



CITY OF SALINAS
SALINAS PLANNING COMMISSION REPORT

DATE: SEPTEMBER 15, 2021

TO: PLANNING COMMISSION

FROM: COURTNEY GROSSMAN, PLANNING MANAGER

BY: THOMAS WILES, SENIOR PLANNER

TITLE: **CONDITIONAL USE PERMIT 2021-023; REQUEST TO ESTABLISH AND OPERATE AN ALCOHOL RELATED USE CONSISTING OF AN ON-SALE BEER AND WINE – EATING PLACE (TYPE 41) ALCOHOL SALES FOR CONSUMPTION ON OR OFF THE PREMISES AT A PROPOSED RESTAURANT WITH A WINE TASTING ROOM (AMAPOLA KITCHEN AND WINE MERCHANT) LOCATED AT 32 WEST GABILAN STREET IN THE MX-CC-DC (MIXED USE – CENTRAL CITY OVERLAY – DOWNTOWN CORE OVERLAY AREA) ZONING DISTRICT**

RECOMMENDED MOTION:

A motion to approve a resolution finding the project exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines, affirming the findings, and approving Conditional Use Permit 2021-023.

RECOMMENDATION:

Approve a resolution finding the project exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines, affirming the findings, and approving Conditional Use Permit 2021-023.

EXECUTIVE SUMMARY:

Jeffrey Birkemeier is proposing to establish and operate an alcohol related use consisting of an on-sale beer and wine – eating place (Type 41) alcohol sales for consumption on or off the premises at a proposed restaurant with a wine tasting room (Amapola Kitchen and Wine Merchant).

DISCUSSION:

Background:

Jeffrey Birkemeier is proposing to establish and operate an alcohol related use consisting of an on-sale beer and wine – eating place (Type 41) alcohol sales at a proposed restaurant with a wine tasting room (Amapola Kitchen and Wine Merchant) with an off-sale component (ABC License No. 628501). Greg Piini, et al. is the property owner. The proposed use is located in a 1,622 square-foot space of a multi-tenant building on the southeast corner which was formerly a Subway restaurant. The Applicant is proposing a counter service restaurant and the alcohol use would be an accessory use to the restaurant. However, the Applicant also requests to utilize the off-sale component of the Type 41 alcohol license for sales of beer and wine for consumption off the premises.

Per ABC, the proposed Type 41 alcohol license is considered an on-sale license. However, ABC also allows an off-sale component as a part of the Type 41 as long as it is associated with the restaurant use. In the past, Conditional Use Permits for Type 41 alcohol related uses have included a condition of approval not allowing the off-sale of alcohol. However, as stated above, the Applicant has stated that they want to exercise the off-sale provision of the proposed Type 41 alcohol license.

The property is located in the MX-CC-DC (Mixed Use – Central City Overlay – Downtown Core Overlay Area) Zoning District. The following provides an overview of the land uses and zoning districts adjacent to the project site:

North:	Monterey Salinas Transit (MST) Salinas Transit Center / Public/Semipublic – Central City Overlay – Downtown Core Area (PS-CC-DC)
South:	Parking Lot / Public/Semipublic – Central City Overlay – Downtown Core Area (PS-CC-DC)
East:	Parking Lot / Public/Semipublic – Central City Overlay – Downtown Core Area (PS-CC-DC)
West:	Parking Lot / Public/Semipublic – Central City Overlay – Downtown Core Area (PS-CC-DC)

ANALYSIS:

Undue Concentration

There are two ways to measure "undue concentration". The proposed location is within Census Tract 13 (CT 13) which is currently undue concentrated pursuant to statewide guidelines. For this purpose, "undue concentration" is a formula defined in California Business and Professions Code Section 23958.4(a)(3) where the ratio of off-sale retail licenses to population in the census tract or census division in which the premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the premises are located, as determined by ABC based on the number of existing

retail off-sale ABC licenses.

There are eight (8) active off-sale licenses within CT 13 which are shown below:

<u>Name of Licensee</u>	<u>Address</u>	<u>Distance from Project site</u>
1. The Steinbeck House (Type 20)	132 Central Avenue	770 feet
2. Grapes N Grain (Type 21)	385 Salinas Street	1,300 feet
3. Gabilan Wine Company (Type 20)	335 Pajaro Street #A	1,620 feet
4. Fresh Market & Produce (Type 20)	201 East Alisal Street	1,950 feet
5. La Mexicana Market Y Dulceria (Type 20)	241 John Street	3,200 feet
6. Central Liquor (Type 21)	118 Central Avenue	570 feet
7. Central Gas Salinas (Type 20)	215 East Alisal Street	2,100 feet
8. 3D Investment Group	201 Monterey Street	860 feet

Per ABC, two (2) off-sale licenses are authorized in CT 13 (see attached Number of Licenses Authorized by Census Tract). This makes the subject Census Tract (CT 13) undue concentrated for number of off-sale alcohol licenses (2 authorized, 8 allowed). Per ABC, because the proposed alcohol related use is an on-sale license, the Applicant and not the Planning Commission must establish a subsequent finding that Public Convenience or Necessity is served by approving an on-sale alcohol use at this location. The attached Map of Off-sale Alcohol Licenses from 2019 shows that location of the proposed on-sale alcohol license to off-sale alcohol licenses. The closest off-sale license to the project site is located at 118 Central Avenue (Central Liquor), which is approximately 570 feet to the northwest of the project site. The average distance to off-sale alcohol outlets in CT13 is 1,546 feet, which is greater than the average of 843 feet for approved off-sale alcohol CUP's since 2010 (see table below).

Comparison to Off-sale Alcohol Conditional Use Permits Since 2010

	Distance to residentially zoned property (feet)	Distance to public schools (feet)	Distance to parks/ playgrounds (feet)	Average Distance to off-sale alcohol outlets (feet)	Alcohol outlets in Census Tract (% - proposed/ allowed)	Crime rate in PRD (%) (120% = undue concentration)	No. of crimes reported
Average	492	1,911	1,908	843	119%	146%	67.31
Minimum	0	450	400	615	40%	29%	2
Maximum	3,200	5,800	5,400	3,270	800%	386%	259
CUP 2021-023	830	1,160	830	1,546	400%	278%	187

Undue concentration is also measured by crime statistics where, as here, the crimes reported in the Police Reporting District (PRD) exceed 20% of that measured city-wide. State law allows the City to analyze off-site alcohol sales proposals for undue concentration based on reported crimes in police PRD 132 where the proposed site is located. For this analysis, “undue concentration” is analyzed under a different provision of state law, California Business and Professions Code Section 23958.4(a)(1), as a premises located in a crime reporting district that has a 20% greater number of reported crimes than the average number of crimes reported by the police department across all PRD’s. This is measured by examining the most recent yearly statistics of violent and non-violent enumerated crimes, both felonies and misdemeanors (except traffic violations) with the average number of reported crimes from all PRD’s within the jurisdiction. Salinas Police Department reports an average of 67.31 reported crimes across all PRD’s for 2020, the most recent date of PRD records. Adding 20%, the formula allows for no more than 80.77 reported crimes within this PRD to avoid the “undue concentration” designation. The 2020 Salinas Police Department (SPD) crime statistics indicated 187 reported crimes in PRD 132, which exceeds the 80.77 threshold, indicating that it is appropriate to label the site within an area of undue concentration. Per the Police Department comments, this is well above the average crime rate. Staff notes that the Salinas Police Department however, does not object to the approval of Conditional Use Permit 2021-023 with conditions of approval (see attached Salinas Police Department memorandum dated July 14, 2021).

Proximity to Residences, Parks, and Schools

The closest residences are located to the northwest of the subject site, at 111 – 117 Church Street, approximately 350-feet from the front entrance of the restaurant. The nearest residentially-zoned land is located approximately 740 feet to the north (10 Lincoln Avenue). Other commercial uses (restaurant and retail) and parking are located on the subject site and adjacent to the east. The nearest park is Bataan Memorial Park (15 East Market Street), which is located approximately 830 feet to the northeast of the subject site. The nearest public school is Roosevelt School (120 Capitol Street), which is located approximately 1,160 feet west from the subject site. The nearest private school is Sacred Heart School (123 West Market Street), which is located approximately 1,000 feet to the northwest of the subject site. It should be noted that there is a religious assembly use which is located on the same parcel at 121 Lincoln Avenue approximately 120-feet north of the primary entrance to the restaurant and which is not a part of this project.

The subject property is located more than the average distance to residentially-zoned properties than the other CUP applications (approved, denied, or expired) since 2010. The subject property is about average concerning its location to *public schools* in comparison with other off-sale alcohol CUP applications. The project site is located less than the average distance to parks and playgrounds and public schools than other off-sale alcohol outlets than the average off-sale alcohol CUP’s.

