



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** May 31, 2022

**COUNCIL DISTRICT: 6**

**SUBJECT: FILE NO. PD22-011. PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (TYPE 21 FULL RANGE OF ALCOHOLIC BEVERAGES) AT AN EXISTING 1,265-SQUARE FOOT RETAIL STORE ON AN APPROXIMATELY 0.8-GROSS ACRE SITE LOCATED AT 350 BARACK OBAMA BOULEVARD (FOR YOU MINI MARKET).**

## **RECOMMENDATION**

The Planning Commission voted 10-0-1 (Commissioner Cantrell absent) to recommend that the City Council take all of the following actions:

1. Consider the exemption in accordance with CEQA.
2. Recommend that the City Council adopt a resolution approving, subject to conditions, a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 full range of alcoholic beverages) at an existing 1,265-square foot retail store on an approximately 0.8-gross acre site located at 350 Barack Obama Boulevard (For You Mini Market).

## **OUTCOME**

If the City Council approves all the actions listed above, the applicant would be able to request an ABC (Alcohol Beverage Control) license to operate an existing retail establishment with the off-sale of alcohol, which includes a full range of alcoholic beverages, in a 1,265-square foot retail store.

## **BACKGROUND**

On May 25, 2022, the Planning Commission considered the proposed Planned Development Permit and Determination of Public Convenience or Necessity. This item initially remained on

the Planning Commission's Consent Calendar. Commissioner Torrens made a motion to approve the recommendation. Commissioner Oliverio seconded the motion. The motion passed 10-0-1 (Commissioner Cantrell absent).

However, public comment was not taken on the Consent Calendar and the Consent Calendar was revisited to allow for the public to comment. There were no members of the public who spoke on this item when Chair Bonilla asked for speakers.

Commissioner Caballero made a motion to approve, and Commissioner Torrens seconded the motion. The motion passed 10-0-1 (Commissioner Cantrell absent).

After the Planning Commission voted to recommend approval of this project, two members of the public raised their hands to speak. Chair Bonilla invited the members of the public to speak.

Mr. Bactash stated that the project is near other off-sale alcohol establishments and is across the street from a residence for people recovering from drug and alcohol addiction. He said the store and the floor area dedicated to the sale of alcohol is over 50% of the floor area. Additionally, the retail store had previously applied for a permit for the off-sale of alcohol and was denied by the City. He said that the store is illegally selling alcohol currently without a valid license. Mr. Bactash said that the business owner was told by City's Code Enforcement to cease all sales. Mr. Bactash then concluded by requesting that the permit be denied for this project.

Oscar Villalobos, assistant manager for the Chevron gas station on Bird Avenue, stated that he is opposed to the project. He said that this project would create problems for the businesses and residents in the neighborhood since it would provide easy access to transients in the area, and it is too close to a low-income residential building that provides supportive housing to people recovering from drug and alcohol addiction, and it's too close to other businesses that also sell alcohol. Mr. Villalobos stated that off-sale alcohol at this location would increase the crime rate in an already high crime rate area. When police are called for emergencies, they show up late if they show up at all, and having off-sale alcohol in the neighborhood would make things worse.

#### *Follow-up Staff Responses*

In response to the public comments, Planning staff visited the project site on May 26, 2022, to verify if there was any off-sale of alcohol operations. Staff found the tenant space to be closed with a chain and padlock barring the door and moving boxes on the floor and counters. Staff did not observe any alcohol containers.

There are only two other establishments with off-sale of alcohol within a 1,000-foot radius, as indicated in the Planning Commission Staff Report attached. The supportive housing facility for residents recovering from drug and alcohol addiction is listed in the staff report as Pensión Esperanza, a single-room occupancy hotel, and there are no findings regarding proximity to hotels in the Zoning Ordinance. See the Planning Commission Staff Report for additional details about the findings required.

In response to Mr. Bactash's claim that there was a previous Planning Permit that was denied for the off-sale of alcohol at this site, there was a previous Planned Development Permit application that was filed in 2016 for the off-sale of alcohol at this location. That application was withdrawn because the applicant did not pay their application fees in order to initiate the Planning staff's review of that application.

### **ANALYSIS**

Analysis of the issues regarding the proposed Planned Development Permit and Determination of Public Convenience or Necessity, including General Plan conformance and the proposed resolution, are contained in the attached Planning Commission Staff Report. Off-sale of alcoholic beverages is allowed with a Planned Development Permit and Determination of Public Convenience or Necessity. The project is consistent with all relevant General Plan policies, development standards of the zoning ordinance, and City Council Policies. The San Jose Police Department reviewed the application and is neutral to the project.

