



## REPORT TO MAYOR AND COUNCIL

**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: April 22, 2014

**SUBJECT: APPEAL OF 99 CENTS ONLY STORE, 4465 CLAYTON ROAD, FINDING OF PUBLIC CONVENIENCE AND NECESSITY DENIAL (PL 131321- FOPCN)**

**Report in Brief**

On February 7, 2014, the Zoning Administrator denied an application to sell beer and wine from an existing 20,468 sq. ft. 99 Cents Only store located on a 1.76-acre site at 4665 Clayton Road. Steve Rawlings (“Appellant”), on behalf of 99 Cents Only Stores, has filed an appeal of the Zoning Administrator’s denial. Based on the discussion and analysis set forth in the following report, staff recommends that the City Council deny the appeal, upholding the Zoning Administrator’s denial of the request for a Finding of Public Convenience and Necessity (FOPCN).

**Background**

On September 16, 2013, Alfonso Gomez, on behalf of 99 Cents Only Stores submitted a request for a FOPCN to sell beer and wine from a 20,468 sq. ft. 99 Cents Only store on a 1.76-acre site at 4665 Clayton Road. Approval of a FOPCN by a local jurisdiction is a requirement of the State Department of Alcoholic Beverage Control where the proposed new alcohol licensee would be located in an area that is deemed “over concentrated” with existing alcohol licenses, or in a high crime area.

The project application requesting a FOPCN was deemed complete on December 6, 2013. Public notices were sent to all properties within 300-feet of the project site as well as to the applicant stating that no public hearing would be held by the Zoning Administrator unless requested. No public hearing was requested. On February 7, 2014, the Zoning Administrator issued Zoning Administrator Order No. 14-02ZA (Attachment 1 – Exhibit A) denying the FOPCN request, finding that issuance of a license to sell beer and wine at this location would result in a public nuisance or otherwise result in an adverse impact on the public’s health, safety, or welfare due to a saturation of alcohol licenses within the immediate vicinity.

The Appellant filed an appeal of the Zoning Administrator denial of the request for a FOPCN on February 18, 2014 (Attachment 2). Per Development Code Section 122-617(c)(7), appeals of the determination on a FOPCN are considered by the City Council.

**Discussion**

The proposed project would allow the 99 Cents Only Store located at 4655 Clayton Road to sell beer and wine from an existing 20,468 sq. ft. retail space. Additional project details are provided within the applicant's written statement (Attachment 3). The Department of Alcoholic Beverage Control (ABC) may issue "off sale" liquor licenses if the retailer is not located in an area that is over concentrated or in an area of high crime. "Over concentration" is presumed when the ratio of the number of liquor licenses to population within a census tract exceeds the ratio in the county. If the location meets the criteria of either over concentration or high crime rate, the ABC refers the application to the local jurisdiction to make a finding that the proposed alcohol sales serve a public convenience and necessity (FOPCN) before the license can be issued. The location of this 99 Cents Only Store is within an area of over concentration of liquor licenses as defined by the ABC.

As discussed above, the Zoning Administrator determined that the issuance of a liquor license to sell beer and wine in this location would result in a public nuisance or otherwise result in an adverse impact on the public's health, safety, or welfare because of the saturation of the immediate vicinity of the site with alcohol licenses. There are already 11 off-sale alcohol licenses and 25 businesses selling alcohol on and off their properties in the immediate census tracts in the surrounding project area. Further, according to research completed by the Concord Police Department, the neighborhood already has a high incidence of alcohol-related crimes and the granting of the FOPCN could result in a potential increase in alcohol related crimes and loitering.

Moreover, Development Code Section 122-617(c)(5)b requires that an FOPCN be denied when issuance will result in a public nuisance or otherwise result in an adverse impact on the public's health, safety, or welfare. As detailed in this staff report and attachments hereto, those conditions exist in connection with Appellant's request for an FOPCN,

The concerns raised by the Concord Police Department regarding crime are the basis of the appeal as presented in the February 18, 2014 appeal application (Attachment 2) and are enumerated in bold below followed by staff's response.

**Appeal Point: The Appellant states that the crimes rates that were reported by the Police Department to the ABC indicated that the crime reporting district is actually below the average for the City of Concord, yet the Police Department report to the Zoning Administrator did not reveal that the site is located in a crime reporting district that is below the City of Concord average.**

**Staff Response:** *The Police Department reviewed the appeal and provided their analysis of the appellant's point noted above in a memorandum dated March 28, 2014 (Attachment 1 – Exhibit B). In reviewing the appeal, the Police Department found that Uniform Crime Reporting (UCR) statistics which only include murder, rape, robbery, arson, assault, and several types of theft, were relied upon by the appellant. In contrast the Police Department's analysis utilized alcohol-related crime statistics for the area near 4665 Clayton Road which includes reporting districts 2410, 2390, 4430, and 4440. The subject property is located in reporting district 2410, with reporting districts 2390, 4430, and 4440 located nearby (Attachment 4). The Police Department believes that the direct evaluation of alcohol-related crimes in reviewing the FOPCN request is more appropriate than the use of more generalized UCR statistics.*

*Attachment 1, Exhibit B also includes the alcohol-related crime rate within the past 90 days and indicates an increase in alcohol-related crimes within the neighborhood in early 2014.*

*The Police Department memorandum further notes that the appeal references Concord Police reporting district 4510 while the project site is located within reporting district 2410. Of the four reporting districts analyzed in this neighborhood, reporting district 2410 was the location for a majority of the alcohol-related police calls within the last 90 days.*

*Based on the analysis discussed above, the Police Department remains opposed to the granting of an FOPCN for the 99 Cents Only store at 4665 Clayton Road.*

### **Fiscal Impact**

The proposed sale of alcohol could have a fiscal impact on the City because of increased calls for service to the Police Department and their associated costs.

### **Public Contact**

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel as required by the Concord Municipal Code. This item has also been posted at the Civic Center and at the subject site at least 14 days prior to the public hearing. Although no public hearing was requested before the Zoning Administrator on the original application, one public comment was received during that time expressing opposition to the FOPCN request (Attachment 5).

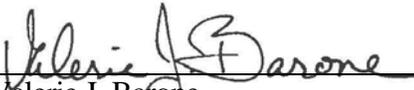
### **Summary**

Staff recommends the City Council uphold the Zoning Administrator's decision to deny the request for a Finding of Public Convenience and Necessity, based on the above analysis, as the required findings to support the application cannot be made. There are five existing licenses within the subject census tract (three permitted) contributing to an overconcentration of alcohol sales in the area that could contribute to alcohol related crimes and adversely affect the public health, safety, and welfare of the neighborhood.

**Recommendation for Action**

Staff recommends that the City Council adopt Resolution No. 14-16, denying the appeal, and upholding the Zoning Administrator's denial of the 99 Cents Only Store request for a Finding of Public Convenience and Necessity.

Prepared by: Jason R. Hade, AICP  
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Reviewed by: Victoria Walker  
Director of Community and Economic  
Development  
[victoria.walker@cityofconcord.org](mailto:victoria.walker@cityofconcord.org)

Attachments:

- Attachment 1: Resolution No. 14-16 (with Exhibits A and B)
- Attachment 2: Appeal form dated February 18, 2014
- Attachment 3: Applicant's written statement
- Attachment 4: Police Reporting Districts Map
- Attachment 5: Public comment received January 21, 2014

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Denying an Appeal by Steve Rawlings  
and Upholding the Denial for the 99 Cents Only Store  
Request for a Finding of Public Convenience and  
Necessity (PL 131321-FOPCN)**

**Resolution No. 14-16 (Denial)**

**WHEREAS**, the 99 Cents Only Store is an existing store located at 4665 Clayton Road, in Concord (APN 115-520-011) (the “Site”); and

**WHEREAS**, on September 16, 2013, Alfonso Gomez, on behalf of 99 Cents Only Stores, submitted an application for a FOPCN to sell beer and wine from the 99 Cents Only store (the “Project”) at the Site; and

**WHEREAS**, on December 6, 2013, the application was deemed complete for processing; and

**WHEREAS**, after giving all public notices required by State Law and the Concord Municipal Code, a public hearing was not requested by any affected person and one public comment was received; and

**WHEREAS**, on February 7, 2014 the Zoning Administrator, after consideration of all pertinent plans and documents, approved Order No. 14-02ZA denying the applicant’s request for a FOPCN; and

**WHEREAS**, on February 18, 2014, Steve Rawlings, on behalf of 99 Cents Only Stores, appealed the decision of the Zoning Administrator to deny the Project; and

**WHEREAS**, the City Council, after giving all public notices required by State Law and the Concord Municipal Code, held a duly noticed public hearing on April 22, 2014, regarding the subject appeal; and

**WHEREAS**, on April 22, 2014, the City Council, after consideration of all pertinent plans, documents and testimony, declared their intent to deny the appeal and uphold the Zoning Administrator’s denial of the 99 Cents Only FOPCN (Order No. 14-02ZA).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES  
RESOLVE AS FOLLOWS:**

//

1           **Section 1.** Denies the appeal and upholds the Zoning Administrator’s denial of the 99 Cents  
2 Only store request for a FOCPN, subject to the Zoning Administrator Order No. 14-02ZA, which is  
3 attached hereto as Exhibit A and incorporated herein by reference, and further makes the following  
4 findings:

5           Finding of Public Convenience and Necessity

6           1.       The business does not have a license at a different location and is not relocating  
7 within the same census tract.

8           2.       The business is not changing from one license type to another.

9           3.       Denial of a Finding of Public Convenience and Necessity to sell alcoholic  
10 beverages would not result in an undue economic hardship as the Applicant’s proposed sale of  
11 alcoholic beverages would have constituted less than five percent of the store’s gross floor area.

12           4.       Although the business would include alcoholic beverage sales as an ancillary  
13 part of its operation if the FOCPN were approved, Development Code Section 122-617(c)(5)b states  
14 that a FOCPN shall be denied when issuance of a license will result in a public nuisance or otherwise  
15 result in an adverse impact on the public’s health, safety, or welfare. That is the case for this FOCPN  
16 request as discussed in detail in number 7 below.

17           5.       The convenience benefits to the community from the sale of alcoholic  
18 beverages do not outweigh the undue concentration criteria. There are other stores licensed to sell  
19 liquor such as 7-Eleven and FoodMaxx located within approximately 830 feet and 1,500 feet from the  
20 subject site, respectively.

21           6.       A Public Convenience and Necessity is already being served by an overabundance  
22 of facilities selling alcoholic beverages in the same census tract as the project site, because ABC records  
23 indicate that there are five liquor licenses within such census tract and their regulations limit the number to  
24 no more than three absent a Finding of Public Convenience and Necessity by the local jurisdiction. Further,  
25 there are already 11 off-sale alcohol licenses and 25 businesses selling alcohol on and off their properties in  
26 the census tracts immediately adjacent to the project site.

