

**PC RESOLUTION NO. XX-XXX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING MODIFICATION OF CONDITIONAL USE PERMIT (CUP 11416-2019) TO ALLOW A 2,167 SQUARE FOOT EXPANSION IN FLOOR AREA FOR AN EXISTING ON-SALE BEER AND WINE ALCOHOL LICENSE (TYPE-41 ABC LICENSE) IN CONJUNCTION WITH A RESTAURANT (POMONA PIZZA COMPANY) ON A PROPERTY LOCATED AT 46 RIO RANCHO ROAD SUITE 101 & 102, IN THE ACTIVITY CENTER OF THE PHILLIPS RANCH SPECIFIC PLAN**

**WHEREAS**, the applicant, Art Rodriguez & Associates for Pomona Pizza Co., has submitted an application for Modification of Conditional Use Permit (CUP 11416-2019) to allow a 2,167 square foot expansion in floor area for an existing on-sale of beer and wine alcohol license (Type-41 ABC license) in conjunction with a restaurant (Pomona Pizza Company) on a property located at 46 Rio Rancho Road, Suite 101 & 102;

**WHEREAS**, the subject site is in the Activity Center of the Phillips Ranch Specific Plan, and designated “Activity Center” by the City’s General Plan;

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

**WHEREAS**, on June 14, 2017, the Planning Commission approved a Conditional Use Permit for on-sale beer and wine (Type 41) in conjunction with a new restaurant (Pomona Pizza Company) at 46 Rio Rancho, Suite 101 (Resolution 17-017);

**WHEREAS**, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on March 13, 2019, concerning the requested Modification of Conditional Use Permit (CUP 11416-2019); 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 and proposes minor interior modifications and no exterior alterations.

**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 (CUP 11416-2019). 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 (on-sale beer and wine – Type 41 ABC license) 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 (beer and wine – Type 41) 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 and PRSP. 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 .911 acres) is sufficient enough in size to accommodate all of the development standards of the Activity Center PRSP, 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.*

The General Plan land use map designates the subject site as Activity Center-Regional Center. Due to its high visibility from the SR-71 and SR-60 interchange, the General Plan envisions this area for further intensification to accommodate regional activity. It specifies that retail investment should be concentrated in “centers” clustered at crossroads that satisfy investor preferences and target the local community; and that the form of new retail development shall not negatively impact the character of surrounding districts or neighborhoods (Goals 6A.G1 and 6A.G2). The project is consistent with the General Plan as it supports the intensification of regional activity through the provision of a new restaurant. The proposed restaurant is clustered with other similar uses in the existing Pomona Ranch Plaza Shopping Center, and is similar in scale and character with surrounding uses. Therefore, the granting of the permit will not adversely affect the General Plan of the City. The project is also in compliance with the applicable code sections of the Pomona Zoning Ordinance and PRSP, and as a result, the granting of this Conditional Use Permit, subject to conditions, will not adversely affect the Zoning Ordinance.

**SECTION 4.** Based upon the above findings, the Planning Commission hereby approves Modification of Conditional Use Permit (CUP 11416-2019) 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 March 13, 2019, and as illustrated in the stamped approved plans dated March 13, 2019. 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 (March 13, 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 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 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.

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.
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.
11. All proposed signage shall be installed after issuance of a valid Sign Permit and building permit and be in conformance with the approved master sign program.
12. After one year of the service of beer and wine, the Planning Commission shall review compliance with conditions of this Conditional Use Permit. If it is determined that conditions are not being complied with or that the use is operating as a nuisance, the Planning Commission shall direct that this conditional use permit be set for public hearing to consider possible modification of conditions of approval or revocation.

### **Operational Conditions**

13. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The Applicant or other person issued an ABC license for the Premises (“Licensee”) shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept on a quarterly basis, and shall be provided to City officials upon request.
14. The establishment shall be permitted to operate from 11:00 a.m. to 9:00 p.m. Sunday through Thursday and from 11:00 a.m. to 10:00 p.m. Friday and Saturday.
15. Any and all alcohol sales shall be limited to beer and wine.
16. No display or sale of alcohol shall be made from an ice tub.
17. 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.
18. At all times when the premises are open for business the sale and service of alcoholic beverages shall be made only in conjunction with the sale and service of food.
19. Within the licensed premise, there shall be no bar or lounge area maintained solely for the purpose of sale, service, or consumption of alcoholic beverages.
20. The employees who sell or serve 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. All restaurant employees serving alcohol must be 18 years or older. Employees engaged in serving alcohol inside the bar area must be 21 years of age or older.
21. All interior window signage and exterior signage of any kind, which advertises the sale or availability of alcohol, shall be prohibited.
22. All windows shall remain clear glass. No tint material shall be applied. Interior retractable sun shades and anti-graffiti coating may be utilized if deemed necessary by the operator.
23. Sales and service of alcoholic beverages under the on-sale privileges of the license shall be restricted to the confines of the building as shown on the approved project

plans dated March 13, 2019.

24. Patrons shall not be allowed to bring into the location any alcoholic beverage to be consumed within the establishment.
25. The Applicant or licensee shall not employ or permit any persons to solicit or encourage any customer, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage salary, or other profit sharing plan, scheme or conspiracy.
26. No alcohol may be sold on the premises and then removed from the establishment for consumption.
27. At no time shall persons appearing to be intoxicated or under the influence of controlled substances be allowed within the premise area of the restaurant.
28. No sales to obviously intoxicated patrons shall be allowed.
29. No sales of alcoholic beverages to minors shall be allowed.
30. All crimes known by the operator inside and outside of the location shall be reported to the Police Department at the time of the occurrence.
31. 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.
32. In January and June of each year, the business 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.
33. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new pay phones of any kind installed on the exterior of the premises.
34. The applicant shall not offer, permit, or provide any type of entertainment (e.g. live entertainment and Disc Jockey); unless the Conditional Use Permit is modified through the review and approval of the Planning Commission at a public hearing.
35. Nightclub, dance club, dancing or other similar activities shall be prohibited within the premise area at any time.

36. Music shall be limited to Non-DJ pre-recorded background music (i.e., soft, ambient music).
37. 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.

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

**APPROVED AND PASSED THIS 13<sup>TH</sup> DAY OF MARCH, 2019.**

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DR. KYLE BROWN  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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ANITA D. GUTIERREZ, AICP  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

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MARCO A. MARTINEZ  
INTERIM ASSISTANT CITY ATTORNEY

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

AYES:  
NOES:  
ABSTAIN:



Modification of CUP 11416-2019  
46 Rio Rancho Road, Suite 101 & 102  
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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."