### **CONCLUSION**

The Planning Commission's motion to recommend that the City Council adopt a resolution approving the Planned Development Permit and Determination of Public Convenience or Necessity for the subject property was approved by 10-0-1 (Commissioner Cantrell absent).

### **EVALUATION AND FOLLOW-UP**

If the Planned Development Permit and Determination of Public Convenience or Necessity are approved, the applicant would be able to request ABC approval for the off-sale of alcohol (Type 21 full range of alcoholic beverages) and operate a retail establishment with the off-sale of a full range of alcoholic beverages in an existing 1,265-square foot retail store.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more Climate Smart San José's mobility goals. The project would reduce Vehicle Miles Traveled (VMT) by providing a more convenient shopping experience in a rapidly growing neighborhood within the Diridon Station Area Plan boundary.

### **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the project. A notice of 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. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public. This memorandum will be posted on the City's Council Agenda website for the June 21, 2022 Council Meeting.

### **COORDINATION**

This project was coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

On May 25, 2022, the Planning Commission considered the proposed Planned Development Permit and Determination of Public Convenience or Necessity. The Planning Commission voted 10-0-1 to recommend that the City Council adopt a resolution approving the Planned Development Permit and Determination of Public Convenience or Necessity.

### **CEQA**

Under the provisions of Section 15301 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 Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 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.

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The project would allow off-sale alcohol at an existing retail store. The project would include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted wholly inside the building. Based on the discussion and findings in the above sections, the activity is not anticipated to have a significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

/s/

Christopher Burton, Secretary  
Planning Commission

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Christopher Burton

**SUBJECT:** PD22-011

**DATE:** 05/25/2022

**COUNCIL DISTRICT:** 6

<b>Type of Permit</b>	Planned Development Permit
Demolition	None
Proposed Land Uses	Off-Sale of Alcohol
New Residential Units	None
New Square Footage	None
Additional Policy Review Items	Determination of Public Convenience or Necessity
Tree Removals	None
<b>Project Planner</b>	Laura Meiners
<b>CEQA Clearance</b>	Exempt per CEQA Guidelines Section 15301(a) for Existing Facilities
<b>CEQA Planner</b>	Not Applicable

## RECOMMENDATION

Staff recommends that the Planning Commission recommends that the City Council take all of the following actions:

1. Consider the Exemption in accordance with CEQA.
2. Recommend that the City Council adopt a resolution, subject to conditions, approving a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 full range of alcoholic beverages) at an existing 1,265-square foot retail store on an approximately 0.8-gross acre site.

## PROPERTY INFORMATION

<b>Location</b>	Southeast corner of Barack Obama Boulevard and West San Carlos Street (350 Barack Obama Boulevard, Suite 10)
<b>Assessor Parcel No.</b>	264-20-132
<b>General Plan</b>	Downtown
<b>Growth Area</b>	Diridon Station Area Plan
<b>Zoning</b>	A(PD) Planned Development per File No. PDC03-016
<b>Historic Resource</b>	Not Applicable

<b>Annexation Date</b>	March 16, 1911 (Gardner)
<b>Council District</b>	6
<b>Acreage</b>	0.8-gross acre
<b>Proposed Density</b>	Not Applicable

## PROJECT BACKGROUND

As shown on the attached [Vicinity Map \(Exhibit A\)](#), the project site is located on the southeast corner of Barack Obama Boulevard and West San Carlos Street. The site is developed with an existing mixed-use building with 123 residential units and approximately 5,530-square feet of ground-floor retail. The subject site is a 1,265-square foot retail/convenience store located in a tenant space within the aforementioned 5,530-square foot ground-floor retail space. The retail space is accessed by a driveway from West San Carlos Street. Podium parking is provided with two dedicated parking spaces and 13 common use parking spaces for the use. The subject site is surrounded by commercial uses to the north across West San Carlos Street, east across Barack Obama Boulevard, and west, and a single-room occupancy (SRO) hotel to the south across Columbia Avenue.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Downtown	DC Downtown Primary Commercial	Enterprise Rent-A-Car
South	Downtown	A(PD) Planned Development (File No. PDC96-005)	Pensione Esperanza (SRO hotel)
East	Downtown	DC Downtown Primary Commercial	Avila Custom Upholstery
West	Commercial Downtown	DC Downtown Primary Commercial	76 Service Station

On February 18, 2022, Cuong (Chris) Hoang, as a representative of For You Mini-Market, a lessee of the project retail space from the building owner EHC Delmas Park, LLC, submitted a Conditional Use Permit application to allow for the off-sale of alcohol (full range of alcoholic beverages) at an existing 1,265-square foot retail space on an approximately 0.8-gross acre site. The off-sale of beer, wine, and distilled spirits for consumption off the premises where items are sold requires a State Alcoholic Beverage Control License Type 21.

On April 22, 2022, the file was converted to a Planned Development Permit (File No. PD22-011) in conformance with Zoning Ordinance Section 20.100.910.B and C. The [floor plan \(Exhibit E\)](#) for the project clearly indicates the locations and shelf area of the off-sale alcohol sales. The residential/commercial mixed-use building in which the subject retail store is located was approved through a Planned Development Permit (File No. PD03-069) in 2003. The site is not located in an area of high crime. As stated in the attached Police Department Memorandum, dated March 30, 2022, the Police

Department is neutral to the off-sale of alcohol at the subject site. However, the subject site is in an overconcentrated census tract (5008) and within the Delmas Park Strong Neighborhoods Initiative (SNI) area. Therefore, a Planned Development Permit and Determination of Public Convenience or Necessity for the off-sale of alcohol requires approval by the City Council.

RELATED APPROVALS	
Date	Action
6/17/2003	Planned Development Zoning (File No. PDC03-016) approved to rezone the site to A(PD) Planned Development Zone
12/19/2003	Planned Development Permit (File No. PD03-069) approved to construct 123 multi-family attached residences and 5,500 square feet of retail and commercial space on a 0.8 gross acre site

## ANALYSIS

The proposed Planned Development Permit and Determination of Public Convenience or Necessity are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Zoning Ordinance Conformance
3. Planned Development Permit Findings
4. Determination of Public Convenience or Necessity (PCN) Findings
5. California Environmental Quality Act (CEQA)

### Envision San José 2040 General Plan Conformance

#### Land Use Designation

As shown in the attached [General Plan Map \(See Exhibit B\)](#), the subject site has an Envision San Jose 2040 General Plan designation of **Downtown**. This designation is intended for a wide variety of uses such as office, retail, service, residential, and entertainment, either in a stand-alone or mixed-use format.

The subject site is located within the Diridon Station Area Plan (DSAP) boundary, which is considered an Urban Village area. Creation of Urban Villages is Major Strategy #5 in the General Plan, and the Urban Village concept is to create a policy framework to direct most new job and housing growth to occur within walkable and bike-friendly Urban Villages that have good access to transit and other existing infrastructure and facilities. Urban Villages are to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the General Plan's environmental goals. The project includes the off-sale of alcohol at an existing convenience store, which provides retail amenities to the surrounding area.

*Analysis: The off-sale of alcohol is a commercial retail use and is consistent with the use requirements. The project is therefore consistent with the land use designation.*



## General Plan Policies

The project conforms to the following key 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.

*Analysis for Policies IE-2.6 and LU-5.1: The project would add a new type of product to the existing retail convenience store. A bus stop for Route 23 and Rapid 523 is located directly in front of the site, and the existing sidewalks in front of the site are 15 feet wide, which encourages walking and transit ridership. The project is consistent with this policy.*

Land Use 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 current and future demand for off-sale alcohol use is expected to increase as the area is located in Downtown and within the Diridon Station Area Plan. According to Appendix 5 of the General Plan, there have already been 10,705 dwelling units entitled, with 17,074 additional dwelling units planned. The project's use would add to the variety of retail products available to the growing community. The store is within convenient transit, walking, and biking distance of the surrounding neighborhood. The project is consistent with this policy.*

## **Zoning Ordinance Conformance**

### Land Uses

As shown in the attached [Zoning Map \(Exhibit C\)](#), the existing building is within the A(PD) Planned Development Zoning District per File No. PDC03-016. The existing mixed-use building conforms to the development standards set forth in the Planned Development Zone. The Planned Development District allows the uses of the CG Commercial General Zone. Per Table 20-90 of the Zoning Code, off-sale of alcohol with a full range of alcoholic beverages is allowed in the CG Zoning District with a Conditional Use Permit. However, as discussed above, a Planned Development Permit is the appropriate permit since the property is within a PD Planned Development Zoning District.

### Development Regulations

The project is subject to the development regulations of the A(PD) Planned Development Zoning District per File No. PDC03-016. The project does not include any physical expansions or exterior changes to the existing mixed-use building with ground-floor retail, which was entitled through a Planned Development Permit (File No. PD03-069). The project was deemed consistent with the development standards on December 19, 2003 with the approval of PD03-069. The project is therefore consistent with the development regulations.

### Parking

There are no land use changes to the existing mixed-use building. The existing building was entitled by a Planned Development Permit (File No. PD03-069) and is required to provide one vehicle parking space per 400 square feet of commercial space. This results in four required parking spaces for the 1,265 square foot retail space. The project site currently provides two dedicated parking spaces and 13 common use parking spaces for the use, which is consistent with the requirement. The additional off-sale alcohol use would not require additional vehicle parking spaces.

### Noise

The project is required to be consistent with the performance standards per Section 20.40.600 of the Zoning Ordinance, which states that the sound pressure level generated by any use or combination of uses on a property shall not exceed 55 decibels adjacent to residential uses or 60 decibels where adjacent to commercial or other non-residential uses. The project does not include a generator or any other noise-producing mechanical equipment. Therefore, the project is not expected to generate any noise beyond existing ambient levels and is consistent with the requirement.

## **PERMIT FINDINGS**

### **Planned Development Permit Findings**

Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

1. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

*Analysis: As explained in detail above, the project use would be consistent with and further the policies of the General Plan. The convenience store currently provides retail products in a safe and convenient multimodal neighborhood. The use would add to the variety of retail products available to the surrounding community and would further facilitate pedestrian, transit and bicycle use to the subject site.*

2. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

*Analysis: As discussed above, the project does not include any modifications to the existing building. The existing setbacks, height, and number of parking spaces are not being altered by this permit. The existing retail use is allowed in the Planned Development Zoning District, and off-sale alcohol use would also be permitted with a Conditional Use Permit pursuant to Table 20-90 of the Municipal Zoning Code. However, as discussed above, a Planned Development Permit is the appropriate permit type within a PD Planned Development Zoning District. Therefore, the project would be in compliance with the requirements of the Planned Development Zoning District.*

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

*Analysis: As discussed above, Council Policy 6-30: Public Outreach Policy was followed in order to inform the public of the project. The on-site sign has been posted at the site since April 4, 2022 to inform the neighborhood of 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 been available to respond to questions from the public.*

4. 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 existing retail building conforms to the development regulations, including setbacks, height, and parking for a building in the Planned Development Zoning District. There are no modifications to the existing building.*

5. 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 does not involve any modifications to the existing mixed-use building. There would not be any construction on-site except for minor interior tenant improvement. The retail store in which the off-sale alcohol would be sold is already existing. Therefore, there would be no unacceptable negative environmental impacts related to noise, vibration, dust, drainage, storm water runoff, or odor, and would not have an unacceptable negative affect on adjacent properties.*

#### **Required Findings for the Off-Sale of Alcohol**

Per Section 20.80.900 of the Zoning Code, a conditional use permit may be issued pursuant to the applicable provisions of this title for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable. As discussed earlier, the Planned Development Permit serves as the Conditional Use Permit in Planned Development zoning districts.

1. 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 closest location with off-sale alcohol is the Shop and Save Market at 365 Bird Avenue, which is approximately 350 feet away from the project site. Within 1,000 feet of the site is only one other location with off-sale alcohol at Mi Rancho Market, 494 Auzerais Avenue, approximately 800 feet from the project site. Therefore, this finding can be made.*

2. 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:

- a. Adversely affect the peace, health, safety, morals, or welfare of persons residing in or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the area; or
- c. Be detrimental to public health, safety or general welfare

*Analysis: As discussed above, there are two existing establishments within one-thousand feet of the project site that provide alcoholic beverages for off-site consumption. Therefore, the 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 project site. As indicated in the San José Police Department Memorandum dated March 30, 2022, the Police Department is neutral regarding the project use. Additionally, the Operations Plan, prepared by the applicant and dated April 11, 2022, provides provisions for trash and graffiti removal, security, and safety, loitering and panhandling, and employee training. Security cameras will be strategically placed throughout the space, including facing the public right-of-way. All security camera video footage will be retained for 30 days in the event that an incident needs review by security personnel or the police. Hours of operation will be 10 a.m. to 10 p.m. seven days a week. Therefore, this finding **can** be made.*

3. 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 nearest child care center is the YWCA Davidson Child Care Center at 350 South 2nd Street, which is approximately 5,000 feet from the site. The nearest public parks are the Del Monte Dog Park, approximately 2,000 feet from the site, and Discovery Meadow, approximately 2,200 feet away and across Highway 87 from the project site. The nearest school is Gardener Elementary School at 502 Illinois Avenue, which is 1,250 feet from the project site.*

*The project site is located within a mixed-use building with residences above and retail spaces on the ground-floor and is otherwise located over 300 feet away from the nearest residentially zoned property. The project is situated and oriented such that the use would not adversely affect the residential use above. The residential units have a separate parking entrance and will not be affected by light or glare from the retail convenience store. Further, as discussed above, there are no noise-generating activities or mechanical equipment included with the project. Therefore, this finding **can** be made.*

### **Required Findings for Determination of Public Convenience or Necessity**

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:

1. 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
2. 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 project site is located within Census Tract 5008. According to the Police Memorandum dated March 30, 2022, the census tract does not have a 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. Per the **Alcohol Radius Map (Exhibit D)**, there are two existing locations within 1,000 feet of the project site with off-sale of alcohol, including the Shop and Save Market at 365 Bird Avenue, which is approximately 350 feet away from the project site, and Mi Rancho Market, 494 Auzerais Avenue, approximately 800 feet from the project site.*

*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 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 Title 6 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 (see San Jose Municipal Code section 6.84.030):

1. The proposed use is not located within a Strong Neighborhoods Initiative (SNI) 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 project is located within the Delmas Park SNI. Therefore, this finding **cannot** be made. However, as indicated in the San José Police Department Memorandum dated March 30, 2022, the Police Department is neutral regarding the project use.*

*The Operations Plan, prepared by the applicant and dated April 11, 2022, provides provisions for trash and graffiti removal, security, and safety, loitering and panhandling, and employee training. Therefore, the project 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.*

2. 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 use would result in less than four off-sale establishments in a 1,000-foot radius. There are currently two off-sale establishments within a 1,000-foot radius. Therefore, this finding **can** be made.*

3. 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 nearest child care center is the YWCA Davidson Child Care Center at 350 South 2nd Street, which is approximately 5,000 feet from the site. The nearest public park is the Del Monte Dog Park, approximately 2,000 feet from the site, and Discovery Meadow, approximately 2,200 feet away and across Highway 87 from the project site. The nearest school is Gardener Elementary School at 502 Illinois Avenue, which is 1,250 feet from the project site.*

*However, the project site is located within a mixed-use building with residences above and retail spaces on the ground-floor. Since the project is located within 150 feet of a residence, this finding **cannot** be made.*

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

*Analysis: The existing convenience store is 1,265 square feet. The area dedicated to alcohol sales is 72 square feet or 5.7% of the total sales floor area. Therefore, the percentage of alcohol sales would be 5.7% of the sales area. 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 in shape, and there are two existing off-sale locations within 1,000 feet of the site. While the project will not affect public health or safety, the area is not considered to be underserved. Therefore, 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: The project is located in an area that has experienced significant population growth. With the update to the Diridon Station Area Plan, the neighborhood is expected to increase in population and jobs through the development of an urban multi-modal, transit-oriented neighborhood. The additional off-sale alcohol use would provide a more convenient shopping experience and would further enhance pedestrian, transit, and bicycle usage. Finally, based on the Police Memorandum dated March 30, 2022, the subject site is not located in a high crime area, and the Police are neutral to the addition of off-sale alcohol use at the subject site. Therefore, the additional off-sale alcohol use at the existing convenience store would not present a significant adverse impact on public health or safety. 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: Census Tract 5008 has a population density of 7,015 residents per square mile. The City of San José has an average population density of 5,642 residents per square mile. Therefore, the location of the project is in a higher population density area in relation to other census tracts in the city and is located in an already over-concentrated area. 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: Approximately 5.7% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the sales floor area would be dedicated to sales of items typical of a convenience store, such as chips, candy, groceries, household goods, ice cream, soda, and juice. The subject site serves a census tract that has a higher than average population density for the City of San José. Furthermore, the off-sale of alcohol at this location would provide a more complete and convenient shopping experience in a neighborhood with transit, bicycle, and pedestrian connections. Therefore, this finding **can** be made.*

Notwithstanding the foregoing provisions and requirements, 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 makes the findings and determinations listed below:

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

*Analysis: Given the above-stated analysis, the first and third findings for the Determination of Public Convenience or Necessity (PCN) cannot be made for the off-sale of alcohol because the subject site is located within the Delmas Park Strong Neighborhoods Initiative (SNI) area, and because the project is located within a mixed-use building with residential units above and retail uses on the ground floor, within 150 feet of the project location. However, two of the four findings can be made. Moreover, findings for two of the four additional findings per Section 6.84.030.B.5 of the San Jose Municipal Code can be made for a PCN determination.*

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

*Analysis: The surrounding neighborhood has experienced significant residential development in recent years. Furthermore, the immediate area around the subject site is expected to experience further population and job growth with the Google Downtown West project. As stated above, the alcohol sales area would represent approximately 5.7% of the total sales area of the store and would not be a primary use of the building.*

*Furthermore, although there are two off-sale of alcohol retail establishments within 1,000 feet from this proposed location, the Shop and Save Market at 365 Bird Avenue and Mi Rancho at 494 Auzerais Avenue only offer the off-sale of beer and wine, not a full range of alcoholic beverages.*

*While not all of the required findings can be made for the Determination of Public Convenience or Necessity, there are significant and overriding benefits by the project use, as it would further*

*activate an existing commercial area and provide a more complete and convenient shopping experience 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.

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 modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol in an existing retail store. The project would include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted wholly inside the building. Based on the discussion and findings in the above sections, the activity is not anticipated to have a significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

### **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. The on-site sign has been posted at the site since April 4, 2022 to inform the neighborhood of 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 been available to respond to questions from the public.

**Project Manager:** Laura Meiners

**Approved by:** /s/ Robert Manford, Deputy Director, for Christopher Burton, Director of PBCE

<b>ATTACHMENTS</b>
Exhibit A: Vicinity Map
Exhibit B: General Plan Map
Exhibit C: Zoning Map
Exhibit D: Alcohol Radius Map
Exhibit E: Floor Plan
Exhibit F: Plan Set
Exhibit G: Operations Plan
Exhibit H: Police Memo
Exhibit I: Draft Resolution
Exhibit J: Statement of Exemption



<b>Owner:</b>	<b>Applicant:</b>	<b>Applicant's Representative:</b>
EHC Delmas Park LLC 470 South Market Street San Jose, CA 95113	Chris Hoang 350 Barack Obama Boulevard, Suite 10 San Jose, CA 95110	Aaron Barger 470 South Market Street San Jose, CA 95113

Exhibit A: Vicinity Map

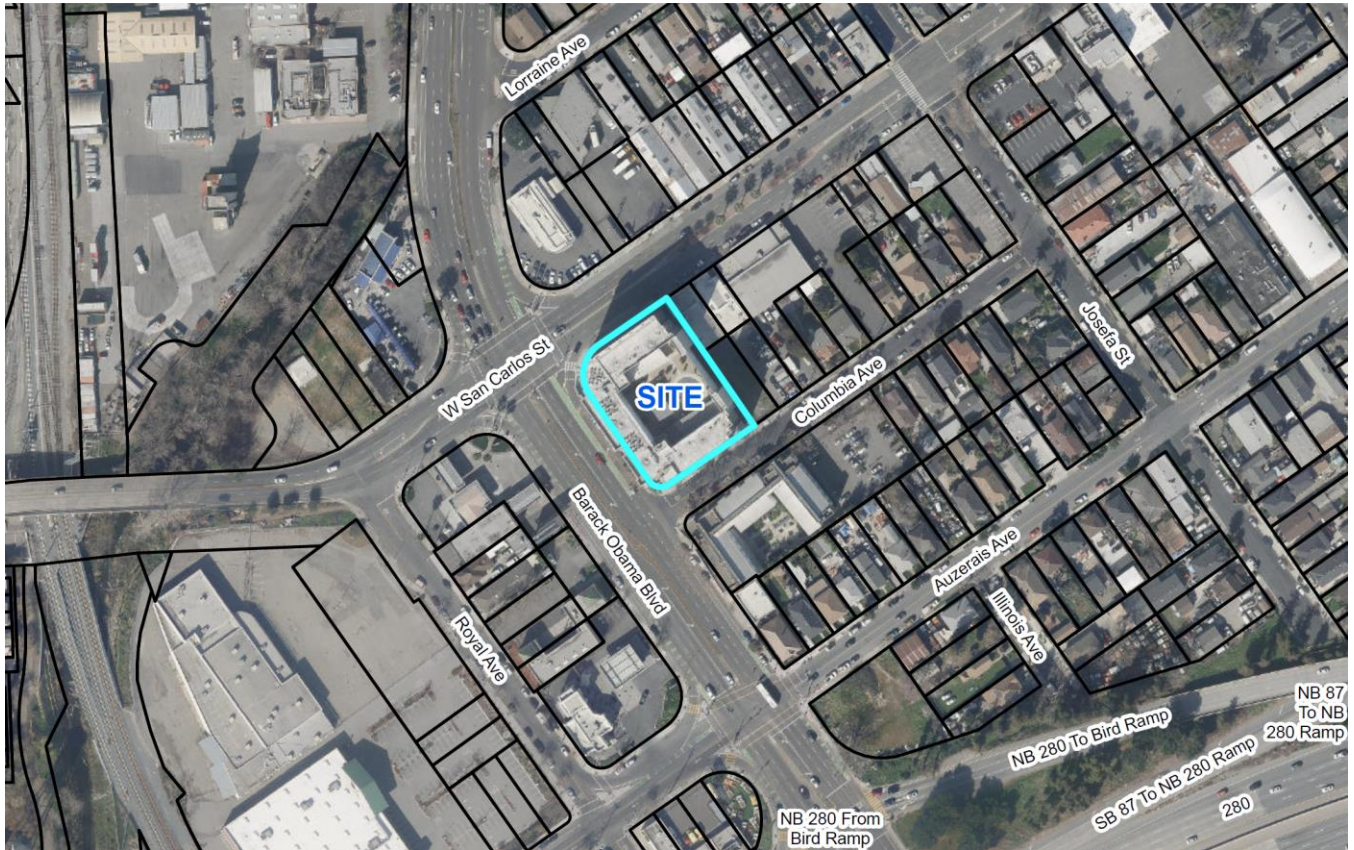


Exhibit B: General Plan Map



Exhibit C: Zoning Map



Exhibit D: Alcohol Radius Map

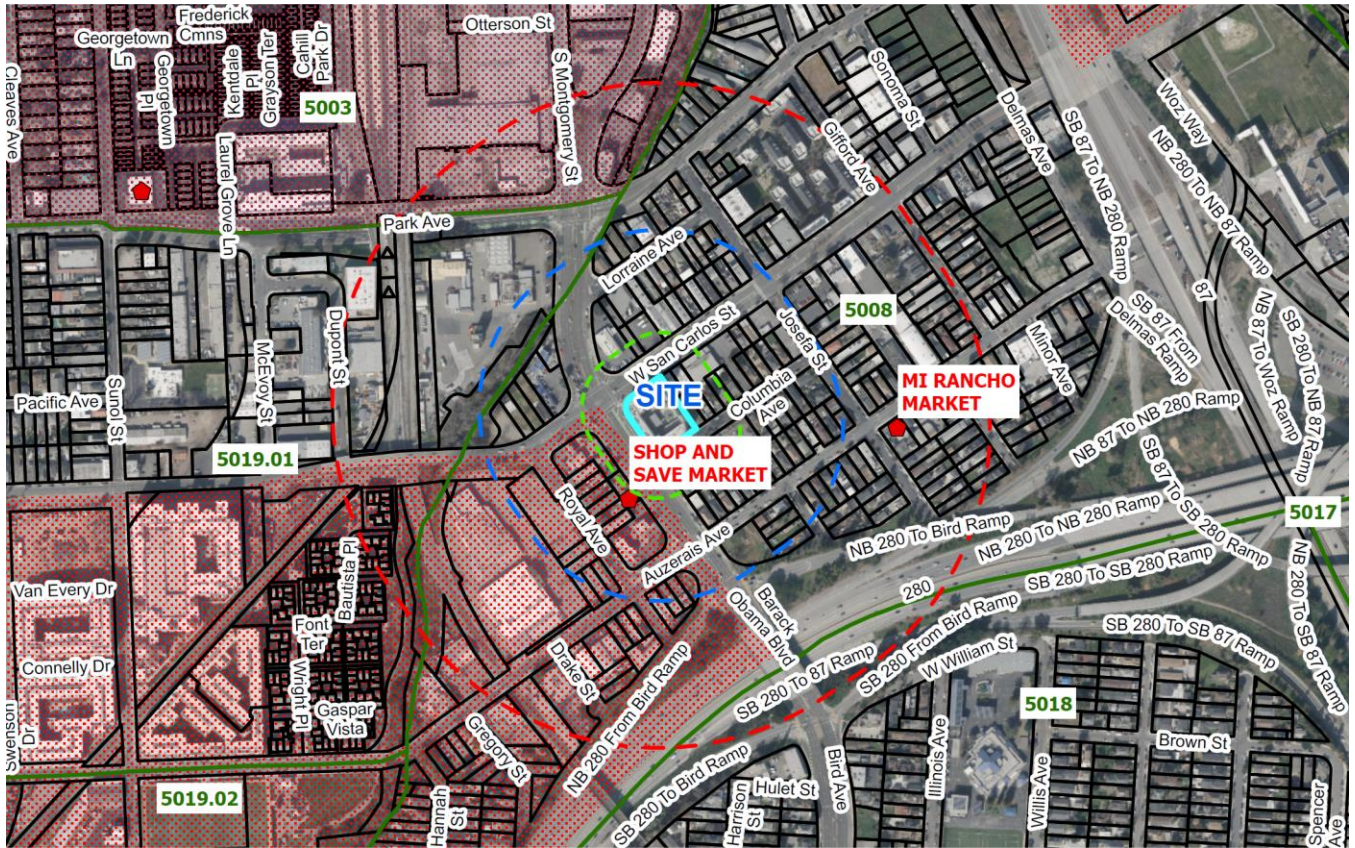