27           7.       Issuance of a license will result in a public nuisance or otherwise result in an  
28 adverse impact on the public’s health, safety, or welfare because of the saturation of the immediate

1 vicinity (0.5 mile radius) of the site with 11 off-sale alcohol licenses and 25 businesses selling alcohol  
2 on and off their properties within the impacted census tract and adjacent census tracts. Further,  
3 according to research completed by the Concord Police Department, the neighborhood already has a  
4 high incidence of alcohol-related crimes and the granting of the FOPCN could result in a potential  
5 increase in alcohol related crimes and loitering. A copy of the Concord Police Department  
6 memorandum is attached hereto as Exhibit B and incorporated by reference.

7 **Section 2.** This resolution shall become effective immediately upon its passage and adoption.

8 **PASSED AND ADOPTED** by the City Council of the City of Concord on April 22, 2014, by  
9 the following vote

10 **AYES:**

11 **NOES:**

12 **ABSTAIN:**

13 **ABSENT:**

14 **I HEREBY CERTIFY** that the foregoing Resolution No. 14-16 was duly and regularly  
15 adopted at a regular meeting of the City Council of the City of Concord on April 22, 2014.

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18 \_\_\_\_\_  
Mary Rae Lehman, CMC  
City Clerk

19 **APPROVED AS TO FORM:**

20  
21 \_\_\_\_\_  
Mark Coon  
City Attorney

22  
23  
24 Exhibit A: Zoning Administrator Order No. 14-02ZA  
25 Exhibit B: Concord Police Department Memorandum dated March 28, 2014  
26  
27  
28

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**ZA ORDER NO. 14-02ZA**

**OFFICE OF THE ZONING ADMINISTRATOR  
CITY OF CONCORD  
DENYING FINDING OF PUBLIC CONVENIENCE AND NECESSITY (PL 131321- FOPCN)  
Applicant: Alfonso Gomez  
Owner: Kin Properties, Inc.  
Project Name: 99 Cents Only Store at 4665 Clayton Road FOPCN**

**WHEREAS**, on September 16, 2013, Alfonso Gomez, on behalf of 99 Cents Only Stores, submitted an application for a Finding of Public Convenience and Necessity for the sale of beer and wine for off-site consumption from a 20,468 sq. ft. 99 Cents Only store at 4665 Clayton Road, APN 115-520-011; and

**WHEREAS**, on December 6, 2013, the application was deemed complete for processing and was duly processed (including Police Department review) in accordance with the City of Concord Development Code; and

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15301, Class 1, "Existing Facilities," and therefore no further environmental review is required; and

**WHEREAS**, after giving all public notices required by State law and the Concord Municipal Code, a public hearing was not requested by any affected person and no public comment was received; and

**NOW, THEREFORE, BE IT RESOLVED** that the Zoning Administrator does hereby deny PL 131321- FOPCN and further makes the following findings:

CEQA

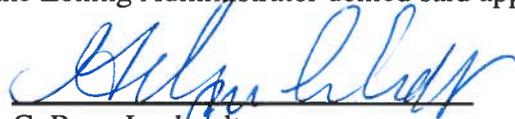
1. The project is Categorically Exempt pursuant to Section 15301, Class 1 "Existing Facilities," in that the sale of alcohol would occur within an existing 20,468 sq. ft. store building on a developed site.

Finding of Public Convenience

2. Issuance of a license will result in a public nuisance or otherwise result in an adverse impact on the public's health, safety, or welfare because of the saturation of the immediate vicinity of the site with alcohol licenses as there are already a total of 11 off-sale alcohol licenses and a total of

1 25 businesses selling alcohol on and off their properties within the impacted census tract. Further,  
2 according to research completed by the Concord Police Department, the neighborhood already has a  
3 high incidence of alcohol-related crimes and the granting of the FOPCN could result in a potential  
4 increase in alcohol related crimes and loitering. A copy of the Concord Police Department  
5 memorandum is attached hereto as Attachment 1 and incorporated by reference.

6  
7 Based on the above findings, on February 7, 2014, the Zoning Administrator denied said application.

8 

9 G. Ryan Lenhardt,  
10 Zoning Administrator

11 Attachment 1: Concord Police Department Memorandum

12  
13 cc: California Department of Alcoholic Beverage Control  
14 Oakland District Office  
15 Attn: Anneata Williams  
16 1515 Clay Street, Suite 2208  
17 Oakland, CA 94612

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27  
28  
Sgt. Russ Norris, Concord Police Department



**Sergeant Russ Norris**  
 Concord Police Department  
 1350 Galindo Street  
 Concord, CA 94520  
 Phone: (925) 250-5041  
 Fax: (925) 691-6549  
 russn@cpd.ci.concord.ca.us

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**Code Enforcement Unit**


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**December 5, 2013**

**TO:** Jason R. Hade, AICP, Associate Planner  
 City of Concord Planning Division

**SUBJECT:** Issuance of an Off-Sale Beer and Wine License  
 FOPCN Addendum  
 4663 Clayton Rd, Concord

The purpose of this memorandum is to update the statistical data provided in a June 25<sup>th</sup>, 2013 letter to ABC Licensing Representative Anneata Williams regarding proposed alcohol sales. The original memorandum was presented in opposition to an off-sale license for the "99 Cent Only" store located at 4663 Clayton Rd in Concord CA. The surrounding neighborhood is a combination of retail, high density residential, and single-family residential uses. I remain opposed to this license for the following reasons:

**1. Saturation**

The census tracts in the immediate vicinity of this property already have a total of eleven off-sale licensed businesses, and a total of twenty-five businesses selling alcohol on- and off-sale. One business is three tenths of a mile away, while the other is only one-tenth of a mile away.