The project site is located in a Census Tract that has four times (400%) the number of allowed off-sale alcohol outlets. As shown on the above table, the average level of undue concentration for Conditional Use Permits processed since 2010 is 119%. The crime rate for the subject PRD is 278%

over the average rate considered as undue concentration for crime (278% vs. 120%).

One-for-One Policy

The Planning Commission had previously determined that a One-for-One policy should be required for off-sale licenses located in areas of undue concentration. A One-for-One policy would require the elimination of one existing, active off-sale alcohol-related use located within City limits to be either from an area of “undue concentration” (based on either the number of retail off-sale ABC licenses or the number of reported crimes) or a nonconforming use (i.e., without a Conditional Use Permit). The One-for-One Policy was originally established in 2007 by the City Council to limit the number of off-sale alcohol outlets in the City, by requiring new outlets to retire an existing license within the City. However, the policy was eliminated by City Council on July 9, 2013. Even though this application is for an on-sale alcohol license, the Type 41 license has an off-sale component which the Applicant is requesting to utilize. The Application has requested not to transfer an off-sale license because of the cost and difficulty of obtaining an off-sale alcohol license within the City of Salinas.

The table below shows the completed 45 Conditional Use Permit (CUP) applications for alcohol related uses that have been processed since 2011. Per the table below, five (5) off-sale alcohol related CUP’s located in an area of undue concentration have been required to comply with the City’s one-for-one policy. However, since 2013, no alcohol related use CUP located in an area of undue concentration has been required to comply with the one-for-one policy. In addition, the City Council approved an appeal of the Planning Commission’s denial of CUP 2018-005 and did not require the Applicant of that CUP to comply with a one-for-one requirement.

Alcohol related use Conditional Use Permit (CUP) applications since 2011

No	Project Number	Status	Type	Address	Approval Date	Approval Body	1:1 Req?	Off-sale?
1.	CUP 2010-004	Approved	Off-Sale Alcohol	970 Work St.	4/19/2011	City Council	Yes	
2.	CUP 2010-006	Expired	Off-Sale Alcohol	1532 N. Main St.	6/14/2011	City Council	Yes	
3.	CUP 2010-007	Approved	Off-Sale Alcohol	615 W. Laurel Dr.	6/6/2010	Planning Commission	Yes	
4.	CUP 2010-013	Approved	Off-Sale Alcohol	306 N. Main St.	10/12/2010	City Planner	No (Not Und.)	

5.	CUP 2010- 018	Approved	On Site Alcohol	242 Williams Rd.	8/2/2011	City Planner		No
6.	CUP 2011- 005	Denied	Off-Sale Alcohol	575 N. Sanborn Rd.	N/A			
7.	CUP 2011- 009	Approved	Off-Sale Alcohol	1375 N. Davis Rd.	6/1/2011	Planning Commission	Yes	
8.	CUP 2011- 010	Approved	Off-Sale Alcohol	1800 N. Main St.	6/14/2011	City Council	Yes	
9.	CUP 2011- 022	Approved	On-Sale Alcohol	1730 N. Main St.	10/10/2011	City Planner		No
10.	CUP 2011- 023	Withdrawn	Off-Sale Alcohol	1730 N. Main St.	N/A			
11.	CUP 2012- 001	Approved	On-Sale Alcohol	1391 N. Davis Rd.	2/12/2012	City Planner		No
12.	CUP 2012- 003	Approved	On-Sale Alcohol	1748 N. Main St.	3/27/2012	City Planner		No
13.	CUP 2012- 005	Denied	Off-Sale Alcohol	8 Williams Rd.	N/A			
14.	CUP 2013- 003	Approved	Off-Sale Alcohol	1045 N. Main St.	9/24/2013	City Council	No	
15.	CUP 2013- 006	Approved	On-Sale Alcohol	1988 N. Main St.	7/1/2013	City Planner		No
16.	CUP 2014- 004	Withdrawn	On-Sale Alcohol	242 Williams Rd.	N/A			
17.	CUP 2014- 025	Denied	Off-Sale Alcohol	1532 N. Main St.	N/A			
18.	CUP 2015- 004	Approved	On-Sale Alcohol	124 Abbott St.	8/4/2015	City Planner		No
19.	CUP	Approved	On-Sale	1938 N	6/9/2015	City Planner		No