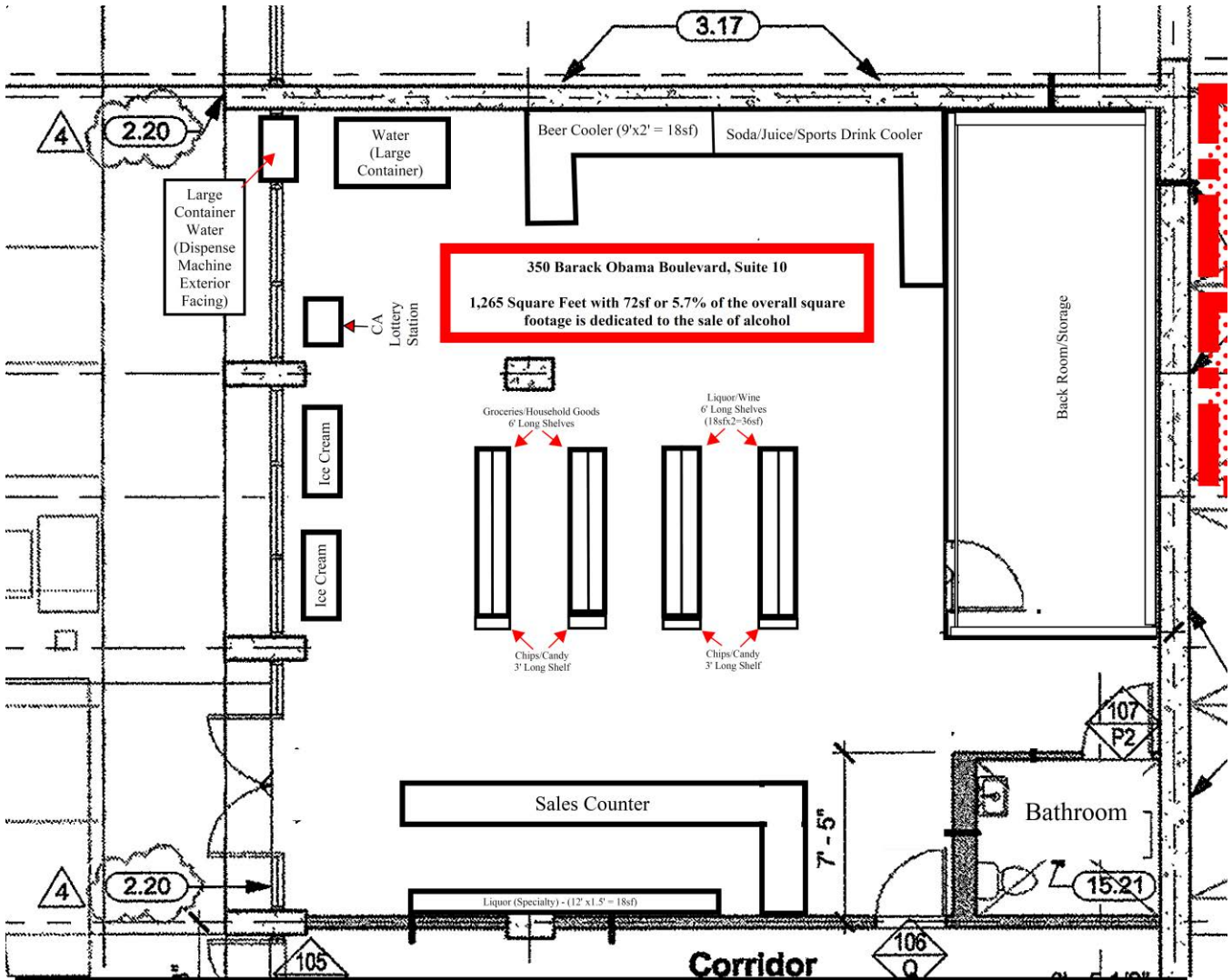


Exhibit E: Floor Plan



# PD22-011

## Links to Attachments F-J

Click on the title to view document

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