

RESOLUTION PC NO. 2023-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA APPROVING CONDITIONAL USE PERMIT NO. 23-013 FOR A TYPE 20 CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (OFF-SALE BEER AND WINE) FOR AN EXISTING GROCERY STORE LOCATED AT 13815 FOOTHILL BOULEVARD (APN: 0230-011-03), PURSUANT TO A CATEGORICAL EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINES SECTION 15301.

WHEREAS, the location of 13815 Foothill Boulevard (APN:0230-011-03) was annexed from the San Bernardino County into the City of Fontana on October 24, 1990; and

WHEREAS, the site is located within the Form Based Code (FBC) Route 66 Gateway and has a General Plan Land Use designation of Walkable Mixed-Use Corridor (WMXU-1); and

WHEREAS, on June 20, 2023, the City of Fontana ("City") received an application from Manpreet Kaur ("Applicant"), for a Conditional Use Permit (CUP) No. 23-013 for a Type 20 license (Off-Sale Beer and Wine) License for an existing grocery store located at 13815 Foothill Boulevard; and

WHEREAS, Conditions of Approval for CUP No. 23-013 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, the owners of property within 660 feet of the project site were notified via 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, posted at City Hall and onsite at the project site; and

WHEREAS, on November 7, 2023, a duly noticed public hearing on CUP No. 23-013 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 at its public hearing on for CUP No. 23-013; 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. 23-013 in accordance with Section 30-150 "Findings for approval of 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 an existing grocery store, International Grocery Bazar, for an Alcoholic Beverage Control (ABC) license. The Zoning and Development Code allows for a grocery store to operate with a California Department of Alcohol Beverage Control (ABC) Type 20 (Off-Sale Beer and Wine) license subject to approval of a Conditional Use Permit. If approved, Conditions of Approval will aid in regulating the off-sale of alcohol at the project site, security and hours of operation.

The grocery store is located at 13815 Foothill Boulevard (APN: 0230-011-03) within an existing multi-tenant retail center. The General Plan land use designation for the site is Walkable Mixed-Use Corridor (WMXU-1). The project site is not located in any Specific Plan or Area Plan.

The site is further located within the Route 66 Gateway subdistrict of the Form Based Code (FBC). The Route 66 Gateway subdistrict is intended to accommodate a variety of commercial retail and personal service uses with incorporated automobile uses that have traditionally been located along the corridor. Therefore, the use is consistent with the General Plan and Zoning regulations.

The Fontana Zoning and Development Code allows for a grocery store to operate in conjunction 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 and 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 existing grocery store occupies a standalone building of approximately 4,189 square feet total that is a part of a multi-tenant retail center. The physical characteristics of the site were reviewed by the City, 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 with the County of San Bernardino. Furthermore, the use is for the existing grocery store to operate in conjunction with a new California Department of Alcoholic Beverage Control (ABC) Type 20 (Off-sale, Beer and Wine) license and will not result in any physical change to the site or building itself.

Based on the conditions of approval, operation of an existing grocery store in conjunction with an ABC license will not have any repercussions on the health, safety, and general welfare of the surrounding community.

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: The request for an existing grocery store to operate in conjunction with a new California Department of Alcoholic Beverage Control (ABC) Type 20 (Off-Sale Beer and Wine) license, which is consistent with the underlying General Plan land use designation, Route 66 Gateway of the Form Based Code (FBC) and compatible with surrounding properties. There will be no adverse effects to the neighboring sites or their permitted uses. Calls for service have been reviewed by the Fontana Police Department and it 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.

Finding No. 4: **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 meet the definition of Public Convenience or Necessity. A large number of the general population chooses to enjoy the convenience of a local neighborhood grocery store including purchasing alcoholic beverages therein. The approval of this application will allow people the opportunity to shop for groceries and purchase alcoholic beverages from a neighborhood store that is within walking distance.

The grocery store is established within retail center that includes uses such as an auto service facility, pet groomers, fast food restaurants, just to name a few. Consumers who already frequent shop at the retail center would find it convenient to purchase beer and wine.

The grocery store is located within Census Tract 22.04. According to ABC, four (4) off-sale licenses are allowed within Census Tract 22.04. Currently there are five (5) active off-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 grocery stores 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 off-sale of beer and wine.

SECTION 4. Approval: Based on the foregoing, the City of Fontana Planning Commission hereby approves Conditional Use Permit No. 23-013 subject to the Conditions of Approval, which are attached hereto as “**Exhibits A**” to this Resolution 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 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, APPROVED AND ADOPTED by the Planning Commission of the City of Fontana, California, at a regular meeting held on this **7th day of November 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 7th day of November 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. 23-013

DATE: November 7, 2023

LOCATION: 13815 Foothill Boulevard (APN: 0230-011-03)

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 10:00 am – 9:00 pm 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 tobacco products shall remain under the control of the management, behind the cashier's counter.
9. 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.
10. The sale of malt liquor or fortified wine products with an alcoholic content greater than 17 percent by volume is prohibited.

11. 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.
12. The sale of beer or malt beverages in single size containers of 40 ounces or less is prohibited.
13. 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.)
14. 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.
15. 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.
16. The possession of alcoholic beverages in open containers and the consumption of alcoholic beverages are prohibited on or around the licensed premises.
17. 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.
18. 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.
19. 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. 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.

20. 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.
21. Sales of alcoholic beverages will be restricted to, and within the confines of, the building portion of the licensed premises.
22. 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.
23. 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).
24. 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.
25. 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.
26. 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.
27. No electronic arcade or amusement games are permitted on the licensed premises at any time.
28. 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.

29. 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.
30. 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