

RESOLUTION NO. 3-08

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND DENYING A
CONDITIONAL USE PERMIT FOR AN ALCOHOLIC BEVERAGE (OFF-SALE)
RETAIL ESTABLISHMENT LOCATED AT 544 HARBOUR WAY (CU1103339)**

WHEREAS, the applicant, Mazen Elmashni, has requested approval from the City of Richmond (the "City") for a Conditional Use Permit, hereinafter called "Request for Approval of a Conditional Use Permit," for the purpose of transferring an alcoholic beverage license from 564 Harbour Way to 544 Harbour Way, under the provisions of the City's Zoning Ordinance, Section 15.04.910.080 (H); and

WHEREAS, the City's adopted policies require that all off-sale retail alcoholic beverage retail establishments, including convenience markets selling alcoholic beverages for consumption off the premises within the City of Richmond obtain a Conditional Use Permit;

WHEREAS, at a duly noticed public hearing on October 4, 2007, the Planning Commission of the City of Richmond, California (the "Commission") heard public comment on the project and reviewed and considered the Request for Approval of a Conditional Use Permit, the activities contemplated by the Request for Approval, applicable sections of the Zoning Ordinance, Section 15.04.90.080 (H) of the City of Richmond, and all such other related information such as crime statistics for the vicinity as presented to the Commission; and

WHEREAS, after considering all oral and written information regarding the project as presented at or before that hearing, the Commission denied the Conditional Use Permit as not appropriate for the location at 544 Harbour Way; and

WHEREAS, on October 15, 2007, the applicant, Mazen Elmashni, appealed the decision of the Planning Commission for denial of the Conditional Use Permit, stating the Commission erred in their interpretation of the crime statistics for the previous and proposed grocery store at 544 Harbour Way; and

WHEREAS, on December 11, 2007, the City Council of the City of Richmond, held a duly noticed public hearing to consider the merits of the Conditional Use Permit application and appeal, and hear testimony in favor of, and in opposition to, the permit; and

WHEREAS, following the public hearing, and based upon all oral and written information presented at or before the hearing, the City Council does find and resolve as follows:

**SECTION I: FINDINGS FOR DENIAL OF THE CONDITIONAL USE PERMIT
(CU 1103389)**

Conditional Use Permit Findings. The City Council finds and determines as follows:

1. **The location of the proposed conditional use is in accordance with the policies of the General Plan of the City of Richmond.**

Statement: *Criterion not satisfied.* The proposed addition of alcohol sales to an existing grocery store will not be conducive or compatible with adjacent and surrounding residences and businesses. As proposed, the activity would be a nuisance for residents that live in the immediate area because of the likelihood of transients and others loitering in front of and around the store. This will prove to adversely affect the livability and future development in the neighborhood. The location of the store is on a major street that connects an area that has been plagued with crime and violence from behavior associated with alcohol sales. The General Plan designation for the project site is Neighborhood Commercial.

2. **The location, size, design and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the proposed conditional use and**

the surrounding neighborhood.

Statement: *Criterion not satisfied.* The General Plan designation of Neighborhood Commercial associated with services for neighborhood residents, does not promote alcohol sales as being compatible with the surrounding residential dwellings and schools in this neighborhood.

- 3. The proposed conditional use complies with all applicable provisions of the Zoning Ordinance.**

Statement: *Criterion not satisfied.* The project site is zoned for neighborhood commercial activities associated with small-scale personal services and convenient stores that allow residents to shop within a close distance to their homes. However, the sale alcoholic beverages adjacent to residential dwellings and schools does not comply with the applicable provisions of the Zoning Ordinance relative to personal services for neighborhood residents and is opposed by many of the residents of the neighborhood.

- 4. The site of the proposed use is adequately served by highways, streets and other public service facilities.**

Statement: *Criterion Satisfied.* The subject site is presently served by all requisite public facilities and services such as gas, water and electricity. Allowable alcohol beverage sales on a major arterial road allow individuals from other neighborhoods to patronize stores, but this does not serve adjacent residents living in the area.

Section II. STATEMENT TO DENY CONDITIONAL USE PERMIT

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Richmond, California hereby upholds the Planning Commission's action and denies Conditional Use Permit Application CU-1103389, as described in the Planning Commission Staff Report dated October 4, 2007, and the City Council Staff Report dated December 11, 2007, incorporated herein by reference.

I CERTIFY that the foregoing Resolution was passed and adopted by the City Council of the City of Richmond, California at a regular meeting held on January 8, 2008, by the following vote:

AYES: Councilmembers Bates, Butt, Marquez, Rogers, Sanhdu, Viramontes, and Mayor McLaughlin

NOES: None

ABSTENTIONS: Councilmember Lopez

ABSENT: Councilmember Thurmond

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE McLAUGHLIN
MAYOR

Approved as to Form:

LOUISE RENNE, Interim
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 3-08, finally passed and adopted by the Council of the City of Richmond at a meeting held on January 8, 2008.