

RESOLUTION NO. 2018-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP 4764-2016) TO ALLOW THE SALE OF BEER WINE, AND LIQUOR (TYPE 21—OFF SALE GENERAL) IN CONJUNCTION WITH AN EXISTING WAL-MART NEIGHBORHOOD MARKET IN THE C-C (COMMUNITY SHOPPING CENTER) ZONE LOCATED AT 778 E. ARROW HIGHWAY.

WHEREAS, the applicant, Wal-Mart Stores, Inc., has filed an application for Conditional Use Permit (CUP 4764-2016) to allow the sale of beer, wine, and liquor (Type 21—Off Sale General) in conjunction with an existing Wal-Mart Neighborhood Market located at 778 East Arrow Highway;

WHEREAS, the subject site is currently located within the C-C (Community Shopping Center) zone;

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 off-sale of alcoholic beverages, pursuant to Section .580 of the Pomona Zoning Ordinance;

WHEREAS, the Planning Commission of the City of Pomona, after giving notice thereof as required by law held a public hearing on January 10, 2018, concerning the requested Conditional Use Permit (CUP 4764-2016) and voted (4-3-0-0) to approve the project, with conditions;

WHEREAS, an application for appeal was submitted by City Councilmember Rubio Gonzalez on January 16, 2018;

WHEREAS, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on February 26, 2018, concerning the requested appeal of the Planning Commission’s approval of the project application;

WHEREAS, the City Council 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 City Council of the City of Pomona, California:

SECTION 1. The City Council exercising their independent judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA),

that the project is Categorically Exempt under Section 15301, Class 1 (Existing Facilities) in that the action involves the licensing and minor alteration of an existing building for the proposed use.

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 4764-2016). 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 City Council 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 for off-site consumption (Type 21—Off Sale General) will enhance the existing store by providing a service and convenience to the public. The sale of alcohol will be incidental to the primary use, which is a bona fide grocery store. Furthermore, the addition of alcohol to the services provided will help ensure the economic viability of the grocery store use, thus increasing the likelihood that the business will continue operating and providing retail opportunities to local residents. The off-sale (Type 21) 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. Based on the proposed project, it is not anticipated that the configuration of the site or activities associated with the use will generate noise or other impacts that will be detrimental. To this end, a condition has been included that prohibits any sound that exceeds the City noise ordinance standards. The project will not be detrimental to the use, valuation, and enjoyment of property and improvements in the vicinity since the subject site is located within a commercial area with uses compatible to those proposed.

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 (approximately 2.89 acres) and the market (approximately 37,000 square-foot premise area) is sufficient enough in size to accommodate all of the development standards of the C-C (Community Shopping Center) zone, such as setbacks, parking, walls/fences, landscaping, and signage.

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 Arrow Highway and Towne Avenue, both major arterial streets with two lanes for each direction going east and westbound (Arrow Highway) and north and southbound (Towne Avenue), 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.*

Granting of the permit will not adversely affect the General Plan of the City in that the proposed off-sale alcohol (beer, wine, and liquor) use will add to the mix of services provided at the shopping center, and would be consistent with the intent of the General Plan's Urban Neighborhood place type. Furthermore, the proposed use is consistent with the following General Plan goal (6E.G1):

"Preserve stable neighborhoods by focusing new intensity and activity in clusters at major crossroads and areas of existing intensity throughout the City."

SECTION 4. Based upon the above findings in Section 1, 2 and 3, the City Council hereby approves Conditional Use Permit (CUP 4764-2016) 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 City Council on February 26, 2018, and as illustrated in the stamped approved plans. 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 void if the privilege authorized is not utilized within one (1) year from the date of this approval (February 26, 2019), 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 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.
4. 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.
5. 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.

6. 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.
7. 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.
8. 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.
9. 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.

Off-Sale Beer and Wine Sale Conditions

10. **Hours:** The establishment will only sell alcohol under the Type 21 license during regular business hours, which is defined as between the hours of 6:00 A.M. and 11:00 P.M., seven days per week.
11. **Sales:** The sale of alcoholic beverages shall be limited to off-sale beer, wine, and liquor. Sales of alcoholic beverages under the off-sale privileges of this license shall be restricted to the confines of the building, within the proposed refrigerated area listed on the approved plans. There shall be no beer sold in less than three-pack quantities; the sale of individual cans, bottles, or tapped/keg containers is prohibited. No liquor, wine, or wine coolers shall be sold in containers of less than 750 mL, unless sold by four-pack or other manufacturer's prepackaged multi-unit quantities. The sale of alcoholic beverages for consumption on the premises or in adjoining parking areas shall be prohibited. No sales to minors or obviously intoxicated patrons shall be allowed. Point-of-sale registers will be equipped with standard technology used to determine patron age by driver's license.
12. **Promotion:** No display or sale of alcohol shall be made from an ice tub. Store windows shall be kept clear of at all times from paper, paint, cardboard or any other material used for

signage. All exterior windows shall be clear glass with no tinting or window coverings either interior or exterior. All interior window signage and exterior signage of any kind, which advertises the sale or availability of alcohol, shall be prohibited.

13. **Training:** The employees who sell 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.
14. **Site:** Loitering or panhandling on the premises shall be prohibited. Overnight parking of vehicles, including recreational vehicles (R.V.s) on the premises shall be prohibited. Signs prohibiting overnight parking shall be placed throughout the parking lot area. No vending machines of any kind shall be installed outdoors within the project site. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new payphones of any kind installed on the exterior of the premises.
15. **Security:** Designated areas for storage of beer and wine and liquor shall be equipped with a locking mechanism. Interior and exterior site video surveillance equipment shall be provided with signage advising customers that video recording devices are in use. Recordings shall be digital and recorded in high-definition, kept a minimum of ninety (90) days, and shall record all activity on surrounding public right-of-ways as well as the subject site. Prior to installation of the video surveillance equipment, a video surveillance plan shall be submitted for review and the privileges afforded under this resolution shall not be enjoyed prior to approval of such video surveillance plan by the Pomona Police Department.
16. **Police/City Contact:** All crimes occurring inside and outside of the location shall be reported to the Police Department at the time of the occurrence. 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. The business shall provide a list annually of no less than three employees who can be contacted twenty-four 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.
17. **Site Improvements:** In order to ensure adequate site conditions as required by the Pomona Zoning Ordinance pertaining to off-sale alcohol licensing, the following site improvements must be completed:
 - a. One eight bicycle capacity or two, four bicycle capacity permanent commercial rated

bicycle racks shall be provided near the main entrance, or in a convenient area, of the Wal-Mart Neighborhood Market. Quality and location shall be subject to review and approval of the Planning Division. Bike racks shall be installed within ninety days of project approval.

- b. All improperly trimmed trees shall be replaced with new trees like for like in all parking and landscaping areas on all contiguous parcels of the shopping center within six months of approval, subject to review and approval of the Planning Division.

SECTION 5. The City Clerk shall attest and certify to the passage and adoption of this Resolution and it shall become effective immediately upon its approval.

APPROVED AND PASSED THIS 26th DAY OF FEBRUARY, 2018.

ATTEST:

CITY OF POMONA:

Eva Buice, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Arnold Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, EVA BUICE, CITY CLERK of the City of Pomona do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Pomona held on the 26th day of February, 2018 by the following vote:

778 E. Arrow Hwy.
Page 8 of 8

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Eva Buice, City Clerk

“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.”