



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: See Below

DATE: November 4, 2024

COUNCIL DISTRICT: 3

SUBJECT: FILE NOS. PD24-012 & ER24-118 – Planned Development Permit and Determination of Public Convenience or Necessity for Certain Real Property Located at 1130 East Santa Clara Street

RECOMMENDATION

On October 23, 2024, the Planning Commission voted 7-1-1 (Young opposed and Bickford absent) to 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 beer, wine, and distilled alcoholic beverages (Type 21 ABC License) at an existing 1,053-square-foot tenant space (jewelry store) on an approximately 0.4-gross-acre-site located at the southwesterly corner of East Santa Clara Street and South 24th Street (1130 East Santa Clara Street, APN 467-58-040).

SUMMARY AND OUTCOME

If the City Council approves the actions listed above as recommended by the Planning Commission, the applicant would be allowed to sell collectible, unique, decorated, or engraved bottles of beer, wine, and distilled alcoholic beverages for off-site consumption in conjunction with a California Department of Alcoholic Beverage Control (ABC) Type 21 License at an existing 1,053-square-foot jewelry store on an approximately 0.4-gross acre site located at 1130 East Santa Clara Street.

BACKGROUND

On October 23, 2024, the Planning Commission held a public hearing to consider the exemption from the California Environmental Quality Act (CEQA), the Planned Development Permit, and the Determination of Public Convenience or Necessity. An overview of the public hearing is provided below. Commissioner Lardinois made a motion to recommend approval of the Planned Development Permit and the

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Determination of Public Convenience or Necessity to the City Council with modifications to the conditions. Commissioner Cantrell seconded the motion. The motion passed 7-1-1 (Young opposed and Bickford absent).

ANALYSIS

Analysis of the proposed CEQA clearance, Planned Development Permit, and Determination of Public Convenience or Necessity, including conformance with the General Plan, San José Municipal Code, Citywide Design Standards and Guidelines, and City Council Policies, are contained in the attached staff report to the Planning Commission.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more Climate Smart San José goals. It would facilitate job retention and creation within City limits by allowing an expansion of product offerings at an existing jewelry store.

EVALUATION AND FOLLOW-UP

No additional follow-up is anticipated at this time.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 19, 2024 City Council meeting.

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. The required onsite sign has been posted on the project frontage since July 10, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on October 4, 2024. Staff has been available to respond to questions from the public. No calls or emails were received from members of the public regarding this project.

COMMISSION RECOMMENDATION AND INPUT

The project was heard at the Planning Commission hearing on October 23, 2024, previously on the consent calendar but moved to the Public Hearing portion of the agenda, as follows:

Staff Presentation

Kora McNaughton, Staff Planner, provided an oral presentation on the proposed project, which included an overview of the applicant's proposal to sell collectible bottles of alcoholic beverages that may be personalized for customers and conformance with the General Plan, Title 20 of the San José Municipal Code, and City Council Development Policies.

Applicant Presentation

Connie Alvarez, co-owner of Plaza Jewelers, stated that she and her husband have operated Plaza Jewelers for several decades and own commercial properties in Council District 3 and Council District 5. She serves as the president of the Alum Rock Santa Clara Street Business Association and works closely with councilmembers to advocate for small businesses. Ms. Alvarez stated that they would not do anything to jeopardize the maintenance or safety of businesses in the area. In 2023, they were eligible for a priority drawing for an off-sale license from ABC. They have been seeking planning permits for the past year and have spent more than \$40,000 on nonrefundable fees. They had requested removal from the consent calendar to request the removal of next-day delivery or pick-up of alcoholic beverages from the permit conditions.

Sandra Escobar, a land use consultant representing the owners of Plaza Jewelers, stated the applicant's request that Condition 4.c be deleted and replaced with a condition that requires the Planned Development Permit to be amended if a new business owner occupies the premises and will not conduct the business that is identical to Plaza Jewelers.

Cesar Pascal, co-owner of Plaza Jewelers, said imposing the next-day delivery/pick-up condition would cause a loss of revenue for the store. He stated that he is trying to reinvent the business and add something different with a "liquor boutique" in the store. He added that many regular customers want to purchase memorable, meaningful items that can be personalized. He asked the commissioners to reconsider the condition, stating that Plaza Jewelers has been a model for business for more than 30 years in San José.

Public Hearing

Chair Tordillos opened the public comment portion of the agenda. Seven members of the public spoke in support of the proposed project. The comments of the speakers are summarized below:

- A representative of Prosperity Lab, a local nonprofit organization that helps small businesses grow, said she has known the applicants for 15 years, and they are responsible business owners, fair employers, good neighbors, and strong stewards of the neighborhood. She added that they have deep roots in the City and support local causes. The proposed off-sale will increase local taxes and job security for their employees. She asked the Commission to consider the applicant's request to modify the conditions of approval.
- A small business owner and co-founder of Prosperity Lab stated that she supports the proposed off-sale of alcoholic beverages and that business owners suffer when licensing takes longer than it should.
- A private citizen said he supports the proposal and has known the applicants since 1986. He stated that the proposed off-sale of alcoholic beverages would allow them to sell artistic commemorative items that enrich people's lives, not mass-produced items.
- A small business owner said he supports the applicants in selling the requested items. He described the items as specialized and aimed at specific types of customers. He said the condition requiring customers to return the next day to pick up the items creates a hardship because customers come from out of town or are tourists who may not be able to return to the store. He asked the Planning Commission to consider the applicants' request to remove the condition to send a message that they care about small businesses.
- The owner of a plumbing contracting company spoke in support of the applicants. He said he enjoyed receiving a personalized bottle of alcohol from a friend with the logo of the 49ers and his company. He stated that the applicants do a lot of work in the community, have helped many people, and are upstanding citizens.
- The executive director of the Latina Coalition of Silicon Valley spoke in support of the application. She said she has been inspired by the applicants and their commitment to the community, and they should be able to expand their services to customers. She said they are pillars in the community and organize and protect small businesses.
- A real estate broker and business owner in San José spoke in support of the application. He said that as a business owner, it is important to provide new services and products continuously, and the ability to sell collectible bottles will enable the business to grow.

