



**SAN RAFAEL ZONING ADMINISTRATOR
REGULAR HEARING
January 24, 2024**

**Minutes and Notice of Decision
(Pursuant to San Rafael Municipal Code 14.28.050)**

- 10:10 am – 1. **1137 4th Street, Pixels Arcade and Taproom** - Request(s) for
10:30 am Conditional Use Permit and Determination of Public Convenience or
Necessity for a combined taproom and arcade. The applicant is
requesting a type 42 (“On-sale Beer & Wine- Public Premises)
Alcoholic Beverage Control (ABC) license.; APN: 011-261-31; T4MS
60/80; San Rafael Properties LLC, Owner; Rob Simmons, Applicant;
File No: UP23-029/PCN24-001 (PLAN23-141)

Project Planner: Michaela O’Brien, Assistant Planner

PERMITS REQUIRED

- **Conditional Use Permit (UP23-029)** Pursuant to San Rafael Downtown Precise Plan Table 2.3.070.A, a conditional use permit approved by the Zoning Administrator is required to operate a bar in the T4MS zone.
- **Public Convenience or Necessity Permit (PCN23-029)** A Determination of Public Convenience or Necessity is needed for the issuance of a type 42 Type (On-Sale Beer & Wine – Public Premises) Alcoholic Beverage Control (ABC) to sell beer, wine, and fermented beverages.

SITE DESCRIPTION

The subject site is located on 4th Street between A Street and B Street. The main access to the site is found on the south sidewalk. The site is a total of 1,797 square feet on the first floor being entirely for the proposed use.

PROJECT DESCRIPTION

The project proposes the business Pixels Arcade & Taproom, including the serving of alcoholic beverages with video games available for entertainment. The proposed facility would provide such games as pinball and console gaming options. The business would serve through a self-pour tap technology system through the Type 42 ABC license. The site will only serve those who are of the legal drinking age (21 or older) and has automatic control set in place per customer using the self-pour system to limit and not over-serve.

The business proposes staffing of initially two employees and one manager with two to three staff members on the floor during peak periods. The hours of operation would be as follows; Monday and Tuesday from 12:00 pm to 9:00 pm, Wednesday and Thursday from 12:00 pm to 10:00 pm, Friday from 12:00 pm to 11:00 pm, Saturday from 11:00 am to 11:00

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pm, and Sundays from 11:00 am to 9:00 pm. The business is proposed to be closed during selective holidays.

The California Department of Alcoholic Beverage Control (ABC) requires a Type 42 license (On-Sale Beer and Wine) for the proposed use and requires the City of San Rafael to provide a Determination of Public Convenience or Necessity (PCN) due to the concentration of existing Type 20 licenses already issued for the census tract which incorporates the site.

Determination of Public Convenience and Necessity

In terms of the City's scope and role in the review of alcohol licenses, ABC is the sole agency that has the authority to issue alcohol licenses. A local governmental agency, such as the City of San Rafael, does not have the authority to grant a license. In certain circumstances where there is an undue concentration of licenses and certain crime statistics, ABC will not issue a new liquor license, predominantly 'off-sale' but also 'on-sale' liquor licenses, unless the local government body first grants a finding of Public Convenience or Necessity (PCN). Nearly the entire City of San Rafael exhibits the undue concentration and therefore any new 'off-sale' and many 'on-sale' liquor licenses in the City will not be granted by ABC unless the City first grants a PCN. The PCN process is established to allow a local jurisdiction to consider additional licenses in over-concentrated areas and if they determine that the additional license would serve a public convenience or necessity, then a PCN can be granted.

PUBLIC HEARING

On January 24, 2024, a Zoning Administrator hearing was convened for this Conditional Use Permit and Determination of Public Convenience or Necessity (UP23-029/PCN24-001). The Acting Zoning Administrator for this meeting, Margaret Kavanaugh-Lynch, opened the meeting at 10:10 am.

A. Applicant presentation

The applicant, Rob Simmons, was present with the business investor Tim Walter. The applicant presented the project and provided further information about the proposed business.

B. Public Comments

There were eight people in attendance, five of whom provided public comments in support of the business.

Mark Cooper noted that the proposed business would be a great contribution to the town, and it will promote more audience for the downtown.

