

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE ALCOHOL (TYPE 21 ABC LICENSE) AT AN EXISTING APPROXIMATELY 124,320-SQUARE FOOT RETAIL STORE (TARGET) ON AN APPROXIMATELY 11.5-GROSS ACRE SITE, LOCATED AT THE NORTHEAST CORNER OF NORTH CAPITOL AVENUE AND MCKEE ROAD (450 NORTH CAPITOL AVENUE) (APN: 592-19-006)**

**FILE NO. CP21-012**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 25, 2021, an application (File No. CP21-012) was filed by Janine Borwn-Wiese, of Target Corporation, with the City of San José, for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale alcohol (Type 21 ABC License) at an existing approximately 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site, on that certain real property situated in the CG Commercial General Zoning District and located on the northeast corner of North Capitol Avenue and McKee Road. (450 North Capitol Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A" entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said concurrent applications on March 23, 2022, notice of which was duly given; and

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

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendation of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Target CP21-012" dated received May 5<sup>th</sup>, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject 11.5-gross acre site is located on the northeast corner of North Capitol Avenue and McKee Road. The site is currently developed with an existing approximately 124,320-square foot retail store (Target). The existing Target is located within the larger Capitol Square Mall.

The site is accessed by three driveways along North Capitol Avenue, and two driveways from McKee Road. The site is surrounded by single-family residences to the north, a middle school (William Sheppard Middle School) to the east, a Mobile Home Park across North Capitol Avenue to the west, and a commercial shopping center to the south.

- 2. Project Description.** The project consists of a Conditional Use Permit and Determination of Public Convenience or Necessity (PCN) to allow the off-sale full range of alcoholic beverages at an existing retail store (Target) located within the larger Capitol Square Mall.

In conjunction with the Conditional Use Permit and Determination of Public Convenience or Necessity, the off-sale alcohol use requires issuance of a State Alcoholic Beverage Control (ABC) License Type 21. A Type 21 license allows for the sale of a full range of alcoholic beverages for consumption off the premises where items are sold. Off-sale alcohol sales would be incidental to the retail store, which is a permitted use in the CG Commercial General Zoning District. Approximately 434 square feet of the 79,716 square foot sales floor area would be dedicated to beer and wine sales (0.5% of the total sales floor area). Alcohol sales hours would coincide with the grocery store hours (typically 8:00 am to 11:00 pm Monday through Saturday and 8:00 am to 10:00 pm on Sunday).

The subject site is located in what is classified as an over-concentrated Census Tract (Census Tract 5038.04). Pursuant to California Business and Professions Code (BPC) Section 23958.4, the ratio of off-sale retail licenses to population in the census tract in which the applicant premises is located, exceeds the ratio of off-sale licenses to population in the County as a whole. The number of off-sale establishments authorized in the census tract is two, per California ABC. There are currently three off-sale establishments operating within the census tract. Therefore, a Determination of Public Convenience or Necessity is required to be issued to process the application. As stated in the Police Department Memorandum, dated June 1, 2021, the site is not located in an area of high crime. The Police Department is neutral to the issuance of a Conditional Use Permit and Determination of Public Convenience or Necessity for off-sale of alcohol at the subject site. The addition of off-sale alcohol at this location would not create more than four off-sale establishments within a 1,000-foot radius of

the exterior of the building. There is currently one off-sale use within 1,000 feet of the subject site (Cardenas Market). The site is located within 150 feet of a residentially zoned property (north) is located within 500 feet of a school (east). The nearest residentially zoned property is a single-family neighborhood adjacent to the subject property to the north. The nearest school (William Sheppard Middle School) is located adjacent to the subject property to the east.

- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Regional Commercial. These commercial areas attract customers from a regional area and play an important fiscal and economic role for the City. This designation is applied primarily to existing regional shopping centers, though sometimes it may reflect the cumulative attraction of a regional center and one or more nearby community or specialty commercial centers, or two or more community or specialty centers in close proximity whose combined drawing power is of a regional scale. This designation supports a very wide range of commercial uses, which may develop at a wide range of densities. Large shopping malls, and large or specialty commercial centers that draw customers from the greater regional area are appropriate in this designation along with office uses ranging in intensity up to an FAR of 12.0. Alcohol sales would be incidental to the full-sale retail and grocery store, which is a consistent use with the General Plan Land Use Designation of Regional Commercial.

The project is consistent with the following General Plan Goals and Policies:

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

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

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

*Analysis: The project is consistent with the Regional Commercial General Plan designation and would allow off-sale alcohol at an existing retail store which provides a wide range of goods and groceries. Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use and would occupy 434 square feet (0.5%) of the larger 79,716-square foot sales floor area. The store would provide an additional retail option for neighborhood residents in addition to employing approximately 180 to 220 employees.*

#### 4. Zoning Ordinance Compliance.

##### Land Use

The existing building conforms to the development standards set forth in the CG Commercial Neighborhood Zoning District. The CG Zoning District is intended to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. A retail store is a permitted use in the CG Zoning District. No additional development permit is required for the occupation of the retail space. Pursuant to Section 20.40.100 of the Zoning Code, the off-sale of alcoholic beverages requires a Conditional Use Permit in this zoning district

##### Setbacks and Height

The project conforms with all setback and height requirements of the CG Zoning District pursuant to Section 20.40.200 of the Zoning Code. As previously discussed, the approximately 124,320-square foot retail store is an existing building. The setbacks and height would not be altered by this Conditional Use Permit. No exterior improvements, signage, or other uses would be approved through this Conditional Use Permit.

Development Standard	Required	Existing
Front setback	15 feet	400 feet
Side, interior setback	None	60 feet (SE), 27 feet (NW)
Rear, interior setback	None	45 feet
Maximum height	65 feet	37 feet, 4 inches

##### Parking

Use	Ratio	Required
Retail	1 per 200 sf of floor area (302,626 sf/200)	1,514 spaces
Restaurant (seating area)	1 per 40 sf (1,127 sf/40)	28 spaces
	<b>Total Required</b>	1,542 spaces
	<b>Total Provided</b>	<b>1,686</b>

The project conforms with all parking requirements pursuant to Chapter 20.90 of the Zoning Code. As previously stated, there are no changes to the existing retail building. The grocery store requires 553 vehicle parking spaces. The existing building provides 749 vehicle parking spaces. A Conditional Use Permit for off-sale alcohol does not trigger additional parking requirements over the primary retail use.

#### Noise

The project is required to conform with the performance standards for noise, pursuant to Section 20.40.600 of the Zoning Code. The maximum allowed decibel level for a commercial use adjacent to a residential use is 55 decibels. The maximum allowed decibel level for a commercial use adjacent to a non-residential use is 60 decibels. All activity regarding off-sale alcohol would occur indoors. There would be no construction associated with this project. A Conditional Use Permit for off-sale alcohol does not trigger additional parking requirements over the primary retail use.

#### **5. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals.**

Council Policy 6-30: Public Outreach Policy was followed in order to inform the public 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. An on-site sign has been posted on the project frontage since August 4, 2021. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

#### **6. Environmental Review.**

Under the provisions of Section 15301(a) for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal 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 a 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 would not have a

significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

**7. Conditional Use Permit Findings:** Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

*Analysis: As explained in detail above, the project use would be consistent with and further the policies of the General Plan. The project would allow off-sale alcohol (Type 21 ABC License) at an existing retail store (Target). Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use. The store would provide a retail option for neighborhood residents in addition to employing 180 to 220 employees.*

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: As described above, the project does not include modifications to the existing building. The existing setbacks, height, noise, and number of parking spaces are not being altered by this Conditional Use Permit. The retail use is a permitted use in the CG Zoning District, and off-sale alcohol use is authorized with a Conditional Use Permit pursuant to Table 20-90 of the Municipal Zoning Code. Therefore, the project would be in conformance with the requirements of the CG Zoning District with the issuance of the permit.*

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: The project is consistent with the City's On-Site Noticing/Posting Requirements and City Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals. An on-site sign has been posted at the project frontage since August 4, 2021. The project was noticed for a radius of 500 feet.*

- d. The proposed use at the location requested will not:

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

*Analysis: As indicated in the San José Police Department Memorandum dated June 1, 2021, the use is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. As discussed above, the ratio of off-sale alcohol establishments to population in the subject Census Tract exceeds the ratio of the County as a whole pursuant to California Business and Professions Code Section 23958.4. The Police department is neutral regarding this project. Due to the concentration of alcohol sales within this census tract, a Determination of Public Convenience and Necessity is required. The sales area dedicated to off-sale alcohol sales is 434 square feet, which is approximately 0.5% of the 79,716-square foot sales floor area. The remaining sales floor area would be dedicated to the sale of retail goods and groceries. Additionally, the Operations Plan, prepared by the applicant and submitted to the Director of the Planning, Building and Code Enforcement on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of seven dedicated security personnel would be present on site at any given time. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with the hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). Therefore, the use would not be considered detrimental to the surrounding neighborhood.*

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

*Analysis: The existing retail building conforms to the development regulations, including setbacks, height, and parking for a building in the CG Zoning District. There are no modifications to the exterior of the building included in this Conditional Use Permit.*

- f. The proposed site is adequately served:
  - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - ii. By other public or private service facilities as are required.

*Analysis: The subject site is adequately served by local and regional access routes, and is accessed from North Capitol Avenue and McKee Road, as indicated above. The subject site is served by VTA bus routes 64A and 64B. The McKee VTA Light Rail Station is located adjacent to the subject site to the west.*

- g. 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 structural modifications to the existing retail building or its use for retail. There would be no outdoor construction activity on-site. Therefore, there would be no unacceptable negative environmental impacts related to noise, vibration, fugitive dust, drainage, storm water runoff, or odor, and the project will not have any unacceptable negative affect on adjacent properties.*

**8. Off-Sale Alcohol Findings.** Section 20.80.900 of the San José Municipal Zoning Code specifies the required findings for the allowance of off-sale alcohol

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

*Analysis: The 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 subject site. There are two other sites that provide alcoholic beverages for off-site consumption within 1,000 of the project site. The nearest off-sale establishments are Cardenas Market, located approximately 900 feet to the south and 4 Less Mini Mart, located approximately 900 feet to the southwest. Therefore, this finding **can** be made.*

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

*Analysis: As previously stated, 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 subject site. The nearest off-sale establishments are Cardenas Market and 4 Less Mini Mart, located approximately 900 feet from the site, both which are greater than 500 feet from the site. As indicated in the San José Police Department Memorandum dated June 1, 2021,*

*the use is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. Therefore, a Determination of Public Convenience or Necessity is required to allow off-sale alcohol at this establishment. The Police department is neutral regarding this project. Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). Therefore, this finding **can** be made.*

- c. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The subject site is not located within five hundred feet from a child care center, public park, social services, agency, residential care facility, residential service facility, secondary school, college or university. The project is adjacent to both a residentially zoned property to the north and a middle school (William Sheppard Middle School) to the east. However, the use would be oriented in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from either the residences or the school. Additionally, the uses are further separated by an existing masonry wall. . Therefore, this finding **can** be made.*

**9. Determination of Public Convenience or Necessity Findings.** Chapter 6.84 of the San José Municipal Code of Title 6 identifies the process and findings related specifically to the off-sale of alcohol; the findings are described below.

- a. The proposed use would not be located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
  - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or

- ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The project site is not located within a Strong Neighborhoods Initiative (SNI) area or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. As described above, according to the Police Department Memorandum dated June 1, 2021, the Police Department is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site during hours of operation. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with the typical hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). Therefore, the use 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. Therefore, this finding **can** be made.*

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

*Analysis: The 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 (Cardenas Market and 4 Less Mini Market). Therefore, this finding **can** be made.*

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

*Analysis: The subject site would be located within five hundred feet of a school and within one hundred fifty feet of a residence. The nearest school (William Sheppard Middle School) is adjacent to the site to the east. A single-family neighborhood is adjacent to the site to the north. Therefore, this finding **cannot** be made.*

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

*Analysis: The sales floor area of the store is approximately 79,716 square feet. The floor area dedicated to alcohol sales is approximately 434 square feet. Therefore, the percentage of alcohol sales would be approximately 0.5% of the sales floor area. Therefore, this finding **can** be made.*

e. At least one of the following additional findings:

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

*Analysis: The census tract is not unusually configured in shape. Therefore, this finding **cannot** be made.*

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

*Analysis: Target would continue to operate in an existing 124,320-square foot retail space in an existing shopping center. The project would allow off-sale alcohol (Type 21 ABC License) within an interior space at an existing retail store (Target). Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, meat, and non-grocery items as well as alcohol. Alcohol sales would be incidental to the larger retail use. According to the Police Department Memorandum dated June 1, 2021, the Police Department stated that it is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. The subject site is located in San Jose Police Beat W4. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated for crime per B&P Section 23958.4 (a)(1). Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on-site during hours of operation. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). The use would not be detrimental to public health, safety, or welfare of persons located in the area. Therefore, this finding **can** be made.*

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

*Analysis: The project would result in an overconcentration in the number of outlets for the off-premises sale of alcoholic beverages as explained above. Therefore, this finding **cannot** be made.*

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

*Analysis: Approximately 0.5% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the approximately 79,716-square foot sales floor area would be dedicated to sales of items typical of a large retail/grocery store that provide for a more complete, convenient, and diverse shopping experience. Therefore, this finding **can** be made.*

Given the above-state analysis, the finding for 9.c., for the issuance of a Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the project site is located within 500 feet of a school and within 150 feet of a residentially zoned property. Therefore, City Council approval is required for the off-sale of alcoholic beverages at the project site. The City Council may issue a Determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where the City Council does all of the following:

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

*Analysis: Given the above-stated analysis, finding 9.c for the Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the subject site is located within 500 feet of a school and within 150 feet of a residentially zoned property.*

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

*Analysis: While all of the required findings for the Determination of Public Convenience or Necessity cannot be made, there are significant and overriding benefits by the project use. Off-sale alcohol would be appurtenant to a larger existing retail use that provides a complete, convenient, and diverse shopping experience for the community. Approximately 0.5% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the approximately 79,716-square foot sales floor area would be dedicated to sales of items typical of a large retail/grocery store.*

*The use would be oriented in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from either the residences or the school. Additionally, the uses are further separated by a masonry wall and*

*intervening development. The Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site during hours of operation. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). These mitigating factors are included in the permit as conditions of approval and will be monitored and enforced by the City. Finally, the proposed off-sale alcohol use would further activate an existing commercial area and provide additional retail options to the existing and future residents in the surrounding area.*

In accordance with the findings set forth above, a Conditional Use Permit and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

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

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Determination of Public Convenience or Necessity (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the

validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Use Authorization.** Subject to all conditions herein, this Permit allows a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License – Full Range of Alcoholic Beverages) at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site. The establishment shall adhere to the associated Operations Plan for File No. CP21-012, dated received, May 24, 2021.
5. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 21 license from the California Department of Alcoholic Beverage Control (ABC).
6. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit plans entitled, "Target CP21-012" dated November 11, 2021, on file with the Department of

Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set”.

8. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
  - a. The copy of the Permit shall be a minimum size of 8.5 inches by 11.0 inches; shall be posted at each public street frontage within two feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
  - b. If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
10. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
11. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
12. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
13. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
14. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
16. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
17. **Mechanical Equipment.** The location and type of mechanical equipment shall be shown on the Approved Plans and shall be screened from view. Changes to the



mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.

18. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
19. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
20. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
21. **Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
22. **Outdoor Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property
23. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
24. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
25. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.
28. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, CP21-012 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.

**35. Revocation, Suspension, Modification.** This Conditional Use Permit and Determination of Public Convenience or Necessity may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

**NOTICE TO PARTIES**

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



# EXHIBIT B PART 1

EXHIBIT "A"  
(File No. CP21-012)

## LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF CAPITOL AVENUE AS CONVEYED TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 22, 1970 IN BOOK 8897 OF OFFICIAL RECORDS PAGE 524, DISTANT ALONG SAID NORTHEASTERLY LINE OF CAPITOL AVENUE NORTH 38°11'00" WEST 411.13 FEET MEASURED FROM THE INTERSECTION OF THE SOUTHEASTERLY LINE OF THE 33.08 ACRE TRACT IN THE PUEBLO TRACT NO.1, SAN JOSE CITY LANDS, CONVEYED BY EDWARD GODFREY TO MATHILDA ANN GODFREY, HIS WIFE BY DEED RECORDED JUNE 20, 1910 IN BOOK 356 OF DEEDS, PAGE 390, SANTA CLARA COUNTY RECORDS, SAID POINT OF BEGINNING BEING ALSO THAT MOST SOUTHERLY CORNER OF LOT NUMBER 76, SHOWN ON TRACT NO. 6769 AS SAID LOT AND TRACT ARE SHOWN ON MAP RECORDED MARCH 12, 1980 IN BOOK 460 OF MAPS AT PAGES 17, 18 AND 19, SANTA CLARA COUNTY RECORDS;

THENCE ON AND ALONG THE SOUTHEASTERLY BOUNDARY OF SAID TRACT NO. 6769, NORTH 51°48'14" EAST (NORTH 51°49'00" EAST) 927.38 FEET, TO THE MOST EASTERLY CORNER OF SAID TRACT NO. 6769, LAST SAID POINT BEING ON A LINE PARALLEL WITH AND DISTANT SOUTHWESTERLY 30.00 FEET FROM THE NORTHEASTERLY LINE OF SAID 33.08 ACRE TRACT, SAID POINT ALSO BEING IN THE SOUTHWESTERLY LINE OF ROUGH AND READY ROAD AS CONVEYED TO THE CITY OF SAN JOSE IN BOOK 8897 OF OFFICIAL RECORDS, PAGE 524 REFERRED TO ABOVE; THENCE ALONG SAID SOUTHWESTERLY LINE SOUTH 28°53'54" EAST, 539.64 FEET; THENCE SOUTH 51°48'14" WEST, 402.25 FEET; THENCE SOUTH 38°11'46" EAST, 75.95 FEET; THENCE SOUTH 51°48'14" WEST, 432.95 FEET TO THE NORTHEASTERLY LINE OF CAPITOL AVENUE AS ESTABLISHED BY LIS PENDENS RECORDED IN BOOK 3761 OF OFFICIAL RECORDS, PAGE 253;

THENCE ALONG SAID NORTHEASTERLY LINE OF CAPITOL AVENUE NORTH 38°15' WEST, 55.34 FEET; THENCE NORTH 50°52'00" EAST 5.36 FEET; THENCE NORTH 39°08'00" WEST 35.00 FEET; THENCE SOUTH 50°52'00" WEST 4.63 FEET TO THE NORTHEASTERLY LINE OF CAPITOL AVENUE AS CONVEYED BY DEED RECORDED IN BOOK 6392, OFFICIAL RECORDS, PAGE 678; THENCE ALONG THE NORTHEASTERLY LINE OF SAID DEED LAST REFERRED TO, NORTH 38°15' 00" WEST 106.97 FEET TO THE SOUTHEASTERLY LINE OF DEED RECORDED IN BOOK 8897 OFFICIAL RECORDS, PAGE 524; THENCE SOUTH 52°27'14" WEST 5.00 FEET, AND NORTH 38°11'46" WEST 411.13 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 502,756 SQ. FT. OR 11.542 ACRES..