



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 11, 2012

Approved

Date

10/17/12

COUNCIL DISTRICT: 7

SUBJECT: FILE NOS. CP12-018 AND ABC12-006. CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE OF ALCOHOL AT A FULL-SERVICE GROCERY STORE LOCATED ON THE SOUTH SIDE OF STORY ROAD BETWEEN MCLAUGHLIN AND CLEMENCE AVENUE ON A 4.05 GROSS-ACRE SITE.

RECOMMENDATION

The Planning Commission voted 5-0-2 (Commissioners Cahan and Kamkar absent) to recommend that the City Council find the project in conformance with the California Environmental Quality Act (CEQA) and approve the proposed Conditional Use Permit and Determination of Public Convenience or Necessity, as conditioned, for the following reasons:

1. The project conforms to the General Plan Land Use/Transportation Diagram's designation of Neighborhood/Community Commercial, in that a grocery store with off-sale is in conformance with this designation.
2. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area and will not impair the utility or value of the property of other persons located within the vicinity of the site.
3. The proposed project conforms to the requirements of CEQA.
4. The addition of alcohol to a full service grocery store would provide for a more complete shopping experience. Since no more than 5% of the total sales floor space shall be dedicated to the sale of alcoholic beverages, the proposed use will be a minor portion of the business.

OUTCOME

Should the City Council approve the proposed Conditional Use Permit and Determination of Public Convenience or Necessity, the proposed full-service grocery store would be allowed the ability to acquire a State of California Alcoholic Beverage Control (ABC) license to allow the ability to sell alcoholic beverages for off-site consumption.

EXECUTIVE SUMMARY OF OFF-SALE APPROVAL PROCESS

On April 27, 2012, regulations adopted by City Council affecting establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective. The updated regulations revise the approval process and include a streamlined permit process for the approval of an off-sale proposal as part of a Conditional Use Permit and Determination of Public Convenience or Necessity, when such a determination is required by the State Department of Alcoholic Beverage Control.

The adopted ordinance streamlines the overall process by providing the Planning Commission an opportunity to make a recommendation to the City Council regarding the application in those instances where one or more of the four factual findings established under Title 6 for a Determination of Public Convenience or Necessity cannot be made by the Commission. Specifically, the ordinance:

- Retains all of the existing findings and clarifies the need for quantifiable information from the Chief of Police regarding 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.
- Maintains that in the instances that the Planning Commission can make all of the four factual findings, then the Planning Commission is the decision maker on the application. The application could still be appealed to the City Council.
- Acknowledges that in the instances that the Planning Commission cannot make one or more of the four factual findings, then the City Council is the decision maker and the Commission would, as with this project, have the opportunity to make a recommendation to the City Council regarding the application.
- Maintains the Council's ability to make a finding of significant and overriding public benefit or benefits will be provided by the proposed use.

The adopted ordinance provides a more direct process to get to hearing before the City Council if the Planning Commission cannot make all of the findings. Rather than forcing an applicant to file an appeal each time the Planning Commission must deny a request for a Determination of

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Public Convenience and Necessity because the requisite findings cannot be made, the new process places the Planning Commission in a recommending body role to the City Council as decision maker in that instance, removing the requirement for a formal appeal. The public hearing notice identified the City Council hearing dates on the same notice as the Planning Commission hearing.

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 within 150 feet of a residential use. Therefore, the Planning Commission made a recommendation that the City Council approve the request for a Conditional Use Permit and Determination of Public Convenience or Necessity as discussed below.

Based on an analysis of the findings required for the City Council to approve the Conditional Use Permit and Determination of Public Convenience or Necessity, the Planning Commission 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, Planning Commission recommends that the City Council approve the request for a Conditional Use Permit and Determination of Public Convenience or Necessity.

BACKGROUND

Planning Commission Hearing

On October 10, 2012, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP12-018 & ABC12-006). The Director of Planning recommended that the Planning Commission recommend approval of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity even though not all of the required four findings for the Determination of Public Convenience and Necessity could be made. As stated in the staff report (see attached), staff was unable to find that the proposed off-sale use is not within 150 feet of a residential use or residentially zoned property, however, the secondary findings to be made by the City Council could be made in that the addition of alcohol to a full service grocery store would provide for a more complete shopping experience and since no more than 5% of the total sales floor space will be dedicated to the sale of alcoholic beverages.

Public Testimony

One member of the public spoke in opposition to the proposal at the Planning Commission hearing expressing general concerns about over-concentration of alcohol establishments in the area.

Planning Commission Discussion

The Planning Commission voted 5-0-2 (Commissioners Cahan and Kamkar absent) to recommend that the City Council find the project in conformance with the California Environmental Quality Act (CEQA) and approve the proposed Conditional Use Permit and Determination of Public Convenience or Necessity, as recommended by staff.

