



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** September 2, 2011

Approved

Date

9/14/11

**COUNCIL DISTRICT:** 5  
**SNI AREA:** East Valley/  
680 Communities

**SUBJECT:** CP11-007 and ABC11-002. Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol, limited to beer and wine, at an existing full-service grocery store in an existing 7,000 square-foot tenant space located at the southeast corner of Story Road and McGinness Avenue (2806 Story Road) on a .74 gross-acre site.

## **RECOMMENDATION**

The Director of Planning, Building and Code Enforcement recommends the City Council 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 a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol, limited to beer and wine, and grant a Determination of Public Convenience or Necessity.

## **OUTCOME**

Should the Council approve the proposed Conditional Use Permit, the proposed retail tenant space would continue to operate as an existing full-service grocery store with a full of range of groceries, including fresh meat and produce as it presently exists, with the ability to acquire a State of California Alcoholic Beverage Control (ABC) license to allow the ability for the existing store to sell beer and wine for off-site consumption.

## **EXECUTIVE SUMMARY OF OFF-SALE APPROVAL PROCESS**

On February 1, 2006, Council-adopted regulations affecting establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective. The updated regulations revise the approval process and include enhanced findings for approval of an off-sale proposal as part of a Conditional Use Permit and mandatory findings for a Determination of Public Convenience or Necessity, when such a determination is required by the State Department of Alcoholic Beverage Control.

The enhanced findings for a Conditional Use Permit include a provision to address the proliferation of establishments in close proximity to existing off-sale uses by requiring additional findings when the number of establishments are more than four within a 1,000-foot radius. Additionally, the existing finding that addresses the location of such establishments proximate to sensitive uses such as schools and residences has been augmented to add public parks, childcare centers, social service agencies, and residential care and service facilities to the list of sensitive uses. If a new off-sale alcohol establishment is to be located within 150 feet of a residential use or residentially zoned property, or within 500 feet of one of the other specified sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect the sensitive use(s).

The State Department of Alcohol Beverage Control, prior to licensing of a new off-sale alcohol establishment in an area of undue concentration or high crime (as defined by State law), requires business operators to obtain a Determination of Public Convenience or Necessity from the local jurisdiction. All applications for a Determination of Public Convenience or Necessity are considered by the Planning Commission in conjunction with any associated application for a Conditional Use Permit. The revised regulations include factual findings the Planning Commission is required to make in order to consider a request for a Determination of Public Convenience or Necessity. The four findings are as follows:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
2. Approval of the proposed use would not result in a grouping of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius from the proposed use; and
3. The proposed use would not be located within 500 feet of a school site, day care center site, public park, social services agency site, residential care facility site or residential service facility site, or within 150 feet of a site upon which a residential use is conducted or that is residentially zoned; and

4. Alcohol sales would not represent a majority of sales of the proposed use.

Should the Planning Commission find that the above conditions exist, further consideration of the request is subject to discretionary findings. If the Planning Commission is unable to make all necessary findings noted above in order to consider making a Determination of Public Convenience or Necessity, it is compelled to deny both the request for a Determination of Public Convenience or Necessity as well as any associated Conditional Use Permit in that approval of one without the other is moot. Appeal of the Planning Commission's decision is heard by the Council. One of the changes made to the ordinance was to include the opportunity for the Council to make a finding of overriding public benefit should one of the mandatory factual findings not be met. The Council is the only decision-making body that can make the finding of greater public benefit.

This report, along with the Planning Commission staff report, includes a discussion of the project and whether the required findings can be made in both the case of the Conditional Use Permit and in the Determination of Public Convenience or Necessity. The Planning Commission was unable to make all necessary findings for a Determination of Public Convenience or Necessity in that the proposed subject use is in a Strong Neighborhoods Initiative (SNI) area (East Valley/680 Communities), within 150 feet of a residential use, within 500 feet of a school (Achieve Kids), and would lead to a grouping of more than four off-sale establishments within 1000 feet of the proposed use. Therefore, the Planning Commission was compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity as discussed below. The applicant subsequently appealed the Commission's decision to deny these applications to the Council.

Based on an analysis of the findings required for the Council to approve the Conditional Use Permit and Determination of Public Convenience or Necessity in the face of negative factual findings by the Planning Commission, staff concludes that one of the necessary findings can be made to determine that a "significant or overriding public benefit or benefits will be served by the proposed use." For these reasons, staff recommends that the Council approve the request for a Conditional Use Permit and Determination of Public Convenience or Necessity.

## **BACKGROUND**

### **Planning Commission Hearing**

On July 13, 2011, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP11-017 & ABC11-003). The Director of Planning recommended mandatory denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because three of the required four findings for the Determination of Public Convenience and Necessity could not be made. As stated in the original staff report (see attached), staff was unable to find that the proposed off-sale use is not located in a Strong Neighborhoods Initiative (SNI) Area, is not within 150 feet of a residential use or residentially zoned property and unable to find that the use is not

within 500 feet of a school, and was unable to find that the proposed use would not lead to the grouping of more than four off-sale uses within a 1,000-foot radius from the proposed use.

Gregg Kays, representing the applicant, stated the background of the applicant and explained that the applicant intended to provide the off-sale of beer and wine as a convenience to be offered at the existing Mi Rancho grocery store. There were no speakers from the public. The Planning Commission voted unanimously to deny the subject application 7-0-0.

### **Appeal**

On August 4, 2011, an appeal was filed by the applicant's representative, Lydia Engdol (see attached Notice of Permit Appeal and letter supporting the Appeal). The applicant states in their appeal that all necessary findings for the requested Conditional Use Permit and Determination of Public Convenience and Necessity can and should be made but the Planning Commission is unable to make the findings and that the mandatory denial should be reversed.

### **ANALYSIS**

The original staff report (see attached) provides a full analysis of this project with respect to the findings required to be made by the Planning Commission to approve a Conditional Use Permit and to make a Determination of Public Convenience or Necessity. In summary, staff's review provided the Planning Commission with information that enabled that body to make required findings for approval of the Conditional Use Permit, and enabled the Commission to make only one of the four findings required to grant a Determination of Public Convenience or Necessity. For the subject application, approval of both a Conditional Use Permit and Public Convenience or Necessity is necessary in order for a Liquor License to be issued by the State of California.

Upon an appeal, per Title 6 of the San José Municipal Code, where the four required findings cannot be made, the Council may still make a Determination of Public Convenience or Necessity if it finds that that a "significant or overriding public benefit or benefits will be served by the proposed use." In addition, the Council would also be required to make at least **one** of the four special findings as listed below in italics. Following the description of the finding, staff has provided analysis of the 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 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 an arterial public street and surrounded by commercial uses. The sales area for alcoholic beverages is incidental to the larger sales of food products and would comprise no more than five percent (5%) of the store's net floor area. The Police Department has stated that

they are neutral to this proposal and that this site is not located in an area of high crime. The proposed 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-sale 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 José, 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 finding can be made.

*B. 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 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. Therefore, the proposed 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. For these reasons, this finding can be made.

### **Findings of Overriding Public Benefit**

Although the four factual findings for consideration of a Determination of Public Convenience still cannot be made, staff has concluded that two of the four findings, as described above, can be made relative to the addition of off-sale of alcohol within a full service grocery store. Based on the analysis of the required findings, staff has concluded that there would be a significant or overriding public benefit served by the proposed use by allowing the incidental sale of beer and wine in conjunction with a full service grocery store.

### **CONCLUSION**

Based on the above analysis and the previous analysis provided in the attached staff report to the Planning Commission, staff concludes that all the required findings for issuance of a Conditional Use Permit for the full range of off-sale of alcoholic beverages can be made with regard to the proposal. Further, staff concludes that there would be an overriding public benefit served by allowing the off-sale of alcohol in conjunction with a full service grocery store and that two findings specific to the granting of a Determination of Public Convenience or Necessity can be made. Given the ability to make the relevant findings, staff recommends that the Council uphold the appeal of the Planning Commission's decision and approve the subject Conditional Use Permit and grant a Determination of Public Convenience or Necessity for the off-sale of alcohol, limited to beer and wine, in accordance with the facts, findings and conditions noted in the draft resolution.

### ALTERNATIVES

The Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to deny the subject Conditional Use Permit and not grant a Determination of Public Convenience or Necessity, or
2. Approve the project as requested by the applicant/appellant and permit the off-sale of alcohol, limited to beer and wine, at an existing full-service grocery store.

### PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site. This memorandum and the staff report to the Council are posted on the City website. Staff has been available to discuss the proposal with members of the public.

### COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

HONORABLE MAYOR AND CITY COUNCIL

September 2, 2011

Subject: CP11-007 / ABC11-002

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**CEQA**

Exempt.

/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For questions please contact Mike Enderby at 408-535-7843

Owner:	Applicant:	Attachments:
Andrew Ajluni Trustee & Et Al 350 Piercy Road San Jose, CA 95138-1401	Mi Rancho Supermarket, Inc. 137 Roosevelt Avenue Redwood City, CA 94061	<ul style="list-style-type: none"><li>▪ Planning Commission Staff Report and Attachments</li><li>▪ Appellant's correspondence</li></ul>

*Resolution Reflecting Staff Recommendation*

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ APPROVING A CONDITIONAL USE PERMIT AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE OF ALCOHOL, LIMITED TO BEER AND WINE, IN CONJUNCTION WITH AN APPROXIMATELY 7,000 SQUARE-FOOT FULL-SERVICE GROCERY STORE LOCATED AT 2806 STORY ROAD ON AN APPROXIMATELY .74 GROSS-ACRE SITE.**

**FILE NO. CP11-007 & ABC11-002**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on January 25, 2011 applications (File Nos. CP11-007 & ABC11-002) were filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol, limited to beer and wine only, in conjunction with an approximately 7,000 square-foot full-service grocery store on that certain real property (hereinafter referred to as "subject property"), situate in the CP-Commercial Pedestrian Zoning District, located on the southeast corner of Story Road and McGinness Avenue (2806 Story Road), and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Mi Rancho Supermarket, 2806 Story Rd, San Jose, CA," received June 30, 2011 said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone

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interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial with Neighborhood Business District Overlay on the adopted San José 2020 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the CP-Commercial Pedestrian Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning has determined pursuant to the provisions of CEQA as well as the provisions of Title 21 of the San José Municipal Code that this project is exempt from environmental review.
4. The project proposes the off-sale of alcohol, beer and wine only, at an approximately 7,000 square-foot existing full-service grocery store located on an approximately .74 gross-acre site.
5. The applicant proposes to sell alcoholic beverages, beer and wine only, for off-site consumption as a minor part of the overall sales area of the full-service grocery store, not to exceed five percent (5%) of the net floor area; such that alcohol sales would not represent a majority of the proposed full-service grocery store use.
6. The project includes no exterior modifications to the existing building on the subject property.
7. The subject tenant space is located on a commercially designated and used parcel that is surrounded by commercial uses to the north, west, and east, and commercial and residential uses to the south.
8. No increase in parking demand results from this proposed project.
9. The subject retail establishment is permitted to open at 6:00 a.m. and close at midnight as-of-right.
10. The Police Department memorandum indicates that the project site is not located within an area of high crime, but is within a census tract that has an over-concentration of off-sale licenses.
11. The Police Department has indicated that they are neutral to the issue of off-sale of alcohol in conjunction with the full-service grocery store at this location.

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12. The proposed use would lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use.
13. Due to the undue concentration of off-sale licenses, the project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off-sale of alcoholic beverages. The granting of such a determination requires that four specific factual findings be made as prescribed by Title 6 of the San José Municipal Code in order to consider granting a Determination of Public Convenience or Necessity.
14. The proposed use is within a Strong Neighborhood Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs.
15. The project site is located within 500 feet of a school (Achieve Kids).
16. The project site is located within 150 feet of residentially zoned property.
17. There are five (5) other off-sale establishments or licenses issued within 1,000 feet of the subject site per data from the State Department of Alcoholic Beverage Control, therefore the proposed use would lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use.
18. The approval of this permit would add more off-sale establishments to the area.
19. The proposed sales of alcoholic beverages are incidental to a larger retail use.
20. The full-service grocery store sells a complete array of food items including fresh produce and meat.
21. The subject grocery store is located on the corner of a major arterial and a collector street where the access to said site is primarily from the major arterial.
22. The building on the subject site is oriented out towards the major arterial.
23. The school within 500 feet of the subject site employs site controls and monitoring of its students such that the sale of alcohol within the larger grocery store will not have a harmful effect on the students.
24. The residential nearby is located behind the subject store and does not have direct access except via the major streets.
25. Prior to the City Council public hearing, a representative of a neighborhood organization wrote in support of the proposed use to support the viability of the existing full-service grocery store/supermarket.
26. Without the granting of a Determination of Public Convenience or Necessity, the Conditional Use Permit cannot be effectuated.
27. The Planning Commission denied the proposed request for the off-sale of alcohol on July 13, 2011 because it could not make all four (4) of the mandated findings set forth in the San José Municipal Code in order to consider granting a Determination of Public Convenience or Necessity.
28. The applicant appealed the Planning Commission decision on August 4, 2011.

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The City Council concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit, that:

1. For the use located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and
2. The use is closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, such that the resulting excess concentration of such uses will not:
  - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the area; or
  - c. Be detrimental to public health, safety or general welfare.
3. The use is not located closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, secondary school, or a college or university, but is located closer than 500 feet from an elementary school (Achieve Kids). The use is located closer than one hundred fifty (150) feet from a residentially zoned property, and the subject building is situated and oriented in such a manner such that the off-sale establishment would not affect such residential use or elementary school.

Based on the above stated facts, the City Council concludes and finds with regard to the findings for a Determination of Public Convenience and Necessity that:

- a) The proposed use is located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and
- b) The proposed use would lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and
- c) The proposed use would be located within five hundred feet of a school (Achieve Kids), but not within 500 feet of a day care center, public park, social services agency, or residential care or service facility. The proposed use is within one hundred fifty feet of an existing residence.
- d) Alcohol sales would not represent a majority of the proposed use.

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Further, with respect the additional findings for a Determination of Public Convenience and Necessity to be considered as part of an appeal, the City Council concludes and finds that:

1. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area.
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.

Finally, the City Council finds and concludes, based on the all of the above facts and findings, that that there would be a significant or overriding public benefit served by the proposed use.

In accordance with the findings set forth above, a Conditional Use Permit and a Determination of Public Convenience and Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this permit and determination except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**CONDITIONS**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions and all of the requirements set forth in San Jose Municipal Code Section 20.100.290.D shall have been fully performed or caused to be fully performed.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the City Council, granting this Permit, if within such two-year period, the proposed use of this site has not

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commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San Jose Municipal Code.

3. **Use Authorization.** This Conditional Use Permit authorizes the sale of off-sale of alcoholic beverages, beer and wine only, to be implemented only in conjunction with a full-service grocery store on the property subject to the terms of this permit as follows:
  - a. The sale and display of beer and wine shall be limited to no more than five percent (5%) of the net floor area of the full-service grocery store.
4. **Conformance with Plans.** The use of this property shall conform to approved plans entitled "Mi Rancho Supermarket, 2806 Story Rd, San Jose, CA," received June 30, 2011 on file with the Department of Planning, Building and Code Enforcement.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
7. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
8. **Lighting.** This permit allows no new exterior lighting except as designated on the approved plans.
9. **Waste Discharge.** The proposed facility shall conform to the City of San José industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system shall require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.
10. **Permittee Responsibility.** The permittee shall ensure that the use authorized by this Permit is implemented in conformance with all of the provisions of this Permit.
11. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed / permitted unless designated on the

*Resolution Reflecting Staff Recommendation*

approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

14. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved permits on the site.
15. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcoholic Beverage Control (ABC). The applicant shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
16. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
17. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
18. **Store Operator Point of Contact.** Store operator shall post in a visible location on the store premises a phone number, and other applicable contact information for the public to address questions and comments regarding management and maintenance of the subject store and store frontage.
19. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** this 27<sup>th</sup> day of September 2011, by the following vote:

*Resolution Reflecting Staff Recommendation*

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
DENNIS D. HAWKINS, CMC  
City Clerk

DRAFT