**2. Crime Rate**

The neighborhood has an inordinately high incidence of alcohol-related crimes. The data shown below represents complaints made to the Police Department about issues involving the consumption of alcoholic beverages or that otherwise commonly involve the consumption of alcoholic beverages. When contrasted with data from the memorandum dated June 25<sup>th</sup>, there has been a decrease in alcohol-related complaints in this area. This drop directly coincides with the incarceration or displacement of several chronic inebriants in the neighborhood. It is foreseeable that these numbers will increase upon their release from custody in early- to mid-2014.

<b>Crime</b>	<b>Frequency</b>	<b>% Change</b>
Intoxicated Driving	1	-67%
Disturbances	47	+40%
Homeless Loiterers	40	-56%
Intoxicated Persons	1	-90%
Parties	3	-73%
Trespass/Unwanted Guests	12	+8%

*Note: While it is recognized that homelessness in itself is not a criminal matter, homeless loiterer complaints in this neighborhood tend to involve a very small group of habitual inebriants. The community regularly complaints to Officers about their intoxication and related behaviors.*

For the above reasons, I believe the issuance of another off-sale license in this neighborhood would negatively impact the already high crime rate. I also believe such a license serves no public convenience or need due to the close proximity of other retailers licensed for alcohol sales.

Please contact me with questions.



**Sergeant Russ Norris**  
 Concord Police Department  
 1350 Galindo Street  
 Concord, CA 94520  
 Phone: (925) 250-5041  
 Fax: (925) 691-6549  
 russn@cpd.ci.concord.ca.us

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**Code Enforcement**

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**March 28, 2014**

**TO:** Jason R. Hade  
 City of Concord Planning Division

**SUBJECT:** Issuance of an Off-Sale Beer and Wine License  
 FOPCN Appeal Hearing  
 4663 Clayton Rd

This memorandum is in response to your request for comment on the FOPC Appeal presented on behalf of the 99 Cent Only store located at 4663 Clayton Rd.

I have reviewed the notice of appeal and I am unclear on the origin and nature of the data presented, so I am unable to respond to it directly. However, I suspect the quoted crime rates are "Uniform Crime Reporting" (or UCR) statistics. UCR crimes include murder, rape, robbery, arson, assault, and several types of theft. These are not the crime statistics I evaluated in an FOPCN memorandum sent to you dated December 5<sup>th</sup>, 2013. In that memorandum, I evaluated alcohol-related crime statistics for the area around 4663 Clayton Rd consisting of reporting districts 2410, 2390, 4430, and 4440. While the use of UCR statistics has utility in certain types of crime analysis and prediction, I suggest that consideration of UCR crimes for determination of Public Necessity and Convenience is in error. Instead, I offer that direct evaluation of alcohol-related crimes is more appropriate in this circumstance.

The below table illustrates the crime rate for crimes in the past 90 days that are either inherently alcohol-related or commonly involve alcohol use. Also offered is the change in crime rate from the last period analyzed: September 5<sup>th</sup> 2013 through December 5<sup>th</sup>, 2013.

<b>Crime</b>	<b>Frequency</b>	<b>Change</b>
Intoxicated Driving	3	+66%
Disturbances	108	+56%
Homeless Loiterers	67	+40%
Intoxicated Persons	5	+80%
Parties	3	-20%
Trespass/Unwanted Guests	27	+55%

As was predicted in the memorandum dated December 5<sup>th</sup>, 2013, the alcohol-related crime rate for this neighborhood increased dramatically in early 2014. While it may not be possible to identify the specific causes, it is highly likely the change is partially attributable to the release from custody of chronic inebriants who live in the area.

I believe it is also important to note that the Notice of Appeal indicates that the neighborhood in question is within police reporting district "4510". It is unclear what this number references. If it is intended to indicate Concord Police Reporting District 4510, this area is miles away from the 4663 Clayton Rd neighborhood. 4663 Clayton Rd is instead located within district 2410, an area which is largely residential with only the southernmost edge facing a retail area. It is this retail area, and not the larger area of district 2410, that is most heavily impacted by alcohol violations. Interestingly, of the four reporting districts analyzed in this neighborhood, reporting district 2410 was the location for a majority of the alcohol-related police calls in the last 90 days. This includes 38% of all disturbance calls, 66% of all loiterer calls, and 40% of all public intoxication calls.

If the appellant is able to clarify the origin of the data provided, as well as the geographical area analyzed, I would be better able to respond to the claim that the crime rate around 4663 Clayton Rd is lower than the City average. As currently presented in the Notice of Appeal, the data would seem to be invalid for the conclusion presented.

Because the history of this neighborhood suggests a chronic high frequency for alcohol-related crimes, I remain committed to my disapproval of the alcohol sales at 4663 Clayton Rd.

Please contact me with questions.



