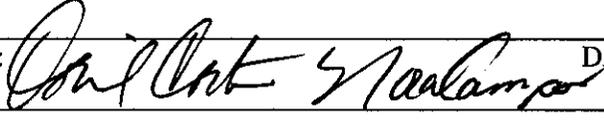




MEMORANDUM

TO: Honorable Mayor & City Council **FROM:** Vice Mayor Dave Cortese
Councilmember Nora Campos

SUBJECT: CP06-038 & ABC06-015 **DATE:** March 20, 2007

APPROVED:  **DATE:** 3/20/07

RECOMMENDATION

It is recommended that the San Jose City Council approve the Planning Director's recommendation to approve the subject conditional use permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol.

BACKGROUND

The southeast corner of Quimby and White Roads in Council District 8 is located within an RDA revitalization area. Prior to May 2006, the shopping center at this corner was negatively viewed and not highly-trafficked because of its blighted state, despite RDA's efforts to unify the multiple property owners to mitigate the shopping center's look and feel.

In May 2006, Manila Oriental Market (MOM), a family-owned, high-end Asian food market chain, located its fourth market at this shopping center through a lease-ownership of the largest square footage building. Since its grand opening, MOM has averaged over one million dollars monthly in revenues with projections of exceeding more than two million dollars per month. MOM has utilized its good fortunes and worked closely with city staff to reinvigorate the overall center by repaving the parking lot, installing new light fixtures, rebuilding electrical boxes, maintaining the on-site trees and hiring overnight security to discourage negative after-hour activities. In summary, MOM has been a positive force at this center and the leaseholders and surrounding neighborhoods have benefited from MOM's presence.

Consistent with other high-end food service markets, MOM desires to expand their services to include the sale of liquor, beer and wine for off-site consumption. Their CUP request meets the *spirit* of the city's enhanced finding requirements, however it fails to strictly meet two of the factual finding requirements. This necessitated the Planning Commission having to deny the CUP request and the associated Determination of Public Convenience or Necessity. It is important to note that although the Planning Commission had to deny the requests, members of the commission expressed their regret at having to do so and encouraged the applicant (MOM) to appeal to the City Council, in recognition of the worthiness of this CUP request and the applicant's efforts to revitalize the shopping center and be a good community partner. It is also important to note that included in the staff report is an assessment by the San Jose Police Department, stating that this is not a high-crime area. Last, it should be noted

that the Planning, Building and Code Enforcement Director recommends approval of the subject CUP and associated findings of significant overriding public benefit.

ANALYSIS

It is our recommendation that the City Council make a finding of overriding public benefit for the issuance of the CUP (as recommended by staff), which is permissible when not all the mandatory findings can be met. The Council can make such a finding in conjunction with the following special findings:

- 1) The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety
- 2) The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

We urge our colleagues on the City Council to support this appeal and approve the CUP and associated determination.