

August 31, 2011

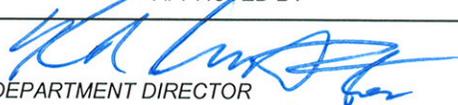
FROM: KEVIN FABINO, Planning Manager
Development Services Division 

THROUGH: MIKE SANCHEZ, Planning Manager
Development Services Division 

BY: JACK VAN PATTEN, AICP, Planner II
Development Services Division 

SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION NO. C-11-028
AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL ASSESSMENT NO.
C-11-028

AGENDA ITEM NO.
COMMISSION MEETING 08-17-11

APPROVED BY

DEPARTMENT DIRECTOR


RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. **APPROVE** the finding of a Categorical Exemption for Environmental Assessment No. C-11-028 issued May 31, 2011.
2. **DENY** the appeal and **UPHOLD** the Director's action approving Conditional Use Permit Application No. C-11-028 for an up-grade of a State of California Alcoholic Beverage Control Type 20 license (*off-sale beer & wine*) to a Type 21 (*off-sale liquor, beer, & wine*) ABC License, subject to the following conditions:
 - a. Development shall comply with Exhibits A and F, dated June 1, 2011.
 - b. Development shall comply with the operational statement for the project dated February 23, 2011.
 - c. Development shall comply with the Revised Conditions of Approval dated September 7, 2011.

EXECUTIVE SUMMARY

Larry McKenry, of ABC Brokers, on behalf of the applicant, Mr. Abdulla Mansour Nasr, the proprietor of Zack's Market, filed Conditional Use Permit Application No. C-11-028 requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

The project is located on the southwest corner of East California Avenue and South Martin Luther King, Jr. Boulevard. The site is zoned C-5, *General Commercial District*.

This matter came before the Planning Commission on August 17, 2011, but was continued to this date and time so that all the parties to this matter might review the Revised RDA Conditions of Approval that came to the Department at 3:10 p.m. on August 17, 2011 (the afternoon of the calendared evening hearing, above referenced).

The August 17, 2011, document from the RDA indicated that the Agency's objection to the project would cease upon incorporation of their Revised Conditions of Approval into the Development & Resource Management Department's (the Department) Conditions of Approval. The Department has so done: The Agency's conditions are part of the Department's Revised Conditions of Approval dated September 7, 2011, which are before you (Attachment Exhibit K).

The Department, also, conferred with both the Police Department and Councilmember Baines's Office. The Police Department provided no further comment on this Department's Revised Conditions of Approval. Councilmember Baines's concerns were, like the RDA's, incorporated into the Department's Revised Conditions of Approval (Attachment Exhibit K).

Staff recommends that the Planning Commission approve Conditional Use Permit Application No. C-11-028, subject to the Revised Conditions of Approval noted above. The conditional use permit is appropriate for the site and all findings required by Fresno Municipal Code (FMC) Section 12-405-A-2 can be made. In addition, granting of the requested special permit would not result in a significant impact under the California Environmental Quality Act (CEQA).

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-11-028 requests authorization to up-grade a Type 20 ABC License to a Type 21 ABC License (from off-sale beer & wine to off-sale liquor, beer, & wine).		
APPLICANT	Abdulla Mansour Nasr, by his agent, Larry McKenry		
LOCATION	854 East California Avenue, located on the southwest corner of East California Avenue and Martin Luther King, Jr., Boulevard (APN: 478-053-21) (Council District 3, Councilmember Baines)		
SITE SIZE	0.66-acres		
LAND USE	Existing	-	Neighborhood Commercial
ZONING	Existing	-	Same
PLAN DESIGNATION AND CONSISTENCY	Conditional Use Permit Application No. C-11-028 is proposed in accordance with the <i>neighbourhood commercial</i> land use identified in the Edison Community Plan and the 2025 Fresno General Plan.		
ENVIRONMENTAL FINDING	Categorical Exemption, dated May 31, 2011		
PLAN COMMITTEE RECOMMENDATION	N/A (Committee not fully established at time of review, although Councilmember Baines expressed interest about the project in a letter [enclosed] dated March 9, 2011)		
STAFF RECOMMENDATION	Approve Conditional Use Permit Application No. C-11-028		

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Medium Density Residential	R-2-A, <i>Low Density Multiple Family Residential District</i>	Medium Density Residential
South	Medium-High Density Residential	R-2, <i>Low Density Multiple Family Residential District</i>	Medium-High Density Residential
East	Commercial Office	C-P, <i>Administrative and Professional Office District</i>	Commercial Office
West	Neighbourhood Commercial	C-5, <i>General Commercial District</i>	Neighbourhood Commercial

ENVIRONMENTAL FINDING

Conditional Use Permit Application No. C-11-028 requests authorization to up-grade a Type 20 ABC License to a Type 21 ABC License (from off-sale beer & wine to off-sale liquor, beer, & wine). This project is not expected to have an adverse impact on the environment and is categorically exempt pursuant to the CEQA, Sections 15301/Class 1 and 15332/Class 32.

BACKGROUND / ANALYSIS

Conditional Use Permit Application No. C-11-028 has been filed by Larry McKenry, of ABC Brokers, on behalf of the applicant, Abdulla Mansour Nasr, of Zack’s Market, requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

The subject property, of which 854 East California Avenue is a tenant space, is approximately 0.66-acres in size and is located on the southwest corner of East California Avenue and South Martin Luther King, Jr., Boulevard. The property is currently zoned C-5, *General Commercial District*. The Edison Community Plan and the 2025 Fresno General Plan designate the land use of the site as *neighbourhood commercial*.

LAND USE PLANS AND POLICIES

2025 Fresno General Plan

The 2025 Fresno General Plan designates the subject site for *neighbourhood commercial* planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. C-11-028 meets all policies and objectives of the 2025 Fresno General Plan. The following are excerpts of such objectives.

Policy C-12-a of the 2025 Fresno General Plan is to ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services.

DIRECTOR'S ACTION ON CONDITIONAL USE PERMIT

The Development and Resource Management Department Director took action on June 1, 2011. In accordance with Government Code Section 65091 (Planning and Zoning Law) and the Special Permit Procedure of the Fresno Municipal Code, a notice of granting of the conditional use permit application was mailed to surrounding property owner with 350 feet of the subject property (Noticing Map attached as Exhibit C). The special permit does not become effective until 15 days from the date the special permit is granted, in order to allow time for any interested parties to file an appeal. One appeal (dated June 6, 2011) was received during the 15-day appeal period from 'The H.E.A.T FOR SouthWest Fresno Community' (HEAT, hereafter). This appeal is attached as Exhibit L.

APPEAL AND ANALYSIS OF THE APPEAL

The applicant, through his attorney, Bruce Leichty, has asserted that the 'appeal' by 'The H.E.A.T. for SouthWest Fresno Community' (HEAT, hereafter) of the Director's Action on this application is invalid. The issues raised by Mr. Leichty pertain to such matters as missing signature; lack of identity of the appellant; the issue of protest of prior action, rather than an appeal of the Director's action; non-compliance with the municipal code and with State Law by the appellant; as well as other issues.

While staff recognizes the applicant's points of contention regarding the validity of the appeal, the protest letter submitted by HEAT is deemed a valid appeal.

The appellant raises, by reference to the enclosure to the appeal, only one issue:

- (1) ". . . an over abundance of venues for the sell [sic] and consumption of alcoholic beverages in SW Fresno."

The appellant has enclosed with his letter a three page excerpt from a preliminary report by Keyser Marston Associates, Inc., which was done in 2008 for the amendments to Merger Number 1, a Redevelopment Agency project. The three pages discuss the link between crime and alcohol use, the creation of the Department of Alcohol Beverage Control, and include a table (Table 25, on page 69 of the report) showing the concentration of on- and off-sale licenses within the Merger No. 1 project area, the City as a whole, and the County as a whole.

RESPONSE:

- (a) The Redevelopment Agency (RDA), the sponsor of the report cited by HEAT, has stated its non-objection to the approval of the Project, subject to conditions that have been incorporated within the Revised Conditions of Approval for the Project (The RDA memos, dated March 15, 2011, and August 17, 2011, (enclosed as Attachment Exhibits G and H).
- (b) The Fresno Police Department has stated its approval for the Project without reference to any conditions (the Police Department memo, dated May 11, 2011, is enclosed as Exhibit I). Subsequent to the continued hearing on August 17, 2011, the Police Department was

contacted and has provided no further comment on the Revised Conditions of Approval, as noted above.

- (c) As can be seen in Table 25, there does seem to be a concentration of liquor licenses in the Merger No. 1 Area (within which area the Project is located), as compared with the City as a whole. What Table 25 does *not* show is whether there are other areas within the City of Fresno with comparable, or higher, concentrations. Therefore, it is not known, from Table 25, whether the distribution of liquor licenses is uniquely higher in the Merger No. 1 Area or whether the Merger 1 Area is only one among others (some of which, perhaps, with higher concentrations).
- (d) According to the applicant, there were no adverse comments received during the State of California Department of Alcohol Beverage Control's comment period following the posting of the notice of intent.

DISTRICT 3 PLAN IMPLEMENTATION COMMITTEE

The District 3 Plan Implementation Committee was in process of formation at the time of the processing of this application. There is in the Application File a letter from Councilmember Baines, expressing his awareness of the application, stating that his office would be monitoring the progress of the application through the review process, and requesting that his office be made a 'copy addressee' on correspondence pertaining to this application. Councilmember Baines's letter, dated March 9, 2011, is enclosed as Exhibit K.

NOTICE OF PLANNING COMMISSION MEETING

The Development and Resource Management Department mailed notices of the August 17, 2011, Planning Commission hearing to all surrounding property owners within 350 feet of the Neighborhood Shopping Center site pursuant to Section 12-326-G-2 of the FMC. Only one letter in opposition to the Director's action has been received.

CONDITIONS OF APPROVAL

The applicant must show compliance with all conditions prior to operating under the new license.

FINDINGS

No special permit may be issued unless it is found that the privilege exercised under the permit, conforms to the findings of 12-405-A-2 of the FMC. Based upon analysis of the conditional use permit application, staff concludes that all of the required findings can be made for Conditional Use Permit Application No. C-11-028

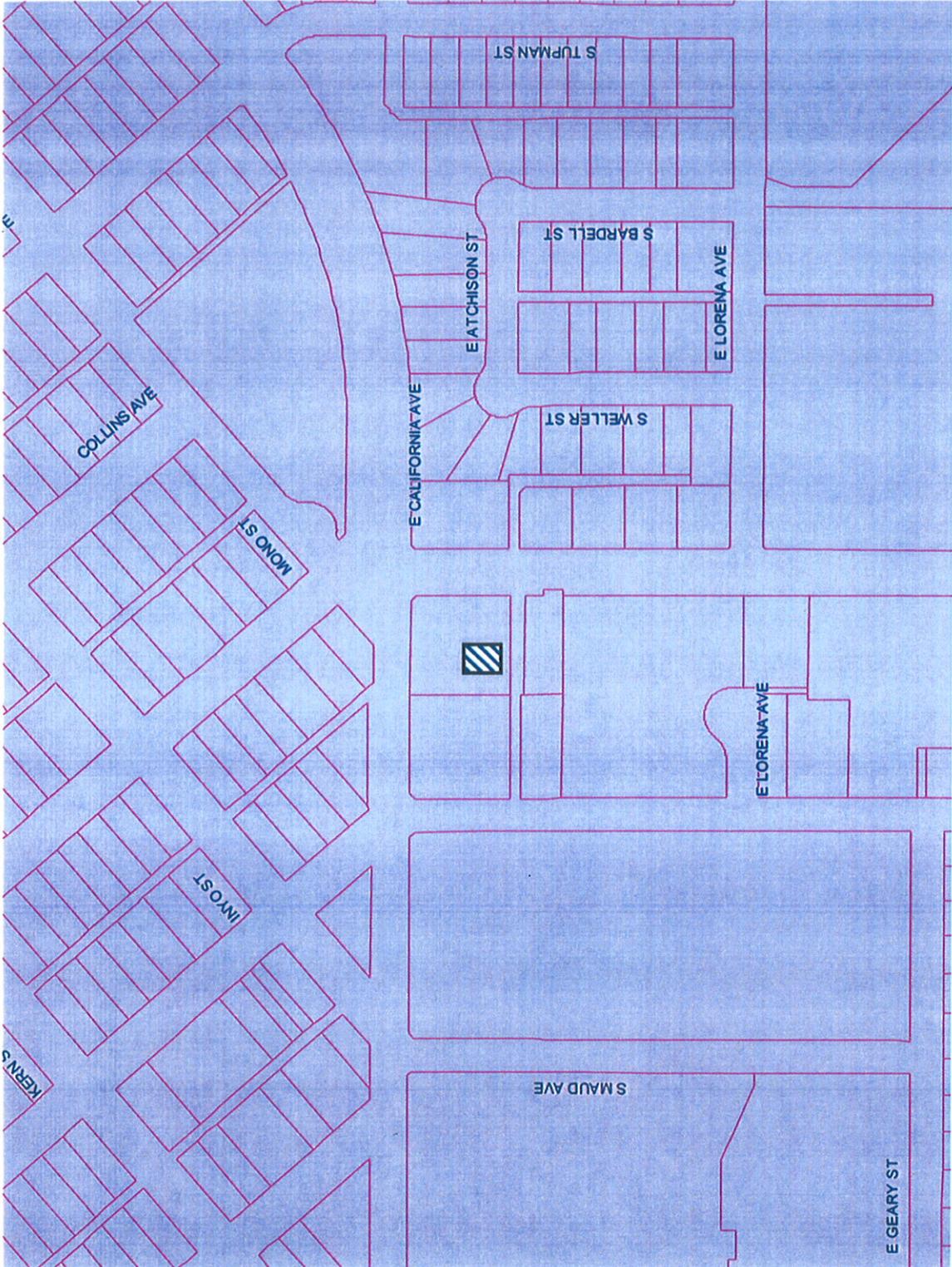
Findings per Fresno Municipal Code Section 12-405-A-2
a. <i>All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i>

Finding a:	Conditional Use Permit Application No. C-11-028 will comply with all applicable codes, including parking, landscaping, walls, etc., as there is no new development proposed with this project.
b. <i>The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
Finding b:	Adjacent streets were assessed during the initial development of the subject site to ensure that the development would have less than significant impacts on traffic and the surrounding community.
c. <i>The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses that are subject to the provision of Section 12-306-N-30 of the FMC.</i>	
Finding c:	The proposed use, a change from a Type 20 to a type 21 ABC license, will not have a negative impact on either the subject site, or neighboring properties given that there will be no change in the operation of the business. These conditions are intended to help protect the public health, safety and welfare of patrons and neighbors, alike.

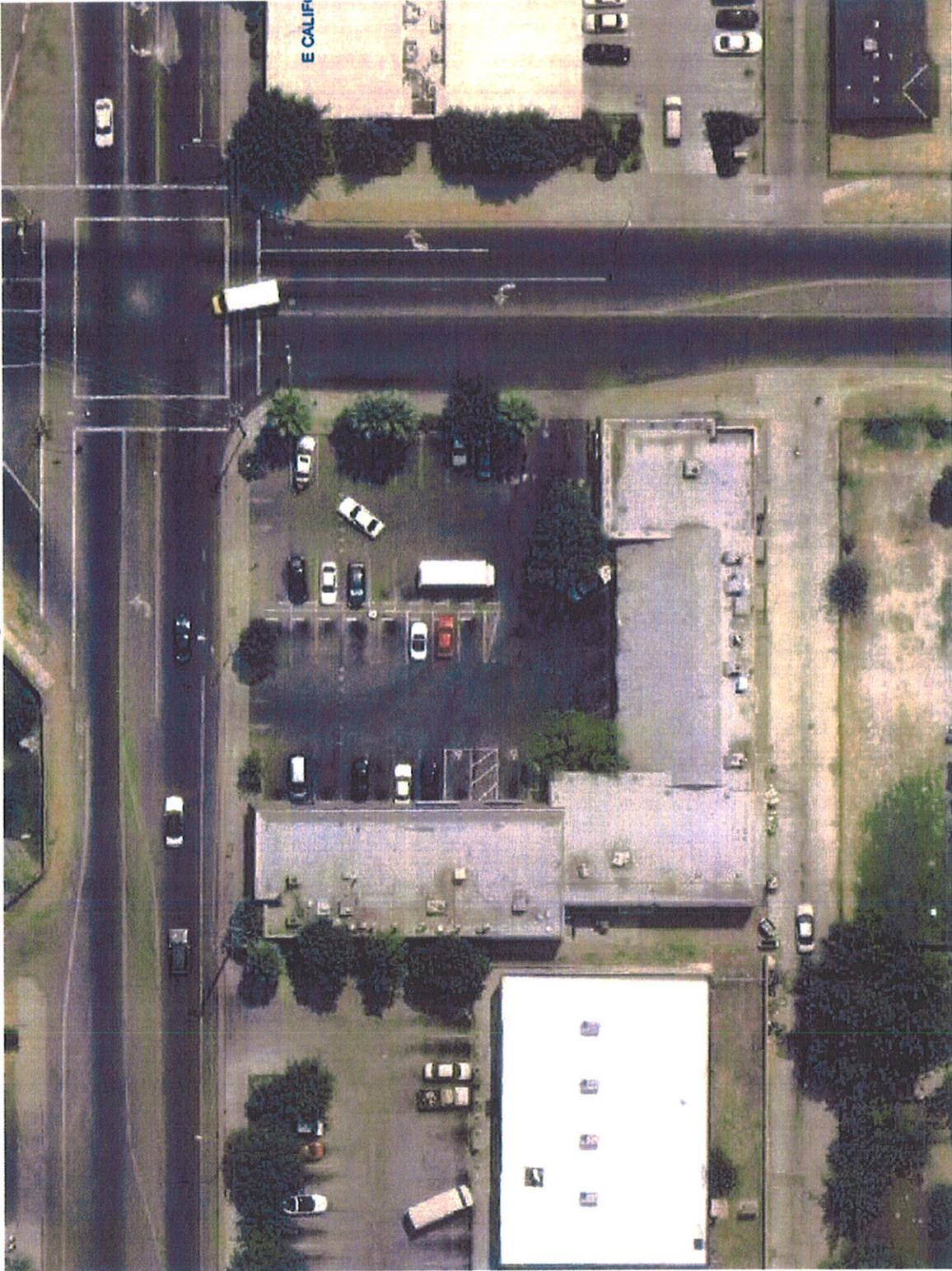
Attachments:

- A. Vicinity Map
- B. 2008 Aerial Photograph of site
- C. Noticing Map (350 foot radius)
- D. Exhibit A, Site Plan, dated February 23, 2011
- E. Exhibit F, Floor Plan, dated February 23, 2011
- F. Operational Statement, dated February 23, 2011
- G. Redevelopment Agency of the City of Fresno Memo dated March 15, 2011
- H. Redevelopment Agency of the City of Fresno Memo dated August 17, 2011
- I. City of Fresno Police Department E-mail dated May 11, 2011
- J. Conditions of Approval, dated August 17, 2011
- K. Conditions of Approval, dated September 7, 2011
- L. Environmental Assessment No. C-11-028, dated May 31, 2011
- M. Councilmember Baines letter of March 9, 2011
- N. 'The H.E.A.T. for SouthWest Fresno Community' letter of June 6, 2011, with attachments
- O. Bruce Leichty, Esq., attorney for Abdulla Mansour Nasr, letter of July 21, 2011

Vicinity Map



Aerial Photograph of site.



Request ID: C-11-028

350

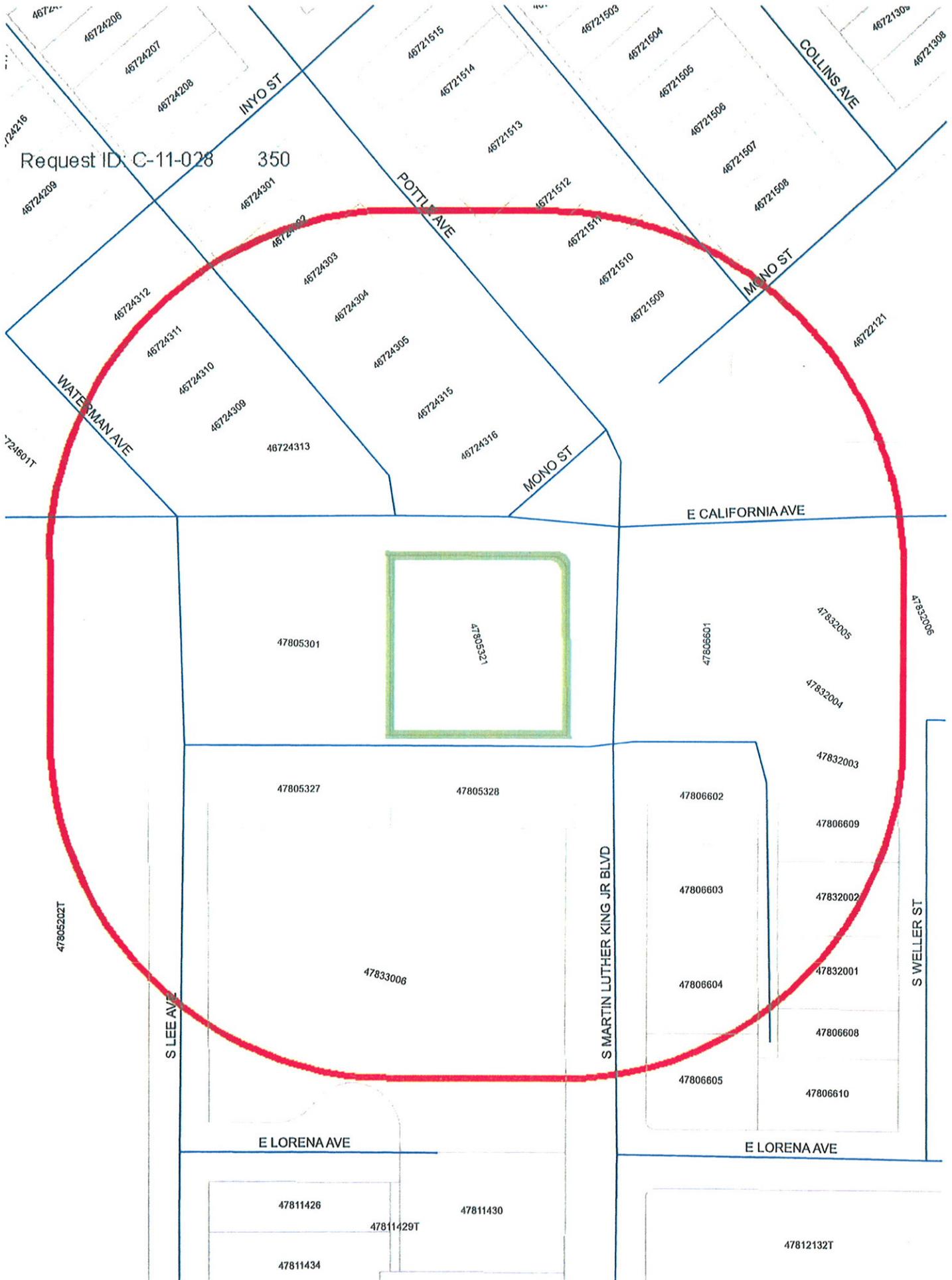
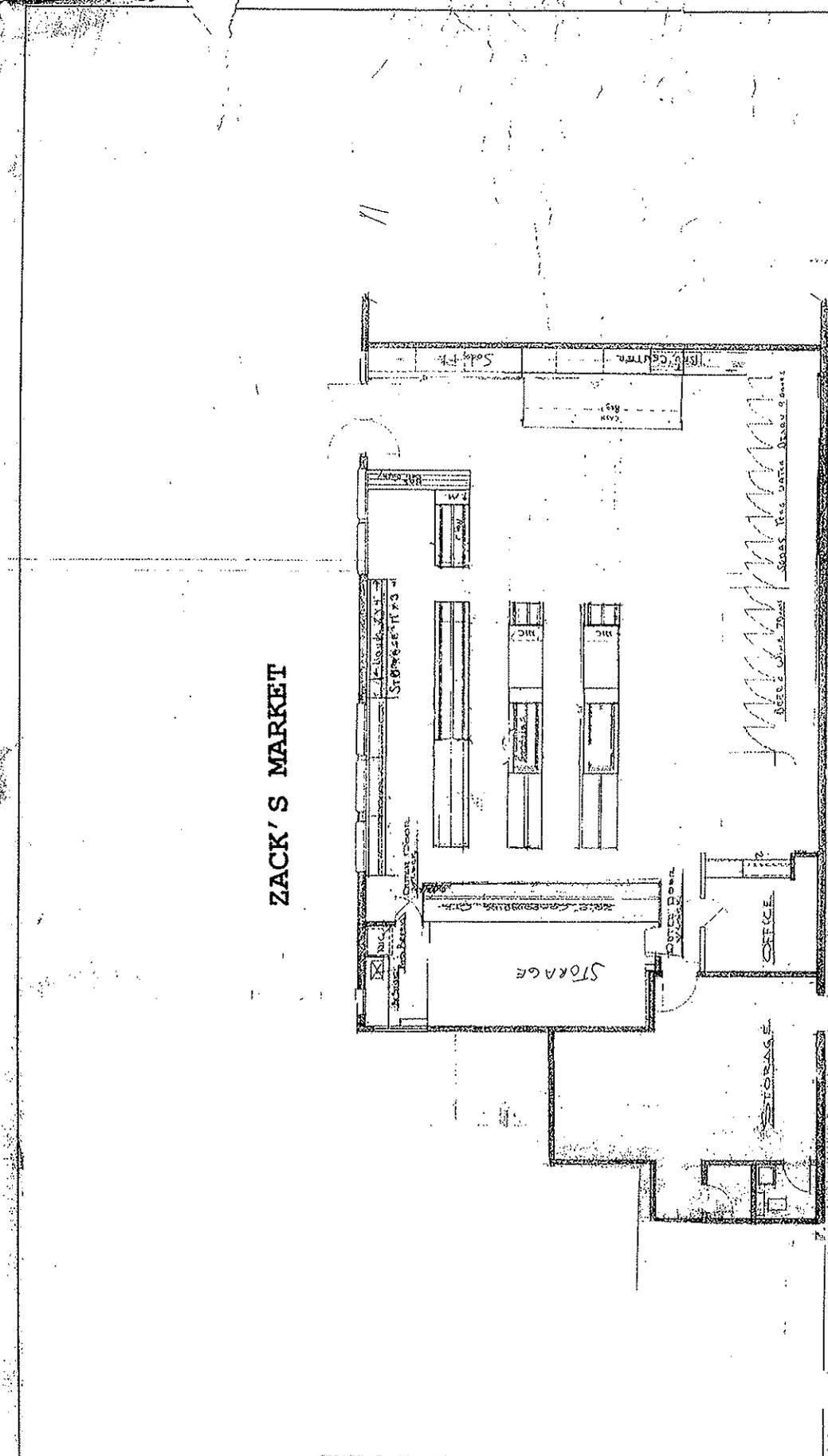


EXHIBIT C



ZACK'S MARKET

MARCUS FLOOR PLAN

REVISIONS	DATE

DRAWN BY: **MARCUS**
 CHECKED BY: **MARCUS**
 APPROVED BY: **MARCUS**
 SCALE: 1/8" = 1'-0"

DESIGNERS MANUFACTURERS... FINE STORE EQUIPMENT
 MAIN OFFICE, SHOWROOMS AND PLANTS AT 1430 W. 240TH ST., HARBOR CITY, CALIF. SP. 5-2316
 SALES OFFICES IN OTHER PRINCIPAL WESTERN CITIES

St. John / Malone
CORPORATION

4



Planning & Development Department
Development Partnership Center (DPC)
2600 Fresno Street, Third Floor
Fresno, CA 93721-3604

Operational Statement Template

Please use this template as a specific guide to explaining the scope of your project. This required information will assist all individuals, departments and agencies in their review and drafting of their comments, conditions and suggestions. Our goal is to facilitate an accurate and complete description of your project in order to avoid unnecessary delays in gathering additional information. If you have any questions about the requested information or need help completing any portions of this form please call the Development Partnership Center at (559) 621-8180. This form must be completed and submitted in order to process your application. If this operational statement is not submitted or incomplete your application will not be accepted for processing.

Project Description: Former Type License 20 off sale Beer & Wine
Type 21 of Sale Liquor Beer & Wine
License Upgrade is being submitted by L. McKerry of ABC Brokers on behalf of
Zacks Market and pertains to 1/2 acres of property located at 854 E. California Ave
APN: _____ and is zoned C with a planned land use of Commercial Strip Center
82 is requesting authorization to:

Change in Alcoholic Beverage License from Type 20 to Type 21
Beer & Wine Liquor, Beer & Wine

The proposed development will consist of:

Just upgrade license

The existing site currently exists of 42 with _____ existing parking spaces. 2 Handicapped

The proposed hours of operation are from 7 to 10 on 7 days

Other facts pertinent to this project are as follows:

The premises are already licensed to sell off sale Beer & Wine
Deli foods and Grocery items, Wine Program, Food Stamps, in a small
Strip Mall that already has a Clothing Store, Subway, Laundromat, Insurance,
Beauty Salon. This is the only Grocery Store in the immediate area
for past 20 years, the store formerly had a Type 21 license operating at this
Location around 4 years ago. Tenant pulled license & sold it to another area.

Operational Narrative: (This is your opportunity to communicate in detail all other characteristics of your property that would be important to consider when reviewing for completeness and contemplating approval. Describe your proposed operation/development in as much detail as possible including information such as name of business, product or service, anticipated traffic-customers, deliveries, etc., any special events, number of employees, required equipment, on-site storage, demolition or adaptive reuse of existing structures, noise generation, any hazardous materials, etc.)

Part 3 item 25 (ABC form 225)

The herein described location was approved for an upgrade from Type 20 license, which it now has, to a Type 21 Conditional Use Permit, by the City of Fresno, under the previous owner of this Store, than called Marcus Market, by Michael Marcus, within the last six years. The Marcus family owns this Center. The Marcus family, owners of this SW Fresno Center, are in favor of allowing their tenant, (now applicant Mansour Abdulla), to upgrade his license at this time as a benefit to draw new and additional business to the Shopping Center. This approval is already written into applicant's lease. The Center already draws its business customers from a diversified list of customers with the recent reopening of the Laundromat, clothing store, beauty salon, Subway franchise, and Zacks Market and Insurance office. The more diversified the product supply list, (Thus a Type -21 Liquor upgrade), merely enhances an additional draw to the overall good of the center, and to Zacks Market, (Already selling Beer and Wine). In addition Zacks Market sells Groceries, Hot Deli items, fountain drinks, ice cream products, Wic Program, Food Stamps, Check Cashing and is in the process of adding a full hot Deli, a limited meat department and fresh produce to round out its customer base making it a total service grocery store in a cleanly run center in the heart of Southwest Fresno. A great deal of customers to Zacks Market and to this Shopping Center are foot traffic and do not own vehicles which is even a greater reason for approval of this license upgrade being granted. Few business's succeed in the lower income areas and that is all the more reason the ones that do succeed, such as this one, be given every opportunity to diversify their product lines to the community they attempt to serve. It should furthermore be mentioned that this location used to have a Type 21 license here for some 10 years or more prior to 2005. Although there are other Beer and Wine licenses in the area there are only two liquor licenses and they are over 1 mile away and cannot conveniently supply the foot traffic for shopping convenience. There are virtually several thousand people who walk to this center which is a beacon of light to SW Fresno. The owners of this center and the applicant run a clean operation and do not believe that this license upgrade would in any way have a negative impact on the area. Other businesses are not in conflict but complimentary to the store. Many of school staff and DayCare frequent this center for both the Subway and Zacks Market. The only school is approximately 600 feet or more away from Zacks, as is, the nearest church. The only possible objection would be the Day Care School and we do believe they are not in objection. There are only a few residences within 100 feet of the store approximately 6. Three behind the store and 3 over 100 ft across the street. Your kind consideration is greatly appreciated.

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO
2344 Tulare Street, Suite 200, Fresno, CA 93721 (559) 621-7600

Application No.: C-11-028-ABCUP (Jack Van Patten)	Date: 3/15/2011
Assessor Parcel No.: 478-053-21	Reviewer: Terry Cox, Project Manager/ Management Analyst III
Site address: 854 E. California Avenue	Telephone: 621-7622
Redevelopment Area: Southwest Fresno GNRA	

Agency Staff Recommendation:

APPROVE PROJECT WITH THE FOLLOWING CONDITIONS:

1. The property identified in Application No. C-11-028-ABCUP is located within the adopted Southwest Fresno General Neighborhood Renewal Area and is subject to all requirements of the Redevelopment Plan.
2. The Redevelopment Agency does not object to the proposed upgrade from a Type 20 to a Type 21 (sale of beer, wine, and distilled spirits for consumption off the premises where sold) State of California Alcoholic Beverage Control license for the existing Zack's Market. Agency support of this project is conditioned on the ability of the development to receive a favorable evaluation from the Fresno Police Department and adjacent property owners, and that the continued operation of the market is in conformance with all requirements of the Redevelopment Plan and the C-5 (General Commercial) zone district and Section 12-304 (including subsequent applicable Sections of the Fresno Zoning Ordinance.
3. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site.
4. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-11-028-ABCUP.
5. Approval of this entitlement applies only to the development identified in Application No. C-11-028-ABCUP, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application with prior approval from the City of Fresno Development Department and the Redevelopment Agency.
6. The project shall also be subject to and be in conformance with the requirements of the Industrial Development Design Guidelines as applicable.
7. All existing and future landscaped areas shall be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees.
8. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational policy of the market (business).
9. Agency recommends a Master Sign Plan with a signage pattern that will enhance the appearance of the building and its association with the frontages of California Avenue and

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS

Martin Luther King, Jr. Boulevard.

10. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of City code.
11. The City of Fresno and Redevelopment Agency shall be informed of any deviation from the conditions of this Entitlement or the Statement of Operations, especially any change in the established use of the property and hours of operation.
12. The Agency reserves the right to reconsider the issuance of Conditional Use Permit Application No. C-11-028 ABCUP to the market (business) should the City of Fresno or the Redevelopment Agency of the City of Fresno receives any complaints about the market's operations and/or sales of alcohol beverages inconsistent with the requirements of Application No. C-11-028 ABCUP; which can result in a recommendation to the Alcoholic Beverage Control (ABC) Department of the State of California to revoke the license.

Redevelopment Agency of the City of Fresno



2344 Tulare Street, Suite 200 • Fresno, California 93721 • (559) 621-7600 • (559) 498-1870 (Fax)

August 17, 2011

To: Planning Commissioners
City of Fresno

From: Terry Cox, Project Manager
Redevelopment Agency City of Fresno

Cc: Jack Van Patten, AICP, Planner II
Development Services Division

Subject: ABCUP C-11-028 - Agenda Item VIII - D

RECEIVED

AUG 17 2011
Planning Division
Planning & Development Dept
CITY OF FRESNO

3:10 p.m. PDT
Lester

Please accept the attached revised Agency Staff Recommendation for application ABCUP C-11-028 to be heard at your August 18, 2011 Planning Commission meeting.

The revised comments are based on analysis provided by Keyser Marston Associates on August 16, 2011. Based on the information provided the Revised Agency Staff Recommendation is Do Not Approve this application. Attached please find analysis and supporting documentation.

EXHIBIT H
(p. 1/14)

RECEIVED

AUG 14 2011

3:10 P.M. PDT [Signature]

REVISED 8/16/11

Planning Division
Planning & Development Dept
CITY OF FRESNO

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

2344 Tulare Street, Suite 200, Fresno, CA 93721 (559) 621-7600

Application No.:	C-11-028-ABCUP (Jack Van Patten)	Date:	3/15/2011 8/16/2011
Assessor Parcel No.	478-053-21	Reviewer:	Terry Cox, Project Manager/ Management Analyst III
Site address:	854 E California Avenue	Telephone:	621-7622
Redevelopment Area	Southwest Fresno GNRA		

Agency Staff Recommendation:

DO NOT APPROVE:

- 1 Based on a blight study conducted by Keyser Marston Associates, Inc. for Southwest Fresno GNRA and Fruit/Church Project Areas (Merger II) it has been determined that there is an excess of existing liquor licenses within the Southwest Fresno GNRA Project Area based on the State of California Alcohol Beverage Control (ABC) established restrictions for limits of issued liquor licenses per capita.

ABC has established limits for Off Sale Beer & Wine + General combined at 1 license per 1,250 persons. Southwest Fresno has 2.06 Off Sale Beer & Wine + General licenses per 1,250 persons. More than double the ABC's restricted limits per capita

- 2 California Community Redevelopment Law definition of blight includes the following; Section 33031(b)(6) "An excess of bars, liquor stores or adult oriented businesses that has resulted in significant public health, safety and welfare problems" and Section 33031(b)(7) "A high crime rate that constitutes a serious threat to the public safety and welfare." Studies conducted have provided links between the excess availability of alcohol's contribution to alcohol-related crime and other social problems. Approval of this project will further contribute to the condition of blight in Southwest Fresno.

IF PROJECT IS APPROVED PLEASE APPLY THE FOLLOWING CONDITIONS:

1. The property identified in Application No. C-11-028-ABCUP is located within the adopted Southwest Fresno General Neighborhood Renewal Area and is subject to all requirements of the Redevelopment Plan.
2. Agency recommends the development receive a favorable evaluation from the Fresno Police Department and adjacent property owners, and that the continued operation of the market is in conformance with all requirements of the Redevelopment Plan and the C-5 (General Commercial) zone district and Section 12-304 (including subsequent applicable Sections of the Fresno Zoning Ordinance.

EXHIBIT H (p. 2/14)

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS

3. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site.
4. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-11-028-ABCUP.
5. Review of this entitlement applies only to the development identified in Application No. C-11-028-ABCUP, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application with prior approval from the City of Fresno Development Department and the Redevelopment Agency
6. The project shall also be subject to and be in conformance with the requirements of the Industrial Development Design Guidelines as applicable.
7. All existing and future landscaped areas shall be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees.
8. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational policy of the market (business).
9. Agency recommends a Master Sign Plan with a signage pattern that will enhance the appearance of the building and its association with the frontages of California Avenue and Martin Luther King, Jr. Boulevard.
10. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of City code.
11. The City of Fresno and Redevelopment Agency shall be informed of any deviation from the conditions of this Entitlement or the Statement of Operations, especially any change in the established use of the property and hours of operation.
12. The Agency reserves the right to reconsider the issuance of Conditional Use Permit Application No. C-11-028 ABCUP to the market (business) should the City of Fresno or the Redevelopment Agency of the City of Fresno receives any complaints about the market's operations and/or sales of alcohol beverages inconsistent with the requirements of Application No. C-11-028 ABCUP; which can result in a recommendation to the Alcoholic Beverage Control (ABC) Department of the State of California to revoke the license

EXHIBIT H (p 3/14)

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS



KEYSER MARSTON ASSOCIATES.
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
ROBERT J. WETMORE
REED T. KAWAHARA

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
PAUL C. ANDERSON
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMNEY
DENISE BICKERSTAFF

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

To: Marlene Murphey, Executive Director
Redevelopment Agency of the City of Fresno

From: Denise Bickerstaff

cc: Terry Cox, Project Manager

Date: August 16, 2011

Subject: Alcoholic Beverage Licenses in the Merger No. 2 Project Area

In 2007 and 2008, Keyser Marston Associates, Inc. ("KMA") completed analyses of blighting conditions in the Merger No. 1 and Merger No. 2 Project Areas ("Project Areas"). As you know, "an excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety or welfare problems" is one of the several definitions of blight contained in the California Community Redevelopment Law ("CRL").

In order to determine whether there was an excess of bar and liquor stores in the Project Areas, KMA obtained information regarding the number of licenses to serve or sell alcoholic beverages in both Project Areas and compare the number of licenses on a per-capita basis to the citywide and countywide averages. The methodology and results of these analyses are described in the following paragraphs.

BACKGROUND AND METHODOLOGY

The California Department of Alcoholic Beverage Control ("ABC") is the state agency charged with administering the regulations governing the issuance of licenses to sell alcoholic beverages. The ABC reviews all applications to sell alcoholic beverages and controls the number of licenses issued. The ABC has the authority to refuse to issue a license under certain conditions and may also place restrictions on the operations of a licensee. For example, the ABC may limit the hours of operation or impose other

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EXHIBIT H (P 4/14)

To: Marlene Murphey,
Redevelopment Agency of the City of Fresno

August 16, 2011

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Subject: Alcoholic Beverage Licenses in the Merger No. 2 Project Area

restrictions to alleviate objections to the premises' operation. Such restrictions have been imposed on operations in the vicinity of churches, schools and residential areas.

In addition to regulating the types of establishments that sell alcohol and their operations, there are also restrictions on the number of licenses that may be issued at any one time based upon the number of licenses per-capita citywide and/or countywide. The ABC may limit the number of new licenses issued to conform to those limits. For "off-sale" licenses (licenses for consumption of alcohol off the premises), the limits are as follows:

License Type	Description	Countywide Limit
Off-Sale Beer & Wine	Authorizes the sale of all types of wine and malt beverages for consumption off the premises in original, sealed containers. Mini- and quick-stop markets (i.e., 7-Eleven or an AM-PM Mini Mart) would fall into this category	One outlet per 2,500 persons
Off-Sale General	Authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers. Supermarkets and liquor stores generally fall into this category	One outlet per 2,500 persons

ANALYSIS AND RESULTS

To assess and compare the number of liquor outlets in both Project Areas, ABC data was obtained and licenses within the Project Areas were identified by address.

A significant number of liquor outlets were identified in both Project Areas. The number of licenses were estimated on a per-capita basis and compared to the citywide and the countywide per-capita limits established by state law. Results indicated that the number of licenses exceeded citywide and countywide per-capita rates in both Project Areas, though the overall rates were lower in Merger No. 2. While the rates in Merger No. 2 were not included in the Report to the City Council ("Report") prepared for the Plan Amendments, as shown in the following table, the number of licenses per-capita exceeded both the citywide and countywide averages and the ABC limits by significant margins. The number of beer and wine licenses exceeded the citywide average by fifty-six percent and the countywide average by fifty-four percent. The number of general licenses exceeded the citywide average by thirty-seven percent and the countywide average by seventy-seven percent. The number of beer and wine and general licenses combined exceeded the citywide average by forty-eight percent and the countywide average by sixty-three percent.

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Redevelopment Agency of the City of Fresno
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Number of Off-Sale Licenses	Merger No. 2	City of Fresno	Fresno County
General (limit = 1 per 2,500 persons)	1.71	1.24	0.97
Beer & Wine (limit = 1 per 2,500 persons)	2.42	1.55	1.57
Beer & Wine + General (limit = 1 per 1,250 persons)	2.06	1.40	1.27

Notes:

City of Fresno includes all RDA project areas.

ABC limits for off-sale general and off-sale beer and wine licenses is 1 per 2,500 persons countywide.

ABC limits for off-sale general and beer and wine licenses combined is 1 per 1,250 persons countywide.

Totals for Fresno County are per ABC summary counts June 30, 2007

Based upon Claritas 2007 population estimates.

Studies have established the links between the availability of alcohol and threats to the public health and safety. Problems such as traffic accidents and fatalities, homicides and violent assaults have been shown to be aggravated by the use of alcohol.¹ As described in the Report for Merger No. 2, violent crime rates in the Project Area were significantly higher than the citywide rates. The rates of homicides were more than four times higher; the rates of robberies were almost double, and the rates of aggravated assault were ninety percent higher than the citywide averages.

Given the established link between the availability of alcohol and violent crime, the high number of "off-sale" alcoholic beverage licenses in the Project Area, and the high levels of violent crime in the Merger No. 2 Project Area, it is likely that the high number of alcohol outlets contributed to the higher rates of violent crime in the Merger No. 2 Project Area. Attached to this memorandum are three articles related to the correlations between alcohol and violent crime for your reference

Attachment

¹ An analysis of the prevalence of alcohol involvement in crime by the U.S. Department of Justice found that an estimated 32 percent of fatal accidents involved an intoxicated driver or pedestrian (the majorities were drivers). Among violent crime victims who provided information about the offender's use of alcohol, 35 percent of the victimizations involved an offender who had been drinking. Among victims who suffered violence by an intimate (a current or former spouse, boyfriend or girlfriend), two-thirds reported the offender had been using alcohol. Source: *Alcohol and Crime. An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime* (Washington, D.C. U.S. Department of Justice, Office of Justice Programs, revised April 28, 1998, pages v and vi.

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ALCOHOL & HEALTH

The Relationship Between Alcohol Availability and Injury and Crime

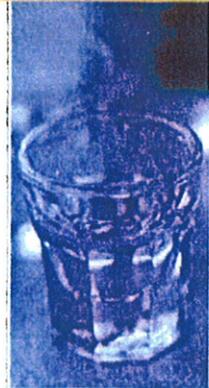
Introduction

There is a growing body of research that shows what many people already know: areas with more alcohol outlets (a business or location where alcoholic beverages are sold) tend to experience more alcohol-related injury and crime. Incidents of sexual and other assaults, domestic violence, child abuse, youth violence, homicides, alcohol-related motor vehicle crashes, and drunk driving have all been shown to increase when the availability of alcohol increases.

Concern among local communities generally focuses on alcohol availability from commercial outlets, such as bars and retail stores. But public availability of alcohol, or alcohol that is served at public events and in public places such as parks, can be a significant source of alcohol in the community and should also be of concern.

The Facts

- The number of alcohol outlets is related to violent assaults. One study showed that each additional alcohol outlet was associated with 3.4 additional assaults per year. Scribner, R., Mackinnon, D. & Dwyer, J.: "The risk of assaultive violence and alcohol availability in Los Angeles County." *American Journal of Public Health* (85) 3: 335-340. 1995.
- Alcohol outlet density has been shown to be the single most important environmental factor explaining why violent crime rates are higher in certain areas of the city than in others. LaBouvie, E. & Ontkush, M.: "Violent crime and alcohol availability: relationships in an urban community." *Journal of Public Health Policy* 19(3):303-318. 1998.
- There are a greater number of alcohol-related injury crashes in cities with higher outlet densities. A 1% increase in outlet density means a .54% increase in alcohol-related crashes. Thus, a city of 50,000 residents with 100 alcohol outlets would experience an additional 2.7 crashes for each new outlet opened. Scribner, R., Mackinnon, D. & Dwyer, J.: "Alcohol outlet density and motor vehicle crashes in Los Angeles County cities." *Journal of Studies on Alcohol* (44): 447-453, July 1994.
- Blocks that have more bars have higher crime rates for murder, rape, assault, robbery, burglary, grand theft and auto theft. Adding one bar to a block would result in 3.38 crimes committed on that block in a year. It would increase the risk of murder taking place on that block by 5%, and increase the risk of having a violent crime of any type by 17.6%. Runcek, D. & Maier, P. "Bars, blocks and crimes revisited: linking the theory of routine activities to the empiricism of 'hot spots.'" *Criminology* (29) 4: 725-753. 1991.
- The level of drinking, drinking participation, and participation in binge drinking are all significantly higher among all college students when a greater number of outlets licensed to sell alcoholic beverages exist near campus. This is particularly true for underage drinking. Chaloupka, F. & Wechsler, H. "Binge drinking in college: the impact of price, availability and alcohol control policies." *Contemporary*



The Relationship Between Alcohol Availability and Injury and Crime

Economic Policy, vol. xiv, October 1996.

- Freedom from unwanted interruptions in one's house or place of business are fundamental legal rights. A basic tenet of law is the right to the "quiet enjoyment" of one's own property. High densities of alcohol outlets cause noise, traffic, loitering, and other disturbances of the public peace. Preventing Problems Related to Alcohol Availability: Environmental Approaches. U.S. DHHS Pub No. (SMA) 99-3298.

Policy Solutions

Communities can influence both alcohol availability and consumption, and thereby mitigate related problems, by controlling the number of alcohol outlets, regulating the behavior of current outlets, and even closing problem outlets. These measures, along with others such as stricter enforcement on underage sales of alcohol and responsible alcohol service training, are part of a broader strategy that communities can implement to prevent and reduce threats to the health and safety of their residents from alcohol abuse.

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EXHIBIT H (P 8/14)

BROOKINGS

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Broken Bottles: Alcohol, Disorder, and Crime

U.S. Poverty, Welfare, Social Norms, Inequality, Crime

John J. DiIulio, Jr

The Brookings Institution

Spring 1996 —

Over the past quarter-century, Americans have spent billions of dollars to wage a war on drugs as part of a broader effort to fight crime and community breakdown, especially in the inner city. The particular focus on illicit drugs, however, has kept the spotlight off a more familiar, yet perhaps more dangerous, psychoactive drug — alcohol. The tendency to leave liquor out of the nation's crime equation is understandable. After all, adult liquor sales are legal, most Americans drink in moderation, and, whatever the social costs of alcohol abuse, no one who wishes to be taken seriously is about to call for a return to prohibition. Policymakers concerned about the health of the nation's inner cities, however, must not ignore the links between alcohol and crime. Although the relationships are complex, the high concentration of liquor stores in the inner cities, the ready availability of beer and hard liquor, and the high incidence of alcohol abuse are deeply implicated in the troubled homes, disorderly neighborhoods, and dangerous streets there.

This insight comes as no news to the struggling, law-abiding residents who live in these neighborhoods. They beg local police and other public authorities to "do something" about the corner-to-corner proliferation of liquor outlets. They spray paint over liquor billboards. They try without success to get zoning laws changed to make it as tough to open retail liquor stores in their neighborhoods as it generally is to open them in rich, white, suburban neighborhoods.

It is time for the rest of us, policymakers and citizens alike, to pay attention.

A Multiplier of Crime

Although scientific research on alcohol-related crime and other social ills has been crowded out by studies of the social costs and consequences of drug abuse, researchers are beginning to get a handle on the epidemiology of alcohol-related crime. Perhaps the single best summary of the evidence is this, by Jeffrey Fagan: "Alcohol use has been associated with assaultive and sex-related crimes, serious youth crime, family violence toward both spouses and children, being both a homicide victim and a perpetrator, and persistent aggression as an adult. Alcohol 'problems' occur disproportionately among both juveniles and adults who report violent behaviors."

Most crime, of course, is not related to drinking, and most drinking never results in crime. But some people are far more prone to crime and violence when they are drinking or drunk than when they are clean and sober. Analysts are careful to stress that "conceptions of how drinking affects social behavior are shaped more by powerful cultural, economic, and political forces than by scientific evidence regarding the direct effects of alcohol." But exactly the same sorts of cautions apply to the links between drug abuse and crime. The evidence that "drug abuse causes crime" is of the same kind and quality as the evidence that "alcohol abuse causes crime" — namely, plentiful but inferential, generally persuasive but not scientifically precise.

What the evidence suggests is that alcohol, like drugs, acts as a multiplier of crime. Aggressive behavior or criminality often occurs before involvement with drugs or alcohol, but the onset of use increases aggressive or criminal behavior. If anything, alcohol abuse probably drives crime and other social problems more than drug abuse does, simply because the use of alcohol is so widespread.

Liquor, Disorder, and Crime

Neighborhood disorder takes many forms — public drinking, prostitution, catcalling, aggressive panhandling, rowdy teenagers, battling spouses, graffiti, vandalism, abandoned buildings, trash-filled lots, alleys strewn with bottles and garbage. But no social

EXHIBIT 14 (p 9/14)

disorder is at once so disruptive in its own right and so conducive of other disorders and crime as public drinking. In a classic 1990 study of community breakdown in American cities by William Skogan, public drinking was ranked first among the disorders identified by residents across 40 neighborhoods.

The statistics are striking. Sixty percent of convicted homicide offenders drank just before committing the offense. Sixty-three percent of adults jailed for homicide had been drinking before the offense. Sixty percent of prison inmates drank heavily just before committing the violent crime for which they were incarcerated. The relationship between poverty and homicide is stronger in neighborhoods with higher rates of alcohol consumption than in those with average or below-average rates. Numerous studies report a strong association between sexual violence and alcohol, finding that "anywhere between 30 and 90 percent of convicted rapists are drunk at the time of offense." Juveniles, especially young men, who drink to the point of drunkenness are more likely than those who do not drink to get into fights, get arrested, commit violent crimes, and recidivate later in life. Alcohol-dependent male factory workers are more than three times as likely to physically abuse their wives than are otherwise comparable, non-alcohol-dependent counterparts.

The high incidence of drinking among convicted criminals does not necessarily prove that drinking stimulates crime; it may be nearer to being evidence that criminals who drink are more likely to get caught and convicted than those who do not. But it is important not to discount or deny the probable, and in some cases patently obvious, connections between liquor, disorder, and crime.

Alcohol in the Inner City

The map shown in figure 1 illustrates the relationship between liquor and crime in Milwaukee in 1993. The map categorizes each city tract according to its crime rate; the darker the shading, the higher the crime rate. Each dot represents a liquor outlet. If one knew nothing about the city or what the shaded areas or dots represent and simply drew circles around the places where the dots are clustered, Milwaukee's poor, minority, high-crime, inner-city neighborhoods would be enclosed in those circles. And the same pattern is true for other inner-city communities all across the country.

Numerous first-rate studies have found close links between the geographic density of alcohol outlets and consumption (and alcohol problem) rates. Without leaping to the further conclusion that if inner-city neighborhoods had fewer liquor outlets and less alcohol consumption, they would also have less crime, policymakers who care about reducing community breakdown and crime in the inner city should nevertheless seriously consider restricting alcohol availability and reducing the density of liquor stores.

The practical question is how best to do so. The main finding of the scientific research literature is that more strongly enforcing liquor law regulations can reduce alcohol availability and consumption, as well as alcohol-related problems, including violent crime, among at-risk youth and adults.

Most states do not have strong liquor-law regulations and procedures. Even states that have them on the books tend to underfund the agencies responsible for enforcing them. Naturally, anemic funding often leads to inadequate enforcement, which opens up the possibility of socially harmful concentrations of liquor outlets and other regulatory failures that can lead to a hornet's nest of alcohol-related social problems.

Developing and enforcing rigorous liquor laws and regulations that might cut crime and alcohol-related problems in poor, minority, high-crime inner-city neighborhoods has not been a high priority for most states. To put it bluntly, America's liquor-control regime is structured without any apparent regard for the connection between alcohol availability, consumption, crime, and other social problems — and is calculated to give the states almost zero capacity to regulate and directly enforce liquor laws. A study of ABC offices and investigators in California, for example, found that investigators were "less concerned with public health and welfare than with the rights of applicants." The study concluded that selling alcohol in California "is treated more as a right than a privilege."

In their new book, *Alcohol and Homicide*, R. N. Nash and L. A. Rebbun observe, rightly, that the high concentration of liquor outlets in inner-city neighborhoods reflects "the relative power of alcohol producers and wholesalers who supply liquor outlets, banks who loan money to store owners, and state regulators whose activities are more oriented toward the interests of alcohol industry lobbying groups than the regulation of that industry and the relative powerlessness of the poor and unemployed individuals and groups who live in greater concentration in these areas of high outlet density."

Broken Bottles

Middle-class Americans would not tolerate for one second laws that permitted an inner-city level concentration of liquor stores in and around the places where they and their loved ones live, work, shop, go to school, or play. It makes no sense to insist that it is all merely a matter of free markets, as if liquor stores simply go where the people want what they sell and sell to whomever they want. Nor can one hide behind a fog of empirical uncertainties about the connections between liquor, disorder, and crime. In the

EXHIBIT 14 (p 10/14)

end, academic statistical exercises are no substitute for live ethnographic realities. A 1993 feature in U.S. News and World Report reported on that reality from the perspective of a typical inner-city child named John. "To John, Tom's Liquor is a short walk from his house, school and the storefront church in the same shopping strip. A slew of transactions take John to Tom's. He tags along with his mom when she goes to cash her welfare checks free of charge. With no supermarket nearby, John goes to Tom's when he wants a candy bar. Even when his mother takes him to the adjoining neighborhoods, John rarely sees a bank or supermarket. Many neighborhood traits convey disorder, but unchecked public drinking is a particularly potent affirmation that 'no one cares. That is the message John gains by observing Tom's Liquor, where winos and crack addicts congregate at night in the parking lot."

Some years ago James Q. Wilson and George L. Kelling offered a by-now almost universally accepted "broken windows" thesis —

Preserving Social Capital

States and cities should begin immediately to experiment with policies aimed at cutting crime by curbing alcohol availability and consumption. The place to start is in high-crime neighborhoods where the density of liquor outlets exceeds citywide averages. The theory behind this experiment should be guided by the large and methodologically sophisticated body of research that documents that in inner-city neighborhoods, the relationship between poverty on the one side and crime and disorder on the other is mediated by community norms and the extent of citizens' attachments to traditional institutions like home, school, and church.

As a rule, the stronger are community norms and traditional institutional attachments, the weaker the link between poverty and crime and the lower the chances that poor children will become deviant, delinquent, or predatory. Studies have shown that religious affiliation fosters less drinking. Indeed, one major study finds that even after controlling for all relevant individual characteristics such as race, gender, education, parental education, family structure, and religious involvement, young people whose neighbors attend church are more likely to find a job, less likely to use drugs, and less likely to be involved in criminal activities whether or not they themselves attend church or have other attachments to traditional institutions.

But in poor neighborhoods where alcohol is readily available and liquor outlets dot every intersection, informal and indirect social controls on deviant, delinquent, and criminal behavior are diluted. Where broken bottles fill the gutters, social capital goes down the drain. Whether or not they themselves drink to excess, hang out at bars, or engage directly in related behaviors, it is probable that poor, inner-city youths who grow up in places where drinking is common and liquor outlets are everywhere are more likely than otherwise comparable youths to have diminished life prospects that include joblessness, substance abuse, and serious trouble with the law.

At least three specific policy experiments should be considered as means of deepening our understanding of the alcohol-disorder-crime nexus. First, conduct systematic empirical research on alcohol availability and crime. Develop a rich database that includes detailed information about the precise degrees of spatial overlap between liquor outlets, the incidence of communal disorders, rates of criminal activity, and the frequency of police response. Building such data sets would require the concerted efforts and cooperation of many different state and local agencies, including police departments and social service agencies.

Second, impose stricter zoning ordinances for liquor stores. New zoning laws would increase the distances between liquor stores, reduce the number of bars and liquor stores in the city, and ban the sale of malt liquor to go.

Third, limit alcoholic beverage advertising. Few systematic, scientifically rigorous studies have documented the relationship between alcohol ads and the incidence of excessive drinking, disorder, crime, and related social problems. But the alcohol industry seems to believe that these ads make a positive difference to their sales. Indeed, the industry seems perfectly well aware of the relationship between alcohol, disorder, and crime — and in some infamous cases has been quick to exploit it for commercial gain. In the early 1990s, for example, one of the billboarded spokesmen for St. Ides malt liquor was Ice Cube, a "gangsta rapper" whose hits feature lyrics such as "Pay respect to the black fist or we'll burn your store right down to a crisp."

Religious leaders in black communities often paint over offensive billboards. City officials should follow their lead by enforcing zoning limitations on billboard alcohol advertising, banning such ads from the horizons of schools, churches, and public housing centers.

One policy experiment that should be avoided at all costs is lowering the legal drinking age. The drinking-disorder-crime nexus seems strongly age-specific. Most violent crime is committed by young males. Drinking in males normally begins around adolescence and rises until the late teens or mid-twenties. Research suggests that the relationship between drinking and serious crime is strongest before young men reach age 31.

In a word, states should refuse to enact any measure that would increase alcohol consumption and particularly consumption among young people. Unless one simply refuses to accept the overwhelming weight of the evidence on the relationship between drinking, disorder, and crime, one must believe that reducing the minimum drinking age or any other measure that would increase, rather

EXHIBIT H (P 11/14)

than further limit, the availability of alcohol would have socially undesirable, even disastrous, consequences — most especially in America's inner-city neighborhoods.

EXHIBIT H (p 12/14)

BREAKING NEWS: Jurors sent home unexpectedly in Sept. 2009 shooting trial(02:04 PM)

NEWS

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Local study provides link between alcohol, crime

May 24, 2009 @ 10:15 PM
LAURA WILCOX
The Herald-Dispatch

HUNTINGTON -- Students at Marshall University recently completed a study proving a spatial relationship between clusters of violent crime and alcohol retailers in downtown Huntington

While the results might not be surprising, they do produce an objective measure to validate the correlation between things like shootings and clusters of bars, according to Anne McGee, director of the Cabell County Substance Abuse Prevention Partnership (CCSAPP).

McGee said she hopes studies like this one will disprove the notion that alcohol is just fun and should be socially accepted. She said CCSAPP would like to see a city bar moratorium in Huntington to reduce over time the number of alcohol outlets in crime-heavy areas.

Marshall students Andrew Lowe and Chad Pyles worked on the project, sponsored by the Cabell County Substance Abuse Prevention Partnership with funding from the West Virginia Partnership to Promote Community Well-Being.

The study analyzed property crimes, robberies and violent crimes compared to on-premise alcohol retailers to see if any of the crimes' clusters were located near clusters of alcohol retailers.

"There was no correlation between property crime and alcohol outlets, but there were pretty significant correlations between violent crime and alcohol outlets," McGee said.

Pyles and Lowe said research before the mapping seemed to indicate there would be correlation, but they were still somewhat surprised by the results.

"I didn't expect to find a lot of crime activity downtown where there's not as many residents," said Pyles, who just completed his junior year studying geography at Marshall.

Pyles said he thinks having a large number of bars in a small number of city blocks can lead to trouble.

EXHIBIT H (7/13/14)

"If someone becomes really intoxicated, the chance of a fight or anything is going to increase," he said

The report proves the cluster of violent crimes and alcohol retailers are related, but not that one causes the other

"It's interesting to see. Living around here, we always hear about all the things that go on outside of bars. There were a few shootings last summer," Pyles said

He said seeing the correlation come to life on maps was interesting and reinforced what many people may already know

Andrew Lowe, a Marshall graduate student, also said the result was along the lines of what the students expected

"Living in Huntington, we kind of knew the areas that seemed to have higher crime," Lowe said

In the year that Lowe has lived in Huntington, he said he's heard many stories about crime in certain places. He said the study didn't prove that it was any worse or better, but confirmed that clusters of violent crime did occur in areas with many bars.

Although she expected to see some correlation, McGee said even she was surprised at how strong it appeared on the maps.

"It makes you stop and think," she said

McGee said the students used crime data from 2008 from the Huntington Police Department and the West Virginia Alcohol Beverage Control Administration and geography software at Marshall to create maps for the study

Comments

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The Herald-Dispatch welcomes your comments on this article, but please be civil. Avoid profanity, obscenity, personal attacks, accusations of criminal activity, name-calling or insults to the other posters. Herald-dispatch.com does not control or monitor comments as they are posted, but if you find a comment offensive or uncivil, click on "Report as abuse" to bring the comment to the attention of our staff for review. You must be a registered user to post comments. To register [Click Here](#).

No comments.

EXHIBIT H (p 14/14)

Jack VanPatten

From: Reynaud Wallace
Sent: Wednesday, May 11, 2011 4:13 PM
To: Jack VanPatten
Subject: C-11-028 854 E. California

Per the Capt we do not protest the ABC upgrade

EXHIBIT 1

C-11-028 CONDITIONS OF APPROVAL

1. Approval of this special permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. This special permit is granted, and the conditions imposed, based upon the Operation Statement provided by the applicant. The Operation Statement is material to the issuance of this special permit. *In the event that the operation of this establishment changes, or becomes inconsistent with, the Operation Statement, a new or revised special permit shall be required, unless the conditions of approval specifically require operation inconsistent with the Operation Statement. Failure to operate in accordance with the conditions and requirements imposed may result in the revocation of the special permit, or in the exercise of any other enforcement remedy available under the law.* The Development and Resource Management Department shall not assume responsibility for any deletions or omissions resulting from the special permit review process or for additions or alterations to construction plans not specifically submitted and reviewed and approved pursuant to this special permit or subsequent amendments or revisions. **(Include this note on the site plan.)**
2. Development shall take place in accordance with the C-5, *General Commercial District*, defined in Section 12-221 of the Fresno Municipal Code.
3. Development shall take place in accordance with Exhibits A and F dated February 23, 2011. The correct address for the subject application is 854 East California Avenue. All exhibits shall reflect the correct address.
4. Development shall take place in accordance with the Standards Specifications and Standard Drawings of the City of Fresno Public Works Department. Transfer all red line notes, etc., shown on all original site plan exhibits dated February 23, 2011, to the final site plan. **CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.**
5. Development shall take place in accordance with all city, county, state and federal laws and regulations.

6. Development shall comply with the requirements of the attached City of Fresno Redevelopment Agency memo dated March 15, 2011. Please contact Terry Cox, Project Manager/Management Analyst III at (559) 621-7622 for further information.
7. The exercise of rights granted by this special permit must be commenced by **June 1, 2015**, (four years from the date of approval). **There is no extension.**

CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

REVISED CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT APPLICATION NO. C-11-028

September 7, 2011

1. The property identified in Application No. C-11-028 is located within the adopted Southwest Fresno General Neighborhood Renewal Area and is subject to all requirements of the Redevelopment Plan.
2. Redevelopment Agency recommends the development to receive a favorable evaluation from the Fresno Police Department and adjacent property owners, and that the continued operation of the market is in conformance with all requirements of the Redevelopment Plan and the C-5 (General Commercial) zone district and Section 12-304 (including subsequent applicable Section of the Fresno Zoning Ordinance).
3. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site.
4. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-11-028.
5. Approval of this entitlement applies only to the development identified in Application No. C-11-028, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application No. C-11-028 with prior approval from the City of Fresno Development and Resource Management Department.
6. All existing and future landscaped areas shall be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees.

EXHIBIT K (P 1/5)

7. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational polity of the market (business).
8. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of the City's Municipal Code.
9. The City of Fresno and Redevelopment Agency shall be informed of any deviation from the conditions of this Entitlement or the Statement of Operations, including any change in the established use of the property and hours of operation.
10. Video Camera: Prior to exercising any privileges granted by CUP No. C-11-028, the applicant must install a fully functional color digital video camera system ("System") that meets the following requirements:
 - a. The System must continuously record, store, be capable of playing back images, and be fully functional at all times, including during any hours the business is closed. The System must be maintained in a secured location inside of the business.
 - b. The System shall have the correct date and time stamped onto the image at all times.
 - c. The System's camera storage capacity should be for at least one week (seven calendar days of real-time activities). Such cameras must be capable of producing a retrievable and identifiable image that can be made a permanent record, and that can be enlarged through projection or other means.
 - d. The System shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a criminal investigation only.
 - e. The interior of the business must have at least one camera placed to focus on each cash register transaction, to include the clerk as well as

the customer waiting area. There should be at least one camera focused on the entrance and the camera view should clearly show an image of the color coded height tape installed on the inside of the door jamb.

- f. There shall be exterior cameras placed so as to record activities in the primary customer parking areas of the business. There shall be exterior cameras placed adjacent to or in or to provide coverage of the primary customer parking area(s) of the business sufficient to record activity and traffic (vehicle and pedestrian) relating to the business, and Applicant shall work with the City of Fresno Police Department to determine and provide what is sufficient. These cameras should be of sufficient quality to be able to identify persons and vehicles using the business parking lot. The applicant shall work with the Fresno Police Department to ensure adequate video coverage of the parking lot and external front.
 - g. All interior cameras shall record in color.
 - h. All exterior cameras shall record in color, and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.
11. Development shall comply with State of California, Business and Professions Code, Section 25612.5, as may be amended, including the following operating standards;
- a. A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee.
 - b. A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee.

- c. No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.
- d. The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.
- e. Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.
- f. Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 72 hours of application. If the graffiti occurs on a Friday or weekend day, or on a holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.
- g. No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.
- h. Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department,

each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.

12. Development shall take place in accordance with the C-5, *General Commercial District*, defined in Section 12-221 of the Fresno Municipal Code.
13. Development shall take place in accordance with Exhibits A and F dated February 23, 2011. The correct address for the subject application is 854 East California Avenue. All exhibits shall reflect the correct address.
14. Development shall take place in accordance with the Standards Specifications and Standard Drawings of the City of Fresno Public Works Department. Transfer all red line notes, etc., shown on all original site plan exhibits dated February 23, 2011, to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.
15. Development shall take place in accordance with all city, county, state and federal laws and regulations.
16. Development shall comply with the requirements of the attached City of Fresno Redevelopment Agency memo dated March 15, 2011, as amended by Items 1 through 11, above. Please contact Terry Cox, Project Manager/Management Analyst III at (559) 621-7622 for further information.
17. The exercise of rights granted by this special permit must be commenced by **September 7, 2015**, (four years from the date of approval). **There is no extension.**

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-11-028**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Larry McHenry
ABC Brokers
2525 Alluvial Avenue, Suite 121
Clovis, CA 93611

PROJECT LOCATION: 854 East California Avenue, located on the southwest corner of East California Avenue and Martin Luther King, Jr. Boulevard (APN: 478-053-21)

(Council District 3, Councilmember Baines)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-11-028 has been filed by Larry McHenry, of ABC Brokers, on behalf of Abdulla Mansour Nasr, of Zack's Market, requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

This project is exempt under Section 15301/Class 1 and Section 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Up-grade from a Type 20 Alcohol Beverage Control (ABC) license to a Type 21 ABC license.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

By current standards, this subject site and surrounding neighborhoods are identified as "in-fill" within an urban setting.

The above described project is consistent with the 2025 Fresno General Plan and the Edison Community Plan without negatively impacting the characteristics of the area, and complies with all conditions described in Section 15332/Class 32, Section

EXHIBIT L
(P.1)

15303/Class 3 of California CEQA Guidelines. No adverse environmental impacts will occur as a result of the proposed project.

Finally, there is no substantial evidence in the record that any of the exceptions to these Categorical Exemptions, set forth in CEQA Guidelines section 15300.2, apply to this project

Date: May 31, 2011

Prepared By: Jack Van Patten, AICP
Planner

Submitted By: _____


Mike Sanchez

Planning Manager

City of Fresno

Development and Resource Management

Department

(559) 621-8277

EXHIBIT L
(P.2)



OLIVER L. BAINES III
Councilmember, District Three

March 9, 2011

Development and Resources
Management Department
2600 Fresno Street, Third Floor
Fresno, California 93721-3604

REGARDING: CUP No. 11-028 ABCUP
854 East California Avenue,

Dear DARM Staff:

Please accept this letter as an initial review of **Conditional Use Permit No. 11-028**, by this office.

Based on the information presented it appears that this project may be a negative aspect in my district. I understand this is the latest attempt to establish a Type 21 license on this site which has a day care center on one side and Edison High School down the street from it.

My office will monitor this project as it navigates the appropriate committees and reviews already established within the City of Fresno's planning and development process.

We request that this letter be made part of the permanent public record for this project and any additional correspondence regarding this matter should be copied to the attention of Gregory Barfield in my office at 621-7834.

Sincerely,

Oliver L. Baines III
Member of the Fresno City Council,
District Three

cc: Capt. Greg Garner, SW Police District

OLBCUPapplicationreview11-028.frm

EXHIBIT M

The H.E.A.T for SouthWest Fresno Community

(Hope Effort Appropriately Thriving)

P O Box 12571

Fresno, CA 93778

e-mail:HEATSWFC@aol.com

RECEIVED

JUN 6 2011

Planning Division
Planning & Development Dept
CITY OF FRESNO

June 6, 2011

Mark Scott, Interim Director

Jack VanPatten

Development & Resource Management Department

2600 Fresno St., Room 3076

Fresno, CA 93721

Re: Conditional Use Permit Application No. C-11-028

Please be advised that H.E.A.T. for SW Fresno Community is opposed to the above-mentioned Conditional Use Permit Application No. C-10-124 filed by Larry McHenry on behalf of Abdulla Mansour Nasr, of Zack's Market.

We are residents of SouthWest Fresno, residing in the area of this store. There is an over abundance of venues for the sell and consumption of alcoholic beverages in SW Fresno. Attached are three pages from the Preliminary Report for the Amendments to the Merger No. 1, prepared for the Redevelopment Agency of the City of Fresno, dated July 21, 2008, prepared by Keyser Marston Associates, Inc.. Starting on page 67 at #5, including the footnote, and continuing on pages 68 & 69 (tables 24 & 25) are issues raised by the preparers of this report. These issues are valid and are of great concern to the residents of SW Fresno.

Based on the information provided in this letter, H.E.A.T. for SW Fresno Community request that the granting of special permit, Conditional Use Permit Application No. C-11-028 be denied.

Sincerely,

H.E.A.T. for SW Fresno Community

Cc: Councilmember Oliver Baines

EXHIBIT IV
(P.!)
N

There were a total of 498 incidents of these conditions noted affecting 400 or 14 percent of parcels in the Project Area.

These data indicate that the Project Area has a significant number of overcrowded housing units and that overcrowding is continuing to become a more severe problem. The high levels of overcrowding coupled with the deteriorated condition of many of the housing units (as described herein and shown on Figure 6) and high levels of code complaints, indicate that there are unsafe, unhealthy and overcrowded living conditions in portions of the Project Area.

5. An Excess of Bars, Liquor Stores and Other Liquor Outlets

The links between the availability of alcohol and threats to the public health and safety have been well established throughout the U.S. Problems such as traffic accidents and fatalities, homicides and violent assaults have been shown to be aggravated by the use of alcohol.³⁴ An article published in *USA Today* described the crackdown on drunk driving instituted in the City of Fresno to reduce driving fatalities where alcohol is involved by setting up checkpoints and bar sting operations.³⁵

In order to promote temperance in the use and consumption of alcoholic beverages, and to protect the safety, welfare, health, peace, and morals of the people of California, the State Legislature enacted Section 23000 et seq. of the California Business and Professions Code, i.e., the "Alcoholic Beverage Control Act." The regulations are administered by the California Department of Alcoholic Beverage Control (ABC) throughout California. The ABC reviews applications for licenses to sell or distribute alcoholic beverages and controls the number of licenses issued. ABC retail licenses fall into two broad categories: "on-sale" licenses for the sale of alcoholic beverages to be consumed on the premises of the sale and "off-sale" licenses for the sale of alcoholic beverages to be consumed off the premises of the sale. The most common types of retail licenses are summarized on Table 24.

³⁴ An analysis of the prevalence of alcohol involvement in crime by the U.S. Department of Justice found that an estimated 32 percent of fatal accidents involved an intoxicated driver or pedestrian (the majority were drivers). Among violent crime victims who provided information about the offender's use of alcohol, 35 percent of the victimizations involved an offender who had been drinking. Among victims who suffered violence by an intimate (a current or former spouse, boyfriend or girlfriend), two-thirds reported the offender had been using alcohol. Source: *Alcohol and Crime. An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, revised April 28, 1998, pages v and vi.

³⁵ Copeland, Larry, "Some see Fresno's DUI crackdown as a model," *USA Today*, 6 November 2006, downloaded March 25, 2008 at: http://www.usatoday.com/news/nation/2006-11-05-fresno-dui-model_x.htm

Table 24: Types of Retail Alcoholic Beverage Licenses

License Type	Description
On-Sale General	Authorizes the sale of all types of alcoholic beverages (beer, wine and distilled spirits) for consumption both on the premises and the sale of beer and wine for consumption off the premises. Bars and restaurants that serve alcohol would be included in this category.
Off-Sale General	Authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers. Supermarkets and liquor stores generally fall into this category.
On-Sale Beer and Wine	Authorizes the sale of all types of wine and malt beverages for consumption on and off the premises. Typical businesses in this category include restaurants that serve beer and wine only.
Off-Sale Beer and Wine	Authorizes the sale of all types of wine and malt beverages for consumption off the premises in original, sealed containers. Mini- and quick-stop markets (i.e. 7-Eleven or an AM-PM Mini Mart) would fall into this category.

Source: ABC website at: http://www.abc.ca.gov/questions/licenses_faq.html

The ABC has the authority to refuse to issue a license under certain conditions and may also place restrictions on the operations of a licensee. For example, the ABC may limit the hours of operation or impose other restrictions to alleviate objections to the premises' operation. Such restrictions have been imposed on operations in the vicinity of churches, schools and residential areas.

In addition to regulating the types of establishments that sell alcohol and their operations, there are also restrictions on the number of licenses that may be issued at any one time based upon the number of licenses per capita city-wide and/or county-wide. The ABC may limit the number of new licenses issued to conform to those limits. As shown in the following table, the number of on-sale general and off-sale general licenses are limited on a county-wide basis; the number of off-sale beer and wine licenses is limited on a city-wide and county-wide basis; and the number of off-sale beer and wine and off-sale general licenses combined is limited on a city-wide and county-wide basis. Nevertheless, the control of licenses on a city- or county-wide basis does not prevent over-concentration of liquor outlets within specific communities. Furthermore, the ABC does not impose a limit on the number of on-sale beer and wine licenses in a county or a city. As shown on Table 25, the Project Area includes a significantly higher proportion of liquor outlets than the City and the County overall.

Table 25: Comparison of Alcohol License Ratios

License Type and Limit	ABC Limit	Project Area	Fresno City	Fresno County
On-Sale General (limit per 2,000 persons Countywide)	1	2.25	0.97	0.78
Off-Sale General (limit per 2,500 persons County)	1	2.11	1.24	0.97
Off-Sale Beer and Wine (limit per 2,500 persons City and County)	1	3.51	1.55	1.57
Off-Sale Beer and Wine AND Off-Sale General (limit per 1,250 persons City and County)	1	2.81	1.4	1.27
On-Sale Beer and Wine per 1,000 persons	NA	1.59	0.66	0.60
Retail Licenses per 1,000 persons	NA	4.97	2.26	2.01

NA = not applicable. Sources: 2007 Population estimates from Claritas; ABC license data from the ABC website: <http://www.abc.ca.gov/>

While the number of on-sale and off-sale licenses in the County are below the ABC limits, the number of such licenses within the Project Area is more than double the ABC limit. While the number of off-sale licenses (both general and beer and wine) exceed the ABC limits in both the City and the County overall, the number of licenses within the Project Area is more than double the rate of licenses in the City and the County. While the higher concentration of on-sale licenses may be attributable to the high daytime population in the City's downtown that would frequent restaurants and bars, this would not account for the higher proportions of off-sale licenses. In addition, the overall number of retail alcohol licenses per capita (per 1,000) in the Project Area is more than double the number for both the City and County. These data indicate that there is an over-concentration and excess of retail outlets for alcohol in the Project Area.

