

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE OF BEER, WINE, AND DISTILLED ALCOHOLIC BEVERAGES (TYPE 21 ABC LICENSE) AT AN EXISTING APPROXIMATELY 1,053-SQUARE-FOOT TENANT SPACE (JEWELRY STORE) ON AN APPROXIMATELY 0.4-GROSS-ACRE SITE LOCATED AT THE SOUTHWESTERLY CORNER OF EAST SANTA CLARA STREET AND SOUTH 24TH STREET (1130 EAST SANTA CLARA STREET, APN 467-58-040)**

**FILE NO. PD24-012**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 15, 2024, an application (File No. PD24-012) was filed by Sandra Escobar, on behalf of Plaza Jewelers Inc. (“Permittee”), with the City of San José (“City”) for a Planned Development Permit and Determination of Public Convenience or Necessity to allow off-sale of beer, wine, and distilled alcoholic beverages (Type 21 ABC License) within an existing retail use (“Project”), on an approximately 0.4-gross-acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the southwesterly corner of East Santa Clara Street and South 24th Street (1130 East Santa Clara Street, San José, APN 467-58-040, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A" entitled “Legal Description,” 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 José Municipal Code, the Planning Commission conducted a public hearing on said concurrent applications on October 23, 2024, notice of which was duly given; and

**WHEREAS**, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José 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 recommendations of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Plaza Jewelers Planned Development Permit PD24-012, 1130 East Santa Clara Street, San José, CA 95116" dated August 14, 2024, 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 plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the Project applicant, City staff, and other interested parties;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed Project:

**1. Site Description and Surrounding Area.** The 0.4-gross-acre Project site is located on the southwest corner of East Santa Clara Street and South 24<sup>th</sup> Street. The site is developed with an approximately 5,900-square-foot multitenant commercial building with a surface parking lot at the rear. The subject jewelry store occupies the corner tenant space (1,053 square feet) and faces both East Santa Clara Street and South 24<sup>th</sup> Street.

The primary store entrance is located at the northeast corner of the building, facing the public right-of-way, and there is also a rear entrance facing the onsite parking lot. The parking lot driveway is located on South 24<sup>th</sup> Street. Surrounding uses include low-scale retail buildings to the north and west, single-family townhomes to the south, the East San José Carnegie Library and Santa Clara County Multi Service Agency to the west, and a car repair business to the east across South 24<sup>th</sup> Street.

**2. Project Description.** The Project consists of a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of beer, wine, and distilled alcoholic beverages (Type 21 License, California Department of Alcoholic Beverage Control ["ABC"]), specifically for collectible bottles of liquor, within an existing 1,053-square-foot tenant space (jewelry store) on an approximately 0.4-gross-acre site.

The existing business is a retail jewelry store that also provides personalization services such as jewelry engraving and which has been in operation on the site since 1998. The store occupies the corner tenant space in a multitenant commercial building that also houses a food market, nail salon, and tax preparation service. There are 32 parking spots in the on-site lot to the rear of the building, eight of which are reserved for Plaza Jewelers customers.

The proposed use is the sale of collectible bottles of liquor for off-site consumption. According to the Operations Plan, collectible bottles of alcohol are gift items that can be personalized with decoration and engraving and sell for hundreds or thousands of dollars. Display bottles will be kept in locked cases occupying 173 square feet, or approximately 20%, of the 880-square-foot sales floor. The collectible bottles of alcohol will be sold during the jewelry store's normal hours of operation, 11:00 a.m. to 7:00 p.m., Monday through Saturday.

Based on the operations plan for the Project, three to five employees work at the store at any given time, including a manager and/or the store owner. Sales staff is required to be 21 years or older to sell liquor, and all staff must undergo ABC Licensee Education on Alcohol and Drugs ("LEAD") program training for the off-sale of alcohol. Alcoholic beverages will not be served on the premises.

