

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (TYPE 21 ABC LICENSE) AT AN EXISTING APPROXIMATELY 2,376-SQUARE-FOOT TENANT SPACE ON AN APPROXIMATELY 0.93-GROSS-ACRE SITE, LOCATED AT THE SOUTHERLY CORNER OF MCKEE ROAD AND NORTH 34<sup>TH</sup> STREET (1610 MCKEE ROAD) (APN 481-03-084)**

**FILE NO. PD24-016**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 16, 2024, an application (File No. PD24-016) was filed by Amritpal Kaur Powar, on behalf of Blue Creek Properties, LLC, (“Permittee”) with the City of San José (“City”) for a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License) at an existing approximately 2,376-square-foot tenant space (“Project”) on an approximately 0.93-gross-acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located at the southerly corner of the intersection of McKee Road and North 34<sup>th</sup> Street (1610 McKee Road, APN 481-03-084, San José, 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 hearing on said application on February 12, 2025, 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 recommendation 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 "101 Mini Market & Produce" dated December 20, 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 Project site is an approximately 0.93-gross-acre lot located at the southerly corner of the intersection of McKee Road and North 34<sup>th</sup> Street (1610 McKee Road, APN 481-03-084). The Project site is currently developed with a neighborhood shopping center. An approximately 2,376-square-foot tenant space within the shopping center will be leased as a convenience store (proposed as 101 Mini Market and Krispy Krunchy Chicken). Metro PCS currently occupies the tenant space.

The site is bounded by a neighborhood shopping center to the northwest across McKee Road, duplex and single-family residences to the northeast across North 34<sup>th</sup> Street, a gas station to the southwest, and duplex and single-family residences to the southeast. The site is accessed by two driveways along McKee Road to the northwest. The driveways provide access to a surface parking lot shared by the shopping center.

**2. Project Description.** The Project consists of a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License) at an existing approximately 2,376-square-foot tenant space on an approximately 0.93-gross-acre site. Approximately 119 square feet (five percent of the gross floor area) will be dedicated to the sale of alcohol. Alcohol will be stored within three walk-in cooler doors and behind the register. Off-sale alcohol sales will be incidental to the 101 Mini Market and Krispy Krunchy Chicken convenience store, which is a permitted use within the site's Planned Development Zoning District. The convenience store will also sell baked goods, snacks, canned goods, fresh produce, dairy, beverages, and household items.

The proposed off-sale of alcohol requires State Alcoholic Beverage Control License Type 21, which allows for the off-sale of beer, wine, and distilled spirits only for consumption off the premises where sold. Alcohol sales will occur from 7:00 a.m. to midnight, seven days a week, coinciding with 101 Mini Market and Krispy Krunchy

Chicken's hours of operation. Two employees will be on site during all hours of operation.

A Determination of Public Convenience or Necessity is required for the Project as the Project site is located within an over-concentrated census tract (5036.01). The authorized number of allowed off-sale licenses in this census tract is one, and currently, there are five active off-sale licenses. The Project will introduce a sixth off-sale license within the census tract. The site is not located within a police beat considered to be high-crime, defined as 20% above the city average. A Police Memorandum dated September 17, 2024 states that the Police Department is neutral to the off-sale of alcohol at this site. The Police Memorandum includes conditions of approval prohibiting exterior advertising of alcohol. The business owner will be required to post signage on the property prohibiting loitering and open alcoholic beverage containers on the premises. The business owner will also be required to remove any graffiti within 72 hours. In addition, no individual containers of beer or malt beverage products shall be sold.

The site is also located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The project would result in five off-sale establishments with an active license within a 1,000-foot radius of the project site. In addition, the project site is located approximately 400 feet east of Anna Darling Elementary School and approximately 70 feet west of the nearest residential properties along North 34th Street. Therefore, pursuant to Chapter 6.84 of the San José Municipal Code, which governs Determinations of Public Convenience or Necessity for an Alcoholic Beverage Control License, the City Council shall be the final decision-maker for this off-sale alcohol proposal, considering a recommendation from the Planning Commission.

Staff recommends that the City Council deny the Planned Development Permit and Determination of Public Convenience or Necessity as the off-sale of alcohol at this site would not provide significant and overriding public benefits to an area that is overconcentrated with active off-sale licenses.

- 3. General Plan Conformance.** The Project site is designated Neighborhood/Community Commercial on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood / Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

*Analysis: The off-sale of alcohol will be incidental to a new convenience store located within an existing shopping center. The new convenience store will serve surrounding*

*residences in the neighborhood. Therefore, the Project is consistent with the Neighborhood/Community Commercial land use designation.*

The Project is consistent with the following General Plan Goals and 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.

*Analysis: The Project will allow a new convenience store to sell alcohol for off-site consumption. The new convenience store will generate revenue for the City and retain existing commercial lands. Therefore, the Project is consistent with this policy.*

Neighborhood Serving Commercial Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.

*Analysis: The new convenience store will be located within an existing neighborhood shopping center, providing an additional neighborhood-serving commercial use for surrounding residents. Therefore, the Project is consistent with this policy.*

Neighborhood Serving Commercial Policy LU-5.10: In the 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 new convenience store will offer a full range of food choices, including baked goods, snacks, canned foods, fresh produce, dairy, beverages, and household items. The new convenience store will also sell Krispy Krunchy Chicken. Therefore, the Project is consistent with this policy. The site is directly across the street from a significantly larger full-service grocery store (Lucky 7 Supermarket) that also sells alcohol.*

The Project is inconsistent with the following General Plan Goals and Policies:

Major Strategy #11 - Design for a Healthful Community: The General Plan further supports Healthful Community regulatory land use policies, enabling the operation of farmer's markets, urban farming activities, and promoting the availability of healthful foods while limiting access to alcohol at retail locations.

*Analysis: The new convenience store would be located along McKee Road, where there are several existing retail establishments authorized to sell alcohol for off-site consumption. The new convenience store would be the fifth off-sale establishment within a 1,000-foot radius of the site. The project would not limit the surrounding*

*neighborhood's access to alcohol, given the number of existing establishments near the project site. Therefore, the project is inconsistent with this major strategy.*

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

##### Use Regulations

The Project site is located within the A(PD) Planned Development Zoning District (File No. PDC99-064). This Planned Development Zoning District allows permitted uses of the C-1 Commercial District, in effect when the Planned Development Zoning District was approved on February 1, 2000. Retail uses are permitted within the C-1 Commercial District. Off-sale of alcohol is allowed with the issuance of a Conditional Use Permit. Pursuant to Section 20.100.910.A, a Planned Development Permit is required for the off-sale of alcohol, instead of a Conditional Use Permit, as the site is located within a Planned Development Zoning District.

##### Development Standards

The off-sale of alcohol at this site is consistent with the development standards of the A(PD) Planned Development Zoning District (File No. PDC99-064), as the Project does not include modifications to the exterior of the convenience store. The table below outlines the Planned Development Zoning District's development standards:

<b>Development Standard</b>	<b>Required</b>	<b>Provided (Existing Building)</b>
Adjacent to McKee Road	15 feet minimum	15 feet
Adjacent to 34th Street	14 feet minimum	14 feet
Adjacent to residential	18 feet minimum	18 feet
Adjacent to gas station	5 feet minimum	189 feet, 11 inches
Building height	1 story 30 feet maximum	26 feet, 6 inches

*Analysis: As shown in the table above, the new convenience store will remain consistent with the development standards of the Planned Development Zoning District.*

##### Parking

Pursuant to the Planned Development Zoning District, 50 vehicle parking spaces are required within the neighborhood shopping center.

*Analysis: The site currently has 50 vehicle parking spaces, meeting the requirement. The Project does not increase or decrease the number of vehicle parking spaces on site.*

##### Noise

The C-1 Commercial District does not contain noise standards. All activity related to the off-sale of alcoholic beverages will take place indoors and any construction for the Project will consist solely of interior improvements.

5. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed Project. An on-site sign has been posted on the Project frontage since October 17, 2024. Staff received one letter of opposition to the off-sale alcohol proposal. Staff also received from the applicant a list of signatures from members of the public who support the project. 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.
6. **Environmental Review.** Under the provisions of Section 15270 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. Section 15270 applies to projects which are denied, in that CEQA does not apply to projects which a public agency rejects or disapproves.
7. **Planned Development Permit Findings:** Section 20.100.940 of the San José Municipal Code specifies the required findings for the approval of a Planned Development Permit.

