



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: January 7, 2004

Approved

Date:

COUNCIL DISTRICT: CITYWIDE
SNI AREAS: ALL

SUBJECT: ADOPTION OF A RESOLUTION INITIATING AN ORDINANCE AMENDING PART 7 OF CHAPTER 20.80 OF TITLE 20, THE ZONNG CODE, TO ALLOW THE CONCURRENT SALE OF FOOD AND ALCOHOL AT GASOLINE SERVICE STATIONS UNDER CERTAIN CIRCUMSTANCES.

RECOMMENDATION

Planning staff recommends that the City Council adopt a resolution initiating proceedings to amend Part 7 of Chapter 20.80 of Title 20 of the San Jose Municipal Code to allow the concurrent sale of food and alcohol at gasoline service stations under certain circumstances.

BACKGROUND

On September 16, 2003, upon further discussion of the issues of the concurrent sale of food and alcohol at gasoline stations, the City Council directed the City Attorney and the Administration to bring back to the City Council the following:

1. A draft ordinance amending Title 20.80.550 removing the prohibition on the concurrent sale of food and grocery items at gasoline service stations.
2. Recommendations for the appropriate zoning, land use designations, and/or development standards for the concurrent retail sale of gasoline and grocery items.
3. Research of crime statistics and other public safety resources to identify nuisance activities related to the sale of alcohol at mini-marts and convenience stores.
4. A draft ordinance with minimum operational and development standards to address any nuisance activities that have been identified.
5. Establish a review schedule for the ordinance to ensure it is achieving its intended purpose.

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Subsequent to Council's action, the City Attorney and the Director of Planning received a memorandum dated September 24, 2003 from Vice Mayor Pat Dando, Councilmember Forrest Williams, and Councilmember Linda LeZotte requesting that staff return to the City Council with an "...ordinance option that would allow grocery convenience stores at gas stations without selling alcohol."

Staff from the Department of Planning, Building and Code Enforcement and the City Attorney's Office have worked together in the preparation of this memo to respond to the direction of the City Council as a whole as well as the subsequent memorandum. Additional coordination was done with the Police Department.

ANALYSIS

Current Zoning Regulations

The adoption of Ordinance 22026 in June of 1985 set in place the current prohibition on the combination of gasoline service stations with the sale of food and grocery items (including alcoholic beverages). This prohibition does not apply to the retail sale of prepackaged soft drinks, cigarettes, and snack foods from automatic vending machines. Additionally, there is no prohibition on other permitted uses in combination with the sale of gasoline. Other uses typically combined with gasoline service stations include minor vehicle related service and repair, the retail sale of auto related products, and the installation of tires, batteries, and accessories. A development permit is required to review any alterations or additions to a gas station, including the case of a new use, to determine the potential need for additional parking spaces and/or circulation changes.

The City's current regulations would not be allowed under current State law (that prohibits cities from not allowing the concurrent sale of beer and wine and gasoline). However, the City's current prohibitions pre-existed State law and were specifically grandfathered in when this State law was adopted. Any modification to the City's current regulations will eliminate forever the grandfathering status presently enjoyed by those regulations and any new City regulation in this area must comply with this State law.

Proposed Regulations

In response to City Council direction, staff has developed a draft ordinance that proposes to eliminate the existing ban on the concurrent sale of food, grocery items, and alcoholic beverages, at gasoline stations and includes provisions allowing for such sales with certain limitations and development standards. Staff has also included recommendations on the appropriate zoning designations for the subject combined uses as well as minimum operational and development standards for such combinations. Additional information on crimes associated with existing gasoline service stations and the sale of alcohol in the City has been obtained from the Police Department and is provided for consideration by the City Council in their decision. Staff also has prepared a recommended time frame for review of the new provisions, if adopted, to

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determine whether the intended purpose of the ordinance, encouraging the upgrading of blighted service station sites, is being met.

Permit Requirement

The current zoning regulations treat a gasoline service station as a separately enumerated conditional use in the CP Commercial Pedestrian and CN Commercial Neighborhood zoning districts, a permitted use in the CG Commercial General zoning district, and a conditional use in the IP Industrial Park, LI Light Industrial and HI Heavy Industrial zoning districts in cases where there is a Mixed Industrial Overlay General Plan land use designation. Staff proposes no change in these regulations. However, staff proposes that in all cases where a gasoline service station is combined with any other enumerated use, permitted or conditional, a Conditional Use Permit would be required.

Limitation on Combined Uses

A gasoline service station is a use typically dominated by vehicular movement on the site as patrons refuel their cars then promptly exit the site. Additional uses on a gasoline service station site that introduce the need for pedestrian circulation, such as retail uses, restaurant uses, or a carwash, create a potential for conflict between vehicles and pedestrians. If the site also has a car repair service use, then there are additional needs for employee parking and car storage for the cars being serviced.