Customers enter the store through the front door on East Santa Clara Street or the rear door facing the onsite parking lot but are required to ring a doorbell for admittance as the doors are locked. There are 26 security cameras located inside the store and five on the store's exterior that record activity 24 hours a day. Store management retains the recordings for at least 30 days. All cameras are registered with the San José Police Department.

Approval of the Planned Development Permit will not result in the grouping of more than four establishments permitted for off-premises sale of alcoholic beverages within a 1,000-foot radius from the exterior of the subject store. However, according to the San José Police Department memo dated July 24, 2024, the ratio of off-sale retail licenses to the population in census tract 5014.02, where the subject site is located, exceeds the ratio of off-sale retail licenses to the population in Santa Clara County. One off-sale establishment is authorized by ABC in the census tract and currently two licenses have been issued. Therefore, the census tract is considered overconcentrated and a Determination of Public Convenience or Necessity is also required to be issued.

According to the Police Department memo, reported crime statistics in the police beat where the site is located do not exceed the 20% crime index, and thus the location is not considered unduly concentrated per California Business and Professions Code Section 23958.4(a)(1). The memo also states that the Police Department is neutral to the issuance of a Planned Development Permit and Determination of Public Convenience or Necessity for the off-sale of alcoholic beverages at the subject site.

- 3. General Plan Conformance.** The proposed Project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of **Urban Village**. This land use designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form.

*Analysis: The sale of collectible bottles of liquor for off-site consumption will not change the primary retail jewelry sales use, which is consistent with the General Plan land use designation.*

The Project is also consistent with General Plan Land Use and Employment Policy IE-2.6: “Promote retail development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.”

*Analysis: Plaza Jewelers has operated on the subject site since 1998. The Project will enable the business to expand its product offerings to include collectible bottles of liquor, which could potentially increase store sales and generate increased sales tax revenue.*

The Project site is located within the Roosevelt Park Urban Village and is subject to the land use goals and policies of the adopted Plan for the urban village. One of the plan’s primary objectives is to retain existing commercial space and increase commercial activity and employment opportunities. The Plan supports retail uses that are small or mid-sized in scale and serve the immediately surrounding neighborhoods, and communities within roughly a two-mile radius.

*Analysis: The Project is consistent with the Plan’s Land Use Policy 1: “Grow the Roosevelt Park Urban Village into an economically vibrant commercial district that serves the surrounding communities and increase commercial building square footage within the Village.” The Project will expand the product offerings to include collectible bottles of alcohol at an established jewelry store in the Urban Village. Promoting the viability of existing businesses is consistent with the policy’s focus on economic vibrancy.*

#### **4. Zoning Conformance**

##### Land Use

The Project site is located within the **A(PD) Planned Development** Zoning District, approved in 1991 under File No. PDC90-077. The Planned Development Zoning District allows permitted and conditional uses of the C-1 Commercial (Neighborhood) Zoning District, which was in effect when the Planned Development Zoning District was approved. The C-1 Zoning District in 1991 permitted retail uses by-right and off-sale of alcoholic beverages with a Conditional Use Permit. In conformance with SJMC Section 20.100.910, a Planned Development Permit is the appropriate permit because the site is within a PD Planned Development Zoning District.

*Analysis: The off-sale of alcohol will be incidental to the primary retail use and will require a Planned Development Permit pursuant to SJMC Section 20.80.900. A Determination of Public Convenience or Necessity is required pursuant to SJMC Chapter 6.84 because the subject site is located within a census tract that is over-concentrated for the off-sale of alcohol.*

### Development Standards

The Project is subject to the height and setback requirements of the A(PD) Planned Development Zoning District.

*Analysis: The Planned Development Permit does not include approval of any structural changes, exterior improvements, signage (except for the informational signs required by Condition 4 below), or other changes. The subject jewelry store is located within a multitenant building that is consistent with the setback and height requirements of the A(PD) Planned Development Zoning District.*

### Parking

The Project is subject to the parking requirements contained in the General Development Plan of the A(PD) Planned Development Zoning District, which requires 32 on-site parking spaces.

