

RESOLUTION NO. 73701

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING A CONDITIONAL USE PERMIT AND A REQUEST FOR A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO USE CERTAIN REAL PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF OFF-SALE ALCOHOL AT AN EXISTING RETAIL ESTABLISHMENT LOCATED ON THE EAST SIDE OF SOUTH WHITE ROAD, APPROXIMATELY 250 FEET SOUTHERLY OF QUIMBY ROAD

FILE NO. CP06-038 & ABC06-015

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose on June 27, 2006, an application (File No. **CP06-038 & ABC06-015**) was filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer and wine and other liquors for off-site consumption, on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the east side of South White Road, approximately 250 feet southerly of Quimby Road, San José, 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 31, 2007, the Planning Commission denied the application, from which decision the property owner has appealed to this City Council; and

WEREAS, 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 on June 13, 2006, 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 "Application for Off-Sale General for

Alcohol at a Grocery Store, Manila Market,” dated February 11, 2007, which plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, 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 subject site is located on the east side of South White Road, approximately 250' south of Quimby Road (2812 S. White Road).
2. The subject site is located within CP Commercial Pedestrian Zoning District.
3. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
4. 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.
5. The subject existing grocery store is 23,200 square feet and is part of a larger neighborhood shopping center.
6. The parking demand shall not increase from the off-sale of alcohol proposed on the site because no additional retail sale area is proposed at this time, just the designation of the existing retail space for off-sale of alcohol items is being requested.
7. The subject retail establishment is a grocery store that currently closes at 8:00 p.m. The store may remain open between the hours of 6:00 a.m. and midnight per Title 20 of the San Jose Municipal Code.
8. The existing grocery store proposes to utilize no more than 335 square feet of floor area to the sales of alcoholic beverages.

9. The project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off sale of alcohol beverages. The granting of such a determination requires that four specific findings be made as prescribed by Title 6 of the SJMC.
10. The project site is located in a census tract with an existing over-concentration of liquor licenses, and there are three other off-sale establishments within 1000' of the subject site.
11. The site is not located in an area with a high number of calls for police service or a high crime rate.
12. The site is not located in an existing Project Crackdown /Weed and Seed Area.
13. The proposed use is within a Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs.
14. The project site is located adjacent to and within 150 feet of residentially zoned property to the north and east.
15. The above mentioned residential use is oriented in a manner that backs up to the existing residential structure, and the existing grocery store is oriented away from the above mentioned residential use.
16. Based on the orientation of the retail use to residential areas, there is a 350' minimum walking distance to the nearest residence on Schooner Court.
17. The proposed use is not located within 500 feet of a child care center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university.
18. The proposed use is separated from the single-family residences that front onto Schooner Court by an approximate 10-foot wood and concrete fence/wall with no openings. The proposed retail space orients to Quimby Road.
19. The Police Department memorandum indicates that the project site is not located within an area of high crime, but that the area does have an over-concentration of existing liquor licenses. For ABC to be able to issue a liquor license for this use, the City must grant a "determination of public convenience or necessity."
20. The proposed use does not include late night operation. The retail sales of beer and wine and other liquor is intended to be in conjunction with the existing retail sale of food and beverages.

21. On January 31, 2007, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP06-038 and ABC06-015). The Director of Planning recommended denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because two of the required four findings for the Determination of Public Convenience and Necessity could not be made.
22. On February 12, 2007, the applicant appealed the Planning Commission decision to deny the subject proposal (see attached Notice of Appeal and associated letter from James Barrett, representative for Peter Quach, owner of Manila Oriental Market, attached hereto as Exhibit "B"). The Permit Appeal requests that the City Council find that the proposed off-sale of alcohol proposal at the Manila Oriental Market would provide an overriding public benefits and that the Council make a Determination of Public Convenience and Necessity to allow the issuance of the ABC licenses required to operate the proposed business insofar as providing a complete package of services and products to serve the diverse Asian Community. The sale of alcohol is the last remaining piece in the product available package for the Manila Oriental Market in serving their Asian clientele.
23. Written and oral testimony was provided to City Council that the off-sale of alcohol proposal at this existing location will enhance the economic vitality of the commercial center located on the southeast corner of White and Quimby Roads which is within the Quimby-White Redevelopment Area. The Manila Oriental Market, which is a thriving business with strong local support, has made a significant effort to improve the aesthetics and safety of the site with a history of blight by working with the San Jose Redevelopment Agency to develop a program to improve the shopping center through participation in the Agency's Façade Program. The Manila Oriental Market painted the building, removed old and decayed walls surrounding the center, cleaned roof tiles, and cleaned all sidewalks. The Manila Oriental Market has also independently utilized its own resources as well as supplemental resources from additional tenants in the shopping center to restripe the parking lot, install new parking lot lighting, prune the existing trees. As the largest leaseholder in the shopping center, the Manila Oriental Market has been instrumental to plan as well as implement these improvements.
24. The applicant has provided a petition supporting the off-sale of alcohol at the subject grocery store which as been signed by approximately 800 store patrons. The only opposition received has been from the ownership of Ernie's Liquors, which is another off-sale of alcohol outlet located in the same shopping center as the Manila Market.
25. The Manila Oriental Market inherited a site that had not been maintained by Senter Foods, the previous tenant of the site. For example, prior to Manila Oriental Market's occupancy, the parking lot was littered by garbage and furniture dumping, the walls of buildings were covered with graffiti, and the trees in the parking lot had not been pruned for several years.

