

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP 9509-2018) TO ALLOW FOR A TYPE 20 OFF-SALE BEER AND WINE LICENSE IN CONJUNCTION WITH A CONVENIENCE STORE LOCATED AT 888 W. MISSION BOULEVARD IN THE NEIGHBORHOOD CENTER SEGMENT OF THE POMONA CORRIDOR SPECIFIC PLAN AND THE MIXED-USE ARTERIAL RETAIL ZONE IN THE DOWNTOWN POMONA SPECIFIC PLAN (APN 8342-013-020).

WHEREAS, the applicant, Fielder Group and 7-Eleven, Inc, has filed an application for a Conditional Use Permit (CUP 9509-2018) to permit a Type 20 Off-Sale Beer and Wine license in conjunction with convenience store located at 888 West Mission Boulevard; Assessor's Parcel Number 8342-013-020;

WHEREAS, the subject site is currently located within the Midtown Segment of the Pomona Corridor Specific Plan and the Mixed-Use Arterial zone of the Downtown Pomona Specific Plan;

WHEREAS, the subject site is currently designated "Neighborhood Edge" by the City's General Plan;

WHEREAS, pursuant to the Pomona Corridor Specific Plan (PCSP), the approval of a Conditional Use Permit is required for the sale of alcohol for off-site consumption;

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 October 10, 2018, concerning the requested Conditional Use Permit (CUP 9509-2018) and voted (0-6-0-1) to deny the project;

WHEREAS, an application for appeal was submitted by City Councilmember Rubio Gonzalez on October 30, 2018;

WHEREAS, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on January 7, 2019, concerning the requested appeal of the Planning Commission's denial 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 judgement has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), that the project is Categorically Exempt under Section 15332, Class 32 (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 (PZO), the City Council must make findings in order to approve Conditional Use Permit (CUP 9509-2018). 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 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 proposed use will contribute to the general well being of the neighborhood and community. Specifically, the applicant proposes off-sale alcohol in conjunction with a convenience store, which will occupy a retail suite in a shopping center with multiple commercial services, thereby offering a convenience use and employment opportunities for the surrounding community. Furthermore, the use within the convenience store will provide and improvement to a physical structure and larger site that has been unoccupied and vacant for multiple years.

2. *That such use will, under the circumstances of the particular use, 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 proposed use, as designed and conditioned, will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the immediate vicinity. Conditions have been placed upon the use to regulate sales and promotion of alcohol, and site security, including Condition #6, which states that “*designated areas for storage of beer and wine shall be equipped with a locking mechanism*” and “*coolers for all alcohol shall be automatically locked during and one hour before and after regular schools hours for Pomona Unified School District.*”

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 a 3,500 square foot convenience market that is part of a larger commercial shopping center, which has been designed for adequate parking, grading, drainage, and site improvements, such as landscaping and lighting.

4. *The site abuts streets and highways adequate in width and improvements to carry traffic generations by the proposed use.*

The site is located at the intersection of White Avenue and Mission Boulevard, which are two major thoroughfares in the City of Pomona. A Traffic Impact Study conducted for the convenience market and shopping center found that the proposed uses can accommodate additional traffic generated by the proposed use. The proposed project will not generate significant amounts of traffic warranting further departmental review.

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.*

Approval of the CUP to allow for alcohol will not adversely affect the General Plan of the City and will be consistent with the site place type designation (Neighborhood Edge). In addition, the project will be consistent with General Plan Goal GD.61 which is to “improve the physical character, economic vitality, and mobility function of the City’s most visible and well-traveled corridors.” The proposed alcohol use in conjunction with a convenience market, as part of a larger commercial shopping center, will contribute towards strengthening economic vitality of the Mission and White corridor in the City of Pomona.

SECTION 4. Based upon the above findings, the City Council hereby approves Conditional Use Permit (CUP 9509-2018) 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/or used in a manner consistent with the project plans reviewed and approved by the City Council on January 7, 2019 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 modification 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 (January 7, 2020), 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 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 violation 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.
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 areas is noticeable distinguishable from the rest of the structure, the property owner shall paint portion 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.
6. No temporary signs related 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 portion on the exterior of the building. The only temporary signs allowed shall be properly permitted banners 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, 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 on 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 & Wine Conditions

1. **Hours:** The establishment will only sell alcohol under a Type 20 license during the hours permitted by Alcoholic Beverage Control (ABC), which is 6:00 A.M. to 2:00 A.M.
2. **Sales:** Sales of alcoholic beverages shall be limited to off-sale beer and wine under the Type 20 license. 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 trapped/keg containers is prohibited. No wine coolers shall be sold in containers of less than 750 mL, unless sold by four-pack or other manufacturer's pre-packaged 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.
3. **Promotion:** No display or sale of alcohol shall be made from an ice tub. 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.
4. **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.

5. **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, except for employees. 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.
6. **Security:** Designated areas for storage of beer and wine shall be equipped with a locking mechanism. Coolers for all alcohol shall be automatically locked during and one hour before and after regular schools hours for Pomona Unified School District. 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.
7. **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 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 7TH DAY OF JANUARY, 2019

ATTEST:

CITY OF POMONA:

Rosalia Butler, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Christi Hogin, Interim City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA BUTLER, 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 7th day of January, 2019 by the following vote:

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

Rosalia Butler, 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.”