

RESOLUTION PC NO. 2023-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA APPROVING CONDITIONAL USE PERMIT NO. 23-006 TO APPROVE A TYPE 41 ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (ON-SALE BEER AND WINE – EATING PLACE) FOR A ROUNDTABLE PIZZA RESTAURANT LOCATED AT 10515 SIERRA AVENUE, SUITE 400 (APN: 0194-371-24) PURSUANT TO A CATEGORICAL EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINESS SECTION 15301.

WHEREAS, the location of 10515 Sierra Avenue, Suite 400 (APN: 0194-371-24) was annexed from the San Bernardino County into the City of Fontana on August 1, 1963; and

WHEREAS, the site is located within the Form Based Code (FBC) Transitional District and has a General Plan Land Use designation of Walkable Mixed User Corridor (WMXU-1); and

WHEREAS, on June 20, 2022, City of Fontana received an application from Baljit Singh (“Applicant”), for a Conditional Use Permit (CUP) No. 23-006 for a new California Department of Alcoholic Beverage Control (ABC) Type 41 license (On-Sale Beer and Wine) for the Round Table Pizza restaurant at 10515 Sierra Avenue, Suite 400.

WHEREAS, pursuant to Section 30, Article II, Division 12 (Conditional Use Permits) of the Fontana Zoning and Development Code, an application for a conditional use permit requires approval by the Planning Commission; and

WHEREAS, Conditions of Approval for CUP No. 23-006 have been prepared and are attached hereto as **Exhibit “A”** and incorporated herein; and

WHEREAS, the project is Categorically Exempt pursuant to Section No. 15301 (Existing Facilities) of the California Environmental Quality Act and Section No. 3.22 (Categorical Exemption) of the 2019 Local Guidelines for Implementing the California Environmental Quality Act; and

WHEREAS, property owners within 660 feet of the project site were notified via a public hearing notice mailer prior to the Public Hearing; and

WHEREAS, a notice of the public hearing was published in the local *Fontana Herald* newspaper on September 22, 2023 and simultaneously displayed at City Hall and at the project site; and

WHEREAS, on October 3, 2023, a duly noticed public hearing on CUP No. 23-006 was held by the Planning Commission to consider testimony and evidence presented by the applicant, City staff, and other interested parties; and

WHEREAS, on October 3, 2023 the Planning Commission carefully considered all information, evidence and testimony presented the public hearing for CUP No. 23-006; and

WHEREAS, all other legal prerequisites to the adoption of this resolution have occurred.

NOW, THEREFORE, the Planning Commission RESOLVES as follows:

SECTION 1. Recitals. The above recitals are true, correct and incorporated herein by reference.

SECTION 2. CEQA. The Planning Commission hereby determines that the project is categorically exempt pursuant to Section No. 15301 (Existing Facilities) of the California Environmental Quality Act and Section No. 3.22 (Categorical Exemption) of the 2019 Local Guidelines for Implementing the California Environmental Quality Act (CEQA).

SECTION 3. CUP. The City of Fontana Planning Commission hereby makes the following findings for CUP No. 23-006 in accordance with Section 30-150 "Findings for approval for conditional use permits of the Fontana Zoning and Development Code:

Finding No. 1 **That the proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning and Development Code, Municipal Code, General Plan, any applicable Specific Plan or Area Plan, and City regulations/standards.**

Finding of Fact: The request is for a Conditional Use Permit (CUP) for Round Table Pizza, a casual sit-down restaurant, for an Alcoholic Beverage Control (ABC) license. The Zoning and Development Code allows for sit-down restaurants to operate with a California Department of Alcohol Beverage Control (ABC) Type 41 (On-Sale Beer and Wine – Eating Place) license subject to approval of a Conditional Use Permit. If approved, Conditions of Approval will aid in regulating the sale of alcohol at the project site such as consumption location, security and hours of operation.

The restaurant is located at 10515 Sierra Avenue, Suite 400 (APN: 0194-371-24) within an existing multi-tenant space. The General Plan land use designation for the site is Walkable Mixed-Use Corridor (WMXU-1). Specific development types allowed in WMXU-1 include: retailing, service activities, offices and businesses providing professional services, as well as restaurants.

The site is further located within the Transitional District of the Form Based Code (FBC). The Transitional subdistrict is intended to accommodate a variety of retail and office uses in addition to service

establishments such as restaurants. Therefore, the proposed use of a restaurant is consistent with the General Plan and Zoning regulations.

The Fontana Zoning and Development Code allows for a restaurant to operate with a California Department of Alcohol Beverage Control license subject to approval of a Conditional Use Permit by the Planning Commission. Therefore, the project is consistent with the General Plan, the City of Fontana's Zoning and Development Code.

Finding No. 2: The site is physically suited for the type, density, and intensity of the proposed use including access, utilities, and the absence of physical constraints and can be conditioned to meet all related performance criteria and development standards.

Finding of Fact: The restaurant occupies a suite of approximately 2,700 square feet within an existing multi-tenant building comprised of approximately 7,460 square feet. The physical characteristics of the site were reviewed, and it was determined that the site meets the requirements for yards, setbacks, walls, landscaping, requirements, and applicable Zoning and Development Code regulations at the time the physical building was approved. Furthermore, the use is for the sit-down restaurant to operate with a new California Department of Alcoholic Beverage Control (ABC) Type 41 (On-Sale Beer and Wine – Eating Place) license which will not result in any physical change to the site or building itself.

No adverse effects should be generated from this conditionally permitted use and an ABC license will not have any effect on the health, safety, and general welfare of the surrounding community. Any possible adverse effects shall be mitigated by the Conditions of Approval attached hereto as Exhibit "A".

Finding No. 3: Granting the permit would not be detrimental to the public interest, health, safety, convenience, welfare, or materially injurious to persons, property, or improvements in the vicinity in which the project is located.

Finding of Fact: An ABC Type 41 (On-Sale Beer and Wine – Eating Place) license is consistent with the underlying General Plan land use designation and, Transitional District of the Form Based Code (FBC) and is compatible with surrounding properties. There will be no adverse effect to the neighboring sites or their permitted uses. Calls for service to the Round Table Pizza restaurant have been reviewed by the Fontana Police Department, and the Department had no

concerns with the project. The building has been constructed and the possible adverse effects from the restaurant have been mitigated by the Conditions of Approval for this project herein. The project has been reviewed by the Fontana Planning Department, Engineering Department, Building and Safety Division, and County Fire Prevention for site circulation, access, and safety.

Section 4: Public Convenience and Necessity. The City of Fontana Planning Commission hereby finds that the proposed use will meet the finding of “Public Convenience or Necessity”.

Finding of Fact: The Planning Commission may find that this application would be considered public benefit” and therefore would meet the definition of Public Convenience or Necessity. A large number of the general population chooses to enjoy the convenience of a local neighborhood restaurant including purchasing alcoholic beverages therein. The approval of this application will allow people the opportunity to enjoy an alcoholic beverage with their meal within a controlled environment.

Given the proximity of residents in nearby residential neighborhoods and workforce, the restaurant, Round Table Pizza, offers a casual sit-down dining experience to its patrons. The proposed project will be limited in hours of operations and shall comply with the conditions of approval.

The restaurant is located within Census Tract 26.08. According to ABC, four (4) on-sale licenses are allowed within Census Tract 33.01. Currently there are nine (9) active on-sale ABC licenses operating within the tract. Therefore, this tract would be categorized by ABC as over-concentrated. New licenses may be issued by ABC where a tract is over-concentrated provided that a finding of Public Convenience or Necessity is made by the local jurisdiction. The Planning Commission in the past, has made such a finding and approved conditional use permits for the sale of beer and wine for restaurants in over-concentrated areas. A census tract information matrix is attached (Attachment No. 4 of the Planning Commission’s staff report). The approval of this application will allow the consumptions of beer and wine with meals.

SECTION 4. Approval. Based on the foregoing, the City of Fontana Planning Commission hereby approves Conditional Use Permit No. 23-006 subject to the Conditions of Approval, which are attached hereto as “**Exhibits A**” and incorporated herein by this reference; and,

SECTION 5. Resolution Regarding Custodian of Record: The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at the Planning Department, 8353 Sierra Avenue, Fontana, CA 92335. This information is provided in compliance with Public Resources Code section 21081.6.

SECTION 6. Certification. The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

SECTION 8. Severability. If any provision of this Resolution or the application of any provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Fontana, California, at a regular meeting held on this **3rd day of October 2023.**

City of Fontana

Cathline Fort, Chairperson

ATTEST:

I, Ralph Thrasher, Secretary of the Planning Commission of the City of Fontana, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on this 3rd day of October 2023, by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ralph Thrasher, Secretary

EXHIBIT "A"



CITY OF FONTANA

CONDITIONS OF APPROVAL

PROJECT: Conditional Use Permit No. 23-006

DATE: October 3, 2023

LOCATION: 10515 Sierra Avenue, Suite 400 (APN: 0194-371-24)

PLANNING:

1. This conditional use permit is conditional upon the permittee proceeding with good faith intent to commence upon the proposed use within two (2) years after the effective date of the approval, or such other period specified as a condition of approval.
2. The applicant shall defend, indemnify, protect and hold harmless the City of Fontana or its agents, officers, attorneys and employees from any and all actual or alleged claims, actions or proceedings against the City of Fontana or its agents, officers, attorneys or employees to attack, set aside, void, annul or seek monetary damages arising out of any challenge to the applicant's proposed project or to any approvals of the Planning Commission and/or City Council concerning this project, including but not limited to actions challenging CEQA actions, permits, variances, plot plans, design plans, maps, licenses, and amendments. The City of Fontana shall promptly notify the applicant of any claim, action, or proceeding and the City of Fontana shall cooperate in the defense.

In the event of any such third-party action or proceeding, the City shall have the right to retain its own separate legal counsel to defend the interests of the City. The applicant shall be responsible for reimbursing the City for such legal fees and costs, in their entirety, including actual attorneys' fees, which may be incurred by the City in defense of such action or proceeding. This indemnification shall also include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities and expenses incurred in connection with such claim, action, or proceeding whether incurred by applicant, the City and/or any parties bringing such forth.

The City of Fontana and the applicant acknowledge that the City would not have approved this project if the City were to be liable to applicant in damages under or with respect to all or any part of this application or this condition of approval.

Accordingly, applicant shall not sue the City for damages or monetary relief for any matter arising from or related to this condition of approval. Applicant's sole and exclusive remedy shall be limited to declaratory/injunctive relief, mandate, and/or specific performance.

3. The rights and privileges granted by this project shall not become effective, nor shall the Applicant commence the use for which this project is granted, until all of the following have occurred:
 - a. All requirements of the Fontana Municipal Code shall be complied with.
 - b. All Conditions of Approval imposed on this project have been fulfilled.
4. In the event that one or more of the Conditions of Approval for this project needs to be amended and/or deleted due to health, safety or welfare concerns, the City Manager is authorized to approve or conditionally approve such amendment/deletion, provided that City Manager shall bring such proposed amendment/deletion to the City Council at the next available meeting for City Council ratification, but in no event later than sixty (60) days following the City Manager's decision. The noticing of such City Council meeting for possible ratification shall be pursuant to Sections 30-30 and 30-31 of the Municipal Code.
5. At any time, the Director of Planning may bring a status report to the Planning Commission identifying impacts or failure to comply with conditions resulting from the Conditional Use Permit approval. Such status report may contain a police report regarding calls for service at the location. Nothing herein shall modify or limit the City's authority to regulate the business or modify or revoke the permit upon the City's determination that the business is being operated in a manner adverse to the public's health, safety, and welfare.
6. The approved set of Conditions of Approval shall be posted at all times at a visible location behind the cashier's counter in the facility and shall remain legible at all times.
7. In addition to sign identifying the business, no sign shall be placed in or upon the window of any structure utilized for commercial purposes in the upper or lower one third of the total transparent area of any window. Window signage shall be limited to 25 percent of the total window and clear door area. Window signs shall be placed and maintained in a manner so that there is a clear and unobstructed view of the interior of the premises from the adjacent sidewalk or entrance to the premises.
8. The establishment shall be operated as a "Bona Fide Public Eating Place" as defined by ABC. The restaurant shall maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises.
9. At all times when premises are open for business, the sale of alcoholic beverages shall be incidental to the sale of food.

10. The quarterly gross sales of alcoholic beverages shall not exceed 35% of the restaurant's total sales, which includes all food and all alcoholic and non-alcoholic beverages.
11. The business owner/licensee or management of the establishment shall, upon request, provide the City of Fontana with an audited report of sales ratio of food to alcoholic and non-alcoholic beverages.
12. Except within City-approved outdoor eating places, which are adequately separated from direct public access, no alcoholic beverages shall be consumed outside of an enclosed building.
13. Employees engaged in the sale or distribution of alcoholic beverages shall be at least 18 years of age. If the business owner, licensee or management chooses to employ a salesperson between the ages of 18 to 20, that salesperson must be under the continuous supervision of at least one salesperson who is 21 years old or older. Bartenders and cocktail waitresses shall be 21 years old.
14. The hours of operation shall not exceed 10:00 am – 11:00 pm seven days a week.
15. Beverage coolers containing alcoholic beverages shall be located behind the cashier's counter or in areas only accessible to employees.
16. Music is limited to overhead/background music, or as directed in a separate Conditional Use Permit for entertainment. Any music allowed shall not be audible from outside the premise so as to disturb the peace, pursuant Fontana Municipal Code 16-19, 18-62 and 18-63. Such a system may be a radio, juke box (coin or token operated customer-paid mechanism) or similar non-hosted device or unit, but not including any system requiring an attendant or host such as a disk jockey or similar person.
17. There shall be no live entertainment, disc jockey, karaoke, dancing, dance floor, or dance area provided on the premises unless a separate conditional use permit for live entertainment is applied for and approved by the Planning Commission.
18. At all times, the premises shall remain open to persons of all ages, as allowed by the Type 41 Department of Alcoholic Beverage license.
19. At no time, shall the premises operate as a nightclub, dance hall or event forum.
20. At no time, shall an entrance fee be charged to patrons to enter the establishment, or to enter any area within the establishment, or to view any televised event.
21. There shall be no obstructions within the storefront windows and doors which would hinder visual surveillance. Obstructions would include signage, window tint, window coverings, advertisements, etc.

