

PC RESOLUTION NO. 17-026

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP CUP 7445-2017) TO ALLOW THE SALE OF OF BEER AND WINE FOR OFF-SITE CONSUMPTION (ABC LICENSE TYPE-20) IN CONJUNCTION WITH A PROPOSED CONVENIENCE STORE ON A PROPERTY LOCATED AT 805 RIO RANCHO ROAD

WHEREAS, the applicant has submitted an application for Conditional Use Permit (CUP 7445-2017) requesting the off-sale of beer and wine (Type-20) alcohol license for a proposed convenience store (AM/PM);

WHEREAS, the subject site is currently located within the C-4 (Highway Commercial) zone;

WHEREAS, the subject site is currently designated "Transit-oriented Development: Core" by the City's General Plan;

WHEREAS, the approval of a conditional use permit by the Planning Commission is required for off-sale of alcoholic beverages, pursuant to Section .580 of the Pomona Zoning Ordinance;

WHEREAS, a conditional use permit may be approved by the Planning Commission if certain findings are made, 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 June 14, 2017, concerning the requested Conditional Use Permit (CUP 7445-2017); and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

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

SECTION 1. In compliance with Section 15164 of the California Environmental Quality Act (CEQA) guidelines, an Addendum to Environmental Impact Report (EIR) (SCH#2012051007) has been prepared for this project with the purpose of comparing and contrasting potential environmental impacts of the modified project and the approved project. On March 26, 2014, the Planning Commission determined that the project will not exacerbate the unavoidable significant effects on the regional air quality, local noise and transportation identified in the certified Final EIR (SCH#2012051007). Additionally, the Planning Commission has also determined that all other potential environmental impacts will result in a less than significant with the implementation of mitigation measures outlined in the Mitigation Monitoring Program.

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 the request to allow the off-sale of beer and wine under Conditional Use Permit (CUP 7445-2017). 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 proposed addition of beer and wine sales to the proposed convenience store will contribute to the general well-being of the neighborhood. If granted, the addition of beer and wine sales will enhance the store by providing a service and convenience to the general public and similar privileges enjoyed by other stores within the area. The off-sale of alcohol will be incidental to the primary use, which is a proposed store that will offer a complete array of general merchandise and groceries. Furthermore, the addition of alcohol to the services provided will help ensure the economic viability of the use, thus increasing the likelihood that the business will continue operating and providing shopping opportunities to local residents. Therefore the off-sale beer and wine license, as conditioned, will not 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 to add off-sale beer and wine sales (License Type 20), will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity and detrimental to the use, valuation or enjoyment of property and improvements in the vicinity since the project is in full conformance with the physical development standards of the C-4 (Highway Commercial) zone. The addition of beer and wine sales, as mentioned, will be incidental to the primary use. Furthermore, to ensure that this incidental use does not negatively impact the community, conditions will be placed on the resolution addressing any potential impacts related to alcohol sales.

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 overall project site (approximately 10.6 acres) and the convenience store parcel (approximately 1.01 acres) are sufficient enough in size to accommodate the use and all of the development standards of the C-4 (Highway Commercial) 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 Rio Rancho Road, a major arterial street with two lanes for each direction going east and westbound, that is 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 and wine) 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 Transit Oriented District: Core place type. Furthermore, the proposed use is consistent with the following General Plan goal (7A.G2):

"Promote a balanced mix of uses throughout the city than can be part of an integrated and sustainable local economy that supports harmonious diversity and prosperity."

SECTION 4. Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit (CUP 7445-2017) 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

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 June 14, 2017, and as illustrated in the stamped approved plans dated November 12, 2014. 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 Planning 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 (June 14, 2018). The Planning Commission may extend this period for one (1) year upon receipt of written request by the applicant at least thirty (30) days before the expiration date.
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. Written appeals may be filed with the City Clerk within twenty (20) days by one or more City Council members, the applicant, or any person owning property within four hundred (400) feet of the exterior boundary of the applicant's property.
6. 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.

7. There shall be no activity conducted on the subject site that exceeds the noise and vibration parameters of Pomona City Code Section 18-301, *et seq.*, and City Council Ordinance No. 3939 at any time, or such other ordinance enacted related to noise and vibration.
8. 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.
9. Any graffiti shall be removed from the project site within 24 hours of discovery. The paint utilized to cover the graffiti must substantially match the affected structure. In the event that the paint finish of the abated area is noticeably distinguishable from the rest of the structure, additional portions of the building shall be painted to minimize the disparity, subject to the approval of the Planning Manager.
10. Any graffiti on the store front windows by scratching or acid sketching shall be removed within thirty days.
11. The applicant shall retain a copy of this resolution on the premises at all times and be prepared to produce it immediately upon the request of any City representative.
12. Before issuance of the alcoholic 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 they will operate in compliance with the conditions of approval.
13. The property owner shall ensure that future tenants are provided with the conditions of approval and that tenants sign a lease addendum confirming that they have read, understood and shall obey all local, state and federal laws and conditions relative to operation of the facility approved under Conditional Use Permit.
14. The "Xpress Carwash" sign shall be removed from the sign plan submittal package and all signage shall be consistent with the approved Master Sign Program for the Rio Rancho Towne Center.

15. The four proposed 24 inch box purple leaf plum trees located at the southwest portion of the site shall be replaced with four Canary Island date palm trees with a minimum 14 foot BTH.

Operational Conditions

16. A security and video surveillance plan shall be submitted for review and the privileges afforded under this resolution shall not be enjoyed prior to approval of such security and video surveillance plan by the Pomona Police Department prior to the sale of alcoholic beverages. A copy of the approved Security Plan shall be submitted to the Planning Division to be kept on file. The terms and conditions of such security and video plan shall be incorporated by reference as if fully stated herein. This condition shall be required for any new owner, operator, substantial change in operations, floor plan reconfigurations and on a periodic basis as deemed appropriate by the Pomona Police Department. Such requirements shall not supplant any requirement for business or other licenses or permit under the Pomona City Code.
17. Loitering or panhandling on the premises shall be prohibited.
18. There shall be no pay telephones installed within the enclosed portion of the convenience store building equipped to receive incoming calls. There shall be no new public pay phones of any kind installed on the exterior of the convenience store building.
19. All signage visible from the exterior of the store which advertises the sale or availability of alcohol shall be prohibited.
20. All windows shall be kept clear and free of any obstructions to visibility including opaque window tint.
21. Sales of alcoholic beverages under the off-sale privileges of the license shall be restricted to the confines of the building as shown on the approved plans stamp dated November 12, 2014. No alcoholic beverages shall be sold or displayed in iced containers/portable freezers within the site.
22. The seven refrigerated coolers (as shown on the approved plans stamp June 14, 2017), used for the display of beer and wine, shall be provided with automatic locks that will engage during the hours that alcohol is not available for sale.
23. An electronic reader shall be utilized to swipe identification cards (i.e. driver's license) to verify that the customer is of legal age to purchase alcohol.
24. The sale of alcoholic beverages for consumption on the premises or in the adjoining parking areas shall be prohibited.

25. No fortified wines, malt liquors or distilled spirits of any kind in any size shall be sold from the premises.
26. No single can or bottle of beer shall be available for purchase.
27. The sale of alcoholic beverages shall be limited to beer and wine. Beer shall be sold in manufacturers prepackaged, multi-packed quantities of four (4) or more cans/bottles of beer. All wine shall be sold in 750 milliliters or larger and any wine bottle less than 750 milliliters shall be sold in four packs or larger.
28. Upon the operator/applicant/owner, or employee of the operator/applicant/owner, learning, knowing, or discovering of any crime occurring inside and immediately outside of the convenience store, such person shall immediately report such incident to the Police Department at the time of occurrence. If such crime is learned of, becomes known to, or discovered by such person after the incident has occurred, then such person shall immediately report such incident to the Police Department at such time.
29. Anytime the licensee/owner is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City Officials.
30. In January and June of each year, the owner 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.
31. 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 within thirty (30) days of hire, and any existing employees shall complete this training program within thirty (30) days of the issuance of the off-sale ABC license.

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

APPROVED AND PASSED THIS 14TH DAY OF JUNE, 2017.



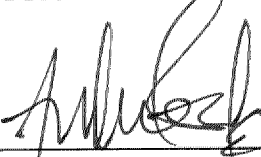
CAROLYN HEMMING
PLANNING COMMISSION CHAIRPERSON

ATTEST:



BRAD JOHNSON
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:



ANDREW JARED
ASSISTANT CITY ATTORNEY

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

AYES: Arias, Hemming, Ursua, and Brown.
NOES: None.
ABSTAIN: Grajeda.
ABSENT: Juarez and Ramos.

"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."