



## CITY COUNCIL STAFF REPORT

<b>File No.</b>	<b>C17-001</b>
<b>Applicant:</b>	<b>Tuyet Pham</b>
<b>Location</b>	<b>Northwest corner of Monterey Road and Bellevue Avenue (1593 Monterey Road)</b>
<b>Existing Zoning</b>	<b>LI Light Industrial</b>
<b>Council District</b>	<b>7</b>
<b>Historic Resource</b>	<b>No</b>
<b>Annexation Date:</b>	<b>December 1, 1947</b>
<b>CEQA:</b>	<b>Determination of Consistency with Envision San José 2040 General Plan EIR (Resolution No. 76041) and Supplemental EIR to the Envision San José 2040 General Plan Program EIR (Resolution No. 77617)</b>

**APPLICATION SUMMARY:**

Conforming Rezoning from the LI Light Industrial Zoning District to the CN Commercial Neighborhood Zoning District on a 0.3-gross acre site.

**RECOMMENDATION:**

Staff recommends that the City Council approve the Conforming Rezoning based upon the facts and findings in this staff report.

**PROJECT DATA**

<b>GENERAL PLAN CONSISTENCY</b>			
<b>General Plan Designation</b>		<b>Neighborhood/Community Commercial</b> <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
<b>Consistent Policies</b>		<b>Implementation Policies IP-1.6 and 8.2</b>	
<b>SURROUNDING USES</b>			
	<b>General Plan Land Use</b>	<b>Zoning</b>	<b>Existing Use</b>
<b>North</b>	Neighborhood/ Community Commercial	LI Light Industrial	Auto repair
<b>South</b>	Neighborhood/ Community Commercial	CG Commercial General	Retail, auto parts store
<b>East</b>	Combined Industrial /Commercial	CG(PD) Planned Development	Vacant (approved for shopping center development)
<b>West</b>	Residential Neighborhood	R-2 Two-Family Residence	Single-family detached residence

## PROJECT DESCRIPTION

On January 4, 2017, the applicant applied for a Conforming Rezoning of the subject 0.3-gross acre site from the LI Light Industrial Zoning District to the CN Commercial Neighborhood Zoning District. The applicant seeks to establish a restaurant use on the property; however, restaurants are not a permitted use in the existing LI Zoning District. The applicant is therefore requesting the property be rezoned as described, as restaurants are a permitted use in the CN Zoning District.

### Site Description and Surrounding Uses:

The 0.3 gross-acre site is located at the northwest corner of Monterey Road and Bellevue Avenue. The site is currently developed with a 4,165-square foot building that was most recently used for a restaurant. There are small parking lots in front of and behind the existing building, with a total of approximately 18 parking spaces. Adjacent to the site are commercial uses to the south and east, an auto repair shop to the north and single-family detached residences to the west (see Figure 1).



Figure 1: Aerial image of the subject site and surrounding uses

### Background

The site is zoned LI Light Industrial. Restaurants are not a permitted use in this district. A restaurant operated as a legal non-conforming use on the property since at least 1948 and has been in the existing building since 1960. There was a gap from 2006 to 2008 in which there was

not an operating restaurant on site. As more than 18 months passed during that time period, the legal non-conforming status has expired and cannot be reestablished. A restaurant did open on site after 2008, but this restaurant did not conform to the site's LI Light Industrial Zoning District. Code Enforcement case #201513650 was opened on the site on October 1, 2015, prior to the closure of the restaurant. The complaint alleged that the facility did not have adequate egress (bars on windows, certain exit doors were bolted shut) and was operating unlawfully after midnight. The complaint stemmed from a shooting that occurred inside the facility on September 26, 2015, during which panicked patrons had difficulty exiting the facility. During the investigation of the code complaint, it was determined that the legal non-conforming status of the restaurant had expired and the restaurant use was no longer a legal use on the site. A compliance order was issued on October 14, 2015, requiring the facility to cease operations. On October 24, 2015, a homicide occurred on site. Shortly after, the restaurant (which was functioning more as a nightclub/drinking establishment) ceased its operation. The same property owner desires to reinstate the restaurant use and is requesting a conforming rezoning to CN Commercial Neighborhood.