Lisa Culbertson stated that this is something the City needs to revitalize the City of San Rafael. Especially since Covid, it's great that the City is supporting a new business like this. This is not just your typical bar; it will appeal to those who played video games growing up.

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Matthew Siroka spoke of how this business will be an excellent asset to the city. It's great to support and allow opportunity for small businesses especially when there are empty storefronts downtown shows we need more businesses in San Rafael.

Derek Beachum noted this is an amazing space that people outside of San Rafael are excited for and will create more interactions with those even outside of the community.

Herman Fok stated places like this are needed more, there are no places such as pixels that contain community interaction and entertainment such as this.

C. Zoning Administrator Discussion

The Zoning Administrator briefly discussed the conditions to be imposed on the proposed use. The Zoning Administrator requested that have the same set of hours for each day if any future alteration is needed. The applicant confirmed that the conditioned hours would be appropriate.

D. Action

The Zoning Administrator Conditionally Approved the request for a Conditional Use Permit (UP23-029) subject to the conditions listed below.

These conditions of approval are listed below and included as part of the Zoning administrator's decision.

The meeting was adjourned at 10:30 am.

FINDINGS

CEQA Findings

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures). Furthermore, none of the exceptions found in Government Code §15300.2 apply.

Use Permit Findings (SRMC §14.22.080)

A. That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purpose of the district in which the site is located.

The proposed use is in accord with the San Rafael General Plan 2040 objectives of the zoning ordinance. The property is in the Downtown Mixed Use land use designation and has been reviewed per the district in which the site is located. The subject property is designated in the Downtown Precise Plan as T4MS 60/80 and meets Policy LU-3.9: Neighborhood Centers Support.

B. That the proposed use together with the conditions will not be detrimental to the public health, safety, or welfare, or materially injurious to property or improvements in the vicinity, or the general welfare of the city.

The proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city given that: 1) The proposed use will have a system in place to not over-serve; and 2) Only those who are of the legal drinking age would be allowed to participate in the business activities.

C. That the proposed use complies with each of the applicable provisions of the zoning ordinance.

The proposed project has been reviewed as a new Bar and complies with each of the applicable provisions of the zoning ordinance.

Public Convenience or Necessity Determination Findings

On August 17, 1998, the City of San Rafael adopted a resolution (City Council Resolution No.10299) identifying the review criteria for determination or finding that ABC's issuance of a liquor license to the applicant, doing business as "Peru Groceries Distributors", would serve a public convenience or necessity. In summary, there are seven criteria that are to be considered by the city as part of its determination whether public convenience or necessity would be served by the issuance of a liquor license.

This PCN Resolution prescribes that the city is to consider the seven criteria as part of their review but does not mean that all seven criteria are mandatory. The intent of the review criteria is to consider the specific request for a PCN, determine whether there would be a public convenience or necessity served by the issuance of that specific liquor license for the census tract where the site is located, and consider the request considering the review criteria. Staff analysis of each review criteria follows below:

Criteria 1:

Whether the issuance involves an existing business with a license which is being transferred to a new location, and which will not result in an increase in the total number of off-sale retail liquor licenses or on-sale retail licenses in the City or in the census tract in which the business would be located.

Finding: The project proposes to add the sale of beer and wine to an existing business, which would increase the total number of on-sale Type 42 licenses in the census tract where the site is located.

Criteria 2:

Whether the business, by reason of its location, character, manner or method of operation, merchandise, or potential clientele, will serve a segment of the City's business or residents not presently being served.

Finding: The business is proposed as a taproom with arcade games for those who are of the legal drinking age. It would provide self-serving technology with limitations set in place to prevent over-serving.

Criteria 3:

Whether the business will be located within a 1,000-foot radius of incompatible facilities, such as public and private schools, day care centers, churches, parks, homeless shelters, and alcoholic rehabilitation centers, and facilities designed and operated to serve minors.

Finding: The site is located within 1,000 feet of several known 'incompatible facilities', as defined above; however, these facilities are already within a 1,000-foot radius of other businesses with Type 42 ABC licenses. Additionally, the PCN application (PCN24-001) was sent to all property owners and occupants within a 500-foot radius of the site and staff has received no public comments in opposition.