Chair Tordillos closed the public comment portion of the agenda and invited the applicant team to respond to comments or provide any closing statements.

Sandra Escobar said the applicant's biggest concern is Condition 4.c and asked the Planning Commission to change it. She stated that the concern about a subsequent operator of the store is understandable, but preventing customers from taking an item home the same day is not realistic for a small business.

Cesar Pascal thanked the commissioners for providing an opportunity to explain the business model. He also thanked the representatives of the small businesses who supported their request and stated that they intend to remain in business in San José. He added that the venture would create employment and create more new taxes for the City.

Connie Alvarez thanked the commissioners and the small business owners who had spoken in support of their request.

Commissioner Discussion

Commissioner Bhandal asked staff if other jewelry stores in San José sell alcoholic beverages, as proposed by the applicant. Staff responded that they were not aware of any.

Commissioner Bhandal asked why the condition prohibiting same-day delivery or pick-up of the bottles is included in the resolution. Staff responded that the permit runs with the land, and if the jewelry store were to close, a subsequent operator could sell liquor at the store in a manner not originally envisioned in the operation plan. Staff further explained that the proposed off-sale use is unique and that there are no standard definitions of a luxury good or a collectible bottle. Prohibiting same-day sales is an easily enforceable condition that would prevent other types of uses that might not normally be allowed but would give the applicant flexibility by not limiting the type of product that could be sold.

Commissioner Bhandal asked whether there is a minimum price at which a product is considered a luxury item. Staff responded that no such minimum price exists that defines "luxury."

Commissioner Bhandal asked what kind of condition could replace the condition prohibiting same-day sales. Staff responded that this is the focus of the discussion and reiterated the need to create a condition that would prevent a liquor store or similar off-sale business from opening on the site but would not overly constrain the applicant's operations.

Commissioner Bhandal asked the applicant about the typical value of the bottles. Mr. Pascal responded that they could be as low as \$80 or as high as \$700 to \$1,000.

Commissioner Bhandal asked the applicant if they intend to sell bottles that are not decorated or personalized. Mr. Pascal responded that the store has an engraving machine, and creating bottles with special meaning would be the main focus of bottle sales. The service is a marketing tool for the business and would help increase sales, as jewelry sales have become more limited. Other stores like Walmart sell liquor and jewelry, but the engraving would differentiate their business from others.

Commissioner Lardinois asked the applicant if they would only sell bottles that have personalized engravings. Mr. Pascal responded that some bottles were already decorated. He added that the industry is changing; companies offer bottles decorated by artists or designed as a limited edition release.

Vice Chair Cantrell said he was sorry that the licensing process had taken so long. He said the applicant's intention is clear, but he wants to ensure that no harm is caused to the community in the future. He stated that the substitution condition could limit the sales to uniquely decorated items and that inexpensive liquor bottles are not typically decorated. He said there is room to give the applicant the maximum ability to be profitable and would like to see a substitution of the condition.

Mr. Pascal stated that the entire store is designated for special jewelry pieces, and having 100 bottles worth \$5.99 or \$10.99 in stock would not make sense. He added that the intent is to add a diamond pendant or something else to the bottle that makes it different and that the business is not likely to have a large number of bottles because display space is limited.

Vice Chair Cantrell asked whether there is some way to describe the items in the condition that would give the applicant flexibility but simultaneously limit their license to this unique use. Mr. Pascal stated that the store's hours are 11 a.m. to 7 p.m. and that he understands that most liquor stores have problems late at night.

Chair Tordillos asked Vice Chair Cantrell if the question was directed toward staff. Vice Chair Cantrell responded that it was. Staff responded that the City Attorney's Office had been asked whether the term "uniquely" could be included in the condition and that staff could not come up with a workable definition. While staff doesn't object to the use, it has been challenged to find a definable condition that won't limit the business and will be enforceable 20 years from now.

Vice Chair Cantrell stated it was unlikely that a future owner would be interested in using a machine to put a stamp on an \$8 bottle of liquor. He agreed that the Planning Commission does not want to cause future harm. He said he appreciated the unique

nature of the applicant's business model and would be amenable to accepting that the bottles are uniquely customized or shipped with embellishment that is different from the normal market for these items if the applicant is amenable to it.

Ms. Escobar stated that a new owner could not automatically take over the license, and the change would undergo ABC review.

Commissioner Young asked where the condition in question is in the staff report. Staff responded that it is in the condition of approval of the resolution, item 4.c.

Commissioner Oliverio asked whether delivery of the product by a third party would be acceptable as a condition. Staff responded that such a condition could change the type of ABC license or regulation associated.

Commissioner Oliverio asked if a time limit could be placed on the permit. Staff responded that in the past, time limits were imposed on off-sale permits or similar use, but case law discourages cities from setting time limits because of the high investment cost associated with obtaining permits. Commissioner Oliverio said the City Attorney would provide guidance on whether "discourage" means that "absolutely not."