NOTICE OF APPEAL  
[Concord Municipal Code 2901(b)]

TO: City Council  
City of Concord  
1950 Parkside Drive, MS/03  
Concord, CA 94519-2578

FOR STAFF USE ONLY	
PUBLIC NOTICE FEE \$	_____
<i>(According to Fees and Charges Resolution)</i>	
DATE PAID	<u>2/18/14</u>
FEE REC'D BY	<u>349<sup>00</sup></u>

DATE \_\_\_\_\_

I hereby appeal the decision / requirement of the Zoning Administrator  
(ADMINISTRATOR OR COMMISSION)

in approving / denying the application of 99 Cent Only Stores  
(NAME OF APPLICANT)

for Finding of Public Convenience or Necessity on Feb 7, 2014, 19   .  
(TITLE OF ITEM BEING APPEALED)

Please indicate the specific action(s) or requirement(s) being appealed: \_\_\_\_\_

The crime rates that were reported by the Police Dept. to ABC showed that the crime reporting district is actually below the average for the City of Concord. Yet, the Police Department report to the Zoning Administrator did not reveal that the site was located in a crime reporting district that is below the City of Concord average.

\_\_\_\_\_  
Steve Rawlings  
(PRINT) NAME OF APPELLANT

\_\_\_\_\_  
SIGNATURE OF APPELLANT / REPRESENTATIVE

APPELLANT'S ADDRESS 26023 Jefferson Ave., Suite D, Murrieta, CA 92562	HOME PHONE	BUSINESS PHONE 951.667.5152
ADDRESS FOR NOTICES PO Box 96, Murrieta, CA 92564	951-667-5152	
MY REPRESENTATIVE IS	BUSINESS PHONE	

FOR STAFF USE ONLY			
ADDRESS OF PROPERTY INVOLVED <u>4665 Clayton Road</u>			
ASSESSOR'S PARCEL NUMBER(S) <u>115-520-011</u>			MUNICIPAL CODE SECTION
FILE NUMBER <u>PL131321-AC</u>	FILE TITLE <u>99 Cent FORCN Appeal</u>	NAME OF RESPONSIBLE PLANNER	REVIEWED BY (PLANNING STAFF)
RECEIVED BY <u>Mary Kay Shuman</u>		PROJECT PLANNER <u>GASON HASE</u>	

CITY CLERK USE ONLY	
Received written appeal on	<u>2/18/14</u>
Scheduled for Council agenda of	<u>3/11/14</u> to set for Public Hearing on <u>4/8/14</u>
<input checked="" type="checkbox"/> Copies distributed to appropriate parties	<u>Mary Kay Shuman</u> <small>DEPUTY CITY CLERK</small>

**INFORMATION AND INSTRUCTIONS -**

**SECTION 23958.4 B&P**

- Instructions This form is to be used for all applications for original issuance or premises to premises transfer of licenses.
- Part 1 is to be completed by an ABC employee, given to applicant with pre-application package, with copy retained in holding file or applicant's district file.
  - Part 2 is to be completed by the applicant, and returned to ABC.
  - Part 3 is to be completed by the local governing body or its designated subordinate officer or body, and returned to ABC.

**PART 1 - TO BE COMPLETED BY ABC**

1. APPLICANT'S NAME <b>99 CENT ONLY STORE</b>			3. LICENSE TYPE <b>20</b>		
2. PREMISES ADDRESS (Street number and name, city, zip code) <b>4665 CLAYTON RD CONCORD CA 94521</b>					
4. TYPE OF BUSINESS					
<input type="checkbox"/> Full Service Restaurant	<input type="checkbox"/> Hofbrau/Cafeteria	<input type="checkbox"/> Cocktail Lounge	<input type="checkbox"/> Private Club		
<input type="checkbox"/> Deli or Specialty Restaurant	<input type="checkbox"/> Comedy Club	<input type="checkbox"/> Night Club	<input type="checkbox"/> Veterans Club		
<input type="checkbox"/> Cafe/Coffee Shop	<input type="checkbox"/> Brew Pub	<input type="checkbox"/> Tavern: Beer	<input type="checkbox"/> Fraternal Club		
<input type="checkbox"/> Bed & Breakfast:	<input type="checkbox"/> Theater	<input type="checkbox"/> Tavern: Beer & Wine	<input type="checkbox"/> Wine Tasting Room		
<input type="checkbox"/> Wine only	<input type="checkbox"/> All				
<input type="checkbox"/> Supermarket	<input type="checkbox"/> Membership Store	<input type="checkbox"/> Service Station	<input type="checkbox"/> Swap Meet/Flea Market		
<input type="checkbox"/> Liquor Store	<input type="checkbox"/> Department Store	<input type="checkbox"/> Convenience Market	<input type="checkbox"/> Drive-in Dairy		
<input checked="" type="checkbox"/> Drug/Variety Store	<input type="checkbox"/> Florist/Gift Shop	<input type="checkbox"/> Convenience Market w/Gasoline			
<input type="checkbox"/> Other - describe:					
5. COUNTY POPULATION		6. TOTAL NUMBER OF LICENSES IN COUNTY		7. RATIO OF LICENSES TO POPULATION IN COUNTY	
		<input type="checkbox"/> On-Sale <input type="checkbox"/> Off-Sale		<input type="checkbox"/> On-Sale <input type="checkbox"/> Off-Sale	
8. CENSUS TRACT NUMBER <b>2</b>		9. NO. OF LICENSES ALLOWED IN CENSUS TRACT <b>3</b>		10. NO. OF LICENSES EXISTING IN CENSUS TRACT <b>5</b>	
		<input type="checkbox"/> On-Sale <input checked="" type="checkbox"/> Off-Sale		<input type="checkbox"/> On-Sale <input checked="" type="checkbox"/> Off-Sale	
11. IS THE ABOVE CENSUS TRACT OVERCONCENTRATED WITH LICENSES? (i.e., does the ratio of licenses to population in the census tract exceed the ratio of licenses to population for the entire county)					
<input checked="" type="checkbox"/> Yes, the number of existing licenses exceeds the number allowed					
<input type="checkbox"/> No, the number of existing licenses is lower than the number allowed					
12. DOES LAW ENFORCEMENT AGENCY MAINTAIN CRIME STATISTICS?					
<input checked="" type="checkbox"/> Yes (Go to Item #13) <input type="checkbox"/> No (Go to Item #20)					
13. CRIME REPORTING DISTRICT NUMBER <b>4510</b>		14. TOTAL NUMBER OF REPORTING DISTRICTS <b>99</b>		15. TOTAL NUMBER OF OFFENSES IN ALL REPORTING DISTRICTS <b>12562</b>	
16. AVERAGE NO. OF OFFENSES PER DISTRICT <b>126</b>		17. 120% OF AVERAGE NUMBER OF OFFENSES <b>151</b>		18. TOTAL NUMBER OF OFFENSES IN REPORTING DISTRICT <b>112</b>	
19. IS THE PREMISES LOCATED IN A HIGH CRIME REPORTING DISTRICT? (i.e., has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency)					
<input type="checkbox"/> Yes, the total number of offenses in the reporting district equals or exceeds the total number in item #17					
<input checked="" type="checkbox"/> No, the total number of offenses in the reporting district is lower than the total number in item #17					
20. CHECK THE BOX THAT APPLIES (check only one box)					
<input type="checkbox"/> a. If "No" is checked in both item #11 and item #19, Section 23958.4 B&P does not apply to this application, and no additional information will be needed on this issue. Advise the applicant to bring this completed form to ABC when filing the application.					
<input type="checkbox"/> b. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for a non-retail license, a retail bona fide public eating place license, a retail license issued for a hotel, motel or other lodging establishment as defined in Section 25503.16(b) B&P, or a retail license issued in conjunction with a beer manufacturer's license, or winegrower's license, advise the applicant to complete Section 2 and bring the completed form to ABC when filing the application or as soon as possible thereafter.					
<input checked="" type="checkbox"/> c. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license, advise the applicant to take this form to the local governing body, or its designated subordinate officer or body to have them complete Section 3. The completed form will need to be provided to ABC in order to process the application.					

