

Resolution No.

STOCKTON CITY COUNCIL

RESOLUTION DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF A USE PERMIT TO ALLOW THE OFF-SALE OF BEER AND WINE IN AN EXISTING MINI-MART, FOR PROPERTY LOCATED AT 836 EAST MINER AVENUE (P16-0263)

The applicant, Sharma's Market, submitted an application for a Use Permit to allow the off-sale of beer and wine at 836 E. Miner Avenue; and

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

On August 25, 2016, the City Planning Commission denied a Use Permit to allow the off-sale of beer and wine in a mini-mart at 836 East Miner Avenue; and

On September 1, 2016, pursuant to the provisions of Section 16.100.040 of the Stockton Municipal Code (SMC), the applicant submitted an appeal of the Planning Commission's denial of the subject Use Permit; and

On December 6, 2016, the City Council convened a public hearing regarding the appeal of the Planning Commission's decision; and

The project site is located in an area of the City that has experienced an above-average number of crimes. Approval of the proposed off-sale on the subject site would have the potential to create an unsafe environment for surrounding residential and retail uses, 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:

The City Council hereby denies the appeal and upholds the Planning Commission's denial of a Use Permit to allow the off-sale of beer and wine in an existing mini-mart at 836 East Miner Avenue (See Exhibit 1 - Floor Plan), based on the following General and Problem Use Findings:

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 because it is in a high crime reporting district as defined in SMC Section 16.80.040.D(2)(d)(i) and (ii) that states a business with off-sale shall not be located in a high crime reporting district, where the average number of crimes in that district exceeds the average number of crimes for all reporting districts citywide by more than 20 percent.. Crime reporting district 103 has a higher than average crime rate of 269, which is 216% above the City average of 85 over a three-year period.
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 there are currently nine (9) active off-sale alcohol licenses in the same census tract as the proposed off-sale alcohol establishment and has the potential to continue or increase illegal activities including violent crime associated with alcohol sales as supported by the University California Riverside(UCR) study of 91 largest US cities (including Stockton) which found that retail alcohol outlet density and violent crime are significantly related, and result in additional demands for police services. (See Exhibit 2 – UCR Study)
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 it is a commercial use in a commercially-designated area.
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 area is already supplied with all required infrastructure and is an existing commercial use in a commercial area 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 residences, transit station and other light industrial uses 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 comply with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines because if the request is denied, no environmental analysis is needed for the proposed use under the California Environmental Quality Act (CEQA).

Problem Use Findings

1. The proposed use is likely to interfere with the comfortable enjoyment of life or property in the area, because the applicant has failed to provide any evidence that the proposed alcoholic beverage sales establishment would not negatively impact the area. According to the Police Department's newly updated crime report statistics (2013 through 2015), the average number of crimes reported in all of the Citywide Crime Reporting Districts is 85. The project site is located in Crime Reporting District No. 103. The average number of crimes reported in this district is 269, which is 216% above the City-wide average. The Police Department considers those districts with an average of 20% or more above the average to be High Crime Reporting Districts. The project site is, therefore, located in a High Crime Reporting District. As a result, the proposed Problem Use 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 nine (9) active off-sale licenses in the subject site's census tract. The area surrounding the proposed use is adequately served by the existing alcohol sales outlets. The proposed alcoholic beverage sales establishment has the potential to worsen safety problems in the neighborhood due to increased crimes, illegal activities, and

drunkenness, as well as by increasing or encouraging deterioration or blight in the area.

3. The establishment of the proposed off-sale alcohol use in the area will not be contrary to the redevelopment of the surrounding neighborhood. While the City has no specific programs for the conservation, improvement, or redevelopment of the area, 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 the 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. Nuisance activity includes, 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; due to the higher than average crime rate in the surrounding area.

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. 3. The proposed use will comply 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. This includes compliance

with annual city business license fees; and would not be applicable upon denial of the project.

4. A finding of public convenience or necessity is not required because the establishment is moving from one location to another within the same census tract which is already over-concentrated.

PASSED, APPROVED, and ADOPTED December 13, 2016.

ANTHONY SILVA
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton