



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Nora Campos

SUBJECT: SEE BELOW

DATE: March 6, 2009

Approved

Nora Campos

Date

3/6/09

**SUBJECT: DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY (PCN)
TO ALLOW THE OFF-SALE OF BEER, WINE AND LIQUOR AT
REGION SUPERMARKET**

RECOMMENDATION

1. Approval of the required findings for a Determination of Public Convenience or Necessity (PCN) and a significant overriding public benefit by the proposed off-sale of alcohol at Region Supermarket located at 400 S. King Road.
2. Approval of a recommendation to the Department of Alcohol and Beverage Control (ABC) that an off-sale alcohol license be granted to Region Supermarkets under the following conditions:
 - a. The applicant will not sell alcoholic beverages between the hours of 10:00 pm and 6:00 am.
 - b. The applicant will not sell single-serving alcoholic beverage containers, including but limited to beer and distilled spirits.
 - c. The applicant will maintain all distilled spirits in controlled-access cabinets.
 - d. The applicant will maintain all beer and wine in refrigerators located in the rear corner of the store, furthest from the store entrance and exit.

BACKGROUND

On November 10, 2008, the applicant requested a PCN to allow the off-sale of alcoholic beverages at an existing retail grocery store (Region Supermarket). The subject site is located in the Mayfair Strong Neighborhoods Initiative (SNI) redevelopment area.

The Planning Commission voted to deny the Determination of Public Convenience or Necessity as mandated by the Municipal Code. However, four of the planning commissioners urged the City Council to overturn the planning commission's automatic denial and issue a PCN.

The Pink Elephant Center is a popular historical shopping center in East San José. Based on information provided by the applicant, an Alcoholic Beverage Control (ABC) license has existed on-site almost continuously since 1963. Region Supermarket is the anchor tenant for the shopping center and generates foot traffic for the other businesses in the center. In June 2008,

Region Supermarket opened their business and, since then, the owners have been good neighbors to the surrounding community. They have improved the shopping center's façade, maintained the parking lot, kept the surrounding property clean, and have contracted services to pick up stray shopping carts in the neighborhood. The Mayfair SNI NAC strongly supported the applicant's request for an ABC license at two community meetings.

ANALYSIS

In order to override the Planning Commission's mandatory denial of this application, the City Council must make at least one of four special findings outlined in the City Council-adopted regulations.

Based on communication with the applicants, staff and community, the following two findings meet the criteria for the City Council to make a Determination of Public Convenience or Necessity in order for approval.

Finding A – 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 health and safety.

Prior to Region Supermarket opening in 2008, there were several failed attempts by other businesses to open a full-service grocery store. In the past, the other shopping center businesses have struggled without a strong anchor tenant, which Region Supermarket has been. The store operator has indicated that with an alcoholic beverage license, the business will attract more customers looking for a complete and convenient experience. The Pink Elephant Center improvements have transformed the corridor, which has helped encourage other businesses along S. King Road to make property improvements. The store owner has made many improvements to the center and maintains the parking lot and public right-of-way.

According to the San José Police Department, the subject property is located in Police Beat M4. The reported crime statistics as defined by the California Business and Professions (B&P) Code, Section 23958.4(c) are not over the 20 percent crime index, thus the location is not considered unduly concentrated per B&P Section 23958.4(a)(1). Furthermore, according to the California Department of Alcoholic Beverage Control (ABC) records, census tract 5036.02 does not exceed the ratio of off-sale retail licenses.

Finding D – 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.

Of the 9,200 square-foot retail space, less than 10 percent of the grocery store floor area will be dedicated to the sale of beer, wine and liquor, a percentage that is incidental to the overall use. A condition has been added to the draft resolution which limits the relative percentage of floor area dedicated to the sale of alcoholic beverages to ensure that the off-sale of alcohol remains an incidental component to the existing retail use.

Region Supermarket is a grocery retailer that specializes in Latino foods and goods. A wide cross-section of clientele shops at Region Supermarket and a significant number of customers are expected to purchase alcohol along with other grocery items if made available at the store, thereby reducing the need for patrons to go to a separate store to purchase alcohol.

Region Supermarket operators have stated that alcoholic beverages, except beer and wine, will be secured in controlled-access cabinets. The operators will require customers to ask for assistance in order to purchase these types of alcoholic products. These types of alcoholic products will be at the check-out stand so that clerks can verify proper identification. In addition, I recommend requiring that beer and wine be located in the rear corner of the store. These two measures are designed to prevent individuals, especially underage persons, from running out of the store with alcoholic beverages. These are common business practices used at other stores selling alcoholic products.

I respectfully urge your approval of the recommendations I have outlined.