	2015-011		Alcohol	Main St.				
20.	CUP 2015-016	Approved	Off-Sale Alcohol	215 E. Alisal St.	9/16/2015	Planning Commission	No	
21.	CUP 2015-023	Denied	Off-Sale Alcohol	602 Williams Rd.	N/A			
22.	CUP 2015-034	Denied	Off-Sale Alcohol	170 E. Laurel Dr.	N/A			
23.	CUP 2016-002	Withdrawn	On-Sale Alcohol	242 Williams Rd.	N/A			
24.	CUP 2016-005	Approved	On-Sale Alcohol	66 W. Alisal St.	6/7/2016	City Planner		No
25.	CUP 2016-006	Approved	Off-Sale Alcohol	150 Main St.	6/24/2016	City Planner		N/A
26.	CUP 2016-013	Withdrawn	Off-Sale Alcohol	1000 Market St.	N/A			
27.	CUP 2016-019	Approved	Off-Sale Alcohol	201 Monterey St.	3/21/2017	City Council	No	
28.	CUP 2016-020	Approved	On-Sale Alcohol	1000 Davis Rd.	12/12/2016	City Planner		No
29.	CUP 2017-003	Approved	On-Sale Alcohol	350 Northridge Mall	4/7/2017	City Planner		No
30.	CUP 2017-005	Withdrawn	Off-Sale Alcohol	980 Acosta Plaza.	N/A			
31.	CUP 2017-014	Withdrawn	On-Sale Alcohol	309 Williams Rd.	N/A			
32.	CUP 2018-001	Approved	On-Sale Alcohol	1600 Northridge Mall	2/27/2018	City Planner		No
33.	CUP 2018-	Approved	On-Sale Alcohol	723 Alisal St.	10/12/2018	City Planner		No

	002							
34.	CUP 2018- 003	Expired	On-Sale Alcohol	1220 S. Main St.	2/26/2018	City Planner		No
35.	CUP 2018- 005	Approved	Off-Sale Alcohol	1764 N. Main St.	10/2/2019	Planning Commission	No	
36.	CUP 2018- 008	Expired	Off-Sale Alcohol	1438 S. Main St.	N/A			
37.	CUP 2018- 012	Withdrawn	On-Sale Alcohol	1366 s. Main St.	N/A			
38.	CUP 2018- 023	Approved	On-Sale Alcohol	309 Williams Rd.	1/9/2019	City Planner		No
39.	CUP 2018- 024	Approved	On-Sale Alcohol	213 Monterey St.	11/27/2018	City Planner		No
40.	CUP 2018- 025	Approved	On-Sale Alcohol	242 Williams Rd.	4/30/2019	City Planner		No
41.	CUP 2018- 029	Approved	On-Sale Alcohol	1790 Northridge Mall	2/20/2029	City Planner		No
42.	CUP 2019- 009	Approved	On-Sale Alcohol	210 Main St.	8/22/2019	City Planner		No
43.	CUP 2019- 020	Approved	On-Sale Alcohol	1582 Constitution Blvd.	1/7/2020	City Planner		No
44.	CUP 2020- 015	Approved	Off-Sale Alcohol	1264 De La Torre	10/23/2020	City Planner	No (Not Und.)	
45.	CUP 2021- 008	Approved	On-Sale Alcohol	1220 S. Main St.	4/2/2021	City Planner		No

ABC Licensing

Following CUP approval, the applicant is required to obtain a license from ABC in order to conduct on-site sales of alcohol. For on-sale alcohol licenses located in an area of undue concentration, the Applicant and not the local governing body (such as the Planning Commission) determines that

“public convenience or necessity would be served by the issuance” (Cal. Business & Professions Code §23958.4(b)(2)). However, the Planning Commission is required to determine public convenience or necessity for the off-sale component of the CUP application.

Conditions of Approval

The City generally requires a CUP for alcohol-related uses (Salinas Zoning Code 37-50.030) and may lawfully regulate through its land use and zoning authority the potentially negative social and environmental effects of alcohol serving businesses. In this regard, the City’s Zoning Code imposes a variety of specific requirements for alcohol-related uses and for all alcohol-related uses located in areas of undue concentration, which are discussed in turn below.

