

Midway City Council  
5 December 2023  
Regular Meeting

Market Express /  
Conditional Use Permit  
to Dispense Alcohol



## **CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** December 5, 2023

**NAME OF PROJECT:** Market Express

**NAME OF APPLICANT:** Mike Holm, as agent for CJM LLP

**OWNER:** CJM Limited Liability Partnership

**AGENDA ITEM:** Alcohol Dispensing Establishment Conditional Use Permit and Local Consent

**LOCATION OF ITEM:** 51 West Main Street, Midway

**ZONING DESIGNATION:** C-2

### **ITEM: 8**

Mike Holm, as agent for CJM Limited Liability Partnership, is applying for a Conditional Use Permit and Local Consent for an alcohol dispensing establishment for Market Express (formerly known as Ridley's Express). The convenience store is located at 51 West Main Street in Midway. The property is 1.1 acres in size and is in the C-2 zone.

### **BACKGROUND:**

Mike Holm, as agent for CJM Limited Liability Partnership, is applying for a Conditional Use Permit and Local Consent for an alcohol dispensing establishment. The applicant has leased

the property formerly known as Ridley’s Express and is operating a convenience store under the name “Market Express” at 51 West Main Street in Midway.

The property is in the C-2 zone and a service store (up to 25,000 sq. ft.) is a permitted use in this zone, although alcohol dispensing establishments must be approved for a conditional use permit if they are allowed to dispense alcohol. If the City grants consent, the applicant will apply for an off-premises state liquor license from the Department of Alcoholic Beverage Services (DABS). In the application, the applicant requests approval to “*continue to be able to sell alcohol*” at the location in closed containers to be consumed off-premises, consistent with the prior use at the location when it operated as Ridley’s Express.

The approval of a CUP is an administrative act but, as per Utah State Code, the approval of the ability to sell alcohol is a legislative act and the City has broad discretion in that decision. Tourism does generate business and taxes and some would argue that limiting alcohol licenses could damage tourism in Midway.

Currently the City has approved the following licenses:

- Lupita’s
- Café Galleria
- Zermatt Resort
- Homestead Resort
- 7-11
- Blue Boar Inn
- Midway Mercantile
- Lola’s
- Heirloom Commons
- Hidden Peak Provisions Deli

As well as the former

- Ridley’s (at the same location as the current application)
- Ridley’s Express (convenience store)

**ANALYSIS:**

Section 16.26.120 of the Midway Municipal Code governs Conditional Use Approvals and Regulations. This provision provides that the Planning Commission shall:

*“ . . . recommend the granting or denying of the conditional use permit based upon the standards set forth in this Section. The Planning Commission may also recommend conditions to be imposed on the use if the permit is granted.”*

The Findings for which the City Council seeks a recommendation from the Planning

Commission include the following:

1. The proposed use is conditionally permitted within the Land Use Title and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all of the applicable provisions of this Code;
  2. The proposed use is consistent with the General Plan;
  3. The approval of the conditional use or special exception permit for the proposed use is in compliance with the requirements of state, federal and Midway City or other local regulations;
  4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored;
  5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare to the City;
  6. The subject site is physically suitable for the type and density/intensity of the proposed use;
  7. There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to ensure that the proposed use would not be detrimental to public health and safety.
- Of note, the Conditional Use Permit requested by the Applicant to sell alcohol in closed containers at the Market Express convenience store at 51 West Main Street in Midway for off-site consumption seeks no more than to continue the conditional use the City permitted at the same location for the same use under the prior management of the convenience store operating as Ridley's Express. The City has received no complaints to date relative to the sale of alcohol at this location pursuant to the CUP issued to Ridley's Express (prior convenience store operator) and is aware of no changes in intended use under the new application.
  - Because the application is limited to sale for off-premises (rather than on-site) consumption of alcohol, the application does not have to meet the requirements of Section 32B-1-202 of the Utah Code, Proximity to Community Location, which imposes distance limitations between outlets or restaurants selling alcohol for on-premises consumption and community locations such as parks and schools.

**PLANNING COMMISSION RECOMMENDATION:**

Motion: Commissioner Simons: I make a motion that we recommend approval for a Conditional Use Permit and Local Consent for an alcohol dispensing establishment for Market Express (formerly known as Ridley’s Express). The store is located at 51 West Main Street. The property is 1.1 acres in size and is in the C-2 zone. Accepting the findings in the staff report and the one condition that no alcohol-related signage will be visible on the exterior of the building or on the inside, visible from the outside.

Seconded: Commissioner Wardle

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Simons, Osborne, Wardle and Lineback

Nays: None

Motion: Passed

**POSSIBLE FINDINGS:**

1. The proposed use is conditionally permitted within the Land Use Title and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all applicable provisions of this Code. In other words, the proposal would not have a significant impact on the neighborhood. The proposal simply extends a conditional use that was granted to the prior convenience store operator at the same location for the same use.
2. The proposed use is consistent with the General Plan. No issues to the contrary have been identified.
3. The approval of the conditional use or special exception permit for the proposed use complies with the requirements of state, federal and Midway City or other local regulations. The applicant shall obtain approval of the CUP, Local Consent, Business License, Alcohol License, and obtain and comply with all applicable state licensing requirements of the DABS.
4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored. No issues have been identified, nor were any identified under the prior conditional use granted to Ridley’s Express for the same operation (convenience store) at the same location.
5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety,

convenience, or welfare to the City. The proposed use and associated traffic are consistent with commercial uses in the commercial zone of the City and consistent with the prior use at this location.

6. The subject site is physically suitable for the type and density/intensity of the proposed use. It appears that the proposal is suitable based upon the existing approved use and is consistent with the prior equivalent use at the same location, formerly operating as Ridley's Express.
7. There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to ensure that the proposed use would not be detrimental to public health and safety. No detrimental impacts have been identified or became apparent under the prior equivalent use at the same location (Ridley's Express) under the CUP and local consent granted.
8. The proposed conditional use permit would allow the selling of closed container alcohol at the Market Express for consumption off-premises.
9. The State does regulate this type of license and approval from the Department of Alcoholic Beverage Services is required.

#### **PROPOSED CONDITIONS:**

- No alcohol related signage will be visible on the exterior of the building or on the inside, visible from the outside.

#### **POSSIBLE ACTIONS**

1. Approval (conditional). This action can be taken if the City Council feels that conditions placed on the approval can resolve any outstanding issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council feels that the request does not meet the intent of the ordinance.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial





