 1, 2014 shall be regarded as a legal nonconforming use which may be continued until December 31, 2014. Staff is proposing that the Planning Commission recommend, and the City Council approve, extending the expiration date on the non-conforming use status period from December 31, 2014 to December 31, 2015.
- 2. Location:** All areas of the City as applicable.
- 3. General Plan/Zoning/Existing Land Use:** The affected General Plan land use designation is Commercial/Office. The affected zoning is the Community Planned Development (CPD) zone. The affected existing land uses include retail.
- 4. Environmental Review:** Staff has recommended that the adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
- 5. Background/Context:** On December 2, 2013, the City Council adopted Ordinance No. 418, which enacted Section 11.14.040.B.2 of the La Cañada Flintridge Municipal Code. This section limits the sales of alcoholic beverages by "off-sale" licensed facilities in the CPD zone to the hours between six a.m. and twelve a.m. of each day. This section further provides that facilities with an "off-sale" license issued by ABC and legally operating in the CPD zone prior to January 1, 2014 shall be regarded as a legal nonconforming use which may be continued until December 31, 2014. For further background on Ordinance No. 418, please see the November 18, 2013 City Council staff report and Ordinance No. 418.

On February 19, 2014, 7-Eleven, Inc. filed a lawsuit against the City to challenge the new hour's restrictions. Among other arguments, 7-Eleven contends that state law preempts the City's ordinance.

Trial in this case is currently scheduled for March 9, 2015. In light of this trial date, staff is recommending that the one year grace period to reach compliance be extended an additional year. If approved by the City Council, facilities with an "off-sale" license issued by ABC and legally operating in the CPD zone as of January 1, 2014, shall be regarded as a legal nonconforming use which may be continued until *December*

31, 2015. This extension will provide sufficient time for the Court to issue a legal determination regarding Ordinance No. 418.

**6. Findings:** For regulatory Zone Changes such as this (a legislative act), the Planning Commission is responsible for holding a public hearing and providing a recommendation to the City Council. Section 11.42.100 – Amendments – requires the Planning Commission to make the following findings relating to amendments to the text. Staff has provided the following support for the findings:

A. The amendment is warranted to protect the public convenience.

Current basic regulations in the Zoning Ordinance do not address blanket limitations for the sale of alcoholic beverages from “off-sale” licensed premises. California law allows cities to regulate alcoholic beverages under provisions within the Zoning Ordinance. The City Council has expressed a desire to preserve public health, safety, welfare, peace, and morals as they relate to the regulation of “off-sale” licensed alcoholic beverage outlets. The Planning Commission finds that base regulations applicable to all “off-sale” licensed premises establishes overall limitations that act to further support the expressed desires of the City Council and yet still allow reasonable convenience to the public for access to alcoholic beverages.

B. The amendment is justified to implement good zoning practices.

Such restrictions in the Zoning Ordinance are deemed reasonably necessary to protect the public health, safety, welfare, peace, and morals of the citizens of the city by reducing potential nuisance and potential criminal activities adjacent to residential areas.

**7. Recommendation:** Staff recommends that the Planning Commission concur with the above Findings and recommend to the City Council approval of the amendment to Section 11.14.040.B.2 of the Zoning Ordinance. A Planning Commission Resolution recommending the ordinance amendment is attached.

**Attachments:**

1. City Council Staff Report Dated November 18, 2013
2. Ordinance No. 418
3. Resolution Adopting Zone Change 14-03
4. Proposed Ordinance

**RESOLUTION NO. 14-\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA CAÑADA FLINTRIDGE RECOMMENDING ADOPTION OF AN AMENDMENT TO SECTION 11.14.040.B.2 OF CHAPTER 11.14 OF TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE TO EXTEND THE TIME PERIOD FOR FACILITIES WITH AN OFF-SALE LICENSE IN THE COMMUNITY PLANNED DEVELOPMENT ZONE TO COMPLY WITH TIME LIMITATIONS FOR SALES OF ALCOHOLIC BEVERAGES**

**WHEREAS**, in 2013, the City Council of the City of La Cañada Flintridge adopted Chapter 11.14.040 of Title 11 of the La Cañada Flintridge Municipal Code to establish reasonable time limitations for facilities with an off-sale license issued by the Department of Alcoholic Beverage Control ("ABC") in the Community Planned Development ("CPD") zone to sell alcoholic beverages; and

**WHEREAS**, pursuant to Section 11.14.040.B.2 of that Chapter, facilities with an "off-sale" license issued by ABC and legally operating in the CPD zone prior to January 1, 2014, which sales of alcoholic beverages do not conform to the new time limitations, shall be regarded as a legal nonconforming use which may be continued until December 31, 2014; and

**WHEREAS**, on October 14, 2014, the Planning Commission, after notification in the prescribed manner, held a Public Hearing to consider a proposed amendment to extend the period from December 31, 2014 to December 31, 2015; and

**WHEREAS**, based on review of the City and State CEQA Guidelines, the Planning Commission recommends that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment; and

**WHEREAS**, the Planning Commission finds that all the facts contained in the staff report dated October 14, 2014 regarding the proposed changes to the Zoning Ordinance are true and correct, and the Planning Commission hereby adopts said staff report as its own findings; and

**WHEREAS**, the Planning Commission finds the following:

A. The amendment is warranted to protect the public convenience. Current basic regulations in the Zoning Ordinance do not address blanket limitations for the sale of alcoholic beverages from "off-sale" licensed premises. California law allows cities to regulate alcoholic beverages under provisions within the Zoning Ordinance. The City Council has expressed a desire to preserve public health, safety, welfare, peace, and morals as they relate to the regulation of "off-sale" licensed alcoholic beverage outlets. The Planning Commission finds that base regulations applicable to all "off-sale" licensed premises establishes overall limitations that

act to further support the expressed desires of the City Council and yet still allow reasonable convenience to the public for access to alcoholic beverages.

B. The amendment is justified to implement good zoning practices. Such restrictions in the Zoning Ordinance are deemed reasonably necessary to protect the public health, safety, welfare, peace, and morals of the citizens of the city by reducing potential nuisance and potential criminal activities adjacent to residential areas.

**NOW, THEREFORE**, based on the above Findings, the Planning Commission of the City of La Canada Flintridge does hereby recommend that the City Council: find the project to be exempt from CEQA, and adopt the Zoning Ordinance amendment (Exhibit A) pertaining to the regulation of alcohol sales.

PASSED, APPROVED, AND ADOPTED this 14<sup>th</sup> day of October, 2014

Attest:

\_\_\_\_\_  
Chair, Planning Commission

\_\_\_\_\_  
Secretary to the Planning Commission

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF LA CAÑADA FLINTRIDGE  
TO AMEND SECTION 11.14.040.B.2 OF CHAPTER 11.14  
OF TITLE 11 OF THE LA CAÑADA FLINTRIDGE MUNICIPAL CODE  
TO EXTEND THE TIME PERIOD FOR FACILITIES  
WITH AN OFF-SALE LICENSE  
IN THE COMMUNITY PLANNED DEVELOPMENT ZONE  
TO COMPLY WITH TIME LIMITATIONS  
FOR SALES OF ALCOHOLIC BEVERAGES**

**WHEREAS**, in 2013, the City Council of the City of La Cañada Flintridge adopted Chapter 11.14.040 of Title 11 of the La Cañada Flintridge Municipal Code to establish reasonable time limitations for facilities with an off-sale license issued by the Department of Alcoholic Beverage Control (“ABC”) in the Community Planned Development (“CPD”) zone to sell alcoholic beverages; and

**WHEREAS**, pursuant to Section 11.14.040.B.2 of that Chapter, facilities with an “off-sale” license issued by ABC and legally operating in the CPD zone prior to January 1, 2014, which sales of alcoholic beverages do not conform to the new time limitations, shall be regarded as a legal nonconforming use which may be continued until December 31, 2014; and

**WHEREAS**, the City Council now desires to extend this time period for an additional year.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LA CAÑADA FLINTRIDGE DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Section 11.14.040.B.2 of Chapter 11.14 of Title 11 of the La Cañada Flintridge Municipal Code is hereby amended and shall now read as follows:

2. Facilities with an “off-sale” license issued by the Department of Alcoholic Beverage Control legally operating in the CPD zone prior to January 1, 2014, which sales of alcoholic beverages do not conform to the requirements of this subsection B, shall be regarded as a legal nonconforming use which may be continued until December 31, 2015. On or before such date, the legal nonconforming use shall be terminated unless an extension is granted as follows:

a. The owner of the facility who desires to extend the amortization period identified in subsection (B)(2) must apply for approval of an extension not later than three months prior to expiration of the amortization period. Such application shall be made in writing on a form as prescribed by the director of community development and shall be accompanied by the required fee as established by resolution of the city council.

b. Not later than thirty (30) calendar days after submittal of an application to extend the amortization period, the director of community development shall notify the applicant, in writing, if the application is not complete.

c. Within sixty (60) days after a determination has been made that the application is complete, the planning commission shall hold a public hearing at which time it shall receive and consider evidence and testimony to determine whether the applicant has made a showing of extreme financial hardship, which shall be defined as a failure to recover the initial

financial investment over the period the business has been in operation plus the one-year amortization period. Upon a finding of extreme financial hardship, the planning commission shall make written findings in support of its determination to grant the extension of the amortization period and shall indicate the duration of the extension.

d. The determination by the planning commission shall be final and effective unless appealed to the city council in accordance with Section 11.49.020.

e. For purposes of this section, a notice of a public hearing by either the planning commission or city council shall be mailed to all property owners within a radius of five hundred (500) feet from the subject facility no later than ten days prior to the date of the public hearing.

f. Upon conclusion of the amortization period, or any extension thereof, any facility in the CPD zone with an "off-sale" license issued by the Department of Alcoholic Beverage Control shall limit the sales of alcoholic beverages to the hours between six a.m. and twelve a.m. of each day.

**Section 2.** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 3.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 4.** The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

**Section 5.** This Ordinance shall take effect thirty (30) days after its adoption in accordance with California Government Code Section 36937.

**Section 6.** The Mayor shall sign this ordinance and the City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published and/or posted in accordance with applicable law.

**PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2014.**

\_\_\_\_\_  
Michael T. Davitt, Mayor

ATTEST:

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Tania Moreno, City Clerk