ANALYSIS

The original staff report (see attached) provides a full analysis of this project with respect to the findings required to be made to approve a Conditional Use Permit and to make a Determination of Public Convenience or Necessity. Most noteworthy and in summary, there are two sets of findings (with four findings in each sets) under Title 6 for Determinations for Public Convenience or necessity. The Planning Commission is primarily responsible to assess the proposal with the first set of mandatory findings. In the event that not all of these finding can be made, as is this case, the City Council may make the final decision based on the second set of more general findings. The information provided enabled the Planning Commission to make required findings for approval of the Conditional Use Permit, and make only three of the four mandatory findings required to grant a Determination of Public Convenience or Necessity.

Findings of Overriding Public Benefit

Staff has concluded that under the secondary findings indentified under Title 6 to be made by the City Council that one of the four findings can be made to grant a Determination of Public Convenience or Necessity to allow off-sale of the full-range of alcoholic beverages at the subject store. Only one such finding must be made. In addition, a determination must be made that there would be a significant or overriding public benefit served by the proposed use. In this case, the addition of alcohol to a full service grocery store would provide for a more complete shopping experience.

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 the findings specific to the granting of a Determination of Public Convenience or Necessity can be issued in the case of off-sale of alcoholic beverages. Given the ability to make all the relevant findings, staff recommends that the City Council accept Planning Commission's recommendation 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 City Council in their review of the project can take the following actions:

1. Approve the project as recommended by the Planning Commission and permit the off-sale of alcoholic beverages at the proposed full-service grocery store, or
2. Deny the subject Conditional Use Permit and Determination of Public Convenience or Necessity.

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 Planning Commission 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.

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CEQA

Exempt.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

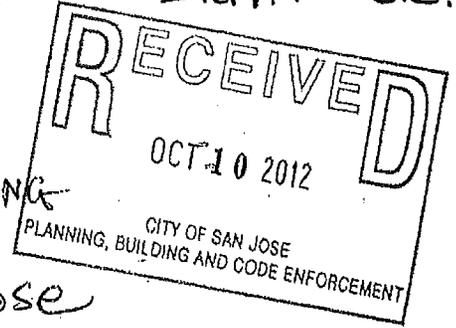
Attachments:

- Public correspondence
- Map identifying location of nearby off-sale establishments
- Planning Commission Staff Report and Attachments

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

PC 10/10/12

Item No. 3.c.



TO: planning commission HEARING
CITY council chambers
CITY HALL of SAN JOSE

To whom it may concern,

RE: Objection to the Conditional Use Permit to Allow Off-Sale of Alcohol
at 1070 STORY ROAD.

I object to the project that is being considered: CP12-018 & ABC12-006. Conditional Use Permit to allow off-sale of alcohol for a full service grocery store in an existing commercial building (formerly SaveMart) on a 4.05 gross acre site in the CP Pedestrian Commercial Zoning District, located on the south side of Story Road, between McLaughlin Avenue and Clemence Avenue (1070 STORY ROAD).

There are too many beer and wine, liquored locations in the area.

There are too many alcoholics, intoxicated people loitering in this area.

This is the East Side San Jose. We have high crime rates, high homicides and an under staffed police force. Allowing any more beer, wine and liquor establishments in this area would only negatively affect the community in this area.

**I OBJECT TO THE CONDITONAL USE PERMIT TO
ALLOW OFF-SALE OF ALCOHOL AT 1070 STORY
ROAD.**

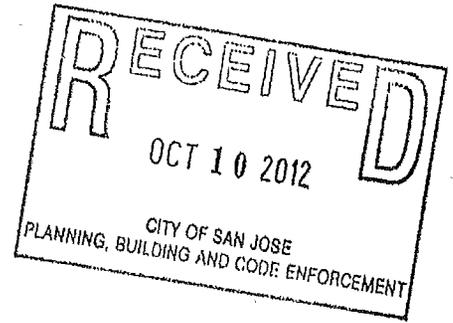
**We should not allow any more off-sale beer, wine and liquor
establishments in this area.**

BEN NGUY
Signature

Date 10-05-2012

BEN NGUY
Print Name

1173. McLaughlin Ave
San Jose CA 95122



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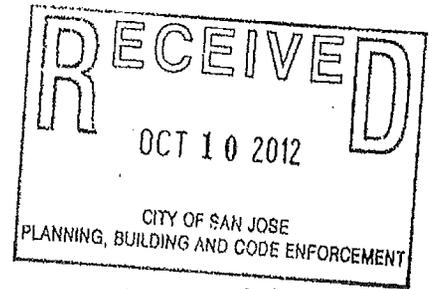
**We should not allow any more off-sale beer, wine and liquor
establishments in this area.**

Martha C Hale
Signature

Date 10 - 04 - 12

MARTHA C HALE
Print Name

1085 OWSLEY AVE APT C
SAN JOSE CA 95122



To whom it may concern,

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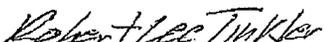
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Signature