The rezoning is a step in addressing the open code case. Subsequent building permits will be required to address all unpermitted work done on the property and to bring the facility up to current building code standards. The code case will not be closed until the facility is in compliance with both building and planning requirements. This includes removing bars from windows, restoring existing windows that have been blocked out, removing unpermitted signs from the site, restoring the trash enclosure in the rear and restriping the rear parking lot to an operable configuration as it appeared in 2007 (see figure 2). All issues will be addressed prior to any new operation commencing on the site.



**Figure 2: 2007 Street View of Rear Parking Lot**



## ANALYSIS

### Envision San José 2040 General Plan Conformance

The proposed project was analyzed for conformance with the Envision San José 2040 General Plan. The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial (see Figure 2).

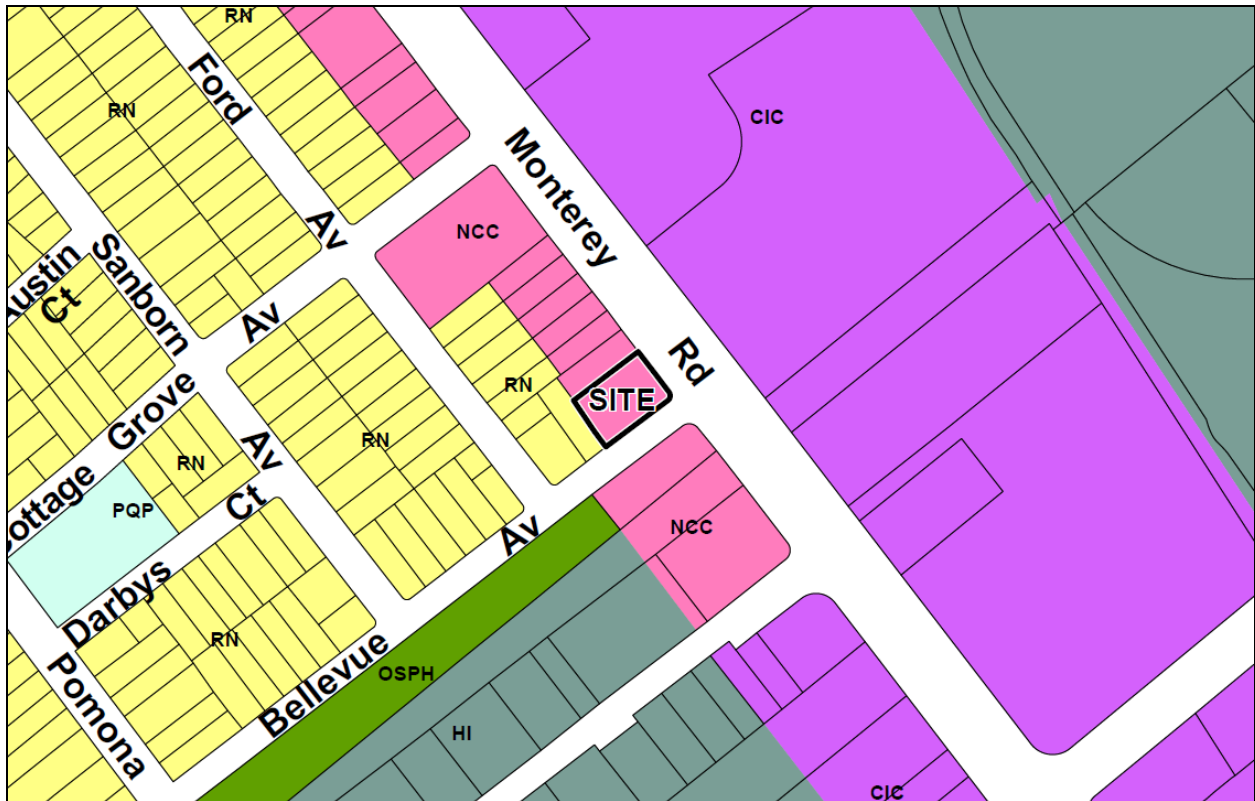


Figure 3: General Plan Land Use/Transportation Diagram

This designation supports a broad range of commercial activities that serve the communities in neighboring areas. The rezoning is consistent with Neighborhood/Community Commercial land use designation, as the CN Zoning District will allow commercial uses on the site.

In addition, the rezoning is consistent with the following General Plan policies:

1. **Implementation Policy IP-1.6:** Ensure proposals to rezone and pre-zone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan Vision, goals and policies.
2. **Implementation Policy IP-8.2- Zoning:** Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan Land Use / Transportation Diagram*. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity

correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis: Pursuant to Table 20-270 of the Zoning Ordinance, the proposed rezoning is to a conventional zoning district that conforms to the General Plan Land Use Designation of Neighborhood/Community Commercial. The rezoning would allow the property to develop with a range of neighborhoods serving commercial uses in the future. The CN Commercial Neighborhood zoning district is the most appropriate zoning designation as the property is too small to be zoned CG Commercial General and is not configured in a pedestrian oriented configuration typical of the CP Commercial Pedestrian Zoning District.*

### **Zoning Ordinance Conformance**

The proposed rezoning is in conformance with Table 20-70, Section 20.120.100 of the San José Municipal Code. The Zoning Ordinance identifies the CN Commercial Neighborhood Zoning District as a conforming zoning district to the Neighborhood/Community Commercial General Plan Land Use/Transportation Diagram land use designation.

### ***Uses Allowed and Permit Requirements***

The rezoning to a commercial use is the first step in addressing the open code enforcement case. Restaurants are permitted by right in this zoning district and are defined as “public eating establishments” within the Zoning Ordinance. Public eating establishments may serve alcoholic beverages for on-site consumption as incidental to the primary public eating establishment use. However, the owner must apply for a subsequent discretionary Conditional Use Permit for the business to operate after midnight and/or operate as a public drinking establishment (i.e., no meal service provided). In either case, a permit to serve alcoholic beverages from the California Department of Alcoholic Beverage Control (ABC) is required. Conditions of approval may be included within the ABC permit to ensure the establishment is operated in a responsible manner. The San Jose Police Department has indicated they would likely protest the ABC permit due to the site’s location in a high crime area; however, the final determination on whether to issue the ABC permit is made by ABC. The Police Department can also work with ABC in recommending that certain conditions be imposed by the permit, such as limiting hours and not allowing amplified noise.

### ***Setback Requirements***

The existing building will not fully conform to the setback requirements of the CN Commercial Neighborhood Zoning District. The existing building has an approximately two-foot corner side setback along Bellevue Avenue which is less than the CN Commercial Neighborhood Zoning District minimum building corner side setback of 12.5 feet. The rezoning will therefore result in a building with a legal non-conforming setback. However, the rezoning will bring the property into conformance with the General Plan, which is the highest priority.

**Parking**

Finally, any proposed new use would be subject to the parking requirements of Chapter 20.90 of the Zoning Ordinance. The Zoning Ordinance has special parking provisions for uses established prior to 1965. In essence, as long as the minimum required number of parking spaces for any expanded use does not exceed the minimum number required for a legal use as it existed in 1965 by more than 40 percent, the expansion may be allowed without the need for additional on-site parking spaces.

In 1965, the restaurant included approximately 3,500 square feet of dining area. Under current code, this would require 90 parking spaces. Under the above provision, an expansion of up to 4,900 square feet of dining area may be allowed without the requirement for additional parking spaces on the subject site, subject to staff verification of the 3,500 square foot restaurant was originally established with 3,500 square feet of dining area.