22. No electronic arcade, amusement games, pool tables, dart boards, or other similar devices are permitted on the licensed premises.
23. In the event security problems occur, the Police Department (Chief of Police) will issue a letter to the owner requesting a meeting to discuss said security problems. If security problems are not resolved by the owner in the timeframe mutually agreed upon in said meeting, at the discretion of the Chief of Police, the business owner/licensee or management, at his or her own expense, shall provide a California licensed, uniformed security guard(s) on the premises, during such hours as requested and directed by the Police Department. All uniformed security guards shall comply with Fontana City Code section 22-62, and shall be registered with the State of California's Bureau of Security and Investigative Services as a security guard prior to employment within the City of Fontana.
24. On a regular and reasonable basis, litter shall be removed daily from the premises, including adjacent public sidewalks, and all parking areas under the control of the business owner/licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.
25. A digital video surveillance system is required at the premise. It is recommended to be an internet-based system and shall be maintained in proper working order at all times. The surveillance video/visual media shall be maintained for a minimum of sixty (60) days and upon request, shall be accessible to law enforcement personnel for viewing, copying and collection purposes during regular business hours.
26. Graffiti abatement by the business owner/licensee, or management shall be immediate and on-going on the premises, but in no event shall graffiti be allowed unabated on the premises for more than 48 hours. Abatement shall take the form of removal or shall be covered/painted over with a color reasonably matching the color of the existing building, structure, or other surface being abated. Additionally, the business owner/licensee, or management shall notify the City within 24 hours (at 909-350-GONE) of any graffiti elsewhere on the property not under the business owner/licensee's or management control so that it may be abated by the property owner and/or the City's Graffiti Team.
27. The exterior of the premise, including all entrances, walkways, adjacent public sidewalks, alleyways and parking lots under the control of the licensee, shall be illuminated at a minimum of one (1) foot candle of light during all hours of darkness, so that persons standing in those areas at night are identifiable by law enforcement personnel. All luminaries utilized are required to have vandal resistant light fixtures.
28. A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted on the exterior of the building, near both entrances, and shall be clearly visible to patrons of the licensee. The size, format, placement, and languages of the sign or signs shall be determined

by the Department of Alcoholic Beverage Control. Generally, the signs should be 24 inches in length and 14 inches in width with the print of sufficient size to make them clearly readable.

29. A prominent, permanent sign or signs stating “NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED OFF THE PREMISES” shall be posted on the exterior of the building, near both entrances, and shall be clearly visible to patrons of the licensee. The size, format, placement and languages of the sign or signs shall be determined by the Department of Alcoholic Beverage Control. Generally, the signs should be 24 inches in length and 14 inches in width with the print of sufficient size to make them clearly readable.
30. The operation of the business shall not violate any federal, state, or local laws or ordinances, including the rules, regulations and orders of the State Alcoholic Beverage Control Department and conditions of this Conditional Use Permit. Failure to comply with these requirements shall constitute grounds for revocation of the Conditional Use Permit.
31. The applicant shall comply with the City False Alarm Ordinance.
32. The business owner/licensee or management shall prevent on-site loitering. The management shall regularly police the area under its control to prevent the loitering of persons about the premises.
33. The licensee shall attend a L.E.A.D. training (Licensee Education on Alcohol and Drugs provided by the Department of Alcoholic Beverage Control) or a responsible beverage service training (RBS) from a provider listed on Department of Alcoholic Beverage Control’s website, within six (6) months, and any employee engaged in the sale of alcohol shall attend the LEAD or RBS training within 90 days of employment.

END OF CONDITIONS