

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
200 E. Santa Clara Street  
San José, California 95113

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 12/06/06 Item:

File Number  
SP06-056

Application Type  
Special Use Permit Appeal

Council District  
3

Planning Area  
Central

Assessor's Parcel Number(s)  
467-45-025

### PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: South side of E. San Carlos Street, approximately 150 feet west of S. 4<sup>th</sup> Street

Gross Acreage: 0.10

Net Acreage: 0.10

Net Density: n/a

Existing Zoning: DC Downtown  
Primary Commercial District

Existing Use: Public eating establishment

Proposed Zoning: No change

Proposed Use: Same w/late night use between 12:00 midnight and 3:00 a.m.

### GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation  
Core Area

Project Conformance:  
 Yes  No

### SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Multi-family residential w/ ground floor retail and  
public eating establishments

DC Downtown Primary Commercial

East: Fast food restaurant

DC Downtown Primary Commercial

South: Surface parking lot for adjacent businesses

DC Downtown Primary Commercial

West: Commercial

DC Downtown Primary Commercial

### ENVIRONMENTAL STATUS

Completed by: LX

Environmental Impact Report adopted  
 Negative Declaration circulated on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: LX

Annexation Title: Original City

Date: March 27, 1850

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

### CONTACT/APPLICANT

Nicandro Barrita  
140 E. San Carlos Street  
San Jose, CA 95112

### PROPERTY OWNER

Masouo Shahidi  
21220 McKean Road  
San Jose, CA 95120

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: LX

## Department of Public Works

- N/A

## Other Departments and Agencies

- San José Police Department (See Attached Memorandums)

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**GENERAL CORRESPONDENCE**

- See attached appeal application and petition regarding original Special Use Permit approval.

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**ANALYSIS AND RECOMMENDATIONS****BACKGROUND**

The appellant, Nicandro Barrita of La Victoria Taqueria, has filed an appeal of the Planning Director's decision to conditionally approve a Special Use Permit (File SP06-056) to allow late night use until 3:00 a.m. daily at an existing public eating establishment (La Victoria Taqueria). The subject site is zoned DC Downtown Primary Commercial Zoning District. The Zoning Ordinance requires a Special Use Permit for late night use between 12:00 midnight and 6:00 a.m. in the DC Downtown Primary Commercial Zoning District. The Planning Director's decision on a Special Use Permit may be appealed to the Planning Commission.

On July 14, 2006, the applicant filed the subject Special Use Permit application. The Planning Director conducted a public hearing on October 11, 2006, notice of which was sent to the property owners and residents within 500 feet of the subject site. The applicant spoke at the hearing indicating that they have been in compliance with their previous Special Use Permit (File No SP06-040) and that they have installed video surveillance and hired a security guard who is on duty at closing time. The Director of Planning conditionally approved this permit to require closure at 2:00 a.m. on October 11, 2006 because the Police Department stated the extended operating hours of La Victoria would result in additional calls for service. An appeal of the Planning Director's decision was filed on October 23, 2006 (see attached).

**Site Conditions and Context**

The subject site is located on the south side of E. San Carlos Street, approximately 150 feet west of S. 4<sup>th</sup> Street between a Jack in the Box restaurant and a retail/office building. The site is surrounded with a mixture of commercial, restaurant, and residential uses. A mixed use, residential with ground floor commercial, development is located across E. San Carlos Street to the north of the subject site. A surface parking lot that serves the adjacent restaurants is located to the south of the site.

**Project Description**

The existing public eating establishment, La Victoria Taqueria, is proposing to be open from midnight to 3:00 a.m. seven days a week. The subject site has an existing Special Use Permit that was approved on October 1, 2004 allowing the public eating establishment to stay open until 2:00 a.m. daily. The applicant's request would allow the restaurant to stay open one hour later than they are currently permitted.

## GENERAL PLAN CONFORMANCE

The existing and proposed use of the commercial building is consistent with the San José General Plan Land Use/ Transportation Diagram designation of Core Area in that entertainment uses are an intended use under the designation. The proposed use also furthers the City's General Plan Downtown Revitalization Major Strategy, which encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses. The proposed late night use of an existing public eating establishment would encourage investment downtown by keeping tenant spaces occupied so that they are active and vibrant.

## ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15301 of the CEQA Guidelines, existing facilities involving negligible or no expansion of use are exempt from further environmental review. The proposed project qualifies for this exemption in that the project involves the permitting of an existing public eating establishment with late night use in an existing commercial building in Downtown San Jose.

## ANALYSIS

The primary policy applicable for the review and analysis of this project is City Council Policy 6-27: Evaluation of 24 Hour Uses.

### **City Council Policy 6-27: Evaluation of 24 Hour Uses**

City Council Policy 6-27, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. The following discussion cites applicable policy followed by an analysis of how the proposed project conforms to the policy.

#### *Area Use Compatibility*

- a. Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. Users which are largely takeout and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site.*

The site is surround by a mixture of commercial and restaurant uses. However, residential uses exist above the ground floor across E San Carlos Street from the subject site. The public eating establishment does have take-out and dine-in services. However, they do no have a drive through nor a parking lot. To help control litter, the draft resolution contains a condition that requires the operator of the proposed use to clean the public right-of-way within 200 feet of the subject site before 8:00 a.m. each day. To avoid conflict with the residential uses the draft resolution contains a condition that prohibits use of mechanical equipment used for outside maintenance from 10:00 p.m. to 6:00 a.m. daily because of the adjacent residential uses.

### *Use Separation*

- b. Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area.*

The subject site is located approximately 90 feet across E. San Carlos Street from a mixed use, residential with ground floor commercial, development. However, the site is also located within the Downtown Core Area.

### **Police Memoranda**

City Council Policy 6-27, Evaluation of 24-Hour Uses also includes a policy regarding police issues. The following discussion cites the applicable policy followed by an analysis of how the proposed project conforms to the policy.

- c. Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.*

The extension of operating hours past 2:00 a.m. was not approved by the Director of Planning because the Chief of Police opposed the public eating establishment operating between the hours of 2:00 a.m. and 3:00 a.m. as stated in their attached memorandum dated September 11, 2006.

According to the attached Police Department memoranda the subject site is located in San Jose Police Beat Edward Two, which is an extremely high crime area. In the last year, the Police Department has responded to La Victoria 11 times for calls for service. An extension in hours would result in more calls for service and after 1:00 a.m. District Edward is only staffed with four officers and one sergeant. The draft resolution includes a condition for licensed security between the hours of midnight and 2:00 a.m.

On November 11, 2006 the Chief of Police issued an addendum to their previous memorandum, which stated that on September 9, 2006, La Victoria was issued a Compliance Order by Code Enforcement for violating their 2:00 a.m. closing time allowed by Special Use Permit, File No. SP06-040. Since this issuance of this compliance order there have been no further violations.

## **PUBLIC OUTREACH**

Hearing notices were mailed to property owners and tenants within 500 feet of the subject property for the October 11, 2006 Director's Hearing and for the December 6, 2006 Planning Commission Hearing in conformance with the Public Outreach Policy. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

## **RECOMMENDATION**

Planning staff recommends the Planning Commission **uphold the decision of the** Planning Director to approve the Special Use Permit for late night use until 2:00 a.m. only.