As previously stated, the site currently has 18 parking spaces, which would normally be required for 45 seats or 720 square feet of dining area. However, as explained, the parking requirement for expansion of uses established prior to 1965 is not limited by the number of existing legal parking spaces on the site, but by the “40 percent” rule described above. The building exists in a similar configuration to how it was in 1965, with approximately 3,500 square feet of dining area. Since this is a 0% increase in dining area (and thus a 0% increase in parking demand), the existing number of legal parking spaces on-site is considered adequate for a new restaurant operation on-site maintaining the same amount of dining area, subject to staff verification of the of the 18 existing parking spaces being legally established with the 3,500 square feet of dining area.

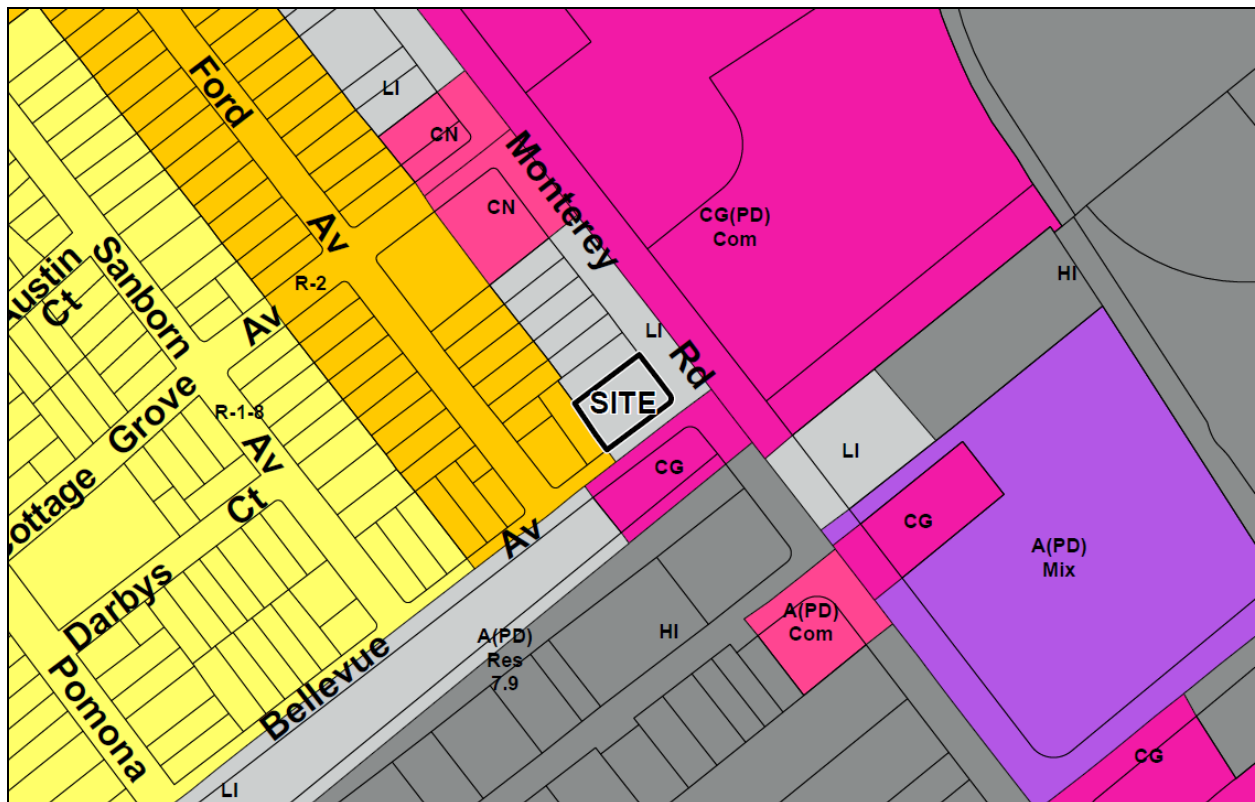


Figure 4: Zoning Map

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the proposed rezoning is pursuant to, in furtherance of and within the scope of the Envision San José 2040 General Plan program, the impacts of which were analyzed and disclosed in the Final Program Environmental Impact Report (EIR) and Supplemental EIR for the Envision San José 2040 General Plan, for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, and Resolution No. 77617 on December 15, 2015, respectively, and all Addenda thereto. The 2011 Program EIR and a supplemental EIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2040. The proposed rezoning does not involve new significant effects beyond those analyzed in the Program EIRs, supplemental EIR, and Addenda thereto.

## **PUBLIC HEARING NOTIFICATION**

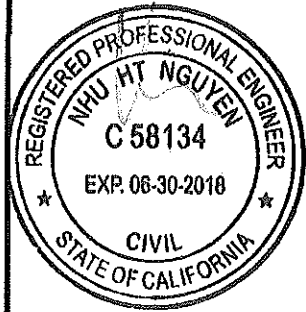
To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public. No public comment letters have been received to date.

**Approved by:** /s/ Rosalynn Hughey, Interim Director, Planning Building and Code Enforcement

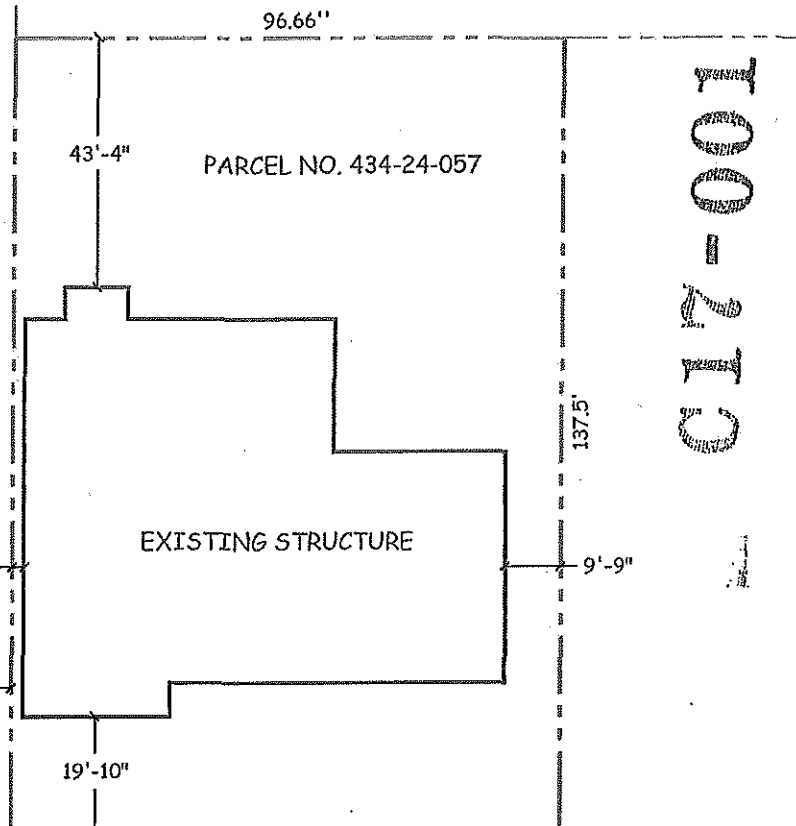
For questions please contact Steve McHarris, Planning Official, at 408-535-7819

Attachments: Plat Map

Correspondence from Sgt. Rick Galea, SJP



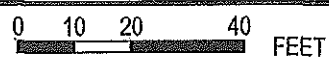
BELLEVUE AVENUE



100-210  
C

120'-0"

MONTEREY ROAD



**REZONING PLAT**

1593 MONTEREY ROAD, SAN JOSE, CA 95110 - APN: 434-24-057

TITLE OF PLAT	PLAT MAP FOR REZONING FROM LI TO CN	DATE	12/15/2016
ENGINEERING COMPANY	N.N. ENGINEERING SERVICES	SCALE	1/32" = 1'-0"
ADDRESS	22528 POPPY DR., CUPERTINO, CA 95014	PAGE	1 OF 2
PHONE NUMBER	(408) 873-7972		
ENGINEER'S LICENSE NO. & SEAL	C58134		



**LEGAL DESCRIPTION**

For APN/Parcel ID(s): 434-24-057

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 2 and 3, Block 3, as shown on the Map of Bellevue Tract in South San Jose, recorded September 7, 1887, Book B of Maps, Page 83, Santa Clara County Records, said Lot 2 and 3 in Block 3, also known on the Amended Map of the Bellevue Tract, recorded April 13, 1891, Book E of Maps, Page 99, Santa Clara County Records.



