

## **PC RESOLUTION NO.**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP 7626-2017) TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES (ON-SALE BEER AND WINE – TYPE 41 ABC LICENSE) FOR ON-SITE CONSUMPTION IN CONJUNCTION WITH A RESTAURANT ON A COMMERCIAL PROPERTY LOCATED AT 1648 INDIAN HILL BOULEVARD.**

**WHEREAS**, the applicant, Rosa de lima Yanez de Contreras, has filed an application for Conditional Use Permit (CUP 7626-2017) to allow the sale of alcoholic beverages (On-Sale beer and wine – Type 41 ABC license) for on-site consumption in conjunction with a new restaurant that will be located at 1648 Indian Hill Blvd.;

**WHEREAS**, the subject site is currently located within the C-3 (General Commercial) zoning district;

**WHEREAS**, the subject site is currently designated “Urban Neighborhood” by the City’s General Plan;

**WHEREAS**, the approval of a Conditional Use Permit by the Planning Commission is required for the On-Sale of alcoholic beverages, pursuant to Section .580 of the Pomona Zoning Ordinance;

**WHEREAS**, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law held a public hearing on August 9, 2017, concerning the requested Conditional Use Permit (CUP 7626-2017); and

**WHEREAS**, the Planning Commission has carefully considered all pertinent testimony, the recommendation of the Planning Division staff and the staff report offered in the case as presented at said noticed public hearing.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Planning Commission of the City of Pomona, California:

**SECTION 1.** The Planning Commission exercising their independent judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is Categorically Exempt under Section 15303, (Class 3 – New Construction or Conversion of Small Structures) in that the proposed project is in an urbanized area, no new construction is proposed, and does not involve the use of hazardous substances.

**SECTION 2.** If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or

invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

**SECTION 3.** In accordance with Section .580.B of the Zoning Ordinance, the Planning Commission must make findings in order to approve Conditional Use Permit (CUP 7626-2017). Based on consideration of the whole record before it, including but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

1. *That the proposed use at the particular location will contribute to the general well being of the neighborhood or community.*

The sale of alcoholic beverages (On-Sale beer and wine – Type 41 ABC license) for on-site consumption will enhance the operation of the restaurant by providing a service and convenience to the public. The sale of alcohol will be incidental to the primary use, which is a restaurant. Furthermore, the addition of alcohol to the services provided will help ensure the economic viability of the restaurant, thus increasing the likelihood that the business will continue operating and providing commercial opportunities to local residents. The on-sale (beer and wine – Type 41) alcohol license will not negatively affect the general welfare of the neighborhood.

2. *That such use will, under the circumstances of the particular case, not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation or enjoyment of property or improvements in the vicinity.*

As conditioned, the applicant's request will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity since the project is in substantial conformance with the development standards and use requirements of the Pomona Zoning Ordinance. The project will not be detrimental to the use, valuation, and enjoyment of property and improvements in the vicinity since the sale of alcohol is for on-site consumption only.

3. *That the site for the proposed use is of adequate topography, size, and shape to accommodate said use, as well as all yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to allow said use in the neighborhood.*

The subject site is a 4,449 square foot tenant space within a larger 48,542 square foot shopping center. The site will be sufficient enough in size to accommodate all of the development standards of the C-3 (General Commercial) zoning district, such as setbacks, parking, and landscaping.

4. *The site abuts streets and highways adequate in width and improvements to carry traffic*

*generations by the proposed use.*

The subject site takes access from Indian Hill Boulevard and San Bernardino Avenue, both minor arterial streets with two lanes for each direction, which are capable of handling any additional vehicle trips generated by the proposed use.

5. *That granting of such conditional use permit will not adversely affect the General Plan of the City and conforms to the provisions of the zoning ordinance.*

The proposed project conforms to the Economic Development section of the General Plan which states:

*“It is the policy of the City of Pomona to encourage, with all means possible, the economic development and redevelopment of Pomona by the private sector.”*

The applicant is proposing to add alcohol sales for on-site consumption to the business to enhance its economic viability. The proposed use is consistent with the intent of the General Plan’s General Commercial land use category, which is designed to accommodate this type of commercial use.

**SECTION 4.** Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit (CUP 7626-2017) subject to compliance with all applicable laws and ordinances of the City as well as the addition of the following conditions, violations of which (or failure to complete any of which) shall constitute grounds for revocation of the conditional use permit or any portion thereof:

## **PLANNING DIVISION**

### **General Conditions**

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning Commission on August 9, 2017, and as illustrated in the stamped approved plans dated August 9, 2017. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services Manager.
2. This approval shall lapse and become if the privilege authorized is not utilized within one (1) year from the date of this approval (August 9, 2018), in accordance with Pomona Zoning Ordinance section .580.I. The Planning Commission may extend this

period for one (1) year upon receipt of an application for a Time Extension request submitted by the applicant at least thirty days before the expiration date of this approval.

3. The project is subject to a twenty (20) day appeal period. Written appeals may be filed with the City Clerk within twenty days by one or more City Council members, the applicant, or any person owning property within four hundred feet of the exterior boundary of the applicant's property. The appeal shall be filed with the City Clerk within twenty days from the date of action by the Planning Commission.
4. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
5. In case of violation of any of the conditions of approval or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein conditional use permit.

6. The property owner shall remove any graffiti on the project site within 24 hours of discovery. The paint utilized to cover the graffiti must substantially match the existing structure. In the event that the paint finish of the abated area is noticeably distinguishable from the rest of the structure, the property owner shall paint additional portions of the building to minimize the disparity, subject to the approval of the Development Services Manager.
7. No temporary signs relating to any activity on the premise shall be placed or allowed to remain within landscape areas, public right-of-way areas adjacent to the subject site (e.g. telephone poles, traffic signs, and city trees) or other portions on the exterior of the building. The only temporary signs allowed shall be properly permitted banner signs by permit per the City's sign ordinance. Signs placed in any window of the premises shall comply with the City's sign ordinance, and all other conditions under this Conditional use Permit.
8. The property owner shall provide regular maintenance and cleaning of all exterior walkways, patios, canopies, sidewalks, and landscaped parkways in compliance with Pomona City Code 62-351 et seq.
9. There shall be adequate lighting around the property at all times (minimum of 1 foot-candle). This shall be done in such a fashion that persons standing outdoors at night are easily identifiable by law enforcement personnel. Lighting shall be screened so that no spillover occurs onto the adjacent properties.
10. Before issuance of a zoning clearance and business license, the applicant and any successor in interest shall sign a certificate of compliance stating that:
  - a) They have read and understand all the conditions of approval applicable to their project;
  - b) That they are familiar with the daily operations of the use; and
  - c) That the use will operate in compliance with the conditions of approval.
11. All proposed signage shall be installed after issuance of a valid building permit and be in conformance with the approved master sign program.
12. After one year of the service of beer and wine, the Planning Commission shall review compliance with conditions of this Conditional Use Permit. If it is determined that conditions are not being complied with or that the use is operating as a nuisance, the Planning Commission shall direct that this conditional use permit be set for public hearing to consider possible modification of conditions of approval or revocation.

### **Operational Conditions**

13. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The Applicant or other person issued an ABC license for the Premises (“Licensee”) shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept on a quarterly basis, and shall be provided to City officials upon request.
14. Any and all alcohol sales shall be limited to beer and wine.
15. No display or sale of alcohol shall be made from an ice tub.
16. The employees who sell or serve alcoholic beverages shall be required to complete a training program in alcoholic beverage compliance, crime prevention techniques and the handling of violence. All new employees shall be required to complete “Licensee Education on Alcohol and Drugs” training that is provided by the California Department of Alcohol and Beverage Control or equivalent responsible beverage service program within thirty (30) days of hire. All restaurant employees selling alcohol must be 18 years or older. Employees engaged in serving alcohol inside the bar area must be 21 years of age or older.
17. All interior window signage and exterior signage of any kind, which advertises the sale or availability of alcohol, shall be prohibited.
18. All windows shall remain clear glass. No tint material shall be applied. Interior retractable sun shades and anti-graffiti coating may be utilized if deemed necessary by the operator.
19. Sales and service of alcoholic beverages under the On-Sale privileges of the license shall be restricted to the confines of the building as shown on the approved project plans dated August 9, 2017.
20. Patrons shall not be allowed to bring into the location any alcoholic beverage to be consumed within the establishment.
21. The Applicant or licensee shall not employ or permit any persons to solicit or encourage any customer, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage salary, or other profit sharing plan, scheme or conspiracy.

22. No sales to obviously intoxicated patrons shall be allowed.
23. No sales of alcoholic beverages to minors shall be allowed.
24. All crimes known by the operator inside and outside of the location shall be reported to the Police Department at the time of the occurrence.
25. At any time when the licensee is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City officials.
26. In January and June of each year, the business shall provide a list of no less than three employees, who can be contacted 24 hours a day, to the Pomona Police Department's Records Bureau. The list of names will be used to facilitate a Police response to the location in the event of an emergency or other problem that requires entry into the location during non-business hours.
27. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new pay phones of any kind installed on the exterior of the premises.

**SECTION 5.** The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

**APPROVED AND PASSED THIS 9<sup>th</sup> DAY OF AUGUST, 2017.**

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LUIS M. JUAREZ  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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BRAD JOHNSON  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

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ANDREW JARED  
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA    )  
COUNTY OF LOS ANGELES   ) ss.  
CITY OF POMONA         )

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

"Pursuant to Resolution No. 76-258 of the City of Pomona the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6."