

PC RESOLUTION NO. 18-047

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING MODIFICATION OF CONDITIONAL USE PERMIT (MODCUP 10990-2018) TO AMEND A CONDITION PERTAINING TO BEER PACK QUANTITIES FOR AN EXISTING OFF-SALE BEER AND WINE (TYPE-20) ALCOHOL LICENSE IN CONJUNCTION WITH AN EXISTING AUTOMOBILE SERVICE STATION AND CONVENIENCE STORE ON A PROPERTY LOCATED AT 2488 SOUTH RESERVOIR STREET

WHEREAS, the applicant, Thomas Kim, has submitted an application for Modification of Conditional Use Permit (MODCUP 10990-2018) to amend a condition pertaining to beer pack quantities for an existing off-sale of beer and wine (Type-20) alcohol license in conjunction with an existing automobile service station and convenience store on a property located at 2488 Reservoir Street;

WHEREAS, the subject site is in the M-2 (General Industrial) zoning district, and designated “Workplace District Edge” 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, on January 23, 2013, the Planning Commission approved a Conditional Use Permit for off-sale beer and wine (Type 20) in conjunction with an existing automobile service station and convenience store was approved at 2488 Reservoir (Resolution 13-002);

WHEREAS, on April 1, 2013, the City Council approved a public convenience and necessity finding for off-sale beer and wine at 2488 Reservoir;

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on November 28, 2018, concerning the requested Modification of Conditional Use Permit (MODCUP 10990-2018); and

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

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

SECTION 1. In accordance of CEQA guidelines, the Planning Commission hereby determines that the proposed project would be categorically exempt under Article 19, Section 15301 (Existing Facilities), because the proposed project will utilize an existing structure where all public services and facilities are available to serve the project.

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 Modification of Conditional Use Permit (MODCUP 10990-2018). 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 beer and wine for off-site consumption will enhance the convenience store by providing service and convenience to the public. The sale of beer and wine will be incidental to the primary use, which is a retail convenience store. 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 convenience shopping opportunities to local residents. The sale of beer and wine for off-site consumption 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.*

The applicant's request to enhance the business will not be detrimental to the health, safety, peace or general welfare of the people working in the area. The sale of alcohol as mentioned will be incidental to the primary use.

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 approximately 39,800 square feet, sufficient enough in size to accommodate all of the development standards of the M-2 (General Industrial) zoning district and for service stations, 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 is located on Reservoir Street, an arterial street that is capable of handling any additional vehicle trips generated by the proposed addition of beer and wine sales.

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 is in the “Workplace District Edge” land use designation under the Pomona General Plan. The project conforms to the goals and policies found in the Plan, specifically to “*provide for continued operation of older industrial and service commercial businesses at specific locations*” (Goal 6F.G2) and “*incrementally redevelop eastern employment lands with contemporary industrial and light industrial uses*” (Goal 6F.G3).

SECTION 4. Based upon the above findings, the Planning Commission hereby approves Modification of Conditional Use Permit (MODCUP 10990-2018) 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 used in the manner requested and shall be in substantial conformity with the plans submitted, date stamped November 28, 2018, as revised and conditioned by the requirements contained in this resolution of approval. Any more intensive use of the property, or deviation from said plans, shall first be reviewed as a modification of this permit.
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 (November 28, 2019). 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 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.
4. The project shall be subject to an appeal period of twenty (20) days. Written appeals may be filed with the City Clerk 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.
5. 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.
- 6. The property owner shall ensure that future primary tenants are provided with the conditions of approval and that tenants sign a lease addendum confirming that they have read and understand all conditions relative to operation of the facility.
- 7. 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 violation 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.
- 8. 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.
- 9. Prior to exercising the privileges authorized by this resolution, the applicant shall request a hearing before the City Council for a consideration of the finding of "public convenience and necessity" before issuance of the Type-20 License by the Department of Alcohol and Beverage Control. Applicant shall not exercise the privileges authorized by this resolution unless, and until such time that, the City Council provides a determination of public convenience and necessity.

10. No temporary signs shall be placed or allowed to remain within the landscape areas, public right-of-way areas adjacent to the subject site (e.g. telephone poles, traffic signs, city trees) or other portions of the site. The only temporary signs allowed shall be properly permitted banner signs by permit per the City's sign ordinance.
11. 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 Planning Manager.
12. Window signs shall be limited to no more than 25% coverage of the glass window area along each building frontage.
13. All signage visible from the exterior of the convenience store which advertises the sale or availability of alcohol shall be prohibited.
14. The owner/applicant/operator shall maintain all of the trash enclosure and containers on-site to ensure containment of debris. Recognizing that some customers may deposit trash or other litter in these areas, and that trash and litter may be deposited by customers in adjacent areas, owner/applicant/operator shall monitor nearby properties and public right-of-ways and remove such debris in a timely fashion. The trash enclosure shall be locked with a self-closing latch at all times.
15. 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.
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. The property owner shall be responsible in properly maintaining and keeping the site free of debris at all times.

18. The applicant shall remove all temporary signage in landscape planters and attached to light standards and/or utility poles within 14 days of this approval.
19. The applicant shall remove the existing pay phone and all associated appurtenant materials associated with the phone system within 14 days of approval.
20. The existing chain link trash enclosure cover shall be replaced with a decorative wood or steel trellis cover within 30 days of approval. The design of the trellis structure shall be subject to the approval of the Planning Manager.
21. The existing storage structure located between the convenience store structure and the east property line shall be removed within 90 days of approval.
22. The applicant shall install bike racks on the project site at locations to be approved by the Planning Manager.
23. The existing monument sign shall be modified so that it is enhanced architecturally and shall be modified to include "City of Pomona" lettering on the enhanced sign face. The final design shall be subject to the approval of the Planning Manager.
24. Prior to utilization of the privileges granted in this resolution, the applicant shall remove the existing chain link gates and fencing used to block access to the rear of the existing convenience store and replace them with wrought iron gates. The design of the wrought-iron shall be subject to the approval of the Planning Manager through a Fence and Wall permit.
25. The parking lot, driveway and fueling areas shall be re-slurried and re-stripped to City standards, prior to initiating the sale of alcohol.
26. All landscaping on-site shall be properly maintained and irrigated as may be suitable for the landscaping material existing or installed. Areas which would customarily be landscaped and where no landscaping currently exists shall be required to be planted and properly maintained and irrigated. All landscape areas shall be provided with an automated underground irrigation system. Landscape and irrigation plans shall be prepared by a licensed landscape architect and presented to the Planning Division for review and approval prior to building permit issuance. The landscape modifications shall include multi-colored, perennial, flowering plants as a part of an enhanced corner landscape planter, subject to the approval of the Planning Manager.

Operational Conditions

27. Loitering or panhandling on the premises shall be prohibited.
28. There shall be no public pay phones installed within or upon any portion of the premises.

29. The sale of alcoholic beverages for consumption on the premises or in the adjoining parking areas shall be prohibited.
30. The sale of alcoholic beverages shall be limited to off-sale of beer and wine in pre-packaged containers. Sale and display of beer products shall be in packages containing **three or more individually packaged servings** (i.e., no individual can/bottle or tapped/keg container display or sales). No wine, wine coolers or flavored malt beverages shall be sold in containers of less than 750 ml, unless sold by four-pack or other manufacturer's pre-packaged multi-unit quantities.
31. Sales of alcoholic beverages under the off-sale privileges of the license shall be restricted to the confines of the building, within the proposed floor area, as shown on the approved plans stamp dated November 28, 2018. No alcoholic beverages shall be sold or displayed in iced containers/portable freezers within the site.
32. The sale of alcoholic beverages shall be restricted to the business hours of 7:00 A.M to 2:00 A.M. daily.
33. The property owner shall provide regular maintenance and cleaning of all exterior walkways, patios, canopies, sidewalks, and landscaped parkways, in compliance with the Pomona City Code Section 62-351.
34. 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.
35. At anytime when the licensee/owner is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City Officials.
36. All 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 prior to making any sale for alcoholic beverage sales. All new employees shall be required to complete "Responsible Beverage Service (RBS)" training program 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. Evidence of such training shall be kept on the premises at all times.
37. ID-scanner age-verification machines shall be utilized as for all sales of alcoholic beverages.

38. 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.
39. The primary public access door to the establishment shall be the front door facing the intersection of Reservoir Street and County Road. The rear access door shall be kept closed and not available for public ingress or egress at all times during the operation of the premises, except in case of emergency, handicap access or to permit deliveries.
40. The applicant shall notify the Planning Manager, in writing, of the first day of exercising the privileges afforded under this permit. Said notification shall be submitted no later than 30 days from the first day of operations as described above.

SECTION 6. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND PASSED THIS 28TH DAY OF NOVEMBER, 2018.

DR. KYLE BROWN
PLANNING COMMISSION CHAIRPERSON

ATTEST:

MARIO SUAREZ, AICP, CNU-A
PLANNING COMMISSION SECRETARY

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APPROVED AS TO FORM:

ANDREW JARED
ASSISTANT CITY ATTORNEY

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

AYES: Brown, Grajeda, Arias, Hemming, Juarez, Kercheval, Ursua
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 Sec. 1094.6 C.C.P."