Approximately 89 of the 187 gasoline service stations in the City of San Jose are on parcels ranging from 0.1 acre to 0.5 acre. Eighty-three are on sites between 0.5 and one (1) acre in size, and 15 are on sites larger than one (1) acre in size. Given the nature of a gasoline service station and the high volume of vehicular traffic on-site, staff is proposing to limit the total number of uses on gas station sites that are one (1) acre or less to a total of two (2) uses. Uses would be defined as those uses enumerated in Title 20, as amended.

The proposed limitation would require gasoline service stations that currently do not have more than one use on site get a Conditional Use Permit if they wanted to add any additional uses beyond the gasoline service station use, including minor vehicle service and repair that is currently considered incidental to a gasoline service station. Staff proposes to eliminate the “incidental” vehicle repair service as part of a gasoline service station. The service would now fall under a new enumerated use of “minor vehicle service and repair” which would include air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-ups, oil changes, and smog checks, as well as tires, batteries and accessories installation.

Examples of a combined use on a site one (1) acre or less could be but are not limited to: gasoline service and minor vehicle service and repair, gasoline service and the retail sale of goods and merchandise (including food but excluding off-sale of alcohol), gasoline service and a public eating establishment, or gasoline service and the off-sale of alcohol. All uses listed above are enumerated as separate uses in the existing use tables in Title 20.

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Off-Sale of Alcohol

Staff proposes, in the case where off-sale of alcohol is combined with gasoline service, the sale be limited to beer and wine. This limitation is consistent with State law and other jurisdictions allowing combined uses. The proposed limitation would restrict the larger food retailers with full alcohol sales including distilled liquors on big parcels. If these businesses wanted to include gasoline sales on site, a new independent parcel would need to be created for the gas station use.

Minimum Site Development and Maintenance Standards

Testimony was provided to the City Council that the intent of allowing additional classes of uses to be combined with gasoline service stations is to create an economic opportunity that would lead to investment in blighted stations and encourage site upgrades benefiting the community. To ensure this intent is implemented, staff has proposed a set of minimum site development and maintenance standards that reflect the City's current site design and policies related to development and specific to gasoline service stations. The minimum standards proposed in the draft ordinance address the following issues: landscape improvements, exterior lighting, driveway locations, public right-of-way dedication and/or improvements, water and air services, public restrooms, parking, signage, off-sale of alcohol, and security. The draft ordinance contains the proposed specific regulations.

Legal Nonconforming Combined Uses

In the case of a legal nonconforming combined use, staff proposes to treat such uses under the existing nonconforming provisions in Title 20. Any expansion, enlargement, or alteration of said use would require a Conditional Use Permit in zoning districts where both uses are allowed, and a Special Use Permit in all other zoning districts. In limited instances where proposed changes would not intensify the use, a Site Development Permit may be appropriate.

Crime Statistics

In response to the City Council's request for crime statistics more relevant to the issue of combined gasoline sales and alcohol sales, staff's best effort was to generate site specific crime data. From a list of gas stations in the City that have an active Alcohol Beverage Control (ABC) license in effect, the Police Crime Analysis Unit provided site specific data on twenty-nine (29) stations for the period of January 2003 through November 2003 that includes calls for service and reported incidents. During this period there were 621 calls for service and 114 reported incidents.

Review of Ordinance

Should the City Council adopt an ordinance amending Title 20 related to the concurrent sale of food and alcohol at gasoline service stations, a review of the ordinance should occur at a future time to determine whether the new provisions have accomplished the intended goal of the ordinance to encourage investment in blighted properties. Due to the nature of development and the time frame involved in securing Planning and Building Permits, as well as factoring in the

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time necessary for actual construction, staff suggests a time frame of three years to review the ordinance to determine whether such investment has occurred. A shorter time frame of one year could be used to determine if any properties have secured permits for such combined uses and improvements.

CONCLUSION

California law bans a city from imposing a prohibition on the concurrent sale of motor fuel and beer and wine. The City of San Jose's current prohibition was grandfathered in State law and can continue indefinitely in its current form. However, any modification to the City's current prohibition will eliminate the grandfathered status of the City's regulations in this area forever. Staff's proposal, should the City Council want to consider eliminating the current prohibition on combined gasoline and food and alcohol sales, is consistent with State law even with the proposed limit on the number of combined uses on smaller sites. The draft provisions provide for the combination of gasoline service with off-sale of alcohol in zoning districts where both uses are otherwise allowed, with a Conditional Use Permit, and do not prohibit the concurrent sale of gasoline and beer and wine. The limitation on beer and wine as well as the requirement of a Conditional Use Permit are consistent with and recognized under State law.

COORDINATION

Preparation of this staff report has been coordinated with the Police Department and the City Attorney's Office.

CEQA

Not a Project.

STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement