

PC RESOLUTION NO. 18-031

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP 4876-2016) TO ALLOW THE SALE OF BEER AND WINE (TYPE 41-ON SALE BEER & WINE-EATING PLACE-RESTAURANT) IN CONJUNCTION WITH A BONA FIDE RESTAURANT LOCATED AT 3530 WEST TEMPLE AVENUE, SUITES D & E IN THE C-4 HIGHWAY COMMERCIAL DISTRICT.

WHEREAS, the applicant, Raymon Bagio, has filed an application for Conditional Use Permit (CUP 4876-2016) to permit the sale of beer and wine (Type 41-On Sale Beer & Wine-Eating Place-Restaurant) in conjunction with a new bona fide restaurant located at 3530 West Temple Avenue, Suites D & E; Assessor's Parcel Number 8710-012-034;

WHEREAS, the subject site is currently located within the C-4 Highway Commercial District;

WHEREAS, the subject site is currently designated "Activity Center" and "Workplace District" 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 22, 2018, concerning the requested Conditional Use Permit (CUP 4876-2016); 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), 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 Pomona Zoning Ordinance, the Planning Commission must make findings in order to approve Conditional Use Permit (CUP 4876-2016). 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 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 (Type 41-On Sale Beer & Wine-Eating Place-Restaurant) for on-site consumption will enhance the existing restaurant 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 restaurant. Furthermore, the addition of alcohol to the services provided will help ensure the economic viability of the restaurant use, thus increasing the likelihood that the business will continue operating and providing dining opportunities to local residents. The on-sale (Type 41-On Sale Beer & Wine-Eating Place-Restaurant) 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 proposed use will occupy an existing 1,628 square foot tenant space within a fully developed shopping center approximately 2.80 acres in area. All on-site improvements are

existing, and include parking lots, landscaping, and lighting. These improvements were installed to meet all applicable standards of the C-4 Highway Commercial District at the time the shopping center was originally constructed in 1989. There are no modifications or improvements proposed to the parking lots, landscaping, or lighting.

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 Temple Avenue, a Major Arterial street with three northbound lanes and three southbound lanes that are capable of handling additional vehicle trips generated by the proposed use. The existing site is a commercial center and proposed tenant space is an existing vacant space proposed to be occupied by an eating establishment which is compatible and appropriate use for the subject site.

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 General Plan land use map designates the land use of subject site as Activity Center and Workplace District, however the majority of the property is designated as Activity Center. The General Plan envisions Activity Centers as districts or concentrations of development that are catalyzed by retail and other complementary uses. In particular, the proposed project address General Plan Goal 6A.G2, which is to “*Over time, concentrate retail investment in “activity centers” that provide a variety of shopping environments that conveniently serve the regional and local community.*” The proposed project addresses Goal 6A.G2 by continuing to concentrate a retail use in an existing shopping center that conveniently serves the regional and local community.

SECTION 4. Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit (CUP 4876-2016) 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 Planning Commission on August 22, 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 (August 22, 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 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 a violation of any of the conditions of approval and/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 (90) 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. Original surface materials installed and designed to not accept paint material such as stone, metal, brick, faux stone, veneers, etc. shall be restored to original finish with methods accepted and agreed to by 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.

On-Sale Beer & Wine Conditions

11. **Operation:** The establishment shall be operated as a "bona fide public eating place" as defined by the Business and Profession Code Section 23038. All other uses shall be ancillary to the restaurant. At all times when the premises is open for business the sale and service of alcoholic beverages shall be made only in conjunction with the sale and service of food.

12. **Hours:** The establishment will only serve alcohol during regular business hours or when serving private parties reserved in advance. Regular business hours are defined as between the hours of 10:00 A.M. and 11:00 P.M., daily.
13. **Sales:** The sale of alcoholic beverages shall be limited to on-sale beer and wine. Sales of alcoholic beverages under the on-sale privileges of this license shall be restricted to the confines of the building, in the bar area as defined in the approved plans. 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. Patrons shall not be allowed to bring into the location any alcoholic beverage of their own to be consumed within the establishment.
14. **Promotion:** Storefront 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.
15. **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.
16. **Site:** Loitering or panhandling on the premises shall be prohibited. 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. There shall be no live entertainment, amplified music, dancing or any other activity on the premises that exceeds noise and vibration parameters of Pomona City Code Section 14-9 and City Council Ordinance No. 3939 at any time. No roof top activities shall be allowed with this conditional use permit.
17. **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.

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

APPROVED AND PASSED THIS 22nd DAY OF AUGUST, 2018.

LUIS JUAREZ
PLANNING COMMISSION CHAIRPERSON

ATTEST:

EMILY STADNICKI
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

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

PC Resolution No. 18-031
CUP 4876-2016, 3530 W. Temple Ave., Suites D & E
Page 8 of 8

action must be sought is governed by Sec. 1094.6 C.C.P."

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