26. The Manila Oriental Market has worked with the San Jose Redevelopment Agency to develop a program to improve the shopping center through participation in the Agency's Façade Program. So far through this program, the Manila Oriental Market has painted the building, removed old and decayed walls surrounding the center, cleaned roof tiles, and cleaned all sidewalks.
27. Manila Oriental Market has independently utilized its own resources as well as supplemental resources from additional tenants in the shopping center to restripe the parking lot, install new parking lot lighting, prune the existing trees. As the largest leaseholder in the shopping center, the Manila Oriental Market has been instrumental to plan as well as implement these improvements.
28. 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. For the 23,200 square-foot retail space, only a maximum of 335 square-feet would be dedicated to the sale of beer and wine. The proposed use will constitute 1.5% of the area of the grocery store, and is incidental to the existing use. A condition has been added to the resolution which limits the relative percentage of floor area dedicated to the off-sale of alcoholic beverages to ensure that the off- sale of alcohol remains an incidental component to the existing retail use.
29. The Manila Market also is a grocery retailer which serves goods predominantly representing the Asian cuisine including the sale of Asian sauces, spices, noodles, rice sticks, lemon grass, teas, herbs, oils, vinegars, all of which support varied styles of Asian cooking. Although there is wide cross section of clientele that shop at the Manila Oriental Market, a large percentage of customers are Asian residents in the Evergreen area. This clientele has requested that alcohol sales be available to them at the Manila Oriental Market.
30. The Manila Market has been pivotal in providing a security program for the entire multi-tenant shopping center. There is onsite security from 7pm-7am. The store does not have late night uses, and only currently operates seven days a week from 8:00 am until 8:00 pm. Given the operational characteristics of the existing Manila Oriental Market, the project site is unlikely to attract the usual liquor store problems of loitering, vagrancy, and crime.
31. The proposed use is located within 150 feet of residentially zoned properties located to the east on Schooner Court which have a back-up site orientation to the existing subject commercial building and located to the north, across Quimby Road, on Masonwood Street. An approximately 10-foot wood and concrete fence/wall with no openings separates the commercial and residential uses. As a result, the walking distance between the Manila Oriental Market's store front and the property line of the closest residence on Schooner Court is approximately 350 feet. Quimby Road, a busy 4-lane road, separates the project site from Masonwood Street to the north and therefore residential units on this street are even more removed from the proposed off-

sale location. Based on the layout of the existing site and orientation of the commercial tenants, the use will not adversely affect the adjacent residences.

32. The proposal does not increase parking demand already on the site, given that no building expansion is proposed but rather the substitution of 1.5% of existing floor area for off-sale of alcoholic beverage use. The traffic generation or parking demand associated with the proposed use is not unique to the sale of alcohol. Staff has determined that the proposed project will not result in any increased parking or traffic impacts.
33. 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.
34. 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.
35. The census tract is not unusually configured.
36. The proposed sale of alcoholic beverages is incidental to a larger retail use.

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 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 within one hundred fifty feet of an existing residence and residentially zoned property.
 - 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 22 through 31 in the Facts section 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 closer than one hundred fifty (150) feet from residentially used and 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 or 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. Further, in accordance with the findings set forth above, the City Council makes a Determination of Public Convenience or Necessity in conjunction with the proposed off-sale of alcoholic beverages. 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

1. **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 of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Recordation.** 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 this Resolution has been recorded with the County Recorder.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **ABC Permit.** Obtainment and maintenance of an ABC License is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. The permittee shall at all times be and remain in compliance with the ABC licensing and shall cause any occupants of the subject site to be and remain in compliance with the ABC licensing.

5. **Conformance with Plans.** The use development shall conform to approved plans entitled, 'Application for Off-Sale General for Alcohol at a Grocery Store, Manila Market', dated February 11, 2007 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
8. **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.
9. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). No alcoholic beverages shall be consumed on any property adjacent to the premises over which the project developer/applicant has control. The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
10. **Floor Area.** The maximum floor area devoted to the sale of alcohol shall be 1.5% of the overall tenant space or 335 square feet, whichever is greater.
11. **Noise.** Noise levels associated with this use shall not exceed 55 db DNL at the adjacent residential property line.
12. **Signs.** No signs are approved at this time. All proposed signage will be reviewed under a separate Sign Permit.
13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
15. **Roof Equipment.** All roof equipment shall be screened from view.
16. **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 approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Outside Storage.** No outside storage is permitted.

18. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
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.

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** made.

ADOPTED this 20th day of March 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, LICCARDO, NGUYEN,
OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CONSTANT

DISQUALIFIED: NONE

VACANT: DISTRICT 4

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk