



THE CITY OF SAN DIEGO

Report to the Hearing Officer

DATE ISSUED: July 13, 2016 REPORT NO. HO-16-042
HEARING DATE: July 20, 2016
SUBJECT: MY MARKET CUP, Process Three Decision
PROJECT NUMBER: 439049
OWNER/APPLICANT: Mid-Cajon/Home Avenue, LLC/Samin H. Bidi

SUMMARY:

Issue: Should the Hearing Officer approve a Conditional Use Permit for an alcohol beverage outlet within the City Heights Community Plan Area?

Staff Recommendation:

1. **APPROVE** Conditional Use Permit No. 1542494.

Community Planning Group Recommendation: On May 2, 2016, the City Heights Community Planning Group voted 13-3-0 (chair not voting) to recommend denial of the proposed project due to the high crime rate and oversaturation of Alcohol Beverage Control (ABC) licenses as well as other reasons detailed in Attachment 6.

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301(Existing Facilities). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on May 26, 2016, and the opportunity to appeal that determination ended June 10, 2016.

BACKGROUND

The 1.04-acre site is located at 4111 Home Avenue in an existing strip mall (originally built in 1991). The site is in the CC-5-3 (Commercial Community) Zone of the Central Urbanized Planned District within the City Heights Community Plan Area. There is commercial retail to the north and east and single-family residential to the south and west. The existing 3,592-square-foot market is within Suite A and sells groceries, produce and meat. Adjacent suites include a pizzeria, barber shop, restaurant and a Head Start/preschool program.

The CC-5-3 Zone allows for community-serving commercial services, retail uses, and limited industrial uses of moderate intensity. The CC zones are intended to provide for a range of development patterns from pedestrian-friendly commercial streets to shopping centers and auto-oriented strip commercial streets. Property within the CC zones will be primarily located along collector streets, major streets, and public transportation lines.

The project site is also located within the Commercial Community designation of the City Heights Community Plan area. The sale of alcoholic beverages is not addressed in the Community Plan except for a recommendation..., "to provide an expanded array of commercial goods and services in neighborhoods that lack them, through appropriate regulatory and promotional activities."

Alcoholic Beverage Control License History

A Type 20 license that allowed the sale of beer and wine for off-site consumption was originally issued for this tenant space in April of 1993. This license was issued to the previous owner of the market in the space. The City's requirement to obtain a Conditional Use Permit (CUP) for Alcoholic Beverage Outlets became effective in 1995. An Alcoholic Beverage Outlet is a business that has a Type 20 or Type 21 license. A Type 20 license allows the sale of beer and wine for off-site consumption and a Type 21 license allows for the sale of beer, wine, and distilled spirits for off-site consumption.

The existing Type 20 license for this tenant space did not require a CUP in 1993 because at the time it was not a requirement of the San Diego Municipal Code (SDMC). Several changes of ownership have occurred over time. The current applicant assumed the existing Type 20 license for the sale of beer and wine for off-site consumption in May of 2015. This license was obtained without a Conditional Use Permit as previously conforming rights were maintained.

The process to obtain a license to sell alcohol starts with an application to the ABC. As part of that application, a zoning affidavit (from the Development Services Department) is obtained which may or may not require additional discretionary review from the City and a Public Convenience or Necessity evaluation from the San Diego Police Department.

During the winter of 2014, the applicant requested a zoning affidavit from the City. This affidavit is a standard form that is completed by the Development Services Department to inform the Department of Alcoholic Beverage Control of the zoning of a premises and any requirement for a Conditional Use Permit. The affidavit was needed by the ABC as part of the application for a Type 21 license to allow for the sale of beer, wine, and distilled spirits for off-site consumption. City staff completed the affidavit and indicated a Conditional Use Permit was not required for a new Type 21 license in the tenant space. City staff made an error on the affidavit by saying a Conditional Use Permit was not required, when after further review, a CUP should have been required at that time.

In April 2015, the Department of Alcoholic Beverage Control issued a Type 21 license allowing for the sale of beer, wine, and distilled spirits for off-site consumption to the applicant. In May 2015, based on a complaint the City's Code Enforcement Division opened a case concerning the use of a Type 21 license without a CUP. In December 2015, the applicant submitted an application for a CUP to correct its violation of the San Diego Municipal Code.

DISCUSSION

Development Regulations and Location Criteria

The project proposes a CUP for the operation of an alcohol beverage outlet accessory to the existing market, specifically for a Type 21 license allowing for the sale of beer, wine, and distilled spirits for off-site consumption.

Alcoholic beverage outlets are permitted by right as a Limited Use pursuant to Section 141.0502(b) of the San Diego Municipal Code (SDMC). Alcoholic beverage outlets that are within a Census Tract, or within 600 feet of a Census Tract, where the ratio of alcoholic beverage outlets exceeds the standards established by the California Businesses and Professional Code Section 23958.4 may be permitted with a Conditional Use Permit pursuant to SDMC Section 141.0502(c). Currently the census tract has eight existing alcohol licenses where three are allowed.