Date 10-3-2012



Print Name

Completion of this card is voluntary (GC 54953.3)

Citizens Request to Speak

Date 10/10/12

I wish to speak:

FOR

AGAINST

Agenda Item No:

3C

Subject:

Name:

JONI PADRON + CINDY NGUY

Address:

2413 SUNNY VISTA DR.

City/State/Zip:

SAN JOSE, CA 95128

I represent:

CINDY + SON NGUY / 7-11

I am a registered Lobbyist:

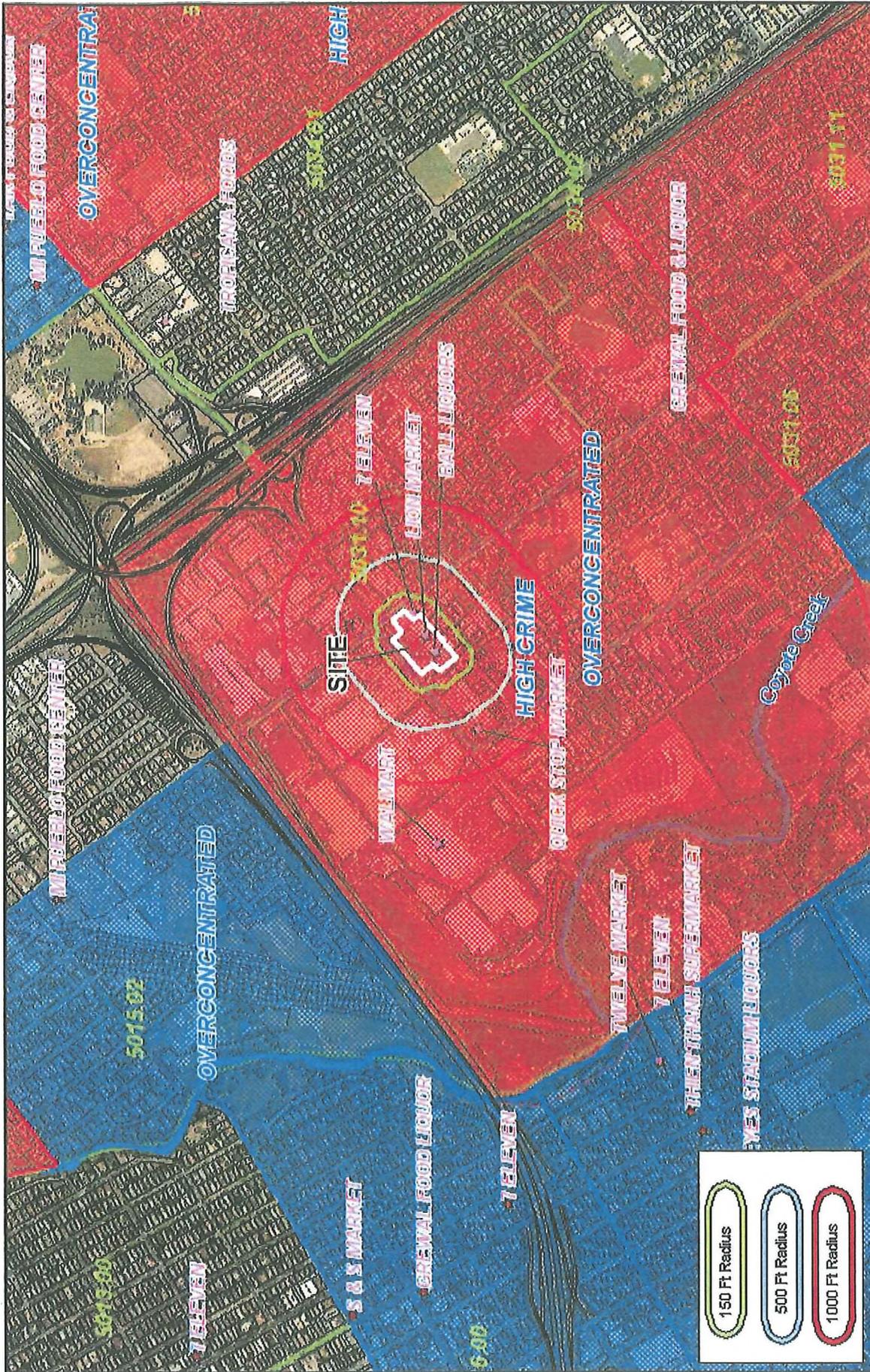
YES

NO

(Circle One)

PLEASE GIVE COMPLETED CARD TO PLANNING STAFF

(See reverse side)



File No: CP12-018 & ABC12-006

District: 7

Nearby Alcohol Off-Sales



Prepared by the Department of Planning,
Building and Code Enforcement
10/01/2012