At the request of Commissioner Young, staff read Condition 4.c aloud: "Alcoholic beverage purchases are subject to a waiting period and shall not be delivered or available for pick-up to customers until the first day following the date of purchase." Staff stated that it could be replaced by a combination of conditions that would make it unlikely that a subsequent operator would open a liquor store. The conditions could include the existing conditions, limiting hours to 11 a.m. to 7 p.m. and defining the bottles allowed for sale as decorated. Staff added that limiting the permit to the current owner is not desirable because it could affect the ability to sell the business in the future. There is a middle ground, and Condition 4.c is meant as a starting point for discussion. Staff said it supports the application even though the business is not a typical grocery store.

Commissioner Young asked staff if Condition 4.c had been discussed with the applicant prior to the hearing. Staff responded that it had been discussed with the applicant, who expressed their objection to the condition.

Commissioner Young asked staff if the applicant still wanted the project to be brought to hearing even if they objected to the condition, and staff responded that they did.

Commissioner Young stated that this was the first time in his experience that an applicant had objected to a condition. He said there is an argument to be made that liquor should not be sold at a jewelry store, which would result in denial of the project. The other option is to approve it as proposed with Condition 4.c. The third option is to

approve and somehow remove that condition. Commissioner Young stated he does not favor removing the condition because the City must plan for the worst-case scenario. He added that since the permit goes with the land if the applicant sells the premises to a liquor store five years from now, liquor could be sold there on day one. He stated that the condition is reasonable and does not favor changing it.

Commissioner Young made a motion to approve the project as staff recommended. Commissioner Oliverio seconded the motion, stating that he did so for the purpose of discussion.

Commissioner Lardinois stated that this is an unusual situation. He said selling personalized bottles of alcohol and staff's concerns about the future of the permit are both reasonable and that he hoped the Commission could create a condition that would be effective in limiting the permit to the proposed use that is also enforceable.

Commissioner Lardinois stated that Condition 4.d limiting the liquor display to 20% of the sales floor is a common condition in off-sale permits. He asked staff if including a condition for a minimum amount of sales floor area for jewelry display would be acceptable. Staff responded that the jewelry should be defined as high-end jewelry but would defer to the City Attorney as to whether that would be acceptable.

Commissioner Lardinois noted that Condition 4.b already limits the hours during which alcoholic beverages may be sold. Staff responded that it is the combination of conditions that would be important.

Commissioner Lardinois asked staff if more time is needed to determine the appropriate conditions. Staff responded that the Planning Commission's recommendation could include the conditions. The language doesn't have to be finalized today.

Commissioner Lardinois moved that the staff recommendation be adopted with the modification to recommend that Condition 4.c be dropped and that staff work with the applicant and the City Attorney to determine alternative conditions that would restrict the permit. Staff suggested listing the following conditions to provide guidance to the City Council: 1. Maintain the store operating hours as conditioned; 2. Require that at least 50% of the sales floor area is designated for high-end jewelry; 3. Limit alcohol sales to 20% of the sales floor area; 4. Limit the off-sale use to alcoholic beverages that are unique, limited-edition, high-end, customized, or decorated.

Commissioner Lardinois asked whether the applicant agreed to Condition 4.c being replaced with the proposed conditions. The applicant responded affirmatively. The applicant described the operations of Eataly in Valley Fair, which combines a restaurant, boutique, and retail store, including wine and liquor sales. He noted that the business is similar in terms of trying to diversify.

Commissioner Lardinois noted that Eataly is also a grocery store, which is a use that is more common for off-sale permits. Commissioner Lardinois motioned to adopt the staff recommendation with the modification that Condition 4.c be replaced with the previously suggested conditions. Vice Chair Cantrell seconded the motion.

Chair Tordillos asked whether it was a friendly amendment or a substitute motion.

Commissioner Lardinois responded that it was a substitute motion, as he understood Commissioner Young felt differently about the item.

Commissioner Oliverio said that typically, for off-sale permits, the City limits the applicant to a percentage of the space for alcohol sales, adding that 20% is a lot of space. He asked staff to consider a smaller percentage of the sales floor to constrain future use. Staff responded that grocery stores are generally more efficient in displaying their wares than jewelry stores.

Commissioner Oliverio asked staff for the shop's sales square footage. Staff responded that the floor area of the store is 1,053 square feet. Commissioner Oliverio said 200 square feet of alcohol is more than enough and that decreasing the percentage is another potential lever. He said Commissioner Lardinois could amend the motion to request that staff analyze the square footage, discuss it with the applicant, and present that to the City Council.

Commissioner Lardinois stated that he would be amenable to that. He also noted that the City Council will be informed of what the Planning Commissioners discussed today.

Commissioner Young asked the City Attorney if, in the future, the business or the land is sold, would the conditions be enforceable with the new property owner? The City Attorney responded that they would be enforceable.

The City Attorney then asked staff if they could make the findings for the permit if the proposal were to sell only alcohol in the store. Staff responded that it would not have been able to make the necessary findings for a liquor store. If the operations plan had not been associated with a jewelry store and this unique type of off-sale of alcohol, the staff wouldn't have made the same findings.

Commissioner Young said he believes this is a slippery slope and it's not a good idea for the Planning Commission to try to design conditions. He stated that he could not support the substitute motion.

Vice Chair Cantrell asked what is the likelihood of someone purchasing a 1,000-square-foot store where only 20% of the sales floor can be used for alcohol? Staff responded

that it was not likely, but having multiple conditions limits the unintended consequences of another problematic user taking over the use.

Commissioner Lardinois agreed that the Commissioners are not experts but said he was comfortable with the conditions because they are based on consultation with staff. He said he is open to requests for an off-sale license as part of a business but does not want to allow a liquor store when it hasn't been requested.

Commissioner Bhandal stated that Commissioner Lardinois did a good job navigating the issue and found a middle ground. He asked staff to repeat the recommendations. Staff responded that the conditions would be 1) to maintain the hours of 11 a.m. to 7 p.m.; to require that at least 50% of the sales floor area is designated for high-end jewelry sales; 3) limit the alcohol sales display area to a maximum of 20% of the sales floor; and 4) restrict the use to the sale of unique, decorated bottles that may be engraved or otherwise personalized. There would be no requirement for the bottles to be personalized.

Commissioner Bhandal stated that he agreed that personalization should not be a requirement and that the applicant should be able to sell the bottles as-is. Staff responded that instead of "may," the word "or" could be used so that the bottles sold could fit any of those descriptions.

Commissioner Lardinois asked if it would make sense to include a condition requiring that the bottles not be refrigerated. Staff asked if the applicant was amenable to the change. Mr. Pascal said he agreed. Staff agreed to add the condition and said it would require a substitute motion or an amendment to the substitute motion.

Commissioner Lardinois requested that his motion be amended to include a prohibition on refrigerated bottles. Vice Chair Cantrell seconded the amendment to the motion.

Chair Tordillos stated that he agrees that the proposed use is unique and would not support a general-purpose liquor store in this location. He said he believes the applicant will provide a distinctive experience and was pleased that a middle ground had been reached.

Chair Tordillos then called for a vote on the motion by Commissioner Lardinois and seconded by Vice Chair Cantrell. The motion passed 7-1-1 (Young opposed, Bickford absent).

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 Zoning 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 at an existing 1,053-square-foot jewelry store. The project would include the display of alcoholic beverages in the store, which would occupy approximately 20% of the sales floor area. Sale of off-sale alcoholic beverages will be conducted wholly inside the building and will not include exterior modifications to 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 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, at john.tu@sanjoseca.gov or (408) 535-6818.

ATTACHMENT

Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION**FROM:** Christopher Burton**SUBJECT:** PD24-012 & ER24-118**DATE:** October 23, 2024**COUNCIL DISTRICT:** 3

Type of Permit	Planned Development Permit and Determination of Public Convenience and Necessity
Demolition	None
Proposed Land Uses	Off-sale beer, wine, and distilled alcoholic beverages (ABC Type 21 License)
New Residential Units	None
New Square Footage	None
Tree Removals	None
Project Planner	Kora McNaughton
CEQA Clearance	Exemption per CEQA Guidelines Section 15301(a): Class 1, for Existing Facilities
CEQA Planner	Kora McNaughton

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): Class 1, for Existing Facilities; and
2. Adopt a resolution approving, subject to conditions, a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of beer, wine, and distilled alcoholic beverages (Type 21 license) at an approximately 1,053-square foot tenant space (jewelry store) on an approximately 0.4-gross-acre site.

PROPERTY INFORMATION

Location	Southwest corner of the intersection of East Santa Clara Street and South 24 th Street (1130 East Santa Clara Street)
Assessor Parcel No.	467-58-040
General Plan	Urban Village
Growth Area	Roosevelt Park Urban Village
Zoning	A(PD) Planned Development Zoning District
Historic Resource	Not Applicable
Annexation Date	December 1, 1911 (East San Jose)
Council District	3
Acreage	0.4 acres

PROJECT BACKGROUND

As shown on the Vicinity Map/Aerial Photo (Exhibit A), the project site is located on the southwest corner of East Santa Clara Street and South 24th Street. The site is developed with an approximately 5,900-square-foot multitenant commercial building with a surface parking lot at the rear. The subject store occupies the corner tenant space (1,053 square feet) and faces both East Santa Clara Street and South 24th Street.

The primary store entrance located at the northeast corner of the building, facing the public right-of-way, and there is also a rear entrance facing the onsite parking lot. The parking lot driveway is located on South 24th Street. Surrounding uses include low-scale commercial buildings to the north and west, single-family townhomes to the south, and a car repair business to the east across South 24th Street.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Urban Village	Urban Village, Commercial Pedestrian	Retail, truck storage
South	Mixed-Use Neighborhood	A(PD) Planned Development (File No. PDC94-015)	Single-family townhomes
East	Urban Village	Commercial General	Car repair
West	Urban Village	Commercial General	Public library

On May 15, 2024, an application was filed by Sandra Escobar on behalf of the owner, Plaza Jewelers Inc., for a Conditional Use Permit and a Determination of Public Convenience or Necessity to allow the off-sale of beer, wine, and distilled alcoholic beverages (Type 21 License, California Department of Alcoholic Beverage Control [ABC]), specifically for collectible bottles of liquor, within an existing 1,053-square-foot jewelry store on an approximately 0.4-gross-acre site. The permit was subsequently converted to a Planned Development Permit, which is required in Planned Development Zoning Districts pursuant to San José Municipal Code (SJMC) [Section 20.100.910](#). The project site is located within a A(PD) Planned Development Zoning District approved under File No. PDC90-077.

The existing business is a retail jewelry store that also provides personalization services such as jewelry engraving and which has been in operation on the site since 1998. The store occupies the corner tenant space in a multitenant commercial building at the corner of East Santa Clara Street and South 24th Street that also houses a food market, nail salon, and tax preparation service. There are 32 parking spots in the on-site lot to the rear of the building, eight of which are reserved for Plaza Jewelers customers.