The Limited Use Regulations of SDMC, Section 141.0502(b)(1) does not permit alcoholic beverage outlets by right (i.e. would require a Conditional Use Permit) in the following locations:

1. Within a census tract, or within 600 feet of a Census Tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.

The property is in Census Tract No. 34.01 which reported a crime rate 144.8 percent. This is considered high crime based on the statistics provided by the San Diego Police Department. A Census Tract is considered to have "high crime" if the crime rate exceeds 120 percent of the city-wide average. Therefore, a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

2. Within a Census Tract, or within 600 feet of a Census Tract, where the ratio of alcoholic beverage outlets exceeds the standards established by the California Businesses and Professional Code Section 23958.4.

The subject property is within Census Tract No. 34.01, which based on the California Businesses and Professional Code Section 23958.4 permits a total of three off-sale alcoholic beverage outlets. There are currently eight existing off-sale alcohol beverage outlets within Census Tract 34.01 (Attachment 10) which includes this project and would maintain the number of licenses to eight. Therefore a CUP would be required for the off-sale of alcoholic beverages based on this factor.

3. Within a Redevelopment Area.

The project site is not within a Redevelopment Area. Therefore a CUP would not be required for the off-sale of alcoholic beverages based on this factor.

4. Within 600 feet of a public or private accredited school, a public park, playground or recreational area, church, hospital or a San Diego County Welfare District Office.

The project is within 600 feet of a Head Start/day care center for pre-school children. In Suite F of the strip mall, there is a Head Start program and day care center. Therefore a CUP would be required for the off-sale of alcoholic beverages based on this factor.

5. Within 100 feet of residentially zoned property.

The project site is within 100 feet of residentially zoned property to the south. Therefore a CUP would be required for the off-sale of alcoholic beverages based on this factor.

6. Within 600 feet of a place of religious assembly.

The project site is not known to be within 600 feet of a place of religious assembly.

The proposed off-sale alcoholic beverage outlet at this site requires a Conditional Use Permit because the project site does not meet all of the location criteria of the Municipal Code. As demonstrated above any one of these factors establishes the need for the Conditional Use Permit.

Draft Conditions of Approval

Approval of this application would allow the sale of alcohol to be conditioned so that the alcohol sales would not have a negative impact on the surrounding neighborhood (Attachment 5). The Conditional Use Permit includes a number of conditions that would limit the hours of sales, regulate the square footage of area for alcohol to be sold, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property. Additionally, the CUP includes enforceable conditions regulating the hours of alcohol beverage sales from 8:00 a.m. to 10:00 p.m. The CUP would prohibit amusement machines or video game devices on the premises. Exterior and interior public pay phones would not be permitted on the premises, on adjacent public sidewalks, or areas under the control of the owner or operator. Advertising would be limited and "No Loitering" signs would be required to be prominently displayed on the premises. Further, both staff and the San Diego Police Department concluded that if the permit were appropriately conditioned as proposed in Attachment 4, the project would not have a negative impact on the surrounding neighborhood.

Conclusion

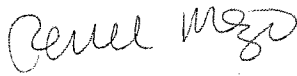
Currently, the Type 20 license under which the facility operates is without conditions as it predates the conditional use permit regulations. Approval of the license to permit alcohol sales, under the Type 21 license, provides an opportunity for the City to place restrictions on the premises that would help ensure the outlet is a cohesive element of the neighborhood and would not be detrimental to the public health, safety and welfare of the community. The project is consistent with the underlying commercial zone and the applicable land use plans and policies in affect for the site. The Development Services Department determined that the proposed project was exempt from further CEQA review as an existing facility. The project with the proposed conditions and the ABC license

recommendations are supported by the San Diego Police Department. City staff and the San Diego Police Department support the request for a Conditional Use Permit for the sale of alcohol for off-site consumption.

ALTERNATIVES:

1. Approve Conditional Use Permit No. 1542494, with modifications; or
2. Deny Conditional Use Permit No. 1542494, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



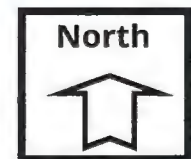
Renee Mezo
Development Project Manager

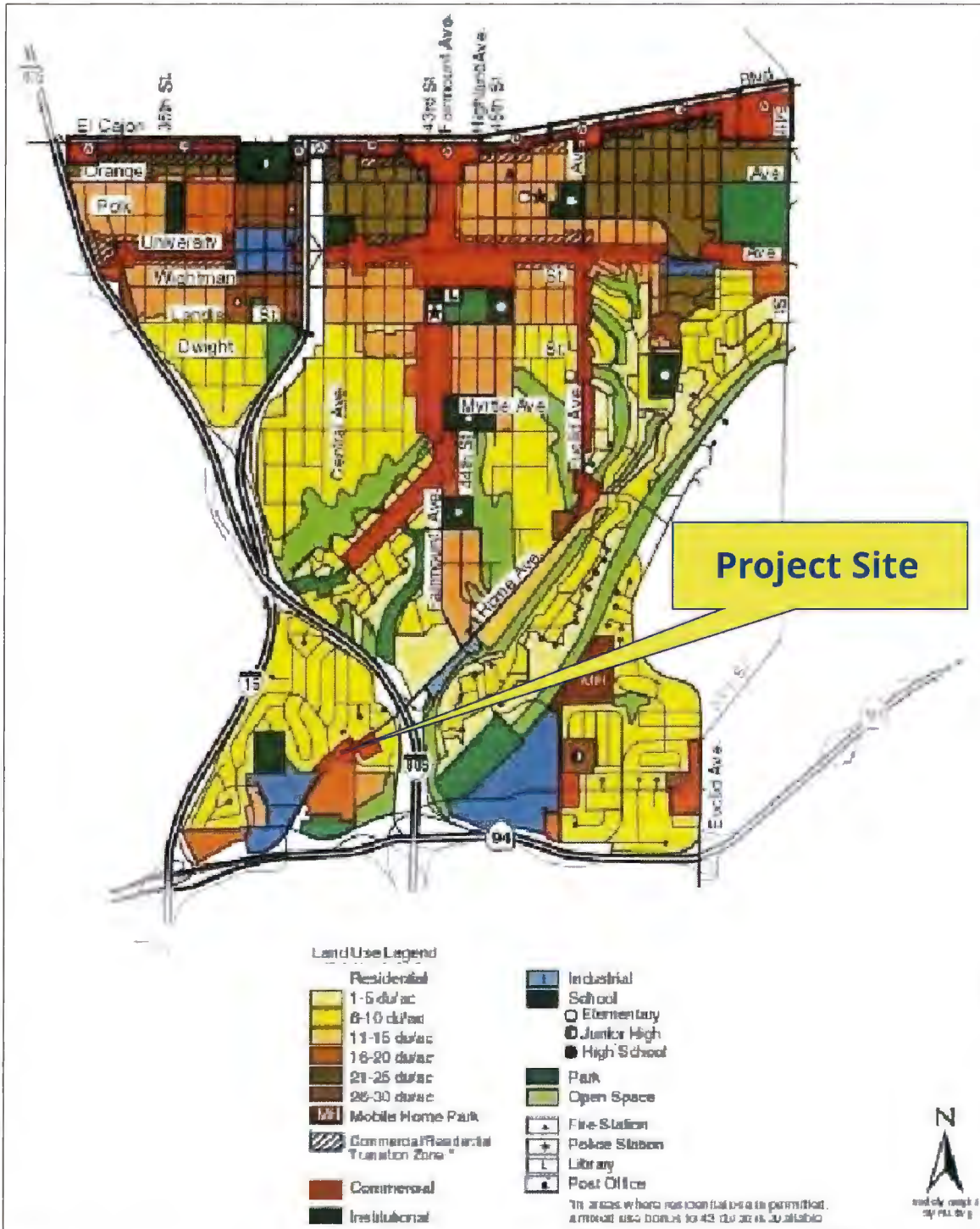
Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Draft Resolution with Findings
4. Draft Permit with Conditions
5. Environmental Exemption
6. Community Planning Group Recommendation
7. Ownership Disclosure Statement
8. Project Plans (Hearing Officer only)
9. San Diego Police Department Recommendation
10. Liquor Licenses within Census Tract 34.01



Location Aerial Photo
MY MARKET CUP - 4111 HOME AVENUE
PROJECT NO. 439049





Land Use Map

**MY MARKET CUP - 4111 HOME AVENUE
PROJECT NO. 439049**



HEARING OFFICER RESOLUTION NO. _____
 CONDITIONAL USE PERMIT NO. 1542494
MY MARKET PROJECT NO. 439049
 DRAFT

WHEREAS, Mid-Cajon/Home Avenue, LLC (a California Limited Liability Corporation), Owner, and Samim H. Bidi, Permittee, filed an application with the City of San Diego to operate an alcoholic beverage outlet and conditioned upon the issuance of a license (Type 21 General Liquor License for the sale of alcoholic beverages for off-site consumption) from the State Department of Alcoholic Beverage Control (ABC) and subject to the City's land use regulations (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1542494), on portions of a 1.04-acre site;

WHEREAS, the project site is located in the CC-5-3 Zone of the Central Urbanized Planned District within the City Heights Community Plan Area. The 1.04-acre site is located at 4111 Home Avenue in an existing strip mall (originally built in 1991). The existing 3,592-square-foot market is within Suite A and sells groceries, produce and meat;

WHEREAS, the project site is legally described as Parcel 1, Lot 1 of Terrace View Villas, Map No. 11840;

WHEREAS, on July 20, 2016, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 1542494 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on May 26, 2016, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301 (existing facility) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated July 20, 2016.

CONDITIONAL USE PERMIT (CUP) FINDINGS - SECTION 126.0305:

1. The proposed development will not adversely affect the applicable land use plan.

The project proposes a CUP for the operation of an alcohol beverage outlet accessory to the existing market, specifically for a Type 21 license allowing for the sale of beer, wine, and distilled spirits for off-site consumption, to replace an existing Type 20 license allowing the sale of beer and wine.