*Analysis: Eight of the 32 on-site parking spaces are reserved for Plaza Jewelers customers. A Planned Development Permit application for off-sale alcohol does not trigger additional parking requirements over the primary use.*

### Performance Standards

Pursuant to SJMC Section 20.40.600, the proposed use may not be conducted or permitted in a manner that results in discharge of waste materials, in a manner that constitutes a menace to persons or property by reason of the creation of a fire, explosion, or other physical hazard (such as air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes), or in a manner that creates a public or private nuisance. The sound level at the southern property line of the subject site may not exceed 55 decibels due to adjacent residential uses and may not exceed 60 decibels at other property lines.

*Analysis: The sale of collectible bottles of liquor for off-site consumption will not result in solid waste discharge into the ground, air, or waterways, and will not generate any physical hazards. The permit conditions include controlled access to the store, employee training in the sale of alcoholic beverages, the use of security cameras with footage retained for at least 30 days, a prohibition on exterior advertising of alcoholic beverages, and a requirement that customers take delivery or pick up collectible bottles on the day following the date of purchase. All sales activity will occur inside the retail store and therefore will not generate noise that will exceed the allowed levels for adjacent residential and commercial uses.*

## **5. City Council Policy Conformance**

Staff followed Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals to inform the public of the proposed Project. On-site signs have been posted on both Project frontages since July 10, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500

feet of the Project site and posted on the City website. The staff report is also posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on October 4, 2024. Staff has been available to respond to questions from the public. No calls or emails were received from members of the public regarding this Project.

## 6. Environmental Review

Under the provisions of Section 15301(a) for 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.

The Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the Project involves negligible or no expansion of an existing use. The Project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The Project will allow the off-sale of collectible bottles of liquor within an existing jewelry store, which will be conducted wholly inside the building. Based on the discussion and findings in the sections below, the Project will not significantly affect the environment. Therefore, the Project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

## 7. Planned Development Permit Findings. The following findings must be made for the issuance of a Planned Development Permit pursuant to Section 20.100.940 of the San José Municipal Code:

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the general plan.

*Analysis: As discussed in Section 3, General Plan Conformance, above, the sale of collectible bottles of liquor for off-site consumption will be incidental to the primary retail jewelry store use, which is consistent with the General Plan land use designation. The Project is also consistent with General Plan Policy IE-2.6, which promotes business expansion in the city. The Project will enable Plaza Jewelers, which has operated at its current location since 1998, to expand its product offerings and potentially increase store sales and sales tax revenue. Increasing retail sales will also promote economic vibrancy, as described in the Roosevelt Park Urban Village Plan.*

- b. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property.

*Analysis: As discussed in Section 4, Zoning Conformance, above, expanding the store's product offerings to include collectible bottles of liquor is consistent with the A(PD) Planned Development Zoning District use standards and the Project does not include exterior changes to the multitenant commercial building where the store is located or changes to the existing parking. Sales of alcoholic beverages will occur inside the store and there will be no significant noise impacts.*

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: Staff followed Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals to inform the public of the Project. On-site signs have been posted on both Project frontages since July 10, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the Project site and posted on the City website. The staff report is also posted on the City website. Staff has been available to respond to questions from the public. No calls or emails were received from members of the public regarding this Project.*

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures, and other uses on-site are appropriate, compatible, and aesthetically harmonious.

*Analysis: The Project consists of the off-sale of alcoholic beverages and will not change the existing orientation, location, mass, or scale of building volumes or building elevations.*

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The Project is eligible for a Categorical Exemption pursuant to CEQA Guidelines Section 15301(a) for Existing Facilities, as it involves negligible expansion of an existing use and does not include any structural modifications or expansion to the footprint of the existing retail building. The Project does not include exterior construction, and therefore will not generate any noise, vibration, dust, drainage, erosion, stormwater runoff, or odor that will have an unacceptable negative effect on adjacent properties.*

- 8. Off-Sale Alcohol Findings.** The issuance of a Planned Development Permit for the off-sale of alcoholic beverages is governed by Section 20.80.900.A, with required findings as follows:



- a. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the location of the off-sale alcohol use will not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the location.

*Analysis: Per the state ABC database, Diana's Mini Market at 1062 East Santa Clara Street is the only off-sale establishment within 500 feet of the subject site. There are two additional such uses within 1,000 feet, located at 1250 East Santa Clara Street (Rose Market) and 1001 East Santa Clara Street (Chaparral Market), for a total of three existing off-sale sites within 1,000 feet. The Project will be the fourth establishment. This finding **can** be made.*

- b. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated 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 establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
  - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing in or working in the surrounding area; or
  - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
  - iii. Be detrimental to public health, safety or general welfare.

*Analysis: The location of the off-sale of alcoholic beverages will not result in more than four off-sale establishments within a 1,000-foot radius, so this finding is not applicable to the Project.*

- c. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that 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, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The applicant, Plaza Jewelers, is located approximately 450 feet east of the Santa Clara County Multi Service Agency, a social services agency. Residential townhomes are also located approximately 75 feet south of the jewelry store, adjacent to the subject site's parking lot.*

*The store occupies the corner space of a multitenant commercial building. The entrance to the store faces northeast, away from social services agency to the west. Customer parking is provided behind the building and is not visible from East*

*Santa Clara Street where the social services agency is located. In addition, access to the store is controlled by employees, who must unlock either the front entrance at the corner or a rear entrance accessible from the parking lot to allow customers to enter.*

*The parking lot behind the store is approximately 75 feet wide and a fence and landscaping with mature trees provide a buffer between the parking lot and the adjacent townhomes to the south. No alcohol consumption that could potentially create a nuisance situation will be allowed on the subject site, as the Planned Development Permit will allow only off-sale of alcoholic beverages. Pursuant to Conditions 4.k and 4.l, signs prohibiting loitering and consumption of alcoholic beverages are required to be posted in conspicuous places on the exterior of the premises.*

*The alcoholic beverages for sale will consist of high-value bottles of alcohol, often decorated or personalized as gifts. Sale of collectible bottles will be incidental to jewelry sales at the store and will be closely controlled and monitored by staff. To maintain the allowed use as incidental and limited to collectible bottles rather than alcoholic beverages commonly purchased at retail establishments, Condition 4.c of the permit requires that customers take delivery or pick up collectible bottles on the day following the date of purchase. Therefore, the Project will not adversely affect the social service agency within 500 feet or residential uses within 150 feet and this finding **can** be made.*

**9. Determination of Public Convenience or Necessity Findings.** Chapter 6.84 of the San José Municipal Code identifies the process and findings for a Determination of Public Convenience or Necessity related specifically to the off-sale of alcohol. The findings are discussed below.

- 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 based upon quantifiable information 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
  - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
  - ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The subject site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan Area. Therefore, this finding **cannot** be made.*

- b. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one-thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: There are currently three off-sale premises, including Diana's Mini Market, Rose Market, and Chaparral Market, within a 1,000-foot radius of the exterior of the subject building and the proposed use would be the fourth. Therefore, this finding **can** be made.*

- c. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The subject store is located approximately 450 feet east of the Santa Clara County Multi Service Center and approximately 75 feet from townhomes to the south, and therefore this finding **cannot** be made.*

- d. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Display cases for the collectible liquor bottles will represent approximately 20% of the 880-square-foot sales floor of the jewelry store. The off-sale of alcoholic beverages will be incidental to retail jewelry sales, and therefore this finding **can** be made.*

- e. At least one of the following additional findings:

- i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*Analysis: The census tract in which the outlet is located, 5014.02, does not have an unusual configuration and there are three off-sale establishments within 1,000 feet of the store. Therefore this finding **cannot** be made.*

- ii. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

*Analysis: Off-sale of collectible bottles of alcohol will represent an expansion of product offerings at Plaza Jewelers and could potentially increase sales, which will in turn facilitate the vitality of commerce along East Santa Clara Street. According to the July 24, 2024 memo provided by the San José Police Department, SJPD is neutral to the off-sale at the subject site. Therefore, this finding **can** be made.*

- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*Analysis: The population density of the census tract where the subject site is located, along with the surrounding census tracts, is shown in the table below:*

Census Tract	Population Density (2020 Census) <sup>1</sup>
5014.02 <sup>2</sup>	14,769
5014.01	9,067
5012	12,865
5013	13,125
5015.01	18,242
5015.02	13,798
5036.01	5,648
5036.02	10,025

*As the data in the table show, the population density of the census tract where Plaza Jewelers is located is higher than all but one of the surrounding census tracts and therefore this finding **cannot** be made.*

- iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis: Sales of collectible liquor bottles will complement jewelry sales and project Condition 4.d will limit the bottle display area to a maximum of 20% of the sales floor (173 square feet). Jewelry will continue to be the primary type of merchandise offered at the store. Therefore, this finding **can** be made.*

Although Findings b., d., e.ii, and e.iv for the issuance of a Determination of Public Convenience or Necessity **can** be made, Finding a. **cannot** be made for the off-sale of alcohol because the subject location is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan Area. Finding c. **cannot** be made because the subject store is located approximately 450 feet from a social services agency and 75 feet from residential uses. Therefore, City Council approval is required

<sup>1</sup> Source: 2020 Census Demographic Data Map Viewer. <https://maps.geo.census.gov/ddmv/map.html>

<sup>2</sup> The proposed off-sale location is within this census tract.

for the off-sale of alcohol at the Project site. The City Council may issue a determination in connection with an application for a license from the ABC for the off-premises sale of alcoholic beverages where the City Council does all of the following:

- a. Makes a determination that not all of the required findings set forth in Subsection B of Section 6.84.030 of the Municipal Code can be made; and

*Analysis: Findings a. and c. for the Determination of Public Convenience or Necessity **cannot** be made for the off-sale of alcohol because the subject site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan Area and is within approximately 450 feet of a social services agency and approximately 75 from residential uses. However, findings b., d., e.ii., and e.iv **can** be made.*

- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

*Analysis: While all the required findings for the Determination of Public Convenience or Necessity cannot be made, there are significant and overriding benefits derived from the Project. The project will enable the store to expand its product offerings and increase sales and tax revenue. The sale of collectible bottles of liquor will be incidental to jewelry sales at a long-standing business in the community, occupying a maximum of 20% of the sales floor, per Condition 4.d. Condition 4 also requires the store to follow safety measures including controlled access to the store, interior and exterior security cameras, and employee training in alcohol sales procedures.*

In accordance with the findings set forth above, a Planned Development Permit and Determination of Public Convenience or 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 approved 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.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Planned Development Permit and Determination of Public Convenience or Necessity (collectively "Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - 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 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.
3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
4. **Use Authorization.** Subject to all conditions herein, this permit allows the following specific use:
  - a. This Planned Development Permit and Determination of Public Convenience or Necessity allows sale of collectible bottles of alcohol for off-sale consumption (Type 21 ABC License – Beer, Wine, and Distilled Alcoholic Beverages) at an existing approximately 1,053 square foot tenant space (jewelry store) on an approximately 0.4-gross-acre site, and successors of said tenant space whereby the subsequent tenant maintains the same use as deemed by the Director of Planning, Building and Code Enforcement. The Permittee shall