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

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

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

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

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

ANALYSIS

The proposed Planned Development Permit 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 General Plan Land Use Designation Map (Exhibit C), the proposed project site has an [Envision San José 2040 General Plan](#) Land Use/Transportation Diagram designation of **Urban Village**. This land use designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form.

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

General Plan Policies

The project is consistent with the following General Plan policy:

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

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

Roosevelt Park Urban Village

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

Land Use Policy 1: Grow the Roosevelt Park Urban Village into an economically vibrant commercial district that serves the surrounding communities and increases commercial building square footage within the Village.

Analysis: The project will expand the product offerings to include collectible bottles of alcohol at an established jewelry store in the Urban Village. Promoting the viability of existing businesses is consistent with the policy's focus on economic vibrancy.

San José Municipal Code Conformance

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

Analysis: The off-sale of alcohol will be incidental to the primary jewelry sales use and will require a Planned Development Permit pursuant to [SJMC Section 20.80.910](#). A Determination of Public Convenience or Necessity is required pursuant to [SJMC Chapter 6.84](#) because the subject site is located within a census tract that is over-concentrated for the off-sale of alcohol.

2. Development Standards: The project is subject to the height and setback requirements of the A(PD) Planned Development Zoning District.

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

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

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

4. Noise: Pursuant to SJMC [Section 20.40.600](#), the proposed use may not be conducted or permitted in a manner that results in discharge of waste materials, in a manner that constitutes a menace to persons or property by reason of the creation of a fire, explosion, or other physical hazard (such as

air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes), or in a manner that creates a public or private nuisance. The sound level at the southern property line of the subject site may not exceed 55 decibels due to adjacent residential uses and may not exceed 60 decibels at other property lines.

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

Permit Findings

Planned Development Permit Findings

The following findings must be made for the issuance of a Planned Development Permit pursuant to [Section 20.100.940](#) of the Zoning Code.

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

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

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

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

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

Analysis: Staff followed [City Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals](#) to inform the public of the proposed project. On-site signs have been posted on both project frontages since July 10, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City website. 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.

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.

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

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

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

Required Findings for the Off-Sale of Alcohol

The issuance of a Planned Development Permit for off-sale of alcoholic beverages is governed by SJMC [Section 20.80.900.A](#), with required findings as follows:

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

2. 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 1,000-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 or working in the surrounding area; or
 - b. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - c. Be detrimental to public health, safety or general welfare.

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

3. For such use at a location closer than 500 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 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 applicant, Plaza Jewelers, is located approximately 450 feet east of the Santa Clara County Multi Service Agency, a social services agency. Residential townhomes are located approximately 75 feet south of the jewelry store, adjacent to the subject site's parking lot.

The store occupies the corner space of a multitenant commercial building. The entrance to the store faces northeast, away from the social services agency to the west. Customer parking is provided behind the building and is not visible from East Santa Clara Street where the social services agency is located. In addition, access to the store is controlled by employees, who must unlock either the front entrance at the corner or a rear entrance accessible from the parking lot to allow customers to enter.

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

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

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 subject site is within Census Tract 5014.02. According to the San José Police Department memo dated July 24, 2024, the site is located within Police Beat K4, where the reported crime statistics are not over the 20% crime index. However, according to the same memo, the ratio of off-sale retail licenses to population in the census tract exceeds the ratio of off-sale licenses to population in the county. It is therefore over-concentrated for off-sale locations and premises and a Determination of Public Convenience or Necessity is required.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to a PCN for 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 subject site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan 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: There are currently three off-sale premises, including Diana's Mini Market, Rose Market, and Chaparral Market, within a 1,000-foot radius of the exterior of the subject building and the proposed use would be the fourth. Therefore, this finding **can** be made.*

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

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

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

*Analysis: Display cases for the collectible liquor bottles would represent approximately 20% of the 880-square-foot sales floor of the jewelry store. The proposed off-sale of alcoholic beverages would be incidental to retail jewelry sales and 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

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

- 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.

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

subject site. 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.

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

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

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

- 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: Sales of collectible liquor bottles would be incidental to jewelry sales and project Condition 4.d will limit the liquor bottle display area to a maximum of 20% of the sales floor. The primary merchandise offered by the store will continue to be jewelry. Therefore, this finding **can** be made.*

If the Planning Commission cannot make one or more of the first four findings (items 1 through 4) listed above, then the Planning Commission is required by SJMC [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: Although Findings 2, 4, 5.b, and 5.d for the issuance of a Determination of Public Convenience or Necessity **can** be made, Finding 1 **cannot** be made for the off-sale of alcoholic beverages because the subject site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan Area. Finding 3 **cannot** be made because the jewelry store is located approximately 450 feet from a social services agency and 75 feet from residential uses. Therefore, City Council approval is required for the approval of the proposed use.*

The Planning Commission is required to make a recommendation on the proposed use to the City Council. The City Council may issue a determination in connection with an application for a license

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

² The proposed off-sale location is within this census tract.

from the California Department of Alcoholic Beverage Control (ABC) for the off-premises sale of beer, wine, and distilled alcoholic beverages, 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.

Notwithstanding the foregoing provisions and requirements contained in SJMC [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:

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

*Analysis: Findings 1 and 3 for the Determination of Public Convenience or Necessity **cannot** be made by the Planning Commission for the off-sale of beer, wine, and distilled alcoholic beverages because the project is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative Plan Area and is within approximately 450 feet of a social services agency and within 75 feet of a residential use. However, the Planning Commission **can** make Findings 2, 4, 5.b, and 5.d.*

2. 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 the required findings for the Determination of Public Convenience or Necessity, there are significant and overriding benefits derived from the project as proposed. The project would enable the store to expand its product offerings, with the potential to increase sales and tax revenue. The sale of collectible bottles of liquor would be incidental to jewelry sales at a long-standing business in the community, occupying a maximum of 20% of the sales floor, per Condition 4.d. Condition 4 also requires the store to follow safety measures including controlled access to the store, interior and exterior security cameras, and employee training in alcohol sales procedures.

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 collectible bottles of liquor within an existing jewelry. The off-sale of alcoholic beverages would be conducted wholly inside the building. Based on the discussion and findings in the sections below, 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. On-site signs have been posted on both project frontages since July 10, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on October 4, 2024. Staff has been available to respond to questions from the public. No calls or emails were received from members of the public regarding this project.

Project Manager: Kora McNaughton

Approved by: /s/ John Tu, Division Manager for Christopher Burton, Planning Director

Please click on the title of each exhibit to view the document:

EXHIBITS:
Exhibit A: Vicinity Map/Aeria (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

Owner/Applicant:	Applicant's Representative:
Connie Alvarez Plaza Jewelers Inc. 1130 East Santa Clara Street San José, CA 95116	Sandra Escobar 5870 Winged Foot Drive Gilroy, CA 95020

Exhibit A: Vicinity Map/Aerial

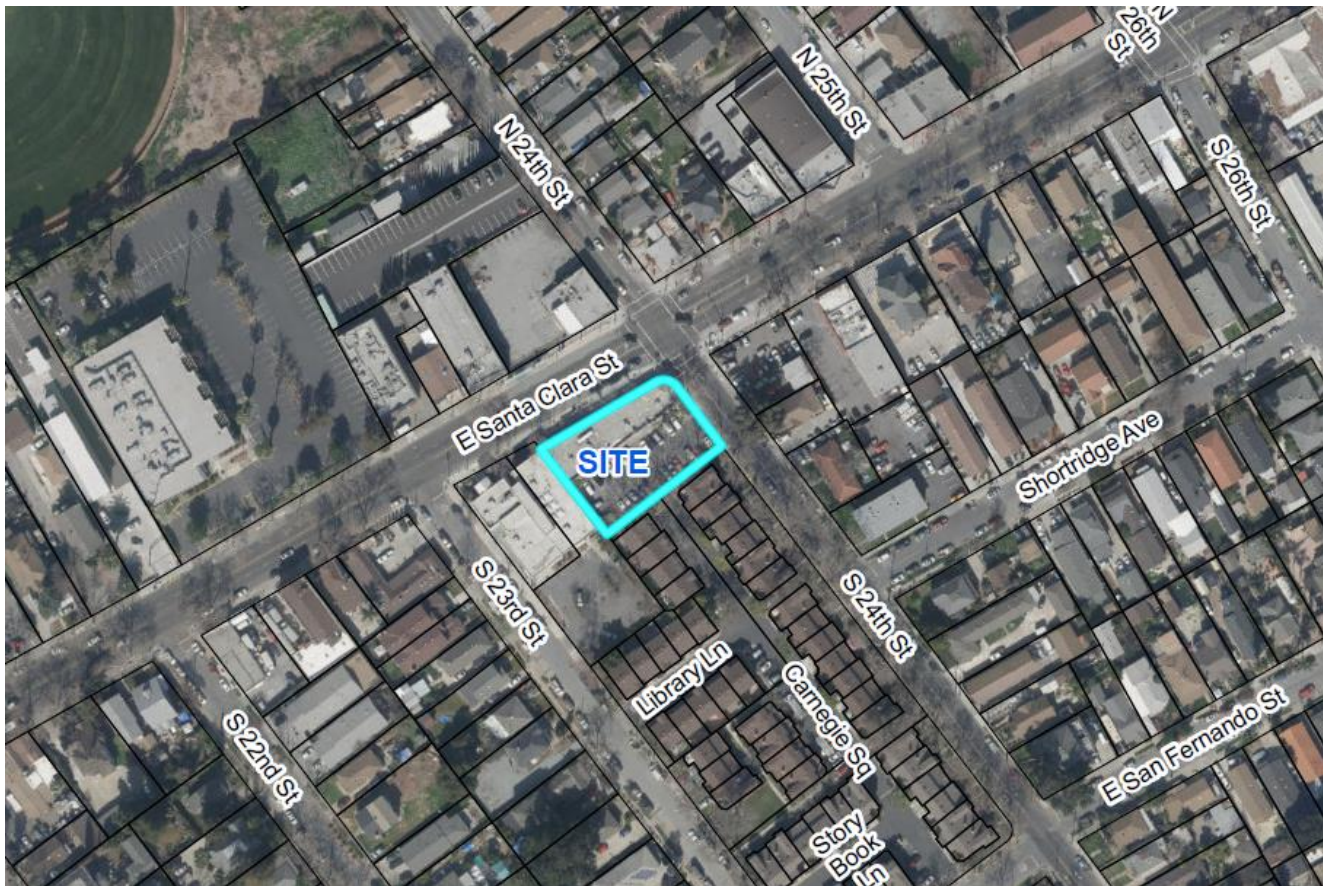


Exhibit B: Floor Plan

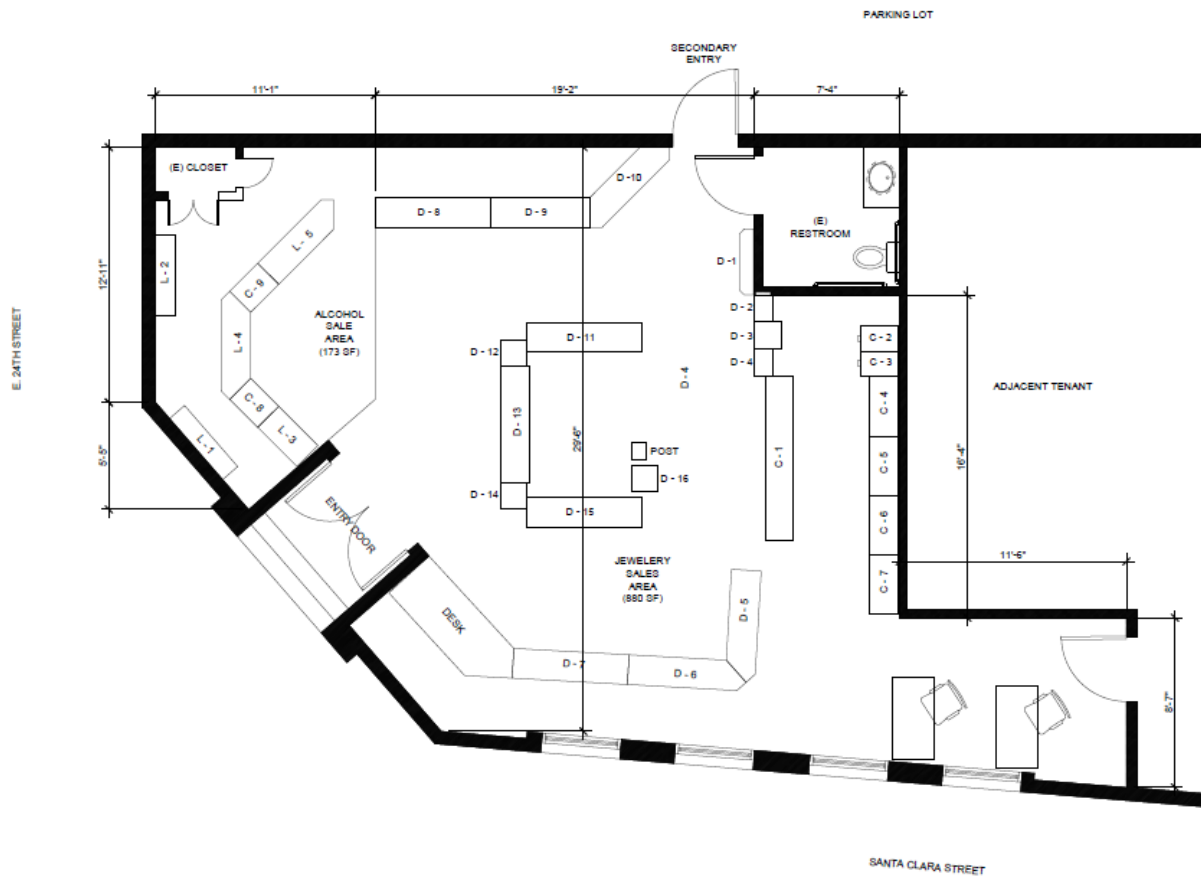


Exhibit C: General Plan Map

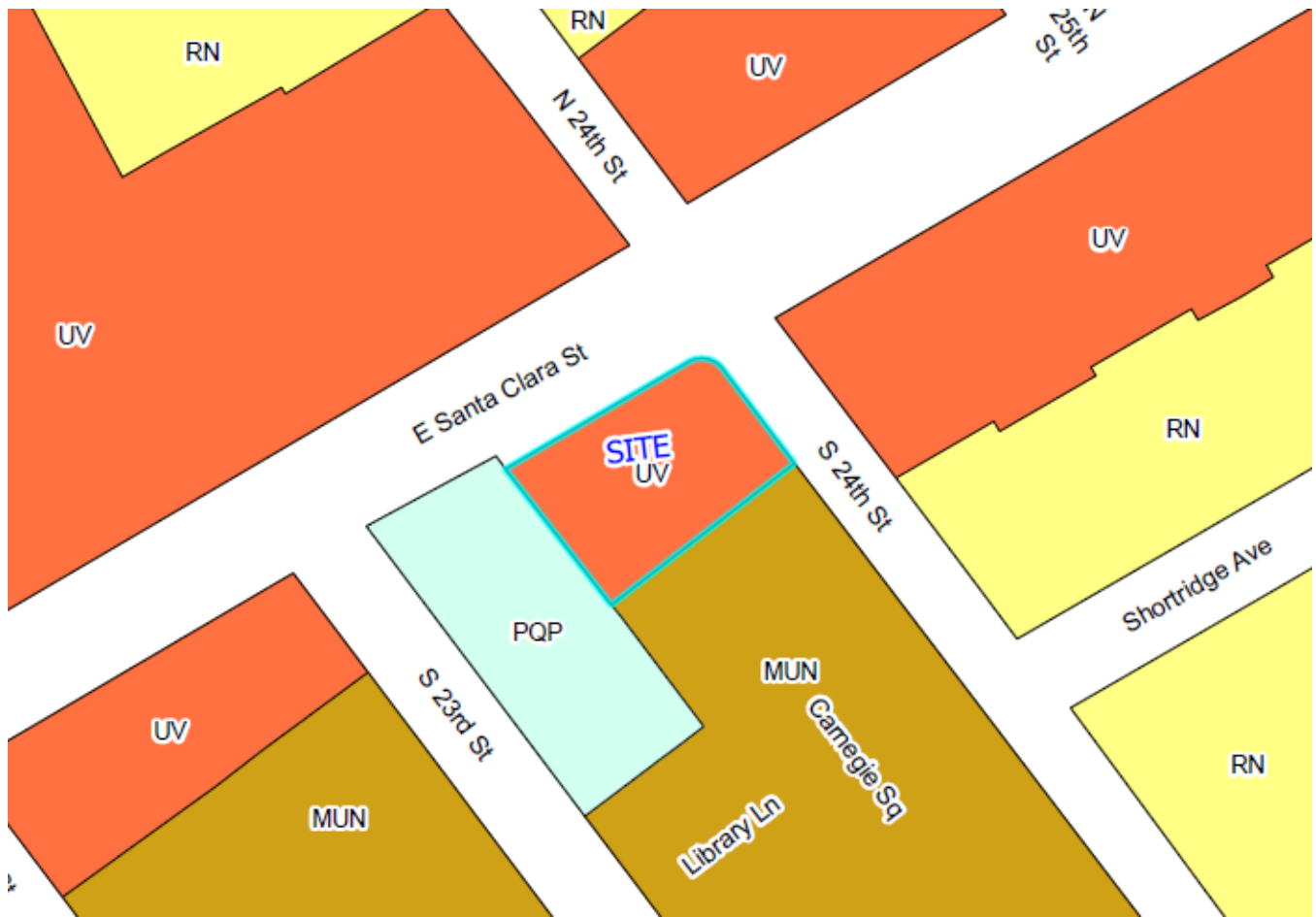


Exhibit D: Zoning Map