The project site is also located within the Commercial Community designation of the City Heights Community Plan area. The sale of alcoholic beverages is not addressed in the Community Plan except for a recommendation..., "to provide an expanded array of commercial goods and services in neighborhoods that lack them, through appropriate regulatory and promotional activities."

The Plan does not specifically address alcoholic beverage outlets; however the sale of alcohol products is defined as a commercial retail use in the Land Development Code and permitted with the approval of a Conditional Use Permit (CUP). The Plan recommends the site be used for commercial development therefore the CUP to allow the sale of alcohol would not adversely affect the applicable land use plan. The Economic Prosperity Element of the General Plan recommends economically healthy neighborhood and community commercial areas that are easily accessible to residents. The project site is located directly to the south of single-family residential development. The market provides conveniences to residents by selling groceries, meat, and produce. The alcohol sales are accessory to the market and as conditioned within the permit, make up a maximum of 20 percent of the floor area. This allows residents easy access to convenience and contributes to the economic viability of the community.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes a CUP for the operation of an alcohol beverage outlet accessory to the existing market, specifically for a Type 21 license allowing for the sale of beer, wine, and distilled spirits for off-site consumption. The site is zoned CC-5-3 (Commercial Community) which allows for community-serving commercial services, retail uses, and limited industrial uses of moderate intensity. The CC zones are intended to provide for a range of development patterns from pedestrian-friendly commercial streets to shopping centers and auto-oriented strip commercial streets. Property within the CC zones will be primarily located along collector streets, major streets, and public transportation lines.

The existing market would continue to be consistent with the recommended commercial land use, therefore there would be no conflict with the current development pattern in the neighborhood. An environmental review was conducted by the Development Services Department and concluded the project was exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (existing facility).

Separate from the Alcoholic Beverage Control (ABC), this CUP allows the City to regulate and place restrictions on the market which relate to the sale of alcohol. Approval of this application would allow the sale of alcohol to be conditioned so that the alcohol sales would not have a negative impact on the surrounding neighborhood. The CUP includes a number of conditions that would limit the hours of sales, regulate the square footage of area for alcohol to be sold, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property. Additionally, the CUP includes enforceable conditions regulating the type, size and quantities of the beverages. Specifically, the conditions would limit the hours of alcohol beverage sales from 8:00 a.m. to 10:00 p.m. The CUP would prohibit amusement machines or video game devices on the premises. Exterior and interior public pay phones would not be permitted on the premises, on adjacent public sidewalks, or areas under the control of the owner or operator. Advertising would be limited and "No Loitering" signs would be required to be prominently displayed on the premises.

Further, both staff and the San Diego Police Department concluded that if the permit were appropriately conditioned, the proposed alcohol sales would not have a negative impact on the surrounding neighborhood. Therefore, with the proposed conditions regulating the sale of alcoholic

beverages, the proposed development would not be detrimental to the public's health, safety or welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The site is zoned CC-5-3 (Commercial Community) which allows for community-serving commercial services, retail uses, and limited industrial uses of moderate intensity. The CC zones are intended to provide for a range of development patterns from pedestrian-friendly commercial streets to shopping centers and auto-oriented strip commercial streets. Property within the CC zones will be primarily located along collector streets, major streets, and public transportation lines.

Alcohol sales are an allowed use with a Conditional Use Permit pursuant to San Diego Municipal Code Section 141.0502 and the project complies with the applicable regulations of the Land Development Code including the use of the market, floor area ratio and no deviations are requested as a part of this application.

4. The proposed use is appropriate at the proposed location.

The project proposes a CUP for the operation of an alcohol beverage outlet accessory to the existing market, specifically for a Type 21 license allowing for the sale of beer, wine, and distilled spirits for off-site consumption.

The 1.04-acre site is located at 4111 Home Avenue, Suite A within the CC-5-3 (Commercial Community) Zone of the Central Urbanized Planned District within the City Heights Community Plan Area. There is commercial retail to the north and east and single-family residential to the south and west. The existing 3,592-square-foot market, which sells groceries, produce and meat, is within a strip mall (originally built in 1991) and has been selling alcoholic beverages under a Type 20 license since 1993. The strip mall includes a pizzeria, barber shop, restaurant and a Head Start/preschool program.

Separate from the Alcoholic Beverage Control (ABC), this CUP allows the City to regulate and place restrictions on the market which relate to the sale of alcohol. Approval of this application would allow the sale of alcohol to be conditioned so that the alcohol sales would not have a negative impact on the surrounding neighborhood. The CUP includes a number of conditions that would limit the hours of sales, regulate the square footage of area for alcohol to be sold, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property.

Specifically, the CUP includes enforceable conditions regulating the type, size, and quantities of the beverages. Conditions would limit the hours of alcohol beverage sales from 8:00 a.m. to 10:00 p.m. and limit a maximum of 20 percent of the floor area dedicated to alcohol sales. The premises shall be maintained as a market, and the quarterly annual sales of alcoholic beverages shall not exceed 10 percent of the quarterly annual sales of all other products. Additional conditions prohibit amusement machines or video game devices on the premises, exterior and interior public pay phones would not be permitted on the premises, on adjacent public sidewalks, or areas under the

control of the owner or operator, advertising would be limited and "No Loitering" signs would be required to be prominently displayed on the premises.

Further, both staff and the San Diego Police Department concluded that if the permit were appropriately conditioned, the proposed alcohol sales would not have a negative impact on the surrounding neighborhood. Therefore, with the proposed use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 1542494 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1542494, a copy of which is attached hereto and made a part hereof.

Renee Mezo
Development Project Manager

Adopted on: July 20, 2016

IO#: 24006367

RECORDING REQUESTED BY
 CITY OF SAN DIEGO
 DEVELOPMENT SERVICES
 PERMIT INTAKE, MAIL STATION
 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24006367

CONDITIONAL USE PERMIT NO. 1542494

MY MARKET PROJECT NO. 439049

HEARING OFFICER

DRAFT

This Conditional Use Permit No. 1542494 is granted by the Hearing Officer of the City of San Diego to Mid-Cajon/Home Avenue, LLC (a California Limited Liability Corporation), Owner, and Samim H. Bidi, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0502. The 1.04-acre site is in the CC-5-3 Zone of the Central Urbanized Planned District within the City Heights Community Plan Area and is located at 4111 Home Avenue, Suite A within an existing 3,592-square-foot market. The project site is legally described as: Parcel 1, Lot 1 of Terrace View Villas, Map No. 11840.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate an alcoholic beverage outlet conditioned upon the issuance of a license from the State Department of Alcoholic Beverage Control (ABC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 20, 2016, on file in the Development Services Department.

The project shall include:

- a. Operate an alcoholic beverage outlet and conditioned upon the issuance of a license (Type 21 General Liquor License for the sale of alcoholic beverages for off-site consumption) from the State Department of Alcoholic Beverage Control;
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by August 3, 2019.
2. The utilization of this CUP is contingent upon a license to sell alcohol at this location by the California Department of Alcoholic Beverage Control [ABC]. The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

12. All signs associated with this development shall be consistent with sign criteria established by the City-wide sign regulations.

13. The business shall operate as a market and the sale of alcoholic beverages shall be accessory and limited to a maximum of 20 percent of the floor area of the market.

14. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

15. The premises shall be maintained as a market, and the quarterly annual sales of alcoholic beverages shall not exceed 10 percent of the quarterly annual sales of all other products.

16. Pool or billiard tables, foosball or pinball games, arcade style video and electronic games, or coin-operated amusement devices are not permitted on the premises with an alcoholic beverage outlet.
17. Exterior public pay phones that permit incoming calls are not permitted on the premises, adjacent public sidewalks, or areas under the control of the owner or operator.
18. The sales of alcoholic beverage shall be permitted between the hours of 8:00 a.m. and 10:00 p.m.

POLICE DEPARTMENT REQUIREMENTS:

19. The sale of distilled spirits in containers less than 375 milliliters (ml) is prohibited.
20. Beer, malt beverages and wine coolers in containers of 16-ounce or less cannot be sold in single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
21. Wine shall not be sold in bottles smaller than 750 ml. and wine coolers, beer coolers, or pre-mixed distilled spirit cocktails must be sold in manufacturer pre-packaged multi-unit quantities.
22. No wine shall be sold with an alcoholic content greater than 15 percent by volume except for "Dinner Wines" which have been aged two years or more.
23. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the license shall be removed or painted over within 48 hours of being applied.
24. The applicant shall post and maintain a professional quality sign facing the premises parking lot that reads : NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two square feet with two inch block lettering. The sign shall be in English and Spanish.
25. Exterior advertising of alcoholic beverages or interior advertising of alcoholic beverages that is visible from the exterior of the premises shall be prohibited in order to prevent under-age drinking.

POLICE DEPARTMENT RECOMMENDATIONS FOR ABC LICENSE:

- Wine shall not be sold in containers of less than 750 ml., with the exception of wine coolers sold in four-pack containers or more per sale.
- Malt beverages shall not be sold in less than-six-pack containers per sale.
- Wine shall not be sold with an alcoholic content greater than 15 percent by volume.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on July 20, 2016 and Resolution No. XXXX.

NOTICE OF EXEMPTION

(Check one or both)

TO: Recorder/County Clerk
 P.O. Box 1750, MS A-33
 1600 Pacific Hwy, Room 260
 San Diego, CA 92101-2400

FROM: City of San Diego
 Development Services Department
 1222 First Avenue, MS 501
 San Diego, CA 92101

Office of Planning and Research
 1400 Tenth Street, Room 121
 Sacramento, CA 95814

Project No.: **439049**Project Title: **My Market**

Project Location-Specific: 4111 Home Avenue, Suite A, San Diego, California 92105

Project Location-City/County: San Diego/San Diego

Description of nature and purpose of the Project: This project proposes a CONDITIONAL USE PERMIT to allow the continual sale of alcoholic beverages with a Type 21 General Liquor License from an existing 3,592 square foot market. The 1.046 acre site is located at 4111 Home Avenue, Suite A in the CC-5-3 zone of the Central Urbanized Planned District within the City Heights Community Plan area. Additionally the project site is within the San Diego International Airport Influence Area- Review Area 2, and Very High Fire Hazard Severity Zone. (LEGAL DESCRIPTION: Parcel A in the City of San Diego according to Parcel Map No. 387, filed in the Office of the County Recorder of San Diego County).

Name of Public Agency Approving Project: City of San Diego

Name of Person or Agency Carrying Out Project: Samim H. Bidi
 4111 Home Avenue
 San Diego, California 92105
 (619) 991-7501

Exempt Status: (CHECK ONE)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269 (b)(c))
- Categorical Exemption: 15301 (Existing Facilities)
- Statutory Exemptions:

Reasons why project is exempt: The City of San Diego conducted an environmental review which determined the project would not have the potential for causing a significant effect on the environment in that the project is consistent with the community plan and the applicable zone. The project would not result in any significant environmental impacts. The project meets the criteria set forth in CEQA Section 15301 (Existing Facilities) which allows for the interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. Furthermore, the exceptions listed in 15300.2 would not apply.

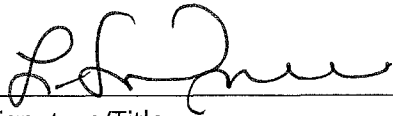
Lead Agency Contact Person: Morgan Dresser

Telephone: (619) 446-5404

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? Yes No

It is hereby certified that the City of San Diego has determined the above activity to be exempt from CEQA

 Sr. Planner
Signature/Title

May 26, 2016
Date

Check One:

Signed By Lead Agency

Signed by Applicant

Date Received for Filing with County Clerk or OPR:

CITY HEIGHTS AREA PLANNING COMMITTEE

Postoffice Box 5859
City Heights CA 92165
(619) 284-2184

May 9, 2016

MEMORANDUM FOR: Renee Mezo
Development Project Manager

From: Committee Chairwoman

Patty Vaccariello



Subj: My Market CUP PTN 439049

At its May 2, 2016 meeting the City Heights Area Planning Committee heard a request for a Conditional Use Permit for a Type 21 General Liquor License at 4111 Home Avenue. We heard a presentation from the owner's representative, the owners, and neighbors both in favor and against the upgrade from the Type 20 License that the previous owner had acquired. After an hour of testimony it was moved and seconded to deny the CUP for the Type 21 license. The Committee voted 13/3/0 (chair not voting) and the motion passed.

Although the Police Department approved the Notice of Public Convenience or Necessity the CHAPC members could not ignore the following issues:

- the fact that in the census tract there are 8 ABC licenses although only 3 are authorized
- a crime rate of 144.8% of the citywide average
- the close proximity to an incompatible use – Head Start/daycare
- that the project is located within 100 yards of an existing ABC licensed liquor store
- the increasing homeless population in that specific area
- the presence of other ABC licenses in the vicinity
- the proximity of a methadone clinic within one-quarter mile of the premises
- a Police services rate of 11 calls to the premises in 2015 [nearly one per month]; the fact of 54 crimes [≈ 1 per week] and 21 arrests [≈ 2 per month] within a two-block radius of the premises in 2015;
- an assault with a deadly weapon near the premises in April 2016
- five Code Enforcement cases from November 2014 to May 2015.

We understand the city and the applicant are in a difficult position having subverted the CUP process, not coming before the CHAPC before acquiring the Type 21 license. But we believe the community should not have to suffer a bad project and the consequences from errors not of our making.

Cc: Jorge Brambila
Samim Jihad



City of San Diego
 Development Services
 1222 First Ave., MS-302
 San Diego, CA 92101
 (619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment • Other _____

Project Title **Project No. For City Use Only**
 Mr. Harriet 439049

Project Address:
 9111 HOME AVE #A SAN DIEGO, CA 92105.

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print):
 Samuel H. Bidi
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 544 Marchase Dr #400
 City/State/Zip:
 San Diego
 Phone No: 619-362-8790 Fax No: _____
 Signature: Date: 12-07-2015

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 City/State/Zip:
 Phone No: _____ Fax No: _____
 Signature: _____ Date: _____

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 City/State/Zip:
 Phone No: _____ Fax No: _____
 Signature: _____ Date: _____

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 City/State/Zip:
 Phone No: _____ Fax No: _____
 Signature: _____ Date: _____

Part II - To be completed when property is held by a corporation or partnership
Legal Status (please check):

- Corporation Limited Liability -or- General) What State? _____ Corporate Identification No. _____
 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property.. Please list below the names, titles and addresses of **all** persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. **Note:** The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. **Additional pages attached** Yes No

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee


Street Address: _____

 City/State/Zip: 544 Morehouse Dr #4000
San diego 92121

 Phone No: (619) 991-7501 Fax No: _____

 Name of Corporate Officer/Partner (type or print): Samim H. Bidi

 Title (type or print): Owner

 Signature :  Date: 12-7-15

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee

Street Address: _____

City/State/Zip: _____

Phone No: _____ Fax No: _____

Name of Corporate Officer/Partner (type or print): _____

Title (type or print): _____

Signature : _____ Date: _____

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee

Street Address: _____

City/State/Zip: _____

Phone No: _____ Fax No: _____

Name of Corporate Officer/Partner (type or print): _____

Title (type or print): _____

Signature : _____ Date: _____

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee

Street Address: _____

City/State/Zip: _____

Phone No: _____ Fax No: _____

Name of Corporate Officer/Partner (type or print): _____

Title (type or print): _____

Signature : _____ Date: _____

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee

Street Address: _____

City/State/Zip: _____

Phone No: _____ Fax No: _____

Name of Corporate Officer/Partner (type or print): _____

Title (type or print): _____

Signature : _____ Date: _____

Corporate/Partnership Name (type or print): _____

 Owner Tenant/Lessee

Street Address: _____

City/State/Zip: _____

Phone No: _____ Fax No: _____

Name of Corporate Officer/Partner (type or print): _____

Title (type or print): _____

Signature : _____ Date: _____

SAN DIEGO POLICE DEPARTMENT CONDITIONAL USE PERMIT RECOMMENDATION

PREMISE ADDRESS: 4111 Home Ave #A, San Diego

TYPE OF BUSINESS: Convenience Market

FEDERAL CENSUS TRACT: 34.01

NUMBER OF ALCOHOL LICENSES ALLOWED: 3

NUMBER OF ALCOHOL LICENSES EXISTING: 8 (Over-Concentrated)

CRIME RATE IN THIS CENSUS TRACT: 144.8%
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR YES NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY YES NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY YES NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR YES NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY YES NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,
AND WELFARE OF THE COMMUNITY AND CITY YES NO

COMMENTS/OTHER FACTORS CONSIDERED:

The applicant is applying for a Conditional Use Permit for a Convenience Market with a Type 21 Off-Sale General license at 4111 Home Ave #A. There is an incompatible facility called the Early Learning Center at 4111 Home Ave #F. This is a Headstart program and day care center for pre-school children.

There were no arrests, no crime cases, and 11 calls for police service at 4111 Home Ave. There were 54 crime cases and 21 arrests in a .2 mile radius of this address in 2015. There were 20 alcohol related arrests/citations (63.2%) in census tract 34.01 in 2015.

The San Diego Police Department will support the issuance of this Type-21 license with the following conditions.

SUGGESTED CONDITIONS:

1. Sales of alcoholic beverages shall be permitted only between the hours of 6:00 AM and 1:00 AMt each day of the week.
2. The sale of distilled spirits in containers less than 375 ml. is prohibited.
3. Beer, Malt beverages and Wine coolers in containers of 16 ounce or less cannot be sold in single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.

4. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine-coolers, beer coolers, or pre-mixed distilled spirit cocktails must be sold in manufacturer pre-packaged multi-unit quantities.
5. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
7. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
8. There shall be no exterior advertising or sign of any kind, including advertising, directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages which are clearly visible from the exterior shall constitute a violation of this conditions.
9. There shall be no amusement machines or video game devices on the premises at any time.

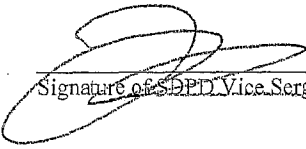
SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:

APPROVE

DENY

ROBERT STINSON
Name of SDPD Vice Sergeant (Print)

619-531-2282
Telephone Number


Signature of SDPD Vice Sergeant

4-27-2016
Date of Review

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF

SAMIM H BIDI
MY MARKET
4111 HOME AVE
STE A
SAN DIEGO, CA 92105

} FILE 21-549600

} REG.

} PETITION FOR CONDITIONAL
} LICENSE

For Issuance of an Off-Sale General - License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the San Diego Police Department filed a protest against the issuance of the applied-for license; and,

WHEREAS, the protest(s) deal(s) with the proposed operation of the applied-for premises; and,

WHEREAS, pursuant to Section 23958 of the Business and Professions Code, the Department may deny an application for a license where issuance would result in or add to an undue concentration of licenses; and,

WHEREAS, the proposed premises are located in Census Tract 0034.01 where there presently exists an undue concentration of licenses as defined by Section 23958.4 of the Business and Professions Code; and,

WHEREAS, the proposed premises are located in a crime reporting district that has a 20% greater number of reported crimes, as defined in subdivision (c) of Section 23958.4, than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency; and,

WHEREAS, the petitioner(s) stipulate(s) that by reason of the aforementioned high crime and over concentration of licenses, grounds exist for denial of the applied-for license; and,

WHEREAS, the proposed premises and/or parking lot, operated in conjunction therewith, are located within 100 feet of residences(s); and,

WHEREAS, issuance of the applied-for license without the below-described conditions would interfere with the quiet enjoyment of the property by nearby residents and constitute grounds for the denial of the application under the provisions of Rule 61.4, of Chapter 1, Title 4, of the California Code of Regulations; and,

