



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 30, 2025

COUNCIL DISTRICT: 6

SUBJECT: CP24-027 & ER24-192 - Conditional Use Permit and Determination of Public Convenience or Necessity for Certain Real Property Located at 1915 West San Carlos Street (Cha Cha ENTs LLC, Owner)

RECOMMENDATION

On January 22, 2025, the Planning Commission voted 8-0-1 to recommend that the City Council take the following actions:

Adopt a resolution approving, subject to conditions, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 20 – Off-Sale Beer & Wine) within an existing approximately 14,000-square-foot grocery store on an approximately 0.87-gross-acre site located on the northwest corner of West San Carlos Street and Brooklyn Avenue.

SUMMARY AND OUTCOME

If the City Council approves the actions listed above as recommended by the Planning Commission, the applicant will be able sell beer and wine for off-site consumption in conjunction with a California Department of Alcoholic Beverage Control (ABC) Type 20 License at an existing approximately 14,000-square-foot grocery store on an approximately 0.87-gross-acre site.

BACKGROUND

On January 22, 2025, the Planning Commission considered the Conditional Use Permit, Determination of Public Convenience or Necessity, and the associated CEQA Categorical Exemption. This item remained on the Planning Commission's Consent Calendar. No members of the public requested to speak on this item, and there was no discussion by the Commissioners. Commissioner Lardinois made a motion to approve the recommendation. Commissioner Oliverio seconded the motion. The motion passed (8-0-1; Rosario Absent).

HONORABLE MAYOR AND CITY COUNCIL

January 30, 2025

Subject: CP24-027 & ER24-192 - Conditional Use Permit and Determination of Public Convenience or Necessity for Certain Real Property Located at 1915 West San Carlos Street (Cha Cha ENTs LLC, Owner)

Page 2

ANALYSIS

Analysis of the proposed CEQA clearance, Determination of Public Convenience or Necessity, and Conditional Use Permit, including conformance with the General Plan, Municipal Code, and City Council Policies, is contained in the attached staff report.

EVALUATION AND FOLLOW-UP

Should the City Council approve the Conditional Use Permit and Determination of Public Convenience or Necessity, the applicant would be permitted to sell beer and wine for off-site consumption in conjunction with a Type 20 ABC License at an existing approximately 14,000-square-foot grocery store on an approximately 0.87-gross-acre site located at 1915 West San Carlos Street. The applicant could proceed to the California Department of Alcoholic Beverage Control (ABC) with an application for a Type 20 License.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office and San José Police Department.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy, whereby the project is considered a standard development proposal. Following City Council Policy 6-30, the applicant posted two on-site signs to inform the neighborhood of the proposed project on September 20, 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's website. Staff has also been available to respond to questions from the public, although no comments have been received. This memorandum will be posted on the City's Council Agenda website for the February 11, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

The item was heard at the January 22, 2025, Planning Commission meeting. This item remained on the Planning Commission's Consent Calendar. No members of the public requested to speak on this item, and there was no discussion by the Commissioners.

HONORABLE MAYOR AND CITY COUNCIL

January 30, 2025

Subject: CP24-027 & ER24-192 - Conditional Use Permit and Determination of Public Convenience or Necessity for Certain Real Property Located at 1915 West San Carlos Street (Cha Cha ENTs LLC, Owner)

Page 3

The motion to recommend City Council approval of the project passed (8-0-1). The Planning Commission recommended that the City Council approve the Conditional Use Permit and Determination of Public Convenience or Necessity.

CEQA

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 would allow the off-sale of beer and wine within an existing grocery store and would include interior modifications to allow for the display of those products. Off-sale beer and wine retail would be conducted wholly inside the building. Based on the discussion and findings in the sections above, the project would not significantly affect the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRIS BURTON

Secretary, Planning Commission

For questions, please contact John Tu, Division Manager, for Christopher Burton, Director of Planning, Building and Code Enforcement, at John.Tu@sanjoseca.gov or (408) 535-6818.

ATTACHMENT: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton

SUBJECT: CP24-027 & ER24-192

DATE: January 22, 2025

COUNCIL DISTRICT: 6

Type of Permit	Conditional Use Permit and Determination of Public Convenience and Necessity
Demolition	None
Proposed Land Uses	Beer and wine, off-sale (ABC Type 20 License)
New Residential Units	None
New Square Footage	None
Tree Removals	None
Project Planner	Angela Wang
CEQA Clearance	Exemption per CEQA Guidelines Section 15301(a) for Existing Facilities
CEQA Planner	Angela Wang

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15301(a) for Existing Facilities; and
2. Adopt a resolution approving, subject to conditions, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 20 – Off-Sale Beer & Wine) within an existing approximately 14,000-square-foot grocery store on an approximately 0.87-gross-acre site.

PROPERTY INFORMATION

Location	Northwesterly corner of West San Carlos Street and Brooklyn Avenue (1915 West San Carlos Street)
Assessor Parcel No.	274-17-087
General Plan	MUC Mixed-Use Commercial
Growth Area	West San Carlos Urban Village
Zoning	MUC Mixed-Use Commercial
Historic Resource	Not Applicable
Annexation Date	June 23, 2008 (Burbank No. 40)
Council District	6
Acreage	0.87

PROJECT BACKGROUND

As shown on the VicinityMap/Aerial Photo (Exhibit A), the project site is located on the northwesterly corner of West San Carlos Street and Brooklyn Avenue. The site is developed with an approximately 14,000-square-foot grocery store (La Plaza Market) along West San Carlos Street and surface parking lots to the east and north of the building. The site is accessed through one driveway on West San Carlos Street and one driveway on Brooklyn Avenue.

The site is surrounded by single-family residences to the north and the northwest, commercial buildings to the west, south across West San Carlos Street, and east across Brooklyn Avenue. The commercial site to the east of the subject site across Brooklyn Avenue (on the northeast corner of West Carlos Street and Brooklyn Avenue) is entitled to construct a mixed-use residential and commercial building (Planning File No. CP20-020), including ground floor commercial space along West San Carlos Street, multi-family residential on the upper floors, and a senior living facility at the rear of the building. The commercial site to the west of the subject site is currently outside of the City Limits with a development proposal (Planning File Nos. Burbank 45, C21-034, GP23-001, and H23-005) to construct a seven-story mixed-use residential and commercial building, including commercial space along West San Carlos Street and multi-family residential on the upper floors.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Residential Neighborhood & Mixe-Use Commercial	Unincorporated	Single-family residential & Commercial
South	Urban Village	Unincorporated	Commercial
East	Mixe-Use Commercial	Mixed-Use Commercial	Commercial
West	Mixed-Use Commercial & Residential Neighborhood	Unincorporated	Commercial & Single-family residential

On July 24, 2024, Juvenal Chavez, on behalf of the applicant, JE&E Chavez, LLC DBA La Plaza Market, filed an application for a Conditional Use Permit and a Determination of Public Convenience or Necessity to allow for the off-sale of beer and wine in conjunction with a California Department of Alcoholic Beverage Control (“ABC”) Type 20 License within the existing approximately 14,000-square-foot grocery store (La Plaza Market).

Off-sale alcohol sales would be incidental to the full-service grocery store, with approximately 70 square feet of floor area dedicated to the sale of beer and wine (0.67% of the sales floor area of 10,451 square feet, shaded yellow on Exhibit B). The off-sale of alcohol also requires a Type 20 license from ABC. The proposed alcohol sale hours are from 7:00 am to 9:00 pm daily, the same as the grocery store hours.

The subject site is located in an over-concentrated Census Tract (Census Tract 5020.01). ABC records indicate that under BPC Section 23958.4(a)(3), the ratio of off-sale retail licenses to the population in this census tract exceeds the ratio of off-sale licenses to the population in the County. Based on this ratio, the census tract allows two off-sale licenses; currently, there are five businesses with off-sale licenses within this census tract. Therefore, a Determination of Public Convenience or Necessity (PCN) is required to be issued to process the application.

As stated in the attached Police Department Memorandum (Exhibit H), dated August 15, 2024, the site is not located in an area of high crime. The Police Department is neutral to the off-sale of beer and wine at the subject site.

ANALYSIS

The proposed Conditional Use Permit Amendment is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. Permit Findings
4. California Environmental Quality Act (CEQA)
5. City Council Policy 6-30 - Public Outreach

Envision San José 2040 General Plan Conformance

Land Use Designation

As shown in the attached General Plan map (Exhibit C), the subject property is within the adopted West San Carlos Urban Village Plan area and is designated **Mixed-Use Commercial** (MUC) on the Land Use map. This designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use and residential activity allowed in a secondary role. 100% commercial use is allowed in this MUC land use designation.

Analysis: A grocery store with off-sale of alcohol is a commercial use and therefore is consistent with this General Plan land use designation.

General Plan Policies

The project is consistent with the following General Plan policies:

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.

Land Use Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

Land Use Policy LU-5.10: In review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The project is consistent with the Mixed-Use Commercial General Plan land use designation and would allow the off-sale of beer and wine at an existing grocery store. La Plaza Market is a retail establishment that includes a full range of groceries, produce, and meat, as well as the proposed alcohol. The grocery store is in a location that provides safe and convenient multi-modal access, as it is within walking distance of residential uses, on a frequent bus line (VTA Routes 23 and Rapid 523) and can also be accessed by car. Alcohol sales would be incidental to the larger grocery store and would occupy only approximately 70 square feet (0.67%) of the 10,451-square-foot sales floor area. The store would provide an additional retail option for neighborhood residents in addition to employing approximately 35 employees.

San José Municipal Code Conformance

Land Use

The subject site is located within the **MUC Mixed-Use Commercial** Zoning District (Exhibit D). Pursuant to [Section 20.55.203](#) of the Zoning Code, the off-sale of alcoholic beverages requires a Conditional Use Permit in this zoning district.

Development Standards

The project does not include any site changes or building exterior changes. The building setbacks and height will not be altered with this Conditional Use Permit.

Parking

A grocery store is defined as a Visit-End Use per Table 20-190 of [Section 20.90.060](#). Visit-End Uses under 100,000 square feet are exempt from the requirement for a Transportation Demand Management (TDM) plan per [Section 20.90.900.B.2.d](#). Because there is no expansion of this grocery store, the project is exempt from the TDM requirement. No new bicycle parking is required per [Section 20.90.020](#), as the project does not include new square footage or more than 5,000 square feet of outdoor uses.

Performance Standards

Pursuant to [Section 20.55.202](#) of the Municipal Code, 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.

Analysis: The sale of beer and wine 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 off-sale of alcohol will be required to comply with the submitted Operations Plans, which provide provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. No consumption or open alcoholic beverages would be allowed on the premises. The site is surrounded by commercial use, two public streets, and single-family residential to the north and northwest. The grocery store is located along West San Carlos Street with a primary entry near the corner of West San Carlos Street and Brooklyn Ave, away from the single-family residences to the north. The project consists only of interior improvements and operations (sale of alcohol), with no additional exterior activities that could potentially increase noise. Therefore, the project would comply with these performance standards.

Permit Findings

Conditional Use Permit Findings

The following findings must be made for the issuance of a Conditional Use Permit Amendment pursuant to [Section 20.100.720](#) of the Zoning Code.

1. The conditional use permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans, and area development policies; and

Analysis: As explained in the General Plan Conformance section above, the project is consistent with the General Plan land use designation of Mixed-Use Commercial, which allows for retail uses, including off-sale alcohol at retail stores. The project is consistent with General Plan policies for promoting retail development, which provides a full range of goods and services to residents.

2. The conditional use permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As analyzed in the San José Municipal Code Conformance section, the proposed project is consistent with the MUC Mixed-Use Commercial Zoning District performance standards. The project would not alter the height and setbacks of the existing building. The project is exempt from providing a TDM plan, and no additional vehicle or bicycle parking is required. Additionally, the project is consistent with the San José Municipal Code sections for the off-sale of alcohol and the determination of public convenience or necessity, as analyzed in the Required Findings for the Off-Sale of Alcohol and Required Findings for the Public Convenience and Necessity sections below.

3. The conditional use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: Staff followed [Council Policy 6-30: Public Outreach Policy](#) for Pending Land Use and Development Proposals to inform the public of the proposed project. Onsite signs have been posted on the two site frontages since September 20, 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. Staff has been available to answer questions from the public and to date, no comments have been received.

4. 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 property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and

Analysis: As described in the Project Background section, the subject site is located in an over-concentrated Census Tract (Census Tract 5020.01). The census tract allows two off-sale licenses; currently, there are five businesses with off-sale licenses within this census tract. The proposed off-sale of alcohol would occur within a grocery market in an existing commercial area along West San Carlos Street. The San José Police Department Memorandum dated August 15, 2025 (Exhibit H) states that the site is not within a high crime area, and the Police Department is neutral to off-sale alcohol at this location. With regard to the proximity of the residential use to the north, the existing building and operations are oriented away from the residential use to the north and are separated from the residences by a surface parking lot and existing fences. No late-night operation is proposed with this project.

All staff must complete the State Alcoholic Beverage Control's mandated training and must comply with State law requiring all staff selling alcohol to be over 21 years of age. According to the Operations Plan (Exhibit G), there are security cameras throughout the sales area and on the exterior of the store, and the store and parking lot would be monitored by staff and management. This surveillance system keeps recorded data for about 30-45 days. The grocery store also has an on-call Security Service 24/7 to help with any matters that require additional support. The presence of surveillance cameras and active monitoring of the premises provides a deterrent to crime and other anti-social behaviors, which prevents adverse effects on the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, as well as the general welfare by discouraging crime and other anti-social behaviors at the site and the surrounding area.

Finally, the Conditional Use Permit Resolution (Exhibit I) includes conditions to address issues related to site security, employee training, trash, litter, graffiti, and site maintenance. Therefore, the project would not adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the vicinity of the project, it would not impair the value of property located nearby, and would not be detrimental to public health, safety, or general welfare.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping, and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: No physical changes are proposed to the subject site or the building exterior, therefore, it would not affect the size and shape of the site or its ability to accommodate yards, walls, fences, parking and loading facilities, or landscaping.

6. The proposed site is adequately served:
- 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
 - By other public or private service facilities as are required.

Analysis: Access to the subject site is provided by West San Carlos Street and Brooklyn Avenue. The site is also within 600 feet of a bus stop for Valley Transportation Authority bus route no. 23. All required public utilities are available to the site.

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

Analysis: The project would allow the off-sale of alcohol at an existing retail store. The project will not include any exterior modifications. The alcohol sales will be conducted wholly inside the building. Based on these facts and the discussion and findings above, the activity is not anticipated to significantly affect the environment concerning noise, vibration, dust, drainage, erosion, stormwater runoff, or odor.

Required Findings for the Off-Sale of Alcohol

A Conditional Use Permit may be issued pursuant to the applicable provisions of [Chapter 20.80, Part 11](#) for the off-sale of beer and wine only if the decision-making body first makes the following additional findings, where applicable:

- For such use at a location closer than 500 feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale alcohol use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

Analysis: The subject retail store is located within 500 feet of one existing off-sale establishment and within 1,000 feet of two existing off-sale establishments, listed below and shown on Exhibit E:

- *San Carlos Liquors (Type 21), located approximately 420 feet to the east at 1875 West San Carlos Street;*
- *7 Eleven (Type 20), located approximately 830 feet to the west at 2230 Stevens Creek Boulevard.*

*The project would result in three off-sale alcohol establishments within a 1,000-foot radius of the project site. Therefore, this finding **can** be made.*

- For such use at a location closer than 500 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:
 - Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - Impair the utility or value of property of other persons located in the vicinity of the area; or
 - Be detrimental to public health, safety or general welfare.

Analysis: This finding is not applicable because there is only one existing off-sale establishment within 500 feet of the project site and only two within 1,000 feet of the project site.

3. For such use at a location closer than 500 feet from any childcare center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or 150 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 site is not currently within 500 feet from any existing child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The nearest residential use is the single-family residence at 47 Brooklyn Avenue, located to the north of the site. This residence is separated from the retail store on the subject property by a surface parking lot and a fence. The walking distance from the entrance of this building to the grocery store entrance is approximately 260 feet. Therefore, this finding **can** be made.*

Please note the following two proposed developments adjacent to the site include residential use and a residential care facility:

- a. *To the east of the project site across the street from Brooklyn Avenue, a mixed-use development project (File No. CP20-020), including ground floor commercial space, a residential care facility for the elderly (RCFE), and multi-family residential use, was approved in September 2023. The walking distance from the proposed residential lobby at Brooklyn Avenue to the grocery store entrance is approximately 156 feet. The walking distance from the RCFE to the grocery store entrance is approximately 468 feet. No building permit application has been filed for this project. Since this project has not been built, it would not affect the findings above.*
- b. *To the west of the site, a mixed-use development project (File No. H23-005), including ground floor commercial space and multi-family residential units on upper floors, is being proposed and has not been approved. The walking distance from the proposed residential lobby to the grocery store entrance is approximately 410 feet. The project would not affect the findings above.*

Determination of Public Convenience or Necessity Findings

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcoholic Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity, or PCN). An “undue concentration” is defined as follows:

1. The premises of the proposed license are located in an area that has 20% greater number of reported crimes than the average number of reported crimes for the City as a whole, or
2. The premises of the proposed license are located within a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Analysis: The project site is located within Census Tract 5020.10. According to the Police Department Memorandum, dated August 15, 2024, the neighborhood does not report 20 percent more crimes above the city average. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. The allocated number of off-sale establishments in Census Tract 5020.10 is two, and currently, there are five off-sale establishments. This permit would be the sixth off-sale alcohol use in the Census tract. Therefore, for the California Department of Alcoholic Beverage Control to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in [Title 6](#) of the San José Municipal Code and is described below.

[Chapter 6.84](#) of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission may issue a PCN only after first making all of the findings specified below (see SJMC Section [6.84.030](#)):

1. The proposed use is not located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined 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

*Analysis: The proposed use is located within the Burbank/Del Monte Strong Neighborhood Initiative area. Therefore, this finding **cannot** be made.*

2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a 1,000-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The project would result in three off-sale establishments within a 1,000-foot radius from the site. Therefore, this finding **can** be made.*

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence; and

*Analysis: The subject site is not located within 500 feet of a school, daycare center, public park, social services agency, or residential care or service facility. The walking distance from the entrance of the nearest residence to the grocery store entrance is approximately 260 feet. Therefore, this finding **can** be made.*

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

*Analysis: The floor area dedicated to alcohol sales is approximately 70 square feet or 0.67% of the sales floor within this grocery store. Therefore, this finding **can** be made.*

5. At least one of the following additional findings:

- a. 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 is not unusually configured. This finding **cannot** be made.*

- b. 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: Per the Police Memorandum dated August 15, 2024, the site is not within a high-crime area. The Police Department is neutral to the off-sale of alcohol at this location. Although the census tract is over-concentrated with off-sale of alcohol establishments, there is only one existing off-sale establishment within 500 feet of the project site and only two within 1,000 feet of the project site. Adding one more off-sale establishment within a grocery store in this area would provide convenience to residents. With the implementation of the measures described in the Operations Plan and as discussed in the Conditional Use Permit Findings and

*Findings for Off-sale of Alcohol above, the off-sale of beer and wine would not be detrimental to public health, safety, or welfare of persons in the area. Therefore, this finding **can** be made.*

- c. 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 project would result in an overconcentration in the number of outlets for the off-premises sale of alcoholic beverages, as explained under the Project Description section above. Therefore, this finding **cannot** be made.*

- d. 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: The off-sale of beer and wine makes up approximately 0.67% of the sales floor area and is incidental and appurtenant to the larger retail use of a grocery store. The sale of alcohol allows for a more complete and convenient shopping experience by providing alcohol at a full-service grocery store. Therefore, this finding **can** be made.*

Since the Planning Commission cannot make one or more of the first four findings (items 1 through 4) listed above. In that case, the Planning Commission is required by San José Municipal Code [Section 6.84.030.D](#) to make a recommendation to the City Council as to whether the Council should make a determination for the proposed use.

*Analysis: Finding 1 for the issuance of a Determination of Public Convenience or Necessity **cannot** be made for the off-sale of beer and wine because the site is within the Burbank/Del Monte Strong Neighborhood Initiative area. Therefore, City Council approval is required for the proposed use. The Planning Commission would make a recommendation on the proposed use to the City Council and the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control (ABC) for the off-premises sale of beer and wine, where it can make a determination that not all of the required findings can be made, and when the Council identifies that the proposed use would provide a significant and overriding public benefit or benefits. The Council **can** identify and find that the proposed use would provide significant and overriding public benefit.*

Notwithstanding the foregoing provisions and requirements contained in Section 6.84.030.D above, the City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control 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. can be made; and

*Analysis: Finding 1 for the Determination of Public Convenience or Necessity **cannot** be made by the Planning Commission for the off-sale of beer and wine because the project site is within the Burbank/Del Monte Strong Neighborhood Initiative area. However, the Planning Commission **can** make Findings 2,3,4, and 5.b and 5.d.*

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

Analysis: While the Planning Commission cannot make all of the required findings for the Determination of Public Convenience or Necessity, there are significant and overriding benefits by the proposed use. Off-sale alcohol would be appurtenant to a larger grocery store that provides a complete shopping experience, including a full range of groceries, produce, meat, and alcohol. Approximately 0.67% of the sales floor area would be dedicated to the off-sale of alcohol. The

remainder of the approximately 10,381-square foot sales floor area would be dedicated to sales of items typical of a grocery store. As discussed in finding 5.b above, while there is an overconcentration of ABC off-sale licenses within the subject census tract, there is currently only one off-sale alcohol establishment within 500 feet of the project site and only two within 1,000 feet of the site. Adding one more off-sale of beer and wine establishments in this area would provide additional convenience for nearby residents.

The store is oriented in a manner that would not be a detriment to the adjacent uses, including the residences to the north, as discussed previously. Additionally, the submitted Operations Plan provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. Video surveillance would be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (7:00 am to 9:00 pm daily). These mitigating factors will be included in the permit as conditions of approval and will be monitored and enforced by the City. Finally, the proposed off-sale alcohol use would further activate an existing commercial area and provide additional retail options to the existing and future residents in the surrounding area.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 would allow the off-sale of beer and wine within an existing grocery store and would include interior modifications to allow for the display of those products. Off-sale beer and wine retail would be conducted wholly inside the building. Based on the discussion and findings in the sections above, the project would not significantly affect the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

PUBLIC OUTREACH

Staff followed [Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals](#) to inform the public of the proposed project. Onsite signs have been posted on both project frontages since September 20, 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.

Project Manager: Angela Wang
Approved by: /s/ John Tu, Division Manager, for Christopher Burton, Director of Planning,
 Building & Code Enforcement

EXHIBITS:
Exhibit A: Vicinity Map/Aerial (Page 12)
Exhibit B: Floor Plan (Page 13)
Exhibit C: General Plan Map (Page 14)
Exhibit D: Zoning Map (Page 15)
Exhibit E: Alcohol Radius Map (Page 16)
Exhibit F: Plan Set
Exhibit G: Operations Plan
Exhibit H: Police Dept. Memo
Exhibit I: Draft Resolution

Applicant:	Owner
Juvenal Chavez JE&E Chavez, LLC DBA La Plaza Market PO Box 361945 Milpitas, CA 95036	Cha Cha ENTs LLC 40 S Rengstorff Ave, Mountain View, CA 94040-1704

Exhibit A: Vicinity Map/Aerial

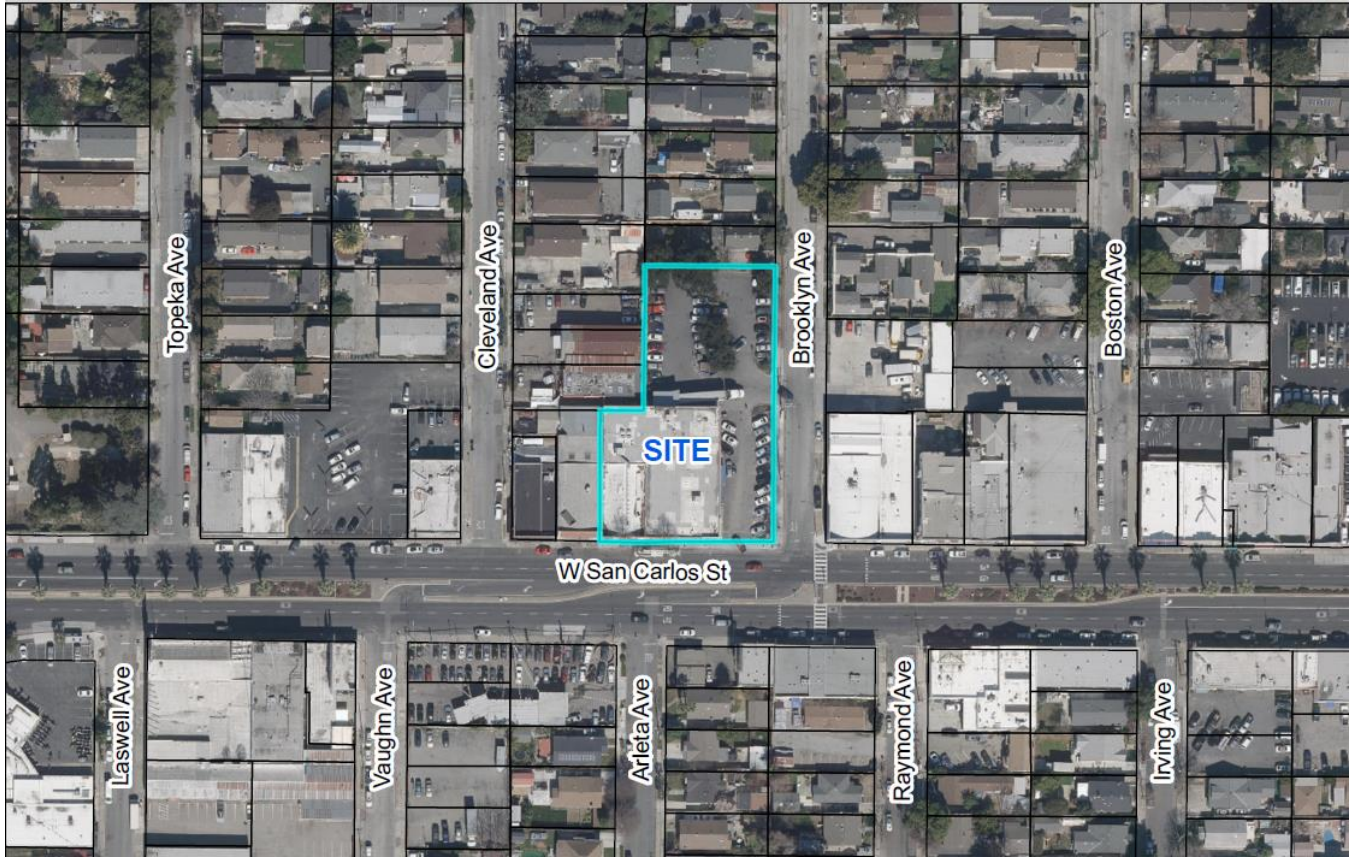


Exhibit B: Floor Plan

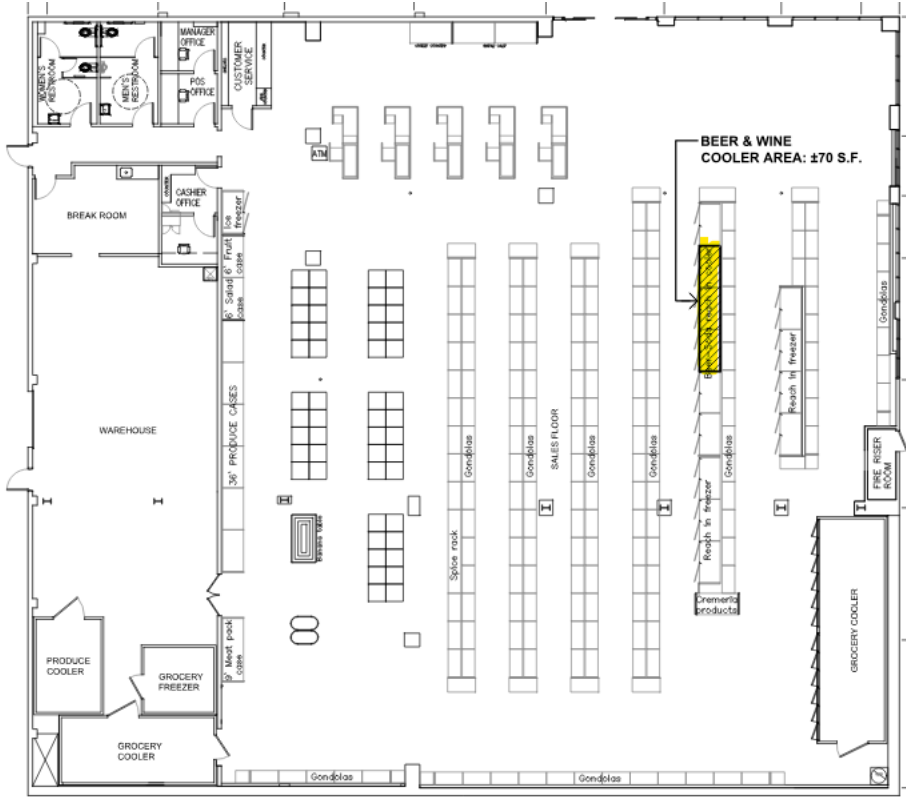


Exhibit C: General Plan Map

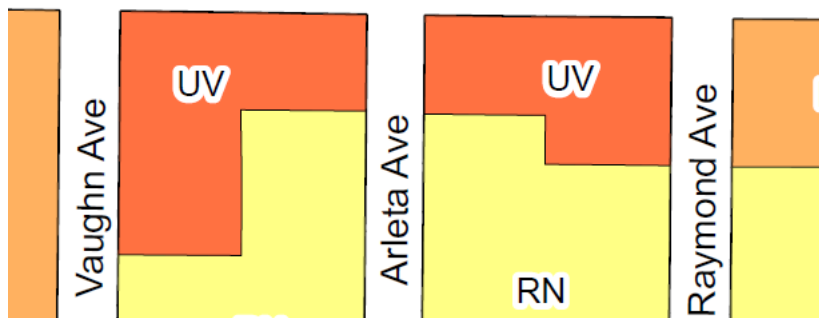
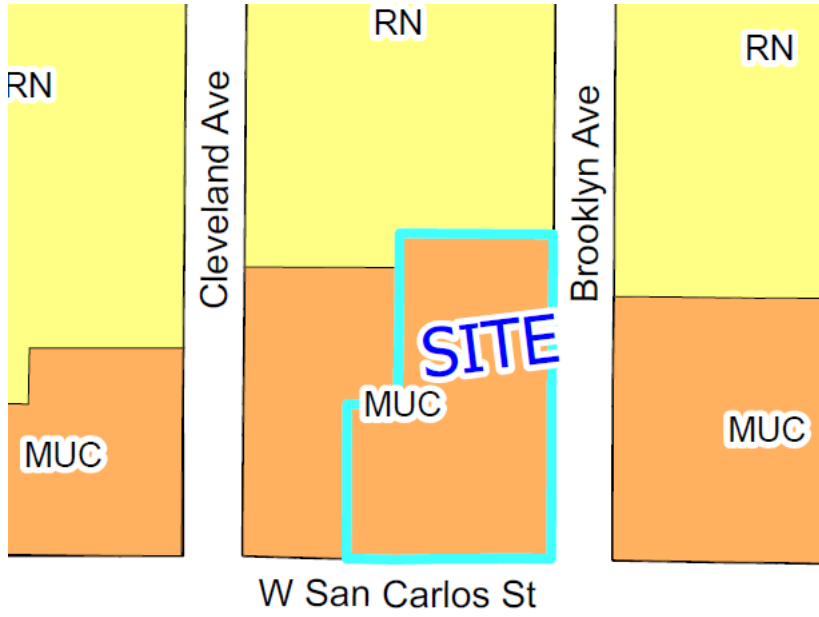


