

**RESOLUTION PC NO. 2023-\_\_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA APPROVING CONDITIONAL USE PERMIT NO. 23-008 TO UPGRADE TO AN EXISTING ABC LICENSE TYPE 20 (OFF-SALE, BEER AND WINE) TO AN ABC LICENSE TYPE 21 (OFF-SALE, GENERAL) FOR AN EXISTING SERVICE STATION LOCATED AT 16414 FOOTHILL BOULEVARD (APN: 0190-081-40) PURSUANT TO A CATEGORICAL EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINESS SECTION 15301.**

**WHEREAS**, the location of 16414 Foothill Boulevard (APN:0190-081-40) was annexed from the San Bernardino County into the City of Fontana in 1952; and

**WHEREAS**, on December 4, 2018, the City of Fontana ("City") approved a Conditional Use Permit, CUP18-012, for an ABC License Type 20 (Off-Sale, Beer and Wine) for an existing service station at the location of 16414 Foothill Boulevard ("Service Station"); and

**WHEREAS**, on June 20, 2023, City received an application from Brandon Deep ("Applicant"), for a Conditional Use Permit (CUP) No. 23-008 to upgrade the Service Station's existing ABC License from a Type 20 to a Type 21 (Off-Sale, General); and

**WHEREAS**, the Service Station is located within the Form Based Code (FBC) Transitional Gateway and has a General Plan Land Use designation of Walkable Mixed-Use Corridor (WMXU-1), which allows for such upgrades; and

**WHEREAS**, Conditions of Approval for CUP No. 23-008 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 October 27, 2023 and simultaneously displayed at City Hall and at the project site; and

**WHEREAS**, on November 7, 2023, a duly noticed public hearing on CUP No. 23-008 was held by the City of Fontana Planning Commission ("Planning Commission") to consider testimony and evidence presented by the applicant, City staff, and other interested parties; and

**WHEREAS**, on November 7, 2023, the Planning Commission carefully considered all information, evidence and testimony presented the public hearing for CUP No. 23-008; 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 Planning Commission hereby makes the following findings for CUP No. 23-008 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 an upgrade to amend an existing ABC License Type 20 (Off-sale, Beer and Wine) to an ABC License Type 21 (Off-sale, General) for an existing service station, Prestige Fuels. The subject site was previously approved on October 27, 1997 for a service station (ASP97-030) and on December 4, 2018, a Conditional Use Permit (CUP18-012) was previously approved for an ABC License Type 20 (Off-sale, Beer and Wine).

The service station is located at 16414 Foothill Boulevard (APN: 0190-081-40) within an existing multi-tenant building. The General Plan land use designation for the site is Walkable Mixed-Use Corridor (WMXU-1) and is located within the Transitional subdistrict of the Form Based Code (FBC). The service station is not located in any specific plan or Area Plan. The project site has been established for approximately 26 years and operating with an Type 20 ABC license for approximately 5 years, a Type 21 ABC license is consistent with the General Plan's WMXU-1 designation and allowed within the Transitional District. Therefore, the use is consistent with the General Plan and Zoning regulations.

**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 Service Station occupies a tenant space comprised of approximately 1,215 square feet total. 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. On-site circulation is adequate with two access points from Foothill Boulevard. Access to utilities and services exists and has been obtained. Furthermore, the use is for the existing service station to operate in conjunction with a California Department of Alcoholic Beverage Control (ABC) Type 21 (Off-sale, Beer and Wine) license which will not result in any physical change to the site or building itself.

**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:        There will be no adverse effect to the neighboring sites or their permitted uses from this ABC License upgrade request. The existing service station has been operating with an ABC license Type 20 (Off-sale, Beer and Wine) for approximately 5 years. Calls for service have been reviewed and the Fontana Police Department had no concerns with the project. The project has been reviewed by the Planning Department, Engineering Department, Building and Safety Division, and County Fire Prevention for site circulation, access, and safety and found to meet or exceed the requirements for all applicable building code, zoning, fire code and standards.

**SECTION 4. Approval.** Based on the foregoing, the Planning Commission hereby approves Conditional Use Permit No. 23-008 subject to the Conditions of Approval, which are attached hereto as “**Exhibit A**” and incorporated herein by this reference.

**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 **7<sup>th</sup> day of November 2023.**

**City of Fontana**

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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 7<sup>th</sup> day of November 2023, by the following vote, to-wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Ralph Thrasher, Secretary

**EXHIBIT "A"**



# **CITY OF FONTANA**

## **CONDITIONS OF APPROVAL**

**PROJECT:** Conditional Use Permit No. 23-008

**DATE:** November 7, 2023

**LOCATION:** 16414 Foothill Boulevard (APN: 0190-081-40)

**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 hours of operation shall not exceed 6:00 AM – 12: AM (Midnight) seven days a week.
7. 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.
8. All distilled spirits shall be located /displayed behind the cashier's counter, and under the continuous control of the management.
9. All tobacco products shall remain under the control of the management, behind the cashier's counter.
10. Employees engaged in the sale distribution of alcoholic beverages shall be at least

18 years of age. If the business owner, licensee, or management choose 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.

11. No beer, wine, or distilled spirits shall be displayed within five feet of the cash register or the front door or between the register and the front door unless it is under the control of the management behind the cashier's counter (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
12. No display or sale of beer, wine, or distilled spirits shall be made from an ice tub (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
13. No alcohol advertisements at the fuel islands (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
14. No alcohol sales from a drive-in window (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
15. No self-illuminated alcohol advertisements on buildings or windows (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
16. Cashier's/employees engaged in the sale of beer or wine or distilled spirits between 10:00 pm and 12:00 am must be at least age 21 (ABC requirement for Concurrent Sales of Alcohol and Gasoline).
17. The sale of malt liquor or fortified wine products with an alcoholic content greater than 17 percent by volume is prohibited.
18. The licensee shall not sell single bottles of wine in less than 750 milliliters containers. Specialty or dessert wines which are only packaged in 375 milliliter bottles shall be permitted.
19. The sale of beer or malt beverages in single size containers of 40 ounces or less is prohibited.
20. The licensed premise shall not sell individual units of beer or wine from the manufacturer's multi-unit packages. (Three-packs, four-packs, six-packs, etc.)
21. No distilled spirits shall be sold in bottles or containers smaller than 375ml.
22. The licensee shall not allocate more than half of the cooler doors for the sale of alcoholic beverages. All designated coolers for alcoholic beverages shall be located furthest away from the entrance doors.
23. Any display or storage of alcoholic beverages on the public floor area of the convenience store is prohibited. All alcoholic beverages shall be displayed in

coolers, or on shelving units. All alcoholic beverages shall be stored within a storage room, only accessible to employees.

24. The possession of alcoholic beverages in open containers and the consumption of alcoholic beverages are prohibited on or around the licensed premises.
25. In the event that adult merchandise (books, magazines, videos, and CDs) is offered for sale, all such merchandise shall be kept under the control of the management behind the cashier's counter and must be segregated from other reading material and screened from the view of minors.
26. 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.
27. The business owner/licensee shall comply with the City False Alarm Ordinance. Excessive false alarms will require replacement of the alarm system prior to the extension of any conditional use permit.
28. 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.
29. 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.
30. Sales of alcoholic beverages will be restricted to, and within the confines of, the building portion of the licensed premises.
31. 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.
32. Signs shall comply with all City of Fontana sign requirements. No more than 25% of the total window area and clear doors shall bear advertising or signs of any sort. 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 public sidewalk or entrance to the premises (this applies to all windows of this location)

33. 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.
34. A prominent, permanent sign or signs stating, "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted on the building 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 length and 14 inches in width with the print of sufficient size to make them clearly readable.
35. A prominent, permanent sign or signs stating, "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THE PREMISES" shall be posted on the building 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 length and 14 inches in width with the print of sufficient size to make them clearly readable.
36. No electronic arcade or amusement games are permitted on the licensed premises at any time.
37. 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 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 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.
38. 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 the 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.
39. The approved set of Conditions of Approval, and the ABC license 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.

#### **END OF CONDITIONS**