Governing Body/Designated Subordinate Name: **ZONING ADMINISTRATION**

**FOR DEPARTMENT USE ONLY**

PREPARED BY (Name of Department Employee)

**ELLY 5/16/13**

**Statement of Operations**  
**99 Cents Only Store #201**  
**4665 Clayton Road, Concord, CA**  
9/11/13

RECEIVED

SEP 16 2013

PLANNING

**Proposed Additional Use:** Finding of public convenience for ABC Type 20 License (beer and wine only) within an existing 20,468 grocery store

**Hours of Operation:** 7am to 10pm - 7 days per week.

**Average number of employees per shift:** 8 - 12

**Beer and Wine Display Area:** Display of beer and wine will not exceed 5% of gross floor area of the store and not be located near the front door. There will be no posters advertising beer or wine in store windows.

**Security Measures:** Surveillance cameras are located throughout the store. Employees go through corporate training for alcohol sales to ensure strict compliance to CA Department of Alcoholic Beverage Control laws.

**About 99 Cents Only Stores**

99 Cents Only Stores is a unique retailer of primarily name-brand consumable general merchandise and groceries. They have always delivered great value to customers and provide an exciting primary shopping destination for price-sensitive consumers. The stores are attractively merchandised, clean, full service "destination" locations that offer customers significant value on their everyday household needs.

From the first store opening in 1982, 99 Cent Only Stores has expanded to 317 extreme value retail stores with over 50% grocery items including a large area dedicated to fresh produce and bread.

99 Cents Only buys directly from almost every major name-brand grocery and consumer goods manufacturer in the nation including 3M, Cadbury Adams, Campbell's, Church & Dwight, Coca-Cola, Colgate-Palmolive, Con Agra, Del Monte, Dial, Dole, Energizer, Frito Lay, General Mills, Hasbro, Heinz, Hershey Foods, Johnson & Johnson, Kellogg's, Kraft, Masterfoods, Nestle, Procter & Gamble, Quaker, Revlon, Unilever and Wrigley.

# Alcoholic Beverage Consulting

26023 Jefferson Avenue, Suite D  
Murrieta, CA 92562

September 11, 2013

City of Concord  
Planning Division  
Attn: Ryan Lenhart  
1950 Parkside Drive, M/S 52  
Concord, CA 92419-2578

RECEIVED

SEP 16 2013

PLANNING

**RE: 99 Cent Only Store #201  
4665 Clayton Road  
Finding of Public Convenience or Necessity Request**

Mr. Mejia:

I am a consultant to 99 Cents Only Stores assisting them with licensing and use permits to sell beer and wine for off-site consumption (ABC Type 20) in all of their stores. This letter is a formal request for a Finding of Public Convenience or Necessity at the above referenced address.

Enclosed are the following documents for an application for a Finding of Public Convenience or Necessity to sell beer and wine at the above referenced store location:

- Completed Application Form with Owner and Applicant signatures;
- Check #15889 for \$1,581.00 made payable to the City of Concord;
- Operation Statement dated 9/11/13;
- Site Plan: 5 copies @ 24" x 36"; 5 copies @ 11" x 17"
- Floor Plan: 5 copies @ 24" x 36"; 5 copies @ 11" x 17"
- Article from People.com about the healthy groceries available at 99 Cents Only Stores.

