Exhibit E
Denial Letter

Planning Commission Hearing: Consideration of Conditional Use Permit Application No. P22-03906

City of FRESNO

Planning and Development Department

2600 Fresno Street, Room 3043
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Jennifer K. Clark, AICP, HDFP
Director

October 16, 2023

Felipe Ceballos
fceballos44@gmail.com
(Sent via email only)

Please Reply to:
Steven Martinez
Steven.Martinez@fresno.gov

SUBJECT: DENIAL LETTER: CONDITIONAL USE PERMIT APPLICATION NO. P22-03906 FOR PROPERTY LOCATED AT 2520 EAST OLIVE AVENUE, FRESNO, CA 93701 (APN: 452-081-17S)

On October 16, 2023, the Planning and Development Department Director denied Conditional Use Permit Application No. P22-03906, requesting authorization to establish a State of California Department of Alcoholic Beverage Control Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license at the Circle D convenience store.

The denial is based upon the proposal's noncompliance with the requirements of Fresno Municipal Code (FMC) Section 15-2706-F (Location Restrictions):

1. The establishment is located approximately 650 feet from Webster Elementary School.

2. The establishment is located approximately 100 feet from another establishment which sells alcohol for off-site consumption.

3. The establishment is located in an area of high crime: Crime Reporting Zone No. 2547.

4. The establishment is located in an area of high concentration. The project site is located in Census Tract 24.00 which currently has seven (7) off-sale licenses. Only four (4) are allowed.

According to FMC Section 15-2706-F-6, a new establishment may be excepted from the location restrictions if the Review Authority determines all of the following:

A. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

B. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

C. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

D. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

The Director was unable to make all the required findings for an exception to the location restrictions outlined in Section 15-2706-F. Therefore, in accordance with required findings specified for Conditional Use Permits under Chapter 15, Article 53, §15-5306 of the FMC, the proposed use, to upgrade to a Type 21 alcohol license is denied based on the following:

Findings per Fresno Municipal Code Section 15-5306
A.) The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code.
Finding A: ❖ This finding cannot be made. The proposed convenience store with alcohol sales does not comply with the FMC Section 15-2706(F) location restrictions. Furthermore, none of the exceptions to the location restrictions ❖ The establishment is located approximately 650 feet from Webster Elementary School. ❖ The establishment is located approximately 100 feet from another establishment which sells alcohol. ❖ The establishment is located in an area of high crime: Crime Reporting Zone No. 2547. ❖ The establishment is located in an area of high concentration. The project site is located in Census Tract 24.00 which currently has seven (7) off-sale licenses. Only four (4) are allowed. ns can be made. ❖ The establishment would not act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety. ❖ The establishment does not meet the definition of a General Market including a supermarket, neighborhood grocery store, or a Healthy Food Grocer.
B.) The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted.
Finding B: This finding cannot be made. The convenience store with alcohol sales is consistent with the current General Plan land use designation of Commercial – General; however, the requested alcohol license will not reduce current adverse impacts on adjacent properties and/or on the general public and will be inconsistent with general plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety. As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales and high exposure to the easy availability of alcohol sales affects public health, safety, and quality of life in a neighborhood. In public meetings held during the development of the General Plan, concerns regarding market saturation, fear of crime, and danger to schools were raised. Furthermore, alcohol sales outlets or the establishment of outlets that are in close proximity to sensitive uses (day care) further increases the perceived lack of safety in a neighborhood and can contribute to a variety of health and safety problems; thus the proposed project has the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when the establishment are concentrated near a day care.

C.) The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements.
Finding C: This finding cannot be made. As described in Finding (b) above, the proposed use will not reduce current substantially adverse to the public health, safety, or general welfare of the community in that its location will be detrimental to surrounding properties or improvements. Areas in which there are sensitive uses nearby can contribute to a variety of health and safety problems. As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health. Alcohol sales establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are near sensitive uses.
D.) The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity.
Finding D: This finding cannot be made. The proposed use is within close proximity to existing single family residences and an elementary school. The location and operating characteristics of the proposed convenience store with Type 21 ABC license is incompatible with the surrounding vicinity and land uses given the project is located near an elementary school. Furthermore, the proposed project conflicts with the Fresno General Plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety.
E.) The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.
Finding E: This finding cannot be made. While the type and intensity of the use proposed may be suitable with respect to access, the proposed convenience store with Type 21 ABC license will be located near a school and has the potential to contribute to a variety of safety problems including drunken driving accidents and pedestrian injuries which result in increased calls for police and emergency services. Therefore, the project is not suitable based on the services required to address public safety concerns.
F.) The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670 - 21679.5.
Finding F: The proposed use is not located within an area of influence of the Fresno County Airport Land Use Compatibility Plan.

APPEALS

Denials are subject to the provisions of Fresno Municipal Code Section 15-5017, Appeals. This issuance of this denial letter commences a 15-day appeal period. If you wish to appeal the decision on this project, a written request shall be submitted directly to the email address PublicCommentsPlanning@fresno.gov (cc Steven.Martinez@fresno.gov) by the end of business on **October 31, 2023. Please note, the fee for an appeal is $963.77**. The appeal shall clearly and concisely state the reasons for the appeal and be signed by the person making the appeal including the accompanied appeal applicable fee. Once the 15-day appeal period has ended and no appeals are received or filed, the determination will be final.

If you have any questions regarding this letter, feel free to contact me at the email above.

Sincerely,

Steven Martinez

Steven Martinez - Planner
City of Fresno - Planning and Development Department