



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Xavier
Campos

SUBJECT: SEE BELOW

DATE: May 17, 2011

APPROVED:

DATE:

5/13/11

SUBJECT: CP11-017 and ABC11-003. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVIENCE OR NECESSITY TO ALLOW OFF-SALE OF ALCOHOL (FULL RANGE) AT AN EXISTING FULL-SERVICE GROCERY STORE IN AN EXISTING 39,661 SQUARE-FOOT TENANT SPACE IN A SHOPPING CENTER LOCATED AT 1070 SOUTH WHITE ROAD ON A 14.1 GROSS-ACRE SITE.

RECOMMENDATION

Approve the Director of Planning, Building and Code Enforcement recommendations to uphold the appeal of the Planning Commission's decision and approve the Subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for the Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity for the full-service grocery store located at 1070 South White Road.

BACKGROUND

Mi Pueblo Food Center is a family-owned company headquartered in San Jose with 20 store locations and over 3,000 employees. Mi Pueblo stores are full-service supermarkets which include grocery, bakery, deli, and produce departments. Mi Pueblo's mission is to create positive, memorable experiences for their customers through warm, friendly, bilingual customers' service. Their stores are known for being family-oriented, safe, clean and for having a festive ambulance and colorful, interior décor that is reminiscent of Latin American architecture and culture.

On March 8, 2011, Mi Pueblo requested a Conditional Use Permit (File No. CP11-017) to allow the off-sale of alcoholic beverages at tenant space, 1070 South White Road, located in a shopping center on the northeast corner of Story Road and White Road.

The previous tenant and grocery operator, Su Vianda, sold alcohol for off-site consumption as a legal nonconforming use on the tenant space prior to Mi Pueblo's occupancy. However, Su Vianda ceased operations more than six month prior to Mi Pueblo lease, resulting in a lapse to transfer the alcohol license for off-sale use. It is this reason the current operator, Mi Pueblo Food Center, is seeking to obtain a Conditional Use Permit and Determination of Public Convenience or Necessity (PCN) to allow for the off-sale of alcohol.

ANALYSIS

The City Council-adopted regulation changes to the Conditional Use Permit and Determination of PCN processes for establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective on February 1, 2006. The updated regulations revised the approval processes and includes enhance findings for approval of an off-sale proposal as part of a Conditional Use Permit, and mandatory findings for a Determination of PCN, when such a determination is required by the State Department of Alcoholic Beverage Control.

Under the revised policy, the City Council has the authorization to make a Determination of PCN if it is discovered that there is at least one special finding to override public benefit or benefits served by the proposed use. As stated in staff's memo, there are two identified "significant or overriding public benefit or benefits." The aforementioned findings are as follows:

- 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 public health or safety.*

The subject use would be part of an existing full service grocery store at a neighborhood commercial shopping center which is well served by existing infrastructure, fronting on arterial public streets and surrounded by commercial uses. The sale area for alcoholic beverages is incidental to the larger sales of food products and would comprise only three percent (3%) of the store's net floor area. The Police Department has indicated that they are neutral to this proposal and that this site is not located in an area of high crime. The proposal use would occupy a commercial building with adequate parking, landscaping and trash and loading facilities that was developed consistent with the City's Commercial Design Guidelines. The addition of the off-site uses would further the City's goals of economic development by contributing to the viability of conveniently located full-service grocery stores in the City of San Jose, and enhance opportunities for the provision of fresh meat and produce in proximity to residents and workers in the City. Based on the above analysis, staff concludes that the above general findings related to the granting of a Determination of Public Convenience or Necessity can be made.

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.

The existing store is an existing large full-service grocery store/supermarket that sells a complete array of food items including fresh produce and meat. The percentage of net floor area allowed for the off-sale of alcoholic beverages would not exceed 5% of the total floor area allowed for the off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and the subject store does provide a more complete and convenient shopping experience.

Therefore, based on the Director's analysis it should be concluded that all the required findings for issuance of the Conditional Use Permit for a full range of off-sale of alcoholic beverages can be made with regards to the proposal.