S.B

Initials

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare and morals;

NOW, THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

- 1 Beer, malt beverages, and wine coolers in containers of 16 oz. or less cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
- 2 No distilled spirits shall be sold in bottles or containers smaller than 375ml.
- 3 Wine shall not be sold in bottles or containers smaller than 750 ml. and wine-coolers, beer coolers, or pre-mixed distilled spirit cocktails (if allowed by the licensee) must be sold in manufacturer pre-packaged multi-unit quantities.
- 4 No wine shall be sold with an alcohol content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
- 5 There shall be no amusement machines or video game devices in the premises at any time.
- 6 The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that read as follows:

NO LOITERING, NO LITTERING,
NO DRINKING OF ALCOHOLIC BEVERAGES

VIOLATORS ARE SUBJECT TO ARREST

The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.


This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

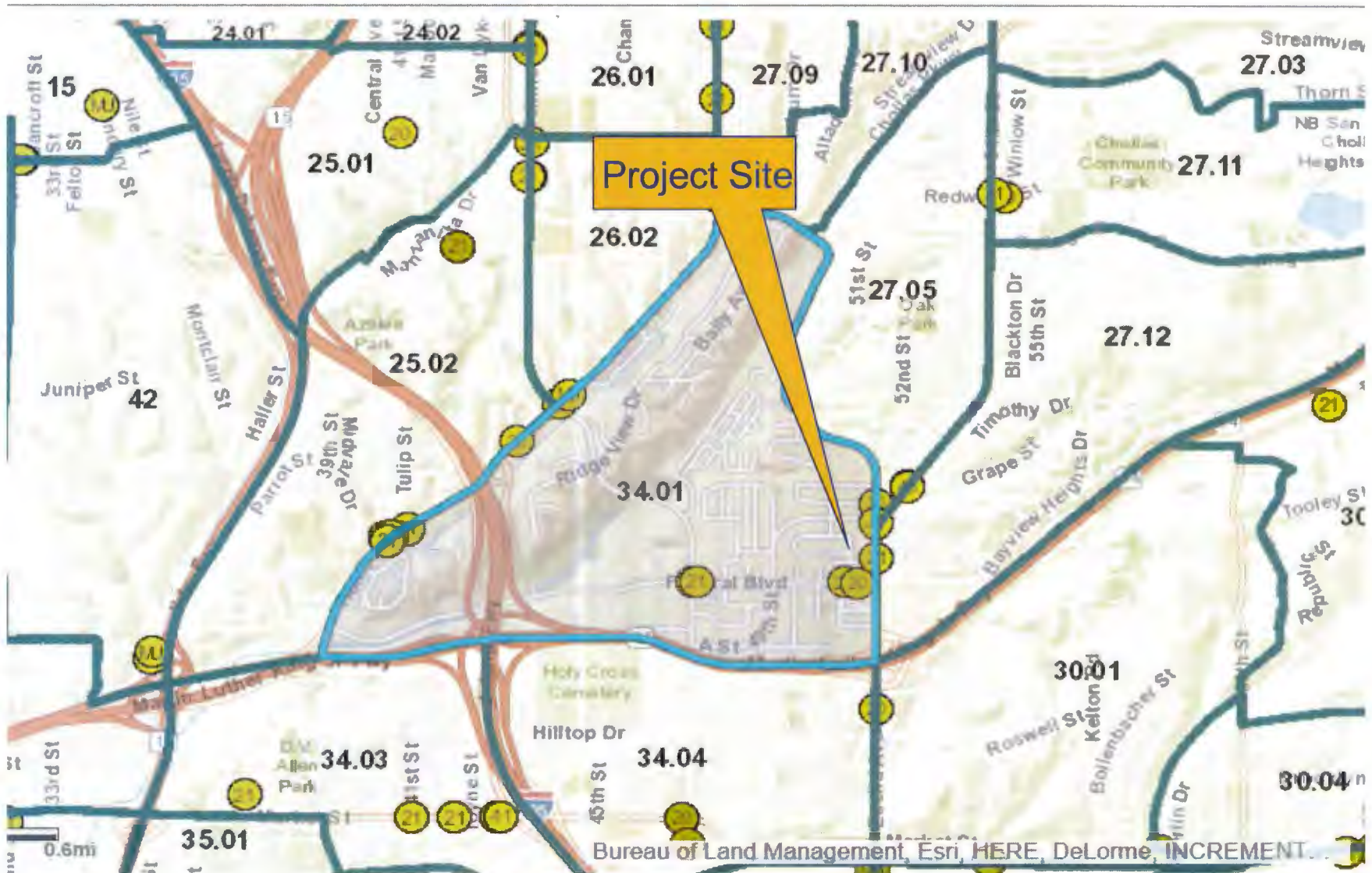
The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 25th DAY OF MARCH, 20 15.

Samim H. Bidi


Applicant/Petitioner

owner
Title



Liquor Licenses within Census Tract 34.01

MY MARKET CUP - PROJECT NO. 439049

4111 HOME AVENUE