## **Background**

The Department of Alcoholic Beverage Control has determined that the existing store is located within Census Tract 3332.00. Pursuant to §23958.4 of the California Business and Professions Code, the Department determined that Census Tract 3332.00 is allowed 3 licenses without a finding of Public Convenience or Necessity and that 5 licenses currently exist within the tract. Therefore, in order to obtain an off-sale beer and wine license, the City of Concord must make a finding that the proposed use would be a public convenience or necessity.

## **Overview and Project Description**

99 Cents Only has operated a 20,468 square foot grocery and consumer goods retail store since 2003 at the above referenced location. The store is within a fully developed shopping center. It is

our understanding that off-sale beer and wine in this zone is permitted for this type of store. This store currently operates from 7:00 a.m. until 10:00 p.m. daily. 99 Cents Only Stores has an excellent reputation for providing the products that customer's desire most at prices they need to survive in these challenging times. The product offering has evolved over the years and now consists of mostly grocery items including a large selection of fresh produce; making 99 Cents Only the primary grocery store for most of its customers. As part of its growing grocery business, 99 Cents Only Stores is adding sell beer and wine to meet the needs and demands of its customers. Beer and wine sales will represent an incidental purchase for its current customers much like other major grocery stores. **99 Cents Only will dedicate less than 5% of the gross floor area for the display of beer and wine** and have implement internal training and controls for its employees to ensure responsible sales.

### **Public Convenience or Necessity**

First, it is important to emphasize that Business & Professional Code § 23958.4 requires a positive finding of public convenience *“or”* necessity in order for an off-sale ABC application to be approved. Thus it is legally sufficient if 99 Cents Only shows *either* public convenience *or* public necessity. It is *not* legally necessary to show both.

Second, it is only necessary to show public convenience or necessity where there is an “undue concentration” of licensees in the census tract. The term “undue concentration” (also referred to as “over concentration”) is specifically defined in Business and Professional Code § 23958.4 as simply a ratio of *the number of licenses in a census tract* compared to *the average number of licenses in a County*, as a whole. It does *not* mean that a particular census tract necessarily has too many licenses for the needs or convenience of residents in that tract.

“Over Concentration” also does not mean that the State, or anyone else, has previously looked at this census tract and determined that it has suffered any deleterious effects from the actual number of licenses existing; or that it will suffer if a new license is issued. It merely provides a guideline for making such a determination, in the form of determining whether in a particular situation, the ABC license would serve the “public convenience or necessity”.

It is also important to understand that Census Tract are “zoning blind”. Hence, many census tracts that contain a lot of commercially zoned property have an “over concentration” state while census tracts with mostly residentially zoned property do not have an “over concentration”.

Thus the fact that the census tract in which this store is located is statutorily “over concentrated” does not mean that selling a small amount of alcoholic beverages at a grocery/consumer goods store will have adverse impacts. Rather, it simply means that either public convenience or public necessity will be served by the sale of alcoholic beverages at this site.

**Basis For Supporting Off-Site Alcoholic Beverage Sales**  
**As An Integral Part Of The Store**

**Company Overview**

99 Cents Only Stores is a unique retailer of primarily name-brand consumable general merchandise and groceries. They have always delivered great value to customers and provide an exciting primary shopping destination for price-sensitive consumers. The stores are attractively merchandised, clean, full service "destination" locations that offer customers significant value on their everyday household needs.

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**Security and Control:**

99 Cents Only is committed to taking all feasible steps to address law enforcement concerns about the site. In addition, 99 Cents Only has an extensive employee-training program and is a responsible retailer of alcoholic beverages. With over 300 stores, 99 Cents Only is recognized as one of the largest grocery and consumer goods chains in California. It certainly has the resources to be a responsible retailer of all types of goods and especially of alcoholic beverages. Moreover, the sale of alcoholic beverages is not the primary purpose.

99 Cents Only stores are designed to provide a safe environment for patrons and employees. Some of the design elements of the store that facilitate a safe and pleasurable shopping experience include adequate lighting levels both on the interior and exterior of the store, employee supervision of the facility, closed circuit video monitoring system with cameras located strategically throughout the property, and careful window signage and landscaping placement to avoid obstruction of visibility into and out of the facility.

99 Cents Only understands the importance of maintaining the appearance of a store to both expand their customer base and prevent criminal activity and is committed to a store that allows for safe family oriented shopping. 99 Cents Only recognizes the seriousness of loitering, delinquency, crime, and underage drinking. They have developed stringent operational standards and training programs for employees involved with selling of alcoholic beverages. Furthermore, 99 Cents Only is open to operating conditions that the police department considers appropriate to ameliorate any concerns that do exist.

**Statement of Justification for Finding of Public Convenience or Necessity**

**1. That the use is essential or desirable to the public convenience and public welfare.**

The proposed availability of alcohol with the sale of staple groceries such as: fruits and vegetables, milk, juice, eggs, bread, cereal, coffee, soup, pasta, sodas as well as consumer products such as tooth paste, soap, detergent and paper towels allows customers to have readily available products in one location where they would otherwise be obliged to travel to other locations to further purchase their items; thus the establishment of off-site alcoholic beverage sale serves a public convenience.

**2. That the granting the permit will not be materially detrimental to the public welfare and to other property in vicinity.**

The proposed sale of alcohol would not be detrimental to the public health, safety or welfare because the store has been designed as safe family oriented shopping with all windows facing the street and parking lot allowing for motorists and patrons outside the store a direct view inside the store; cashiers are located near the entrance of the store; and security cameras are placed throughout the interior and exterior. Furthermore, the store is primarily for the sales of staple groceries and consumer products and the sale of alcohol is incidental and in conjunction with the sale of such items. Additionally, the convenience of a wide variety of groceries and consumer products in one location promotes the general welfare. Furthermore, this operation will have general conditions to limit nuisance behavior associated with sales of alcohol.

