

Resolution No.

STOCKTON CITY COUNCIL

RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF A USE PERMIT TO ALLOW THE OFF-SALE OF BEER AND WINE AT 2122 S. AIRPORT WAY (P16-0656)

The applicant, Mohammed Alnaggar, submitted an application for a Use Permit to allow the off-sale of beer and wine at 2122 S. Airport Way; and

The subject Use Permit was processed by Planning staff in accordance with applicable alcohol provisions of the Development Code; and

On March 23, 2017, following a public hearing before the Planning Commission, the Commission voted 6-1 to deny the requested Use Permit; and

On March 27, 2017, the applicant filed an appeal pursuant to Stockton Municipal Code section 16.100.020; and

The project site is located in area of the City that is over-concentrated with alcohol licenses and close in proximity to a sensitive community park site and within 500 feet of another alcoholic beverage sales establishment; and

Approval of the proposed off-sale on the subject site would have the potential to create an unsafe environment for surrounding residential and public areas, by potentially increasing crimes, loitering, panhandling, drunkenness, encouraging deterioration or blight in the area, and resulting in additional calls for police service; and

This neighborhood already has an adequate number of alcohol sales outlets and adding another off-sale use would have the potential to result in adverse impacts upon the general health and welfare of the neighborhood and increase vagrancy and illegal activities and result in additional calls for police service; now; therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council hereby denies the request for a Use Permit to allow the off-sale of beer and wine at 2122 S Airport Way (See Exhibit 1 – Site Plan & Floor Plan) based on the following findings:

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General Findings

1. The proposed use is allowed within the subject zoning district with the approval of a use permit but does not comply with all other applicable provisions of this Development Code and the Municipal Code because it does not meet the location restrictions of SMC 16.80.040.D, in that it is located within 500 feet of a park and another alcoholic beverage sales establishment, and is located in an over-concentrated census tract.
2. The proposed use would not maintain or strengthen the integrity and character of the neighborhood and zoning district in which it is to be located because the proposed use has the potential to increase the number of calls for police service in nearby commercial areas and residential neighborhoods. There are currently two existing off-sale alcohol establishments in the census tract and the addition of another off-sale alcohol establishment would result in an overconcentration of liquor licenses which has the potential to increase illegal activities associated with alcohol sales. Further, overconcentration is linked to higher levels of crime and violence, allowing the proposed use has the potential to increase crime-related activities in the area and result in additional demands for police services.
3. The proposed use would be consistent with the general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan because the proposed commercial use is located at a site that is designated in the General Plan for commercial development.
4. The subject site would be physically suitable for the type and density/intensity of use being proposed including the provision of services (e.g., sanitation and water), public access, and the absence of physical constraints (e.g., earth movement, flooding, etc.) because the building already has existing services and there are no known physical constraints.
5. The establishment, maintenance, or operation of the proposed use at the location proposed and for the time period(s) identified, if applicable, would endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, peace, or general welfare of persons residing or working in the neighborhood of the proposed use because the proposed use is likely to result in additional calls for police services related to illegal activities from alcohol sales, including noise, public drunkenness, vandalism, and panhandling and, thereby, place a further strain on police resources.
6. The design, location, size, and operating characteristics of the proposed use would not be compatible with the existing and future land uses on-site and in the vicinity of the subject property because the proposed use has the potential to be incompatible with a park in the vicinity area of the project site due to the creation of additional alcohol-related impacts, such as noise, illegal drug usage and sales, theft, and violent behavior.
7. The proposed action would be in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines because environmental review is not required for applications that are not approved.

Problem Use Findings

The following are required additional findings for “Problem Uses” (SMC 16.168.050.B):

1. The proposed use is likely to interfere with the comfortable enjoyment of life or property in the area the applicant has failed to provide any evidence that adding another alcoholic beverage sales establishment would not negatively impact the area. The project site is in a high crime area, almost half of the police reporting district is community park space that is identified in the City Alcohol ordinance as a sensitive site with potential to be impacted negatively. As a result, adding another Problem Use in the area has the potential to increase vagrancy and illegal activities and can also be expected to result in additional calls for police service.
2. The proposed use will increase or encourage the deterioration or blight of the area because there are two existing off-sale alcohol outlets in the census tract, which is the allowable limit of licenses for the census tract. The area surrounding the proposed use is adequately served by existing alcohol sales outlets. Adding another alcoholic beverage sales establishment in a high crime area that is adjacent to public spaces has the potential to create an unsafe neighborhood, increasing crimes, illegal activities, and drunkenness, decreasing the enjoyment of parks by the public because of safety concerns and increasing deterioration or blight in the area.
3. The establishment of an additional off-sale alcohol use in the area will not be contrary to any program of neighborhood conservation, improvement, or redevelopment because such programs do not exist in the area. However, the City has taken legal action on a neighboring off-sale location that was placed in receivership by the courts because of ongoing problems related to crime and blight. The receivership of this neighboring site is seen as a step forward in improving and potentially redeveloping this area. Although the site’s crime reporting district is below the City crime average, the two crime reporting districts that abut the location are both above the average City crime rate. Approval of the proposed use will be contrary to the improvement and redevelopment of the area because such an establishment has the potential to increase alcohol-related illegal activities, which would adversely affect the quality of life for area residents and the viability of future retail/commercial development in the surrounding area.

Alcoholic Beverages Findings

1. The proposed use will potentially result in repeat nuisance activity on or in close proximity to the premises, the increased concentration would only serve to increase criminal activity as the site lies in an area of high crime. Due to its close proximity to a public parks, residential neighborhoods, and another alcoholic beverage sales establishments the use would unduly expose the area and public spaces serving young people to nuisance activities including, but is not limited to: disturbing the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of

stolen goods, public urination/defecation, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noise (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

2. The owners and all employees of the establishment would complete an approved course in Licensee Education on Alcohol and Drugs (LEAD), or other "Responsible Beverage Sales" (RBS) or any other California Department of Alcoholic Beverage Control Board (ABC) approved program within 60 days of hire for employees hired after the passage of this Development Code or within six (6) months of the passage of this Development Code for existing employees. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board, Service Advisory Board or other certifying/licensing body designated by the State of California; This requirement would not be applicable upon denial of the project.

3. The proposed use and operator has not complied with all provisions of local, state and federal laws, rules, regulations, policies, or orders, including, but not limited to, those promulgated and or enforced by the ABC, California Business and Professions Code sections 24200, 24200.6, and 25612.5, and any condition imposed on any valid permit(s) issued pursuant to applicable laws, regulations or other authority. The applicant has not obtained a valid ABC license. The applicant is applying for a new ABC license which would result in an overconcentration of licenses in census tract 22.01, this would require a Finding of Public Convenience or Necessity which cannot be made due to high crime in the area, the proximity to a public park with playgrounds serving young people, and proximity to residential neighborhoods. The applicant has not provided sufficient evidence that a public convenience or necessity would be served by permitting a new ABC license at the proposed site.

4. A finding of public convenience or necessity is not required for an application that is denied.

The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED August 8, 2017.

MICHAEL D. TUBBS, Mayor
of the City of Stockton

ATTEST:

BRET HUNTER, CMC
Interim City Clerk of the City of Stockton