

RESOLUTION NO. 73264

A Resolution of the City Council of the City of San Jose approving a Conditional Use Permit and a request for a Liquor License Exception Permit (Determination of Public Convenience or Necessity) to use certain real property described herein for the purpose of allowing off-sale of alcoholic beverages at an existing retail commercial (Target Store) building a 9.02 gross acre site.

FILE NO. CP05-033 & ABC05-003

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on June 8, 2005, an application (File No. CP05-033) was filed for a Conditional Use Permit and a Liquor License Exception Permit (File No. ABC 05-003) for the purpose of the off-sale of liquor, beer and wine on that certain real property (hereinafter referred to as "subject property"), situate in the CG- General Commercial Zoning District, located on the west side of Morrill Avenue, 550 feet southerly of Landess Avenue , 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, on January 25, 2006, the Planning Commission denied the application, from which decision the property owner has appealed to this City Council; 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 June 20, 2006, 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, "Target," dated July 21, 2003. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone 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:

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

1. The existing Target store is located on the west side of Morrill Avenue, 550 feet southerly of Landess Avenue (2155 Morrill Avenue).
2. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The site is located in the CG-General Commercial Zoning District, which allows retail sales as a permitted use and off-site alcohol sales subject to the approval of a Conditional Use Permit.
4. The applicant proposes to offer beer and wine for sale for off-site consumption as an incidental use to a variety store in which the sale of groceries is not the primary use.
5. The Zoning Ordinance requires a Conditional Use Permit for the off-sale of alcoholic beverages and for a public drinking establishment in the CG- General Commercial Zoning District.
6. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
7. The project consists of the off-sale of alcoholic beverages in an existing, approximately 108,000-square-foot retail building.
8. The proposed project is located within 500 feet of two other establishments that sell alcoholic beverages for off-site consumption.
9. The proposed project is located within 500 feet of a residential land use.
10. The project site is located in an area with an existing crime statistic of more than 20% greater than the citywide average and thus requires the issuance of a Liquor License Exception (Determination of Public Convenience or Necessity).
11. The census tract in which the proposed use is located has a ratio of existing retail on-sale/retail off-sale licenses to population that exceeds the countywide ratio and thus requires the issuance of a Liquor License Exception (Determination of Public Convenience or Necessity).
12. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.

13. The store's front entry is oriented towards Morrill Avenue, away from the adjacent residential uses, in keeping with the other commercial uses located in the shopping plaza.
14. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.
15. The proposed off-sale use is within 1000-feet of only two other off-sale establishments, both of which are located within the same shopping center. There is a liquor store (Ernie's Liquors), and a supermarket (currently vacant), both of which are permitted to sell beer, wine, and spirits for off-site consumption.
16. The proposed use is not located within five hundred (500) feet of a school, day care center, public park, social services agency or residential care facility or service facility.
17. The proposed use is located within 150 feet of residentially zoned properties.
18. Alcohol sales would not represent a majority of the proposed use. Target is a major retail store with sales of a wide range of merchandise, including grocery items, to which the off-sale of alcohol would be incidental. Planning staff has included a condition that the alcohol sales and display areas be limited to a maximum of five percent (5%) of the floor area of the store to insure that the off-sale of alcohol remains an incidental use.
19. Upon an appeal, Title 6 allows the City Council to make a Determination of Public Convenience or Necessity for a proposal that does not meet all of the required factual findings, if the Council makes a finding of significant and overriding public benefit.
20. The proposed sale of alcoholic beverages is incidental to a larger retail use. The proposed off-sale of alcohol is being requested in connection with the operation of an existing Target retail store that is over 100,000 square feet in size, sells assorted merchandise including groceries, and that staff has proposed a condition in the Conditional Use Permit to limit the floor area allowed for display and sales area for off-sale of alcohol to a maximum of five percent (5%) to further ensure the ongoing incidental nature of the proposed off-sale of alcohol use at this location.
21. Target is an existing retail store in this shopping center, together with a number of other commercial uses, and at least one vacant storefront. Allowing the off-sale of alcohol as incidental to the retail sales of other goods at this facility increases the range of products provided in the store, and allows this Target location to include the same array of products as may be included in other Target stores elsewhere in the City and the state. Customers who shop at more than one Target location from time to time could find it more convenient to have the range of products include incidental wine sales consistent with other locations. Target's original application, and subsequently their appeal of the Commission's denial of a

Conditional Use Permit for the off-sale of alcohol indicates that Target Corporation has determined that inclusion of a small area for wine sales within their stores increases sales and vitality of the stores and provides a service to their patrons. While this Target store has already been operating without the ability to include wine sales, it is a major anchor in the mix of commercial uses at this site, and small changes to increase the choices for its patrons and the vitality of the store could, over time, have the potential to enhance the overall vitality and success of this commercial center near the Milpitas border, keeping retail dollars in San Jose.

22. The census tract in which the proposed outlet is located does not have a low population density in relation to other census tracts in the city.
23. The census tract is not unusually configured.

Based on the above stated facts, the City Council concludes and finds:

1. Based on the findings in the subsection below, the City Council hereby makes a Determination of Public Convenience and Necessity for the subject liquor license:
 - a. 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 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 not 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 is located within one hundred fifty feet of an existing residence and residentially zoned property; and
 - d. Alcohol sales would not represent a majority of the proposed use.
 - e. Significant and overriding public benefits will be served by the proposed use, as noted in Items 20 and 21 above.
 - f. 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 City Council concludes and finds, based on the analysis of the above facts in regard to the Conditional Use Permit, that:
 - a. For this use is 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, the proposed location of the off-sale of alcoholic beverages use would not 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

- b. The use is not located closer than five hundred (500) feet from an elementary school and is located closer than one hundred fifty (150) feet from residentially zoned property; however, the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential use.

Finally, based on the above-stated findings and subject to the conditions set forth below, the City Council finds that:

1. The proposed use at the location requested 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 of value of the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This City Council expressly declares that it would not have granted this permit 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

CONDITIONS PRECEDENT

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 shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Off-sale of Alcohol.** This permit allows the sale of alcoholic beverages for off-site consumption only. The sale of alcohol shall conform to the requirements of the Liquor License requirements of the Department of Alcoholic Beverage Control. The applicant shall obtain all necessary permit(s) and will maintain full compliance and shall remain in good standing with regard to the Department of Alcoholic Beverage Control requirements.
2. **Area for alcohol sales.** Alcoholic beverages sales and display area shall be limited to no more than five (5) percent of the sales floor area of the store.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Retail Store Use.** The sale of alcohol shall be allowed in conjunction with the retail store use only.
5. **No new construction.** No new construction is allowed under this permit.
6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not 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 for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **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.

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In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above is hereby **approved** and a Determination of Public Convenience or Necessity **is** be made.

ADOPTED this 20th day of June 2006, by the following vote:

AYES: CORTESE, LeZOTTE, NGUYEN, REED, YEAGER;
 GONZALES

NOES: CAMPOS, CHAVEZ, PYLE, WILLIAMS

ABSENT: CHIRCO

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk