

RESOLUTION PC NO. 2021-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA APPROVING CONDITIONAL USE PERMIT NO. 11-007R1 TO APPROVE A TYPE 47 LICENSE (ON-SALE BEER, WINE AND DISTILLED SPIRITS) FOR AN EXISTING RESTAURANT AT 17122 SLOVE AVENUE SUITE 101K (APN: 0254-221-48).

WHEREAS, the City of Fontana received an application on June 28, 2021, for a Conditional Use Permit Modification (CUP) No. 11-007R1 for a Type 47 License (On-Sale Beer, Wine and Distilled Spirits).

Project Applicant: Josue Paiz (La Katrina Mexican Grill and Cantina)
17305 Redmaple Street
Fontana, CA 92337

Project Location: 17122 Slover Avenue Suite 101K (APN: 0254-221-48)

Site Area: 1,936 square foot suite on a 0.9 acre parcel

WHEREAS, the subject site was annexed from San Bernardino County into the City of Fontana on August 1, 1963 under Annexation 003; and

WHEREAS, the site is located within the Empire Center Specific Plan and has a General Plan Land Use designation of General Commercial (C-G); and

WHEREAS, Conditional Use Permit No. 11-007 was approved on August 16, 2011 for a restaurant Type 41 ABC license (On-Sale Beer and Wine); and

WHEREAS, the proposal is for an upgrade of an existing California Department of Alcoholic Beverage Control (ABC) Type 41 (On-Sale Beer and Wine) to a Type 47 (On-Sale Beer, Wine and Distilled Spirits) for La Katrina Mexican Grill and Cantina restaurant; and

WHEREAS, pursuant to Section 30, Article II, Division 7 (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, the City of Fontana wishes to protect and preserve the quality of the life throughout the City, through effective land use and planning; and

WHEREAS, Conditions of Approval for CUP No. 11-007R1 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

of the 2019 Local Guidelines for implementing the California Environmental Quality Act; and,

WHEREAS, the owners of property within 660 feet of the proposed 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 *Fontana Herald* newspaper on November 5, 2021, posted at City Hall and onsite at the project site; and

WHEREAS, on November 16, 2021, a duly noticed public hearing on CUP No. 11-007R1 was held by the Planning Commission (“Commission”) to consider testimony and evidence presented by the applicant, City staff, and other interested parties, at the Public Hearing held with respect hereto; and

WHEREAS, the Commission carefully considered all information pertaining to the proposed project, including the staff report, findings, and all of the information, evidence, and testimony presented at its public hearing on November 16, 2021; and

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

WHEREAS, the Planning Commission carefully considered all information pertaining to the project, including the staff report and attachments, and all of the information, evidence, and testimony presented at its public hearing on November 16, 2021;

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

NOW, THEREFORE, the Commission RESOLVES as follows:

Section 1. The City of Fontana Planning Commission hereby makes the following findings for CUP No. 11-007R1 in accordance with Section 30-46 “Findings for approval of conditional use permits” of the Fontana Zoning and Development Code; as well as, findings of “Public Convenience or Necessity:

Finding No. 1 That the proposed use is consistent with the General Plan and the applicable land use zone.

Finding of Fact: The request is for a Conditional Use Permit (CUP) Modification for La Katrina Mexican Grill and Cantina restaurant for an Alcoholic Beverage Control (ABC) license. The Zoning and Development Code allows for restaurants to operate with a California Department of Alcohol Beverage Control (ABC) Type 47 (On-Sale Beer, Wine and Distilled Spirits) license subject to approval of a Conditional Use Permit.

The restaurant is located at 17122 Slover Avenue Suite 101K, (APN: 0254-221-48), within an existing tenant space. The General Plan land use designation for the site is General Commercial (C-G). Specific development types allowed in C-G include: retailing, wholesaling, service activities, offices and businesses providing professional services, as well as restaurants.

The site is located within the Empire Center Specific Plan and is within Planning Area 5 (Promotional Center). Planning Area 5 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 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, the City of Fontana's Zoning and Development Code.

Finding No. 2: **That the site for the intended use is adequate in size, shape, topography, accessibility and other physical characteristics to accommodate the use, and all the required provisions of this chapter including yards, setbacks, walls or fences, landscaping and other applicable regulations.**

Finding of Fact: The restaurant occupies a tenant space comprised of approximately 1,936 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. Furthermore, the proposed use is for the restaurant to operate in conjunction with a new California Department of Alcoholic Beverage Control (ABC) Type 47 (On-Sale Beer, Wine and Distilled Spirits) license which will not result in any physical change to the site or building itself.

Finding No. 3: **That adequate streets and highways exist to carry the type and quantity of traffic anticipated by the proposed land use, and adequate access to utilities and other services exist.**

Finding of Fact: Adequate streets and highways exist to carry the existing and anticipated traffic. On-site circulation is adequate. Traffic to and from the project site has two (2) access points from Slover Avenue. Slover Avenue is identified as a Primary Highway in the City's General Plan Circulation Element, which has been determined to be adequate to handle the traffic generated by the commercial center. In addition, access to utilities and services has been obtained.

Finding No. 4: **That the proposed use at the specific location will be compatible with surrounding properties and that there will be no adverse effect to surrounding properties or their permitted uses.**

Finding of Fact: The proposed request for a restaurant to operate in conjunction with a new California Department of Alcoholic Beverage Control (ABC) Type 47 (On-Sale Beer, Wine and Distilled Spirits) license is consistent with the underlying General Plan land use designation, Empire Center Specific Plan and is compatible with surrounding properties. There will be no adverse effect to the neighboring sites or their permitted uses. 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 proposed project has been reviewed by Planning Department, Engineering Department, the Building and Safety Division, and County Fire Prevention for site circulation, access, and safety.

Finding No. 5: **That the proposed use will be organized, designed, constructed, operated and maintained so as to be compatible with the character of the area as intended by the General Plan.**

Finding of Fact: The proposed use is consistent with the underlying General Plan land use designation and the Empire Center Specific Plan. In addition, the proposed use is compatible with surrounding retail and restaurant properties. The site is organized, designed, and constructed to accommodate the intent of the General Plan land use elements. The operation and maintenance of this use will be regulated by specific requirements set forth in the Conditional Use Permit.

Finding No. 6: **That any adverse effects upon the surrounding properties are justified by the benefits conferred upon neighborhoods or the community as a whole, and those potential adverse effects to the health, safety and general welfare shall be minimized.**

Finding of Fact: No adverse effects should be generated from this conditionally permitted use. The proposal of the restaurant to operate in conjunction with an ABC license will not have any repercussions on the health, safety, and general welfare of the surrounding community. Any possible adverse effects shall be mitigated by the Conditions of Approval set forth in the Conditional Use Permit and as referenced herein.

Finding No. 7: **That the proposed use will meet the finding of “Public Convenience or Necessity”**

Finding of Fact: A large number of the general population chooses to enjoy the convenience of neighborhood restaurants including purchasing

alcoholic beverages therein. The approval of this application to operate in conjunction with a new Alcoholic Beverage Control (ABC) Type 47 license (On-Sale Beer, Wine and Distilled Spirits), within an existing commercial facility, will allow patrons of the shopping center and the local community the opportunity to purchase the additional beverages permitted under a Type 47 license at La Katrina Mexican Grill and Cantina. Consumers who frequent the restaurant would find it convenient to purchase distilled spirits in addition to the existing permitted beer and wine beverages.

The General Plan encourages commercial access for the local population. Given the proximity of residents in nearby residential neighborhoods, the restaurant will provide food and alcoholic refreshments to a large local consumer base.

The restaurant is located in Census Tract No. 26.08. Currently, there are ten (10) on-sale licenses operating within this Census Tract. Three (3) of the ten (10) establishments are approved to operate with an ABC Type 47 license (Off-Sale Beer, Wine and Distilled Spirits).

Moreover, Census Tract No. 26.08 is an area of approximately 3.3 square miles, stretching from the 10 freeway to the north to Riverside County to the south, and Sierra Avenue to the west and Locust Avenue to the east. Most restaurants are located along major transportation corridors. The restaurant has an existing ABC license, and the approval of a Type 47 upgrade will not increase the density of on-site ABC licenses.

Base on the above considerations, this project could be found to be a Public Convenience.

Section 2. 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 of the 2019 Local Guidelines for implementing the California Environmental Quality Act (CEQA). CEQA exemption 15301 is based on the following: a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value, as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) The site can be adequately served by all required utilities and public services. Further, there are no unusual circumstances present under 15300.2 that could provide an exception under 15300.2.

Section 3. Based on the foregoing, the City of Fontana Planning Commission hereby approves Conditional Use Permit No. 11-007R1 subject to the Conditions of Approval, which are attached hereto as “**Exhibits A**” to this Resolution and incorporated herein by this reference; and,

Section 4. 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 Community Development Department – Planning Department, 8353 Sierra Avenue, Fontana, CA 92335. This information is provided in compliance with Public Resources Code section 21081.6.

Section 5. The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED by the Planning Commission of the City of Fontana, California, at a regular meeting held on this **16th day of November 2021.**

City of Fontana

Cathline Fort, Chairperson

ATTEST:

I, Idilio Sanchez, 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 the 16th day of November 2021, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Idilio Sanchez, Secretary

EXHIBIT "A"



CITY OF FONTANA

CONDITIONS OF APPROVAL

PROJECT: Conditional Use Permit No. 11-007R1 **DATE:** November 16, 2021
(La Katrina Mexican Grill and Cantina Restaurant Type 47 ABC License)

LOCATION: The project site is a rectangularly-shaped property consisting of one parcel (APN: 0254-221-48) located on the northeast corner of Sierra Avenue and Slover Avenue. The site is further identified as 17122 Slover Avenue Suite 101K.

PLANNING:

1. The approval for a Conditional Use Permit Modification (CUP) for an existing restaurant to operate with a California Department of Alcoholic Beverage Control (ABC) Type 47 (On-Sale General for a Bona Fide Public Eating Place) license is outlined in the staff report as approved by the Planning Commission on November 16, 2021.
2. The previously approved CUP No. 11-007 shall be null and void. Conditions of Approval for CUP No. 11-007R1 shall supersede all previous conditions.
3. 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.
4. 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.

5. 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.
6. 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.
7. At any time, the Planning Director 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.

8. 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.
9. 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.
10. 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.
11. At all times when premises are open for business, the sale of alcoholic beverages shall be incidental to the sale of food.
12. 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.
13. 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.
14. 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.
15. 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.
16. The hours of operation shall not exceed 9 a.m. to 10 p.m., seven days a week.
17. Beverage coolers containing alcoholic beverages shall be located behind the cashier's counter or in areas only accessible to employees.
18. 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.

19. 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.
20. At all times, the premises shall remain open to persons of all ages, as allowed by the Type 47 Department of Alcoholic Beverage license.
21. At no time, shall the premises operate as a nightclub, dance hall or event forum.
22. 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.
23. 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.
24. No electronic arcade, amusement games, pool tables, dart boards, or other similar devices are permitted on the licensed premises.
25. 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.
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. 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.
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 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.
30. 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.
31. A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON 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.
32. 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.
33. The applicant shall comply with the City False Alarm Ordinance.
34. 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.
35. 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.

36. 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.
37. The business owner/licensee or management shall attend a Licensee Education on Alcohol and Drugs (LEADS) training or a responsible beverage service (RBS) training sponsored by ABC within six (6) months, and any employee engaged in the sale/service of alcohol shall attend the LEAD or RBS training within 90 days of employment.

END OF CONDITIONS