## Schreiner, Edward

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**From:** Galea, Richard  
**Sent:** Monday, September 18, 2017 4:01 PM  
**To:** Schreiner, Edward; McHarris, Steve  
**Cc:** Yee, Stanley@ABC; Kelly, Patrick  
**Subject:** Re: 1593 Monterey Road, San Jose (sometimes 1595 Monterey Road)

All,

I have had a chance to review your concerns and information regarding this location.

It looks like 1593 Monterey Road is applying to operate as a restaurant through the Planning Department. If they are granted the approval, we are anticipating the restaurant will apply for an on sale ABC license. The past history at this specific location has been a public nuisance for the neighborhood and the San Jose Police Department. However, it does not appear you are asking the San Jose Police Department for comments on this project. If you are, please let me know.

I reviewed the site location as if they were applying for an ABC license. The location is in a high crime area and the census tract is already over concentrated with on sale ABC licenses. Therefore, the San Jose Police Department would file a formal protest against the ABC license if someone applied for one for this location.

Please let me know if you have any more concerns or questions. Feel free to call me at 408-277-4041.

Sgt. Rick Galea #3495  
San Jose Police Department  
Special Investigations/Vice

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**From:** Schreiner, Edward  
**Sent:** Wednesday, September 6, 2017 8:03 AM  
**To:** Galea, Richard; McHarris, Steve  
**Cc:** Yee, Stanley@ABC; Kelly, Patrick  
**Subject:** RE: 1593 Monterey Road, San Jose (sometimes 1595 Monterey Road)

Hi Sgt. Galea,

There's a bit of a history with the site and there is currently *not* an active ABC application on file that I am aware of. However, this issue coming up is that there is a Conforming Rezoning on file, which could allow a restaurant with alcohol sales by right.

The property is currently LI Light Industrial Zoning, which wouldn't allow a restaurant in the existing building. The property owner wants to rezone to CN Commercial Neighborhood, which would conform to the City's General Plan and therefore be supported.

Here's a quick history of the site (1593 Monterey Road – also sometimes shows at 1595 Monterey Road):

1948 – First evidence of restaurant/bar on the site

1960 – Restaurant/bar existed in the current building on the site

11/30/2007 – Last ABC Permit for the site at 1593 Monterey expired (Type 47/48)

10/1/2015 – Code Enforcement Case #201513650 opened for facility operating past midnight without a CUP, as well as for numerous unpermitted building code issues (improper egress, lighting and walls installed without permit, etc.)  
10/24/2015 (1:54 am) – Man shot and killed outside the premises (known as Lu Beer Club). Premises were not permitted to be operating past midnight.  
10/27/2015 – ABC License for 1595 Monterey Road (a Type 47) was indefinitely suspended. Suspension never rescinded. Eventually expired on February 28, 2017.  
1/4/2017 – Property owner applies for Conforming Rezoning to CN Commercial Neighborhood, which could allow a restaurant with a Type 47 license to operate by right.

Currently we are obligated to recommend approval of the Conforming Rezoning because the rezoning conforms to the General Plan. However, we are certainly concerned based on the history at the site that a future restaurant with alcohol sales could be problematic again in the future. Again, there is nothing on file at this time, but we anticipate that as soon as the rezoning is approved, the property owner will likely pursue a new ABC permit.

We have two requests of you:

- 1) The rezoning will be going to City Council at some point, likely in late October. We anticipate at the Public Hearing the City Council will likely have some questions about the site's history. I think it would be helpful if someone from SJPD could be at the hearing. I will let you know when we have a firm date/time for the hearing.
- 2) Based on the site history, we would request that the SJPD file a protest to the future ABC permit, whenever it does come in and assist ABC in adding whatever conditions to the permit will be most effective.

Thank you – please let me know if you have any follow up questions,

-Ed

Ed Schreiner, CGBP  
Planner III  
Code Enforcement  
City of San Jose  
200 E Santa Clara Street, Floor T4  
San Jose, CA 95113  
(408)535-7601 office (408)888-7100 mobile  
[Edward.Schreiner@sanjoseca.gov](mailto:Edward.Schreiner@sanjoseca.gov)

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**From:** Galea, Richard  
**Sent:** Tuesday, September 05, 2017 7:21 PM  
**To:** McHarris, Steve <[Steve.McHarris@sanjoseca.gov](mailto:Steve.McHarris@sanjoseca.gov)>  
**Cc:** Schreiner, Edward <[Edward.Schreiner@sanjoseca.gov](mailto:Edward.Schreiner@sanjoseca.gov)>  
**Subject:** Re: 1593 Monterey Road, San Jose

Hey Stanley,

It looks like I only have half of this email chain regarding 1593 Monterey Road. Can you send me what they are applying for and when the application was submitted? I will review the application in case the San Jose Police Department wishes to file a formal protest against the application.

Also, can you email me or call me regarding the history with the applicant. Let me know if you need my cell number. Thanks!

Sgt. Rick Galea #3495  
San Jose Police Department  
Special Investigations/Vice

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**From:** McHarris, Steve  
**Sent:** Wednesday, August 30, 2017 9:26 AM  
**To:** Galea, Richard

**Cc:** Schreiner, Edward  
**Subject:** FW: 1593 Monterey Road, San Jose

Hi Sgt. Galea, We have done everything possible to control the alcohol portion of this future restaurant use. Please ABC response below.

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**From:** Schreiner, Edward  
**Sent:** Wednesday, August 30, 2017 9:13 AM  
**To:** McHarris, Steve  
**Cc:** Hughey, Rosalynn; Do, Sylvia  
**Subject:** FW: 1593 Monterey Road, San Jose

FYI

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**From:** Yee, Stanley@ABC [<mailto:Stanley.Yee@ABC.ca.gov>]  
**Sent:** Wednesday, August 30, 2017 8:51 AM  
**To:** Schreiner, Edward <[Edward.Schreiner@sanjoseca.gov](mailto:Edward.Schreiner@sanjoseca.gov)>  
**Subject:** RE: 1593 Monterey Road, San Jose

No. Revocation is a potentially lengthy process, no shortcuts. We have to receive complaints first before any action will take place. If the City receives complaints, then the City should act within their power to deal with the issue, and at the same time, forward those complaints to the ABC via the ABC-099 Complaint form, so we can have it assigned to ABC Enforcement.

I would suggest that you keep Sgt. Richard Galea in the loop re: this potential application, and suggest SJPD protest this application because of past history with this owner.

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**From:** Schreiner, Edward [<mailto:Edward.Schreiner@sanjoseca.gov>]  
**Sent:** Wednesday, August 30, 2017 8:41 AM  
**To:** Yee, Stanley@ABC  
**Subject:** FW: 1593 Monterey Road, San Jose

Stanley-  
See below – is there any possibility something like this could be done?  
-Ed

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**From:** McHarris, Steve  
**Sent:** Tuesday, August 29, 2017 5:53 PM  
**To:** Hughey, Rosalynn <[Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov)>; Do, Sylvia <[sylvia.do@sanjoseca.gov](mailto:sylvia.do@sanjoseca.gov)>; Schreiner, Edward <[Edward.Schreiner@sanjoseca.gov](mailto:Edward.Schreiner@sanjoseca.gov)>  
**Subject:** RE: 1593 Monterey Road, San Jose

Can ABC add such a condition that if city receives complaints, they can review and revoke the ABC permit? We can't afford to have another long drawn out fight with this owner who has a terrible track record. Get [Outlook for Android](#)