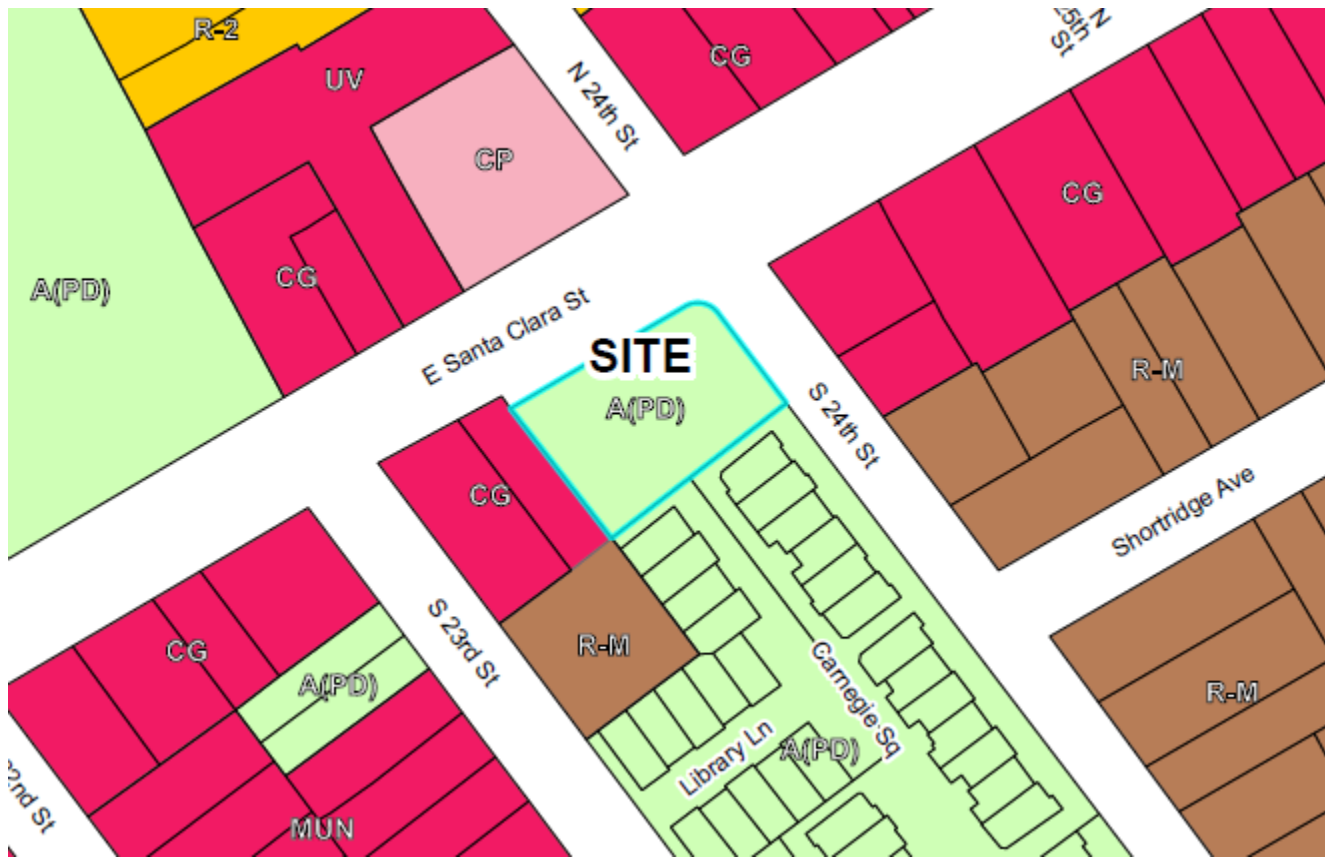


Exhibit E: Alcohol Radius Map

Green line: 150-foot radius

Blue line: 500-foot radius

Red line: 1,000-foot radius

PD24-012 & ER24-118

Click on the title to view document.

[Correspondence received AFTER 10/16/24](#)