**3. That the use conforms to good zoning practices and development standards.**

The store is located within a commercial zone. Locating grocery stores in retail commercial zones on major thoroughfares is consistent with good community development practices and standards.

**4. That the use is not contrary to any of the objectives of any part of the adopted General Plan**

Alcohol sales for off-site consumption within a grocery store is consistent with the City's General Plan by providing a product that serves to provide the full spectrum of commercial needs for a community commercial retail center.

We respectfully request an approved finding of Public Convenience or Necessity for this store. If there is any additional information you need to process this request, please contact me.

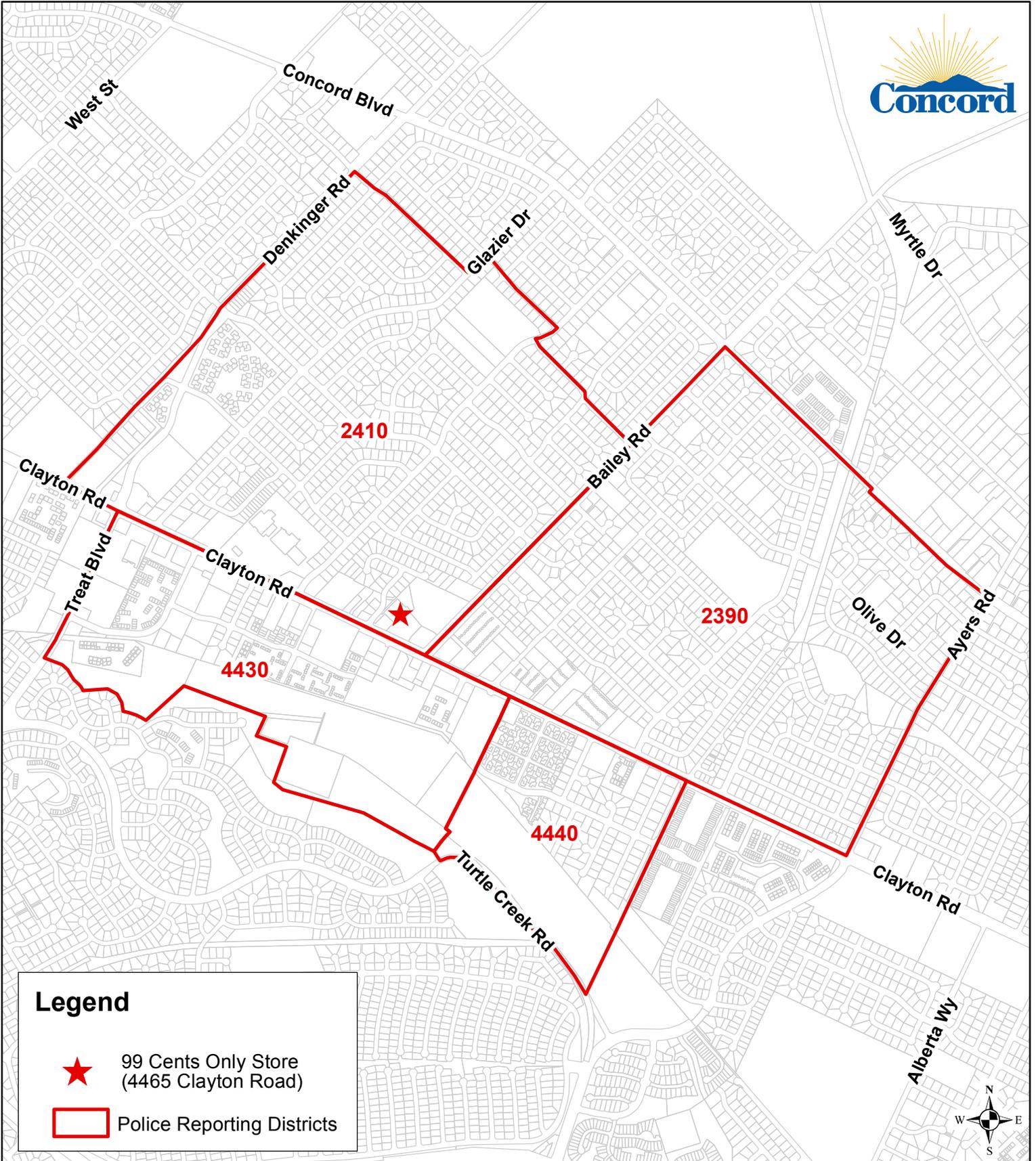
Thank you for your time and consideration of our request.

Sincerely,



Steve Rawlings  
(951) 667-5152  
SE.Rawlings@verizon.net

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**Hade, Jason**

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**From:** Janet Larson <jlarson2013@gmail.com>  
**Sent:** Tuesday, January 21, 2014 1:05 PM  
**To:** Hade, Jason  
**Subject:** FOPCN for 4665 Clayton Road

Hello Mr. Hade:

Without requesting a public hearing, are citizens who live near the 99 Cents Only store on Clayton Rd allowed to offer input on this matter? I cannot imagine anything being more detrimental to my neighborhood than increasing the availability of inexpensive alcohol.

Regards,

Janet Larson  
4671A Rishell Ct,  
Concord

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