Criteria 4:

Whether the location of the license will be in a crime data area covered by Police Department statistics, which has a twenty percent (20%) greater number of reported crimes than the average number of "reported crimes" for all crime data areas in the City, over the previous year. For this purpose, "reported crimes" means reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other misdemeanor or felony crimes, except for traffic citations.

Finding: Captain. Roy Leon of the San Rafael Police Department (SRPD) provided an email approving the PCN based on previous "crime statistics in Area 16", within the boundaries of Census Tract 1110.00, which indicated a 19% increase in the number of "reported crimes" taken from 2021/2022 to 2022/2023 (43 "reported crimes" in 2021/2022; 51 "reported crimes" in 2022/2023) and a 48% decrease in the number of arrests (136 arrests in 2021/2022; 71 arrests in 2022/2023). Of these "reported crimes," none occurred at the subject site.

Criteria 5:

Whether the issuance of the license involves an existing business, which has been located at a site which has had three or more reported crimes defined in (4) above within the previous one-year period.

Finding: As indicated in Criteria 1 Finding above, the project proposes a new use of a taproom arcade facility.

Criteria 6:

Whether the issuance of the license will promote the goals and policies of the City’s adopted General Plan, any applicable specific plan, or any similar policies that have been formally adopted by the City Council.

Finding: Granting of the requested PCN is in accordance with the City of San Rafael General Plan 2040, including, Economic Vitality Policies EV-1.4 – *Business Retention and Support*, EV-1.11 – *Economic Resilience*, and EV-2.2 – *Promoting Local Purchasing* which seek to retain and support businesses that contribute to the economic vitality and help San Rafael support a broad and healthy range of businesses.

Criteria 7:

Whether any other information supplied by the applicant, or other competent evidence shows that public or necessity will be served by issuance of the license.

Finding: After considering the review criteria above, the Community Development Director Designee (CDDD) has determined that a public convenience would be served by the issuance of a Type 42 ABC license which would allow the existing business to supply specialty services to City residents. Staff also finds that this determination that public convenience or necessity will be served by the issuance of a Type 42 ABC license involves no expansion of the existing site and is, therefore, exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines.

CONDITIONS OF APPROVAL

Planning Division Standard Conditions of Approval

1. Approved Use. This Conditional Use Permit (UP23-029) conditionally approves the use of a Bar space located at 1137 4th Street.
2. Applicant Responsible for Compliance with Conditions. The applicant shall ensure compliance with all the following conditions. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Conditional Use Permit pursuant to SRMC Section 14.22.160.
3. Subject to all Applicable Laws and Regulations. The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building Division, Public Works Department, Fire Department, and other affected City divisions and departments.
4. Hours of Operation. Allow hours of operation are 11:00 am to 11:00 pm or as otherwise allowed in the District, whichever is more permissive.

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5. Permit Validity. This Permit shall become effective on **January 31, 2024**, and shall be valid for a period of two (2) years from the date of final approval or **January 31, 2026**, and shall become null and void if a building permit is not issued or a time extension granted by **January 31, 2026**. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
6. Building Permit. If a building permit is required by the City of San Rafael Building Division for the proposed installations. Then one must be applied and issued prior to the operation of the business.
7. Revocation. The City reserves the right to bring this application up for revocation per SRMC 14.21.150 and as provided in Chapter 14.29 of the San Rafael Zoning Ordinance for any use that is found to be in violation of any of these conditions of approval.
8. Business License. The applicant shall obtain a business license with the Business License Division before the business operation.

ACTION TAKEN: On January 24, 2024, the Zoning Administrator Approved the requested Conditional Use Permit (UP23-029) and Public Convenience or Necessity subject to the Findings and Conditions above.

This Notice of Zoning Administrator decision is provided in compliance with SRMC Section 14.28.050 - *Notice of decision*. Any aggrieved party may appeal this decision pursuant to SRMC Section 14.28.030 - *Filing and time limit of appeals*, by submitting a letter of appeal and the appropriate fees within five (5) working days of the date of approval, or by **January 31, 2024, at 4:00 p.m.** This approval shall become effective at the end of the appeal period.

Once a permit approval has been implemented/established in compliance with all City requirements, it shall run with the land and be valid for the time period specified, e.g., duration of the project/use.

Margaret Kavanaugh-Lynch

Margaret Kavanaugh-Lynch, Acting Zoning Administrator

January 30, 2024

Date