- comply with the Operations Plan for File No. PD24-012, which is incorporated herein by reference.
- b. This use shall be limited to the hours of 11:00 a.m. to 7:00 p.m. Monday through Saturday, unless a permit, as applicable, is approved by the City for other hours of operation.
  - c. <Removed>
  - d. A minimum of 50% of the sales floor area of the store (excluding storage areas) shall be used for the display and sale of high-end jewelry.
  - e. A maximum of 20% of the sales floor area (excluding storage areas) may be used for the display of unique, collectible, decorated, or personalized bottles of alcohol.
  - f. Sales of refrigerated bottles of alcohol shall be prohibited.
  - g. Display cases containing alcoholic beverages shall remain locked.
  - h. The sale of single-serving containers of alcohol, including containers known as “minis,” “shooters,” or “airplane bottles,” shall be prohibited.
  - i. Both entrance doors shall remain locked and customer access to the store shall be controlled by employees.
  - j. If the use authorized by this Planned Development Permit is discontinued for a period of 12 months, the Planned Development Permit will no longer be in effect.
  - k. The site will be well-maintained, clean, and free of litter, graffiti, etc.
  - l. The interior, exterior, and parking lot of the store will be monitored by video surveillance cameras 24 hours per day. All security camera footage will be retained for at least 30 days.
  - m. Loitering and panhandling will not be tolerated, and the Permittee will maintain a zero-tolerance policy. Exterior “No Loitering” signs will be posted in conspicuous places containing wording (in Spanish and English) that aligns with state and local law (business owner to work with San José Police Department to obtain proper language). All loitering and panhandling issues will be dealt with in a swift and consistent manner by notifying local police.
  - n. No consumption or open alcoholic beverages will be permitted on the premises. Exterior signs specifically prohibiting this activity will also be placed in conspicuous places in both Spanish and English.
  - o. The Permittee shall be available to meet with neighbors to address any concerns that arise.
  - p. All employees shall receive training in responsible alcoholic beverage sales.

- q. All lighting issues, such as inadequate lighting or non-functioning lights, shall be addressed promptly by the Permittee's maintenance provider.
  - r. The Project will conform to all local noise performance standards as required by the Municipal Code. All efforts will be made to limit the amount of noise emanating from the business at all times.
  - s. Exterior advertising or window signs advertising alcoholic beverages is prohibited.
5. **Conformance with ABC Requirements.** The off-sale of alcohol (Type 21 – beer, wine, and distilled alcoholic beverages) is allowed in conformance with the requirements of the ABC. The Permittee shall obtain and maintain full compliance with its ABC license and remain in good standing with the Department of Alcoholic Beverage Control.
6. **Limitations on the Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a jewelry store. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed approximately 173 square feet (20%) of the total sales floor area of 880 square feet that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.
7. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Plaza Jewelers Planned Development Permit PD24-012, 1130 East Santa Clara Street, San José, CA 95116" dated August 14, 2024, on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
8. **Conformance with Previously Approved Zoning.** All conditions of approval and environmental mitigation measures required by the approved Planned Development Zoning applicable at the time of issuance of this Permit, File No. PDC90-077 or by the environmental clearance for such zoning, are hereby incorporated by reference into and made a part of this Permit.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
11. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit



incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
13. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
14. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
15. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set is conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
17. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
18. **Building and Property Maintenance.** The Permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
19. **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 frontage.
20. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
21. **Revocation, Suspension, Modification.** This Planned Development Permit and Determination of Public Convenience or Necessity may be revoked, suspended or modified by the City Council 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 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development 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 permit to use the subject property for said purpose specified above is hereby approved.

//

//

//

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, MMC  
City Clerk

*NOTICE TO PARTIES*

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

## **Exhibit "A"**

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lot 1, as shown on that certain Map of "Tract No. 8647" which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on June 4, 1994 in Book 656 of Maps, Pages 45 and 46.

Assessor's Parcel Number    467-58-040