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

*Analysis: The Project is consistent with the General Plan land use designation of Neighborhood/Community Commercial, which supports neighborhood-serving retail. As explained in Section 3, "General Plan Conformance", the Project is consistent with General Plan policies regarding retail development. The off-sale of alcohol at the new convenience store would provide an additional revenue-generating opportunity for the City while providing the benefit of a neighborhood-serving commercial use for surrounding residents who may purchase alcohol along with a full range of other food and grocery items sold. However, the project is inconsistent with Major Strategy #11, which supports healthful communities by limiting the availability of alcohol.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: The Project conforms with the Use Regulations and Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC99-064). The Project is consistent with all required setbacks,*

*heights, parking, and noise requirements of the Planned Development Zoning District. The Project will not modify the exterior of the existing building.*

- c. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the Project. An on-site sign has been posted on the Project frontage since October 17, 2024. Staff received one letter of opposition to the off-sale alcohol proposal. Staff also received from the applicant a list of signatures from members of the public who support the project. 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 also been available to respond to questions from the public.*

- 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; and

*Analysis: The Project will not alter the exterior of the existing commercial building. The new convenience store will continue to be compatible with the rest of the neighborhood shopping center.*

- 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 CEQA, will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The off-sale of alcohol within the new convenience store will only result in interior modifications and tenant improvements for the storage of alcohol. As a result, environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor will not occur. Therefore, the Project will not have an unacceptable negative effect on adjacent properties. The project is categorically exempt from further environmental review pursuant to CEQA Section 15270 for Projects Which Are Disapproved.*

- 8. Off-Sale Alcohol Findings:** A Planned Development Permit may be issued pursuant to the applicable provisions of Chapter 20.80, Part 11 for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

- 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 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 one-thousand-foot radius from the proposed location.



*Analysis: The new convenience store will be located approximately 230 feet from the nearest use involving off-sale of alcoholic beverages (Lucky 7 Supermarket). In addition, there are four off-sale alcohol establishments located within a 1,000-foot radius from the new convenience store (Lucky 7 Supermarket, Gas & Shop, Quality Produce, and 7 Eleven). The new convenience store will result in a total of five off-sale establishments within this 1,000-foot radius. Therefore, this finding **cannot** 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 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: As stated above in finding (a), there are four off-sale establishments located within a 1,000-foot radius of the Project site. The new convenience store will be the fifth off-sale establishment. The Police Memorandum dated September 17, 2024 states that the Police Department is neutral to the off-sale of alcohol at this site. The Police Memorandum includes conditions of approval, prohibiting exterior advertising of alcohol. The business owner will be required to post signage on the property prohibiting loitering and open alcoholic beverage containers on the premises. The business owner will also be required to remove any graffiti within 72 hours. In addition, no individual containers of beer or malt beverage products shall be sold. The Operations Plan prepared by the Permittee states that security cameras will be installed inside and outside of the store, with footage being stored for up to 180 days. In addition, employees will follow trash management and graffiti prevention practices to keep the site clean. As such, the new convenience store will not adversely affect the peace, health, safety, morals, or welfare, impair the utility or value of property, or be detrimental to public health, safety, or general welfare. Therefore, this finding **can** be made.*

- 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 site is located approximately 400 feet easterly of Anne Darling Elementary School, which is situated opposite the intersection of McKee Road and North 33rd Street. The site is also located approximately 70 feet westerly of residential properties along North 34th Street. The existing entrance to the commercial building is oriented to the west, which faces away from the residential properties along North 34th Street. In addition, the entrance, pick-up, and drop-off area at Anne Darling School is located on the opposite end of the property, approximately 1,000 feet from the new convenience store. The portion of Anne Darling Elementary School located within 500 feet of the new convenience store location is occupied by a parking lot for the school. Due to the orientation of the existing commercial building facing away from residential properties and the location of Anne Darling Elementary School's entrance being more than 500 feet from the site, the off-sale of alcohol at this location will not adversely affect the elementary school or nearby residential properties. Therefore, this finding **can** be made.*

**9. Determination of Public Convenience or Necessity Findings:** Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol 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:

- a. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
- b. The premises of the proposed license are located in 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 site is located within Census Tract 5036.01 and San José Police Beat M3. According to the Police Department Memorandum dated September 17, 2024, the reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20 percent crime index. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. As stated in the Police Department Memorandum, one off-sale location is authorized to this census tract based on its population. There are currently five off-sale establishments with an active license (Lucky 7 Supermarket, Gas & Shop, Quality Produce, 7-Eleven, and Trade Rite Market). Four establishments have an active Type 20 license and one establishment has an active Type 21 license. For*

*the California Department of Alcoholic Beverage Control to be able to issue a license for this off-sale alcohol use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the Project is based on the required findings identified in Title 6 of the San José Municipal Code and is described below.*

