

**RESOLUTION NO. PC 2024-\_\_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA DENYING CONDITIONAL USE APPLICATION NO. 95-019R4, A REQUEST TO MODIFY THE CONDITIONS OF APPROVAL FOR AN EXISTING CONDITIONAL USE PERMIT TO ALLOW THE SALE OF SINGLE ALCOHOLIC BEVERAGES OF WINE AND DISTILLED SPIRITS LESS THAN 375 MILLILITERS AND THE SALE OF BEER/ MALT BEVERAGES IN SINGLE SIZE CONTAINERS OF 40 OUNCES OR LESS AT THE LOCATION OF 16119 FOOTHILL BOULEVARD (APN: 0191-011-06), PURSUANT TO A CATEGORICAL EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINES SECTION 15301.**

**WHEREAS**, Assessor Parcel Number (“APN”) 0191-011-06, (“Project Site”), was incorporated as part of the original City of Fontana in 1952; and

**WHEREAS**, on February 27, 1995, the Fontana Planning Commission (“Planning Commission”) approved an application for CUP No. 95-019 for a Type 20 (Off-Sale Beer and Wine) ABC license for a Circle K convenience store located at 16119 Foothill Boulevard (“Subject Property”); and

**WHEREAS**, on April 21, 2020, the Planning Commission approved an application for Conditional Use Permit No. 95-019R3 for a Type 21 (Off-Sale General) Alcoholic Beverage Control (“ABC”) license for the Circle K convenience store at the Project Site, including specific conditions imposed by the City attached hereto as Attachment No. 7, that included prohibition against the sale of single size alcoholic containers of wine, distilled spirits and beer/malt beverages; and

**WHEREAS**, on May 9, 2023, the City of Fontana (“City”) received an application from Jagjit Singh (“Applicant”), for a Conditional Use Permit (“CUP No. 95-019R4”) to modify the conditions of approval for Conditional Use Permit No. 95-019R3 to allow the sale of single sized alcoholic containers of wine and distilled spirits less than 375 milliliters and the sale of beer/malt beverages in single size containers of 40 ounces or less at the Subject Property; and

**WHEREAS**, the existing 2,600 square foot convenience store that is the subject of this application is within an established shopping center; and

**WHEREAS**, the Project Site has a General Plan Land Use designation of Walkable Mixed-Use Corridor (WMXU-1) and is located within the Form Based Code (FBC) Route 66 Gateway, which allows for alcoholic beverage sales; and

**WHEREAS**, the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section No. 15301 (Class 1, Existing Facilities) and Section No. 3.22 (Categorical Exemption) of the 2019 Local Guidelines for

Implementing the California Environmental Quality Act as the project proposal would not result in changes or expansions to the building. Further none of the exceptions in CEQA Guidelines section 15300.2 apply to this project; and

**WHEREAS**, the City wishes to protect and preserve the quality of life throughout the City through effective land use planning; and

**WHEREAS**, all of the notices required by statute and the Fontana Municipal Code (FMC) have been given as required; and

**WHEREAS**, the owners of property within 660 feet of the Project Site were notified via public hearing notice mailer prior to the public hearing and a notice of the public hearing was published in the local *The Fontana Herald* newspaper on February 9, 2024, and a notice of the public hearing was simultaneously displayed at City Hall and at the Project Site; and

**WHEREAS**, the project was originally scheduled for the February 20, 2024 Planning Commission meeting and was continued to the March 5, 2024 Planning Commission meeting, and at the March 5, 2024 meeting the project was continued to the April 16, 2024 Planning Commission meeting, and at the April 16, 2024 meeting the project was continued to the June 18, 2024, Planning Commission meeting, and at the June 18, 2024 meeting the project was continued to the July 16, 2024 Planning Commission meeting, all at the request of the applicant; and

**WHEREAS**, on July 16, 2024, a duly noticed public hearing on CUP No. 95-019R4 was held by the Planning Commission to consider testimony and evidence presented by the Applicant, City staff, and other interested parties; and

**WHEREAS**, on July 16, 2024, the Planning Commission carefully considered all information, evidence, and testimony presented at its public hearing on for CUP No. 95-019R4; 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) as the project proposal would not result in changes or expansions to the building. Further none of the exceptions in CEQA Guidelines section 15300.2 apply to this project. The

Planning Commission further directs Staff to file a Notice of Exemption pursuant to this Finding.

**Section 3. CUP Findings.** The Planning Commission hereby makes the following findings for CUP No. 95-019R4 in accordance with Section 30-169 “Findings for approval of conditional use permits modifications” 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 City’s Zoning and Development Code requires a Conditional Use Permit for any new or modified ABC licenses. Planning Commission approval of a Conditional Use Permit may include such conditions of approval as are deemed necessary to enable the Planning Commission to make the required findings. The existing off-sale convenience store establishment is located at 16119 Foothill Boulevard on the southeast corner of Foothill Boulevard and Citrus Avenue. The General Plan designation is Walkable Mixed-Use Corridor (WMXU-1) and the property is located within the Form Based Code (FBC) Route 66 Gateway subdistrict which allows for off-sale establishments with the approval of a Conditional Use Permit. This establishment has a conditional use permit to sell alcoholic beverages (Type 21 ABC license, Off-sale General) that was approved on April 21, 2020, by the Planning Commission; this Conditional Use Permit included three conditions (Condition No. 13 through 15) stating that alcoholic beverage containers cannot be sold that are single size, smaller than 375 ml or smaller than 40 ounces. With approval of a Conditional Use Permit by the Planning Commission, the use is consistent with the 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.**

The Applicant is requesting to modify the ABC conditions of approval from a previously approved project (CUP No. 95-019R3) in order to allow the sale of single alcoholic beverages of wine and distilled spirits less than 375ml and

beer/malt beverages less than 40 oz. The site is physically suited for the type, density, and intensity of the use. The site was previously approved for a Conditional Use Permit to operate and sell alcoholic beverages with an ABC Type 21 (Off-sale, General) license. There are no modifications to the site or structure. The physical characteristics of the site are sufficient to accommodate the business including access and utilities.

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.**

Staff has concerns with the modification and the associated potential for negative impacts on the public health, safety, and welfare as well as concerns with potential injury to persons, property, and improvements. Single serve alcoholic beverages are often offered for sale cold and ready to be consumed. This frequently leads to public intoxication, littering, panhandling, and other disruptive behaviors. By prohibiting the single sale of alcoholic beverages, minors and transients are discouraged from purchasing such as single sale alcoholic beverages are typically priced lower and are more affordable. The requested modification to the standing conditions of approval could be detrimental to the public interest, health and safety or materially injurious to persons or property in the vicinity in which the project is located.

**Section 4. Denial:** Based on the foregoing, the Planning Commission hereby denies Conditional Use Permit No. 95-019R4.

**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 such 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, DENY AND ADOPTED** by the Planning Commission of the City of Fontana, California, at a regular meeting held on this **16<sup>th</sup> day of July 2024**.

**City of Fontana,**

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Cathline Fort, Chairperson

**ATTEST:**

I, Ricardo Quintana, 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 16<sup>th</sup> day of July 2024, by the following vote, to-wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Ricardo Quintana, Secretary