6. A High Crime Rate That Constitutes a Serious Threat to the Public Health and Safety

The 1998 Report included an analysis of per capita crime rates (per 100 persons) in the Project Area census tracts in comparison to the crime rate Citywide for a one-year period (November 1995 through October 1996). The crime rate in the Project Area was over 89 percent higher, at 36.78 versus only 20.83 percent Citywide.

Crime data was obtained from the Fresno Police Department (FPD) for the period 1998-2006. As shown in Table 26, crime rates for both violent crime (homicide, rape, robbery and aggravated assault) were considerably higher in the Project Area, as were crime rates for property crime (burglary, larceny (theft) and motor vehicle theft). Overall, from 1998 through 2006, the rate of homicides was more than 3.5 times higher, the rate of

BRUCE LEICHTY

ATTORNEY AT LAW

625-A Third Street • Clovis, California 93612
(559) 298-5900 • Fax (559) 322-2425

July 21, 2011

BY FACSIMILE TRANSMISSION -- 488-1020 -- AND U.S. MAIL

Mark Scott, Interim Director
Attention: Jack VanPatten
Current Planning Division
Development and Resource Management Department
City of Fresno
2600 Fresno Street, Third Floor
Fresno, California 93721-3604

Re: "Appeal" of Approval of CUP Application C-11-028
By The H.E.A.T. for SouthWest Fresno Community

Dear Mr. Scott:

I have been retained by Mansour Nasr Abdulla, applicant under Conditional Use Permit Application No. C-11-028 filed by Larry McHenry of ABC Brokers concerning property located at 854 E. California Ave., Fresno, California (the "CUP Application").

Request is respectfully made that, to the extent that the City of Fresno has not already made this determination for itself, the City decline to recognize as a proper "appeal" that certain letter dated June 6, 2011 on letterhead of "The H.E.A.T. for SouthWest Fresno Community," a copy of which is attached hereto.

There are multiple reasons why the attached letter does not qualify for treatment as an appeal under the terms set forth in the approval of the CUP Application:

First, the letter is not signed. The typewritten words "H.E.A.T. for WS Fresno Community" (hereinafter referred to as "HEAT") does not qualify as a signature. We know an appeal has to be signed both because it must be presented by an interested person and because of City of Fresno Municipal Code Section 12-401(H), which states in the section on withdrawals that "all withdrawals shall be in writing and signed by all persons who signed the appeal." That section necessarily requires that the initial appeal be signed.

It cannot be determined from the letter what form of organization "HEAT" purports to be, and the applicant should not be forced to speculate about who he is dealing with, but let us say that "HEAT" is an association. True, an interested person can include an association, but there is nothing in California law which allows an

(P.1)

EXHIBIT 0

Mark Scott, Interim Director Current Planning Division
Development and Resource Management Department
City of Fresno
July 21, 2011
Page Two

association to act--and particularly to present a legally cognizable document--without a signature of one of its members. Because a signature is lacking, therefore, the attached letter is not legally cognizable as an appeal or anything else.

Even more dispositive on the issue of the signature requirement, Municipal Code Section 12-401(J)(1) states that "whenever a written...appeal must be filed...all statements and matters of fact in a form must be sworn to under penalty of perjury by the signers of the form," and (J)(2) states that "No form shall be deemed to be filed until accepted by the Director." Even if the putative appellants would protest that they have not submitted any "statements [or] matters of fact"--which is patently incorrect--that would not excuse submission of an appeal form without "signers." An appeal form without "signers" is not a cognizable appeal at all.

Parenthetically, it should be noted that the letter does not even purport to be an appeal. It purports to object to approval of the C.U.P. ("request that the granting...be denied"). However, as of June 6 when the letter was sent, the C.U.P. had already been approved and an appeal was the only thing that could have prevented the approval from becoming final. Not only does the letter not identify itself as an appeal, it does not identify the decision or action appealed from, which is the June 1 approval of the C.U.P., and therefore it is fatally defective under yet another provision of the Municipal Code, namely Section 12-401(H)(1) which states that the "appeal form" shall include "the decision or action appealed."

The fact that City of Fresno has not acted on the letter as if it were an appeal prompts the applicant to surmise that City of Fresno has already determined that the letter does not qualify as an appeal. Under City of Fresno Municipal Code Sections 12-406(F) and 12-401(B), a hearing on appeal must be set "within forty days after the initiation of the...action which gives rise to the requirement." Already 45 days have elapsed since June 6. We believe that City of Fresno has rightly recognized that the submission on June 6 of the attached letter is not an action which gives rise to a hearing requirement, and therefore no hearing was set for that reason, but even if our surmise is incorrect, we ask that City of Fresno make that determination at this time.

That is not the end of the reasons why "HEAT's" letter should not be recognized as an appeal, however. Under Municipal Code Section 12-401(H)(1), any "appeal form" presented by an appellant must include "the appellant's interest in or relationship to the subject

Mark Scott, Interim Director Current Planning Division
Development and Resource Management Department
City of Fresno
July 21, 2011
Page Three

property...." That interest is merely asserted but is not adequately documented in the attached letter.

The only information provided by "HEAT" on its interest in or relationship to the subject property is found in this statement: "We are residents of SouthWest Fresno, residing in the area of this store." However, no residential addresses have been provided. Indeed the only address of "HEAT" to appear at all on the appeal is a post office box. Applicant submits that vague statement is plainly insufficient under the meaning and intent of Section 12-401(H)(1), but beyond that, that the City's failure to require more information on "interest" or "relationship" in an appeal could easily lead to abuse. Anyone can obtain a post office box in a neighborhood. Indeed anyone can say "we are residents...residing in the area of the store," if they don't have to provide their actual addresses. Applicant disputes that HEAT is composed of anyone with an actual interest in or relationship to the neighborhood of the store (including for reasons set forth below). For example, Applicant gave notice of the application to all addresses in the neighborhood of the store, and no one objected. If any of the residents composing HEAT in fact were residing in the area of the store, they had ample opportunity to state their street addresses in the appeal; their failure to document their interest in or relationship to the property in the form of a street address should be regarded as a fatal defect.

Alternatively, the "interest" that HEAT has asserted in the property is not cognizable because HEAT has admitted that they would object to any request for a liquor license in southwest Fresno (on-sale or off-sale), and therefore their objection (and interest) are not specific to a property. This admission by HEAT came in the context of a meeting that applicant arranged with HEAT, at which applicant tried to explain its goals and also to determine the basis and good faith for the opposition, and asked for withdrawal of the challenge. This fact is attested to by Mansour Abdulla, applicant, who attended that meeting and whose signature appears below. HEAT professed no interest in applicant's presentation, including applicant's evidence of the accessibility and quality of its management and the shopping center in which the market is located, or the potential for added growth of the shopping center based on approval of the C.U.P., but instead said they were intent on opposing all liquor licenses in southwest Fresno simply because any further licenses would stand in the way of the community getting more redevelopment funds from the State. This species of "interest" (in redevelopment funds) does not qualify as an interest in an identified property for the purposes of an appeal under the City Municipal Code.

Mark Scott, Interim Director Current Planning Division
Development and Resource Management Department
City of Fresno
July 21, 2011
Page Four

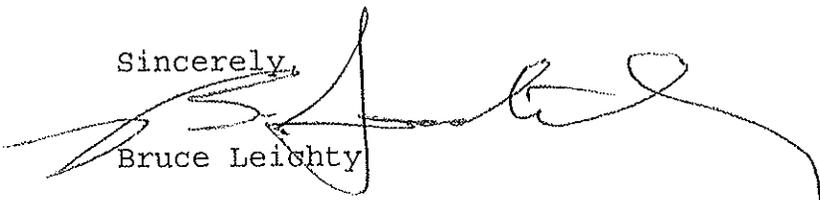
Finally, Applicant submits that even if HEAT is an association or a partnership, if HEAT has not complied organizationally with applicable law, its letter should not be recognized as an appeal for that reason as well. Applicant sought to determine whether HEAT (regardless of its form) had complied with the fictitious business names law of the state. As set forth in the second attachment hereto, no fictitious business name registration can be found for HEAT. Nor is HEAT a corporation recognized in California. Applicant asserts that HEAT may not qualify as an "interested person" for the reason that it is simply a "name," but that even if it is an association, it should be estopped from preventing lawful approval of a C.U.P. by its own unlawful conduct.

A question is also presented by the above facts as to who is entitled to withdraw any appeal presented by the attached letter. It would appear that applicant would be as entitled as anyone to withdraw this "appeal," by simple appropriation of the name appearing on the letter attached hereto. Because anyone could withdraw the appeal if the mere use of the name "HEAT" could be deemed to be a signature, the City is asked to recognize this letter as a withdrawal by HEAT of the appeal to the extent that it recognizes the attached letter as an appeal to begin with.

Applicant declines to address the substance of the attached letter, except to note that most of it is boilerplate incorporation of a "Preliminary Report" of a consultant dating back three years (to 7/21/08), the weight and relevance of which to the specific property in question, in the year 2011, are not made clear. Applicant of course does not rely on any substantive arguments to assert that the attached letter is not cognizable as an appeal.

Based on all the foregoing reasons, Applicant respectfully submits that the City should not--based on either legal or equitable reasons--regard the attached letter as an appeal, and that the City should confirm that its June 1 approval of the C.U.P. of Applicant controls.

Sincerely,



Bruce Leishty

I have read the above letter, and as to all facts and statements made therein that are not legal arguments, they are all true and correct.

Date: 7/21/2011

see attached

MANSOUR ABDULLA

Mark Scott, Interim Director Current Planning Division
Development and Resource Management Department
City of Fresno
July 21, 2011
Page Four

Finally, Applicant submits that even if HEAT is an association or a partnership, if HEAT has not complied organizationally with applicable law, its letter should not be recognized as an appeal for that reason as well. Applicant sought to determine whether HEAT (regardless of its form) had complied with the fictitious business names law of the state. As set forth in the second attachment hereto, no fictitious business name registration can be found for HEAT. Nor is HEAT a corporation recognized in California. Applicant asserts that HEAT may not qualify as an "interested person" for the reason that it is simply a "name," but that even if it is an association, it should be estopped from preventing lawful approval of a C.U.P. by its own unlawful conduct.

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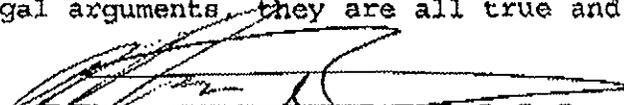
Based on all the foregoing reasons, Applicant respectfully submits that the City should not--based on either legal or equitable reasons--regard the attached letter as an appeal, and that the City should confirm that its June 1 approval of the C.U.P. of Applicant controls.

Sincerely,

Bruce Leichty

I have read the above letter, and as to all facts and statements made therein that are not legal arguments, they are all true and correct.

Date: 7/21/2011


MANSOUR ABDULLA