

Resolution No.

## **STOCKTON CITY COUNCIL**

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### **RESOLUTION DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF A USE PERMIT TO ESTABLISH A BAR WITH THE ON-SALE OF GENERAL ALCOHOLIC BEVERAGES IN AN EXISTING BUILDING AT 222 NORTH SUTTER STREET (P16-0307)**

The applicant, Amar Mathfallu, submitted an application for a Use Permit to allow a bar with the on-sale of general alcoholic beverages in an existing building at 222 North Sutter Street; and

On December 15, 2016, the City Planning Commission held a public hearing and ultimately denied the application;

On December 22, 2016, pursuant to the provisions of Section 16.100.040 of the Stockton Municipal Code (SMC), the applicant's attorney submitted an appeal of the Planning Commission's decision; and

On February 21, 2017, 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 subject on-sale alcohol use on the project site has the potential to create an unsafe environment for surrounding commercial/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 the proposed change in license from a Type 47 (restaurant) to a Type 48 (bar) has the potential to result in adverse impacts on 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 a bar with the on-sale of general alcoholic beverages in an existing building at 222 North Sutter Street, based on the following General, Problem Use, and Alcoholic Beverage Findings:

## General Findings

1. The subject use is allowed within the CD zoning district, subject to approval of a Use Permit by the Planning Commission, but does not comply with all other applicable provisions of this Development Code. Specifically, it does not meet the three required location restrictions regarding proximity to schools, being located in a High Crime Reporting District, and proximity to other alcoholic beverage sales establishments. The subject use does not warrant a Waiver of the noted location restrictions, because it does not promote and support economic development in the Downtown District. Specifically, the use presents itself more as a vacant building than as a functioning and viable business and is only proposed to be open 25 hours per week, according to information provided to the Planning Commission during the public hearing. Also, the applicant's only plans for upgrading the site's existing exterior elevations consist of placing stucco on the building's west and south elevations. Rather than improving the building's appearance, the plan retains the existing structure's blighted appearance. The site's frontage on Sutter Street consists of a relatively blank block wall with one bank of windows, a roll-up security door over the entrance to the facility, and has no outdoor activity areas. For these reasons, the subject use does not promote and support economic growth in the downtown areas and waiver of the three noted location restrictions is not warranted.

2. The subject 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 31 active alcohol licenses in the same Census Tract as the subject site (including the site's existing on-sale alcohol license). The total number includes seven (7) bars (according to ABC regulations, the applicant's application for a Type 48 License is considered an active license, pending approval of the subject Use Permit by the City). A bar is defined as a Problem Use and has the potential to continue or increase illegal activities associated with alcohol sales and result in additional demands for police services.

3. The proposed use is not 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 does not upgrade, beautify, or revitalize an existing commercial area (Land Use Policy No. LU-4.1) and does not promote cleanliness and beautification of the downtown (Economic Development Policy No. ED-3.10), effectively contributing to blight. Specifically, the blank façade, industrial-style roll-up security door, and lack of visibility into the interior result in a site that presents itself more as a vacant building than as an active business and no improvements have been proposed to the site's frontage on Sutter Street.

4. The subject site would be physically suitable for the type and density/intensity of use being proposed, including the provision of services, public access, and the absence of physical constraints, 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 subject 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 subject alcohol-related 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 subject use would not be compatible with existing and future land uses on the subject site and in the vicinity of the subject property, because it has the potential to be incompatible with existing commercial/retail uses in the vicinity of the project site, as well as with the nearby Downtown Transit Center, due to the creation of additional alcohol-related impacts, such as noise, illegal drug usage and sales, theft, and violent behavior. In addition, a bar is defined by the Development Code as a Problem Use and, as such, has a blighting and/or deteriorating effect upon its surroundings (see Problem Use Findings).

7. Denial of the application does not constitute a project under the California Environmental Quality Act (CEQA) and, therefore, no environmental analysis is needed for this action.

#### Problem Use Findings

1. The subject use has the potential to interfere with the comfortable enjoyment of life or property in the area, because the project site is located in a high crime reporting district as defined in the Development Code and the applicant has failed to provide any evidence that the subject bar (an on-sale alcoholic beverage sales establishment) would not adversely affect the area surrounding the subject site. The project site is located in Crime Reporting District No. 102 where the average number of crimes reported is 222. According to the Police Department's crime report statistics (2013 through 2015), the average number of crimes reported in all of the Citywide Crime Reporting Districts is 85. Thus the project site is located in a district where the average number of crimes is 161.18% above the City-wide average. Additionally, the subject bar is defined as a Problem Use under the Development Code and has the potential to increase vagrancy and illegal activities which are expected to result in additional calls for police service, thereby exacerbating the existing High Crime designation in this area of the downtown Stockton.

2. The subject use will increase or encourage the deterioration or blight of the area, because increasing the number of bars in the area has the potential to worsen safety problems in the neighborhood due to increased crimes, illegal activities, and drunkenness, as well as increasing or encouraging deterioration or blight in the area. There are 31 active alcohol licenses in the subject site's Census Tract which means the area surrounding the subject site is adequately served by those existing alcohol sales outlets, which are comprised of both restaurants and bars. Converting a restaurant with

the on-sale of general alcoholic beverages to a bar with the on-sale of general alcoholic beverages results in the creation of a new Problem Use in the subject Census Tract. Additionally, the area is already served by six (6) bars, which is twice as many as allowed by ABC regulations, based on the population in the Census Tract. Finally, the failure to make substantial investments to upgrade the exterior of the business and reduction of the already extremely limited days and hours of operation has the potential to increase existing blight in the area.

3. The establishment of the subject on-sale alcohol use in the downtown area will not be inconsistent with any City-adopted programs for the conservation, improvement, or redevelopment of the area, because there are no such plans in place at this time. However, approval of the subject use has the potential to be contrary to the improvement and redevelopment of the area, because an additional bar in this area of the downtown has the potential to increase illegal alcohol-related activities, which would adversely affect the quality of life for area residents and the viability of future retail/commercial development in the surrounding area. The subject business would only be open 25 hours per week and does not have either an active or lively street frontage. The applicant's limited hours of operation result in a building that appears vacant most of the time; the design of the façade presents a mostly-blank wall with an unattractive security roll-up door. The applicant has not proposed any significant investment in improving the building's exterior. As a result, the subject use does not promote and support economic growth in the downtown area.

### Alcoholic Beverages Findings

1. The subject use has the potential to result in additional nuisance activities on or in close proximity to the premises, because the subject use is likely to result in increased instances of public drunkenness due to the change in license type that focuses the business's activity on alcohol sales rather than food sales, thereby exacerbating an existing higher-than-average crime rate in the subject Crime Reporting District.

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 is not applicable, due to the denial of the subject Use Permit.

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; which includes compliance with annual city business license fees.

This requirement is not applicable, due to the denial of the subject Use Permit.

4. If required by Business and Professions Code section 23958.4, public convenience or necessity would be served by the issuance of this commission use permit or land development permit.

A finding of Public Convenience or Necessity is not required, because ABC has determined that exchanging one type of on-sale alcohol license (Type 47) for a different type of on-sale license (Type 48) does not result in a net increase in the number of active on-sale licenses and does not increase the existing overconcentration of on-sale alcohol licenses in the Census Tract.

PASSED, APPROVED, and ADOPTED February 21, 2017.

MICHAEL D. TUBBS  
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE  
City Clerk of the City of Stockton