

RESOLUTION NO. PC-2023-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION PA-22-43 FOR AN EXISTING CONVENIENCE STORE (AK MARKET) WITH REQUEST TO CHANGE TYPE OF OFF-SALE STATE ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE FROM TYPE 20 (BEER AND WINE) TO TYPE 21 (GENERAL) AND EXPAND THE HOURS OF OPERATION AT 1178 SUNFLOWER AVENUE

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, an application was filed by Rakesh Dadrah, the authorized agent on behalf of the property owner, C.J. Segerstrom & Sons;

WHEREAS, Planning Application 22-43 is a request for a Conditional Use Permit to change the type of off-sale ABC license from Type 20 (Beer and Wine) to Type 21 (General) for an existing Convenience Store, and increase the hours of operation to 6 a.m. to 10 p.m., Sunday through Thursday (an additional hour in the morning and in the evening) and 6 a.m. to 11 p.m., Friday and Saturday (an additional hour in the morning only) at 1178 Sunflower Avenue;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 27, 2023 with all persons having the opportunity to speak for and against the proposal;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 (Class 1), for Existing Facilities and;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the Planning Commission hereby **APPROVES** Planning Application 22-43 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon

the activity as described in the staff report for Planning Application PA-22-43 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 27th day of February, 2023.

Adam Ereth, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2023-__ was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 27, 2023 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2023-__

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(2) because:

Finding: The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

- **Facts in Support of Finding:** The convenience store has been in operation since 2001. The proposed project is to change the State ABC license type from Type 20 to Type 21 to include the sale of distilled spirits, and increase the hours of operation to 6 a.m. to 10 p.m., Sunday through Thursday (an additional hour in the morning and in the evening) and 6 a.m. to 11 p.m., Friday and Saturday (an additional hour in the morning only). The proposed intensification in operations would be compatible with commercial developments in the same general area and would not be materially detrimental to the nearby residential properties in that the conditions of approval have been included to avoid potential noise, trash and light disturbances. In addition, the original conditions of approval, as applicable, have also been included. The existing center contains a mix of uses including a laundromat, nail salon and other retail/service uses. Staff has received a letter from one of the adjacent tenants supporting the current application request. The applicant will continue to occupy the existing tenant space and does not propose an expansion to the interior square footage. There are also no proposed exterior modifications or site improvements. The convenience store will continue to serve the surrounding neighborhood as it has over the past 20 plus years with no anticipated operational issues.

Finding: Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

- **Facts in Support of Finding:** The proposed use, as conditioned, would not generate adverse noise, traffic, or parking impacts that are unusual for commercially-zoned properties. Furthermore, conditions of approval require the use be conducted in a manner that would allow for the quiet enjoyment of the surrounding neighborhood. The Police Department has reviewed the proposed use and has no objections to the approval of the application.

Finding: Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property.

- **Facts in Support of Finding:** The existing convenience store is conditionally permitted in the C1 (Local Business) zone. The General Plan land use

designation of the property is Neighborhood Commercial. The existing convenience store use is an appropriate retail use for the Neighborhood Commercial land use designation. The proposed project would allow for the sales of distilled spirits and does not change the primary use which is a neighborhood serving convenient store. Furthermore, the proposed project is consistent with General Land Use Policy LU-6.7 in that the proposed project would retain the existing retail business and continue to provide retail opportunities for local businesses and residents.

- B. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities. The Class 1 exemptions applies to minor alterations to existing facilities or structures involving negligible or no expansion of the existing use. The project involves no exterior alterations or additions to an existing commercial building. As conditioned and proposed, the project will have little or no impact on the surrounding area. There will be no resulting increase in the existing floor area of the tenant space. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. The Project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location, and would not impact any historic resources.
- C. The project is not subject to a traffic impact fee, pursuant to Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

- PIng.
1. The use shall be limited to the type of operation described in the staff report and applicant's letters dated February 27, 2023, subject to conditions. Any change in the operational characteristics including, but not limited to, hours of operation, shall be subject to Planning Division review and may require an amendment to the minor/conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
 2. Approval of the planning/zoning application is valid for two (2) years from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and a valid building permit has been maintained by making satisfactory progress as determined by the Building Official; 2) a certificate of occupancy has been issued; or 3) the use has been established and a business license has been issued. A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29(k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.
 3. The applicant, the property owner and the operator (collectively referred to as "indemnitors") shall each jointly and severally defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, legal action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of City's approval of the project, including but not limited to any proceeding under the California Environmental Quality Act. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the indemnitors' joint and several obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section.

4. The hours of operation of the business shall be limited to Sunday to Thursday 6 a.m. to 10 p.m. and Friday and Saturday 6 a.m. to 11 p.m. Any minor adjustments in these hours of operation that meet the intent of this condition may be granted with written approval of the Director of Development Services.
5. Alcoholic beverage sales from drive through or walk-up service windows shall be prohibited.
6. Wine, beer and other distilled spirits shall be sold in factory manufactured packages for retail sales. Factory multiple-packed bottles or cans shall not be unpackaged to be sold individually. This restriction is not intended to prohibit the sale of beverages in a single container packaged by the manufacturer for individual sale.
7. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
8. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business shall institute whatever security measures are necessary to comply with this requirement.
9. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "dinner wines" which have been aged 2 years or more and maintained in corked bottles.
10. Wine shall not be sold in bottles or containers smaller than 750 milliliters.
11. No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of 2 or more gallons, which are clearly designed to dispense multiple servings.
12. Malt beverages, wine coolers or pre-mixed distilled spirit cocktails (if allowed by the license) packed in 16-ounce containers or smaller, may not be sold as single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
13. The applicant shall maintain areas that are under the applicant's control and ensure areas are well maintained and free of litter.
14. No alcoholic beverage shall be displayed or offered for sale outside the building.
15. Exterior signage/advertisements promoting or indicating the availability of alcoholic beverages shall be prohibited. Exterior signage indicating the availability of alcoholic beverages shall be limited to the name of the business, e.g., AK Market. Interior signage/advertisements promoting or indicating the availability of alcoholic beverages which are visible from the exterior of the building shall be prohibited.
16. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured.
17. Exposed neon signage is strictly prohibited. This excludes the "open/close" sign for business.

18. The business operator shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcoholic beverages.
19. The business operator shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering.
20. Alcoholic consumption on premises is prohibited.
21. All work shall be conducted under-roof. Outdoor work or display is prohibited.
22. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
23. The outdoor storage of boxes, equipment materials, merchandise, and other similar items shall be prohibited.
24. A copy of the conditions of approval for the conditional use permit shall be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
25. If any section, division, sentence, clause, phrase or portion of this approval is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.
26. Any change in the operational characteristics of the use shall be subject to Planning Division review and may require an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
27. All exterior lighting shall shielded and/or directed away from residential areas.
28. Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas (behind fences).
29. Every 2 hours, from 4:00 p.m. to closing, the applicant shall patrol the area over which the applicant has control in an effort to prevent the loitering of persons about the premises. The applicant shall make reasonable efforts to prevent loitering during other hours the business is open.
30. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering. Any lighting under the control of applicant shall be directed in such a manner so as not to unreasonably interfere with the quiet enjoyment of nearby residences. Applicant shall further provide adequate lighting above the entrance to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.
31. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or it, in the opinion of

the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.

32. The project shall be limited to the type of building as described in this staff report and in the attached plans. Any change in the use, size, or design shall require review by the Planning Division and may require an amendment to the Minor Conditional Use Permit.
33. Once the use is legally established, the planning/zoning application herein approved shall be valid until revoked. The Director of Economic & Development Services or designee may refer the planning/zoning application to the Planning Commission for modification or revocation at any time if any of the following circumstances exist: 1) the use is being operated in violation of the conditions of approval; 2) the use is being operated in violation of applicable laws or ordinances or 3) one or more of the findings upon which the approval was based are no longer applicable.
34. If determined necessary by the Director of Economic and Development Services, based on excessive calls for police service, loitering and/or an increase in crime attributed to the proposed use, the applicant shall contract with a security guard to monitor the business during all hours of operation.
35. The above conditions of approval shall supersede and replace the conditions of approval for the prior entitlements for this property.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- Plng.
1. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
 2. The conditions of approval and ordinance or code provisions of Planning Application 22-43 shall be blueprinted on the face of the site plan as part of the plan check submittal package when building permits are necessary.
 3. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time.
 4. The project is subject to compliance with all applicable Federal, State, and local laws. A copy of the applicable Costa Mesa Municipal Code requirements has been forwarded to the Applicant and, where applicable, the Authorized Agent, for reference.
 5. All noise-generating construction activities shall be limited to 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. Saturday. Noise-generating construction activities shall be prohibited on Sunday and the following federal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

6. Street addresses shall be visible from the public street and may be displayed either on the front door, on the fascia adjacent to the main entrance, or on another prominent location. When the property has alley access, address numerals shall be displayed in a prominent location visible from the alley. Numerals shall be a minimum six (6) inches in height with not less than one-half-inch stroke and shall contrast sharply with the background.
7. All requirements of the California Alcoholic Beverage Control Board (ABC) shall be complied with.
8. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
- Bldg. 9. Prior to issuing the Building permit the conditions of approval shall be on the approved Architectural plans.
10. Comply with the requirements of the following adopted codes Code, 2019 California Building Code, 2019 California Electrical code, 2019 California Mechanical code , 2019 California Plumbing code , 2019 California Green Building Standards Code and 2019 California Energy Code (or the applicable adopted, California Building code California Electrical code, California Mechanical code California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2019 California Building Code.
11. Prior to the Building Division issuing a demolition permit. contact South Coast Air Quality Management District (AQMD) located at:
21865 Copley Dr.
Diamond Bar, CA 91765-4178
Tel: 909- 396-2000
or
Visit their web site:
<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=23381>. The Building Division will not issue a demolition permit until an Identification Number is provided by AQMD.
- Fire 12. Comply with the requirements of the California Fire Code and referenced standards as amended by the City of Costa mesa.
- Bus. 13. All contractors and subcontractors must have valid business licenses to do
Lic. business in the City of Costa Mesa. Final Inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.