Chapter 6.84 of the San José Municipal Code identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN may be issued only after first making all of the findings specified 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:
  - 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 project site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The Police Department Memorandum states that the Police Department is neutral to the off-sale alcohol proposal at this location. The site is not located within a police beat that is over 20 percent of the crime index. In addition, a crime analysis identified that a majority of the calls for service within 1,000 feet of the site between August 20, 2023 and August 20, 2024 were traffic-related (208 out of 349 calls). As stated in the Operations Plan, the off-sale of alcohol would be limited to the hours of 7:00 a.m. to 12:00 a.m. midnight. In addition, the implementation of security cameras, trash management, and graffiti prevention practices would help prevent additional service calls. Therefore, the off-sale of alcohol would not be detrimental to 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. However, because the subject site is located within an SNI area, 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: The off-sale of alcohol at this location will lead to the grouping of more than four off-sale establishments within a 1,000-foot radius of the new convenience store. A total of five off-sale establishments will be located within this radius. Therefore, this finding **cannot** be made.*

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

*Analysis: The new convenience store is located approximately 400 feet east of Anna Darling Elementary School and approximately 70 feet west of residential properties along North 34th Street. Therefore, this finding **cannot** be made.*

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

*Analysis: Approximately 119 square feet of the 2,376-square-foot tenant space (five percent) will be used for alcohol sales. Alcohol will be stored within three walk-in cooler doors and behind the register. This will not represent a majority of the new convenience store use. 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 is not unusually configured in shape. 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: The off-sale of alcohol will occur within the 101 Mini Market and Krispy Krunchy Chicken tenant space of the existing commercial building. The new convenience store will provide the surrounding neighborhood with access to a variety of grocery and household items. The Project will allow the convenience store to complement its products with alcohol sales for off-site consumption. The Police Department is neutral to the off-sale of alcohol at this location. The Operations Plan includes provisions for trash and graffiti removal, the installation of security cameras inside and outside of the convenience store, and employee training for alcohol sales. Therefore, off-sale of alcohol will not significantly impact public health or safety, and 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 off-sale of alcohol at the new convenience store will contribute to an over-concentration in the number of off-sale establishments in the census tract area, as there are currently five active off-sale licenses. The census tract's*

*population allows for one active off-sale licenses. 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: Approximately 119 square feet of the 2,376-square-foot tenant space (five percent) will be used for alcohol sales. Alcohol will be stored within three walk-in cooler doors and behind the register. The remainder of the floor area will be dedicated to the sales of grocery items such as baked goods, snacks, canned foods, fresh produce, dairy, beverages, and household items. The new convenience store will also sell Krispy Krunchy Chicken. Therefore, this finding **can** be made.*

Findings (a), (b), and (c) for the issuance of a Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol. Therefore, City Council approval is required for the off-sale of alcoholic beverages at the Project site. 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. (findings a-d and e.i-iv listed above) can be made; and

*Analysis: Finding (a) for the issuance of a Determination of Public Convenience or Necessity cannot be made because the project site is located within an SNI area. Finding (b) cannot be made because the project would result in five off-sale establishments within a 1,000-foot radius of the site. Finding (c) cannot be made because the site is located within 500 feet of a school and within 150 feet of a residential property. Finding (e.i) cannot be made because the census tract is not unusually configured in shape. Finding (e.iii) cannot be made because the site is located within an overconcentrated census tract. Findings (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: Findings (a), (b), (c), (e.i), and (e.iii) for the Determination of Public Convenience or Necessity cannot be made. While the new convenience store would offer a full range of food choices and would not significantly impact public health and safety through the implementation of security measures and frequent site maintenance, the off-sale of alcohol at the site would not provide significant and overriding public benefits. The project site is located along McKee Road where several active off-sale licenses have been issued. The project would result in a fifth off-sale establishment within a 1,000-foot radius of the site. In addition, the project site's census tract is overconcentrated with five active off-sale licenses; one off-*

*sale license is authorized. The project would provide an additional neighborhood-serving commercial use for surrounding residents, with a full range of food choices. However, the proposed use does not include significant site improvements and has not shown how it will differentiate itself from the existing off-sale establishments nearby. Given the proposed use's proximity to existing off-sale establishments (including directly across the street from a full-service grocery store) and because the census tract is overconcentrated with active off-sale licenses, the off-sale of alcohol at this site would not provide significant and overriding public benefits. Therefore, staff recommends that the City Council deny the Planned Development Permit for off-sale alcohol and Determination of Public Convenience or Necessity.*

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 is hereby **denied**.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025, 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.*