Pursuant to Zoning Code Section 37-50.030(f), if the Planning Commission determines that the public convenience or necessity would be served by the approval of the proposed CUP and the subsequent issuance of an alcohol license by ABC, the CUP would contain the following conditions of approval:

1. Hours of operation for the alcohol related use shall be limited to 10:00 a.m. to 8:00 p.m. seven (7) days per week.
2. The premises shall be maintained free of litter at all times.
3. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.
4. No display of alcoholic beverages shall be made from an ice tub.
5. No unsecured alcohol may be placed near the entrances and exits of the store.
6. No self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
7. All business owners and managers shall complete a program certified by the Department of Alcoholic Beverage Control (ABC) as a qualified responsible beverage service (RBS) program prior to the commencement of the use. Any business established after the effective date of the ordinance codified in this section shall require such training of all owners and managers within ninety days of ownership transfer or hire. Failure of managers to obtain training shall be the liability of the owner. The owner shall maintain on the premises a file containing the certificates of training and shall present the file and its contents upon request by the City at any time during normal business hours. The provisions of this section regarding responsible beverage training shall be suspended upon a finding by the City Planner that the training is not reasonably available.

8. An electronic age verification scanner shall be installed, maintained, and utilized for all off-sale alcohol sales.
9. Signs shall be posted at the location in English and Spanish with regard to prohibitions of open containers and loitering at the location, and no loitering will be tolerated.
10. No beer may be sold from premises for off-site consumption.
11. No malt liquor or fortified wine products (wines with greater than 15% alcohol content) shall be sold.
12. Sales of wine shall be in containers of at least 750 ml.
13. There shall be no coin operated video or arcade games and no adult magazines or videos shall be sold.
14. No pay telephone booths shall be permitted on the premises.
15. Any alcohol license violation and/or suspension by the Alcohol Beverage Control Board or significant criminal activity, in the opinion of the City Police Chief, shall constitute grounds for review and modification or revocation of this use Permit in accordance with Section 37-60.640: Expiration- transferability; recordation; rescission; revocation, of the Salinas Zoning Code.

The additional conditions of approval as recommended by the Department of Alcoholic Beverage Control (ABC) for the proposed alcohol related use are also included as a part of the proposed project:

1. The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department of Alcoholic Beverage Control (ABC) on demand.
2. Full and complete meals must be offered and made available at all times the premises is exercising the privileges of its alcoholic beverage license, with the exception of the last half-hour of operation each day.

The additional conditions as recommended by the Salinas Police Department per the attached comments dated July 14, 2021 (Exhibit "D" of CUP 2021-023) are also included as a part of the

proposed project:

1. Digital surveillance system with high quality cameras focused on the points of sales, entrances/exits of the business and the parking lot, with the capability to store the digital images captured. The video/photos must be retained for 30 days and be made available to police upon request.
2. Ample lighting in the parking lots, exterior area of entrances/exits and situated in areas to enhance video surveillance equipment.

Findings:

The Planning Commission may approve an application for Conditional Use Permit to establish and operate an alcohol related use consisting of an on-sale beer and wine – eating place (Type 41) alcohol sales at a proposed restaurant use with a wine tasting room (Amapola Kitchen and Wine Merchant) with an off-sale component if all of the findings set forth in the proposed Planning Commission Resolution are established.

CEQA CONSIDERATION:

The environmental impacts of the project have been analyzed in accordance with the California Environmental Quality Act (CEQA). The project has been determined to be exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines. The proposed project is exempt because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

TIME CONSIDERATION:

The project was deemed complete on August 11, 2021. Final action is required by October 10, 2021 pursuant to the Permit Streamlining Act.

ALTERNATIVES AVAILABLE TO THE COMMISSION:

The Planning Commission has the following alternatives:

1. Affirm the findings set forth in the attached Resolution, find the application exempt from the California Environmental Quality Act (CEQA), and approve Conditional Use Permit 2021-023 with modifications; or

2. Find that the proposal is not appropriate and establish findings at the public hearing stating the reasons for not approving Conditional Use Permit 2021-023.

ATTACHMENTS:

Proposed Planning Commission Resolution

Draft Conditional Use Permit with the following exhibits:

Exhibit "A" Vicinity Map

Exhibit "B" Site Plan

Exhibit "C" Floor Plan

Exhibit "D" Police Department comments dated July 14, 2021

Map of Areas of Undue Concentration of Off-sale Licenses and Reported Crimes (Combined)

Map of Census Tracts with Undue Concentration of Off-sale Alcohol Licenses

Map of PRD's with Undue Concentration of 20% Greater Number of Reported Crimes than the Average Number of Reported Crimes

Map of Off-sale Alcohol Licenses

Cc: Jeffrey Birkemeier, Applicant
Greg Piini, et. al, Property Owner
Sgt. Stephen Sparks, Salinas Police Department

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