Exhibit D: Zoning Map

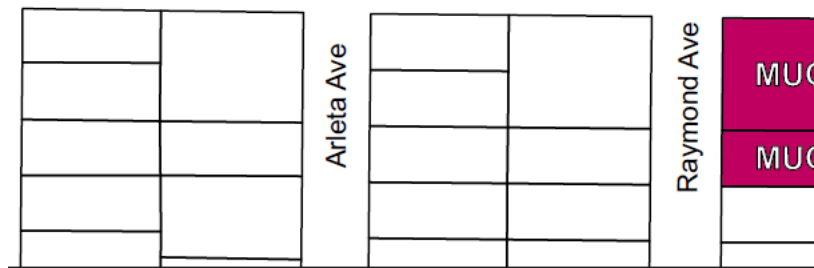
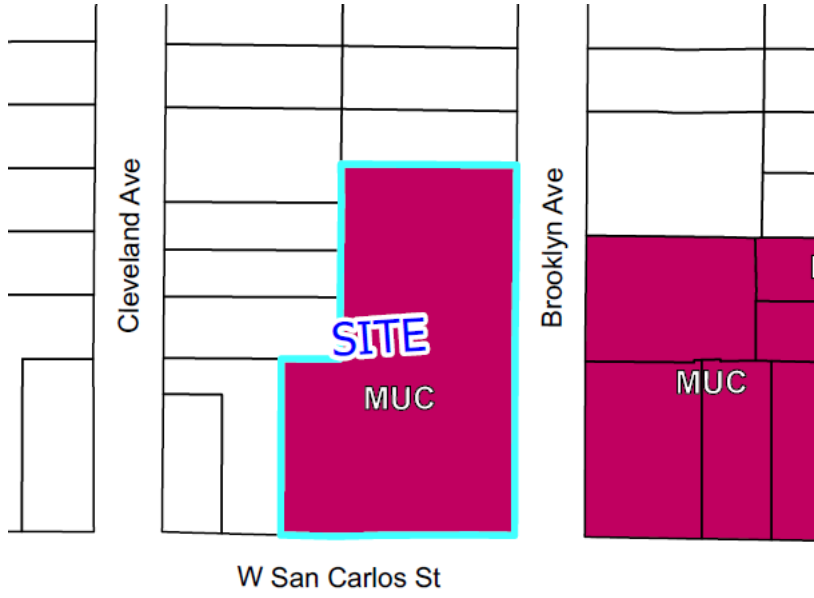
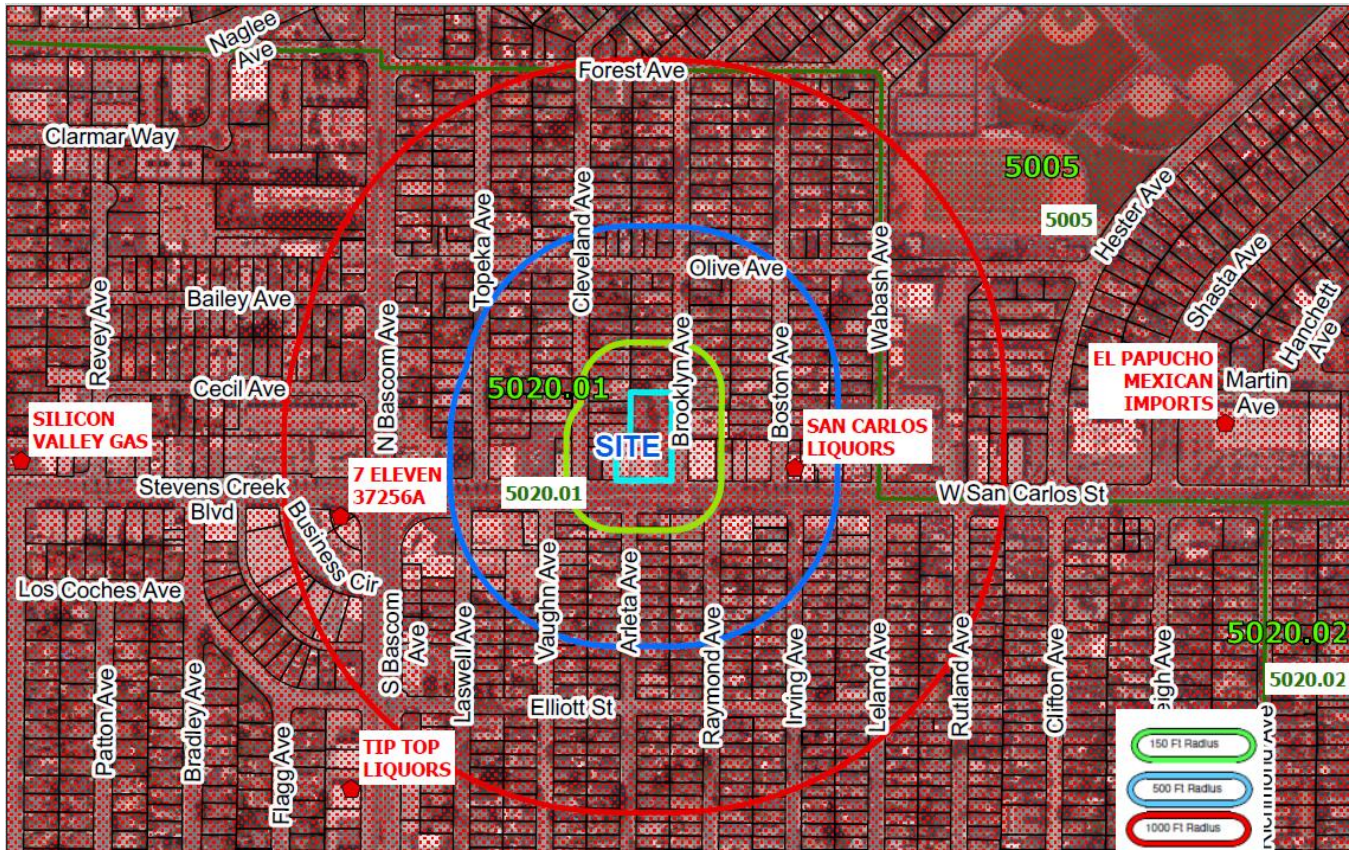


Exhibit E: Alcohol Radius Map



Green line: 150-foot radius
Blue line: 500-foot radius
Red line: 1,000-foot radius