

RESOLUTION NO. 2022-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2021-16 AS CONDITIONED TO ALLOW THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES AT NORTHGATE MARKET LOCATED AT 2603 WEST WESTMINSTER AVENUE.

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Kevin Le ("Applicant"), representing property owner Northgate Gonzalez, LLC, is requesting approval of Conditional Use Permit (CUP) No. 2021-16 to allow the off-premises sale of alcoholic beverages at a new grocery store located at 2603 West Westminster Avenue.
- B. Pursuant to Santa Ana Municipal Code ("SAMC") Section 41-196, a CUP is required for establishments selling alcoholic beverages for off-premise consumption.
- C. On February 28, 2022, the Planning Commission held a duly noticed public hearing on CUP No. 2021-16.
- D. The Planning Commission determines that the following findings, which must be established in order to grant a Conditional Use Permit pursuant to SAMC Section 41-638, have been established for Conditional Use Permit No. 2021-16 to allow the off-sale of alcoholic beverages at a new grocery store located at 2603 West Westminster Avenue.
 1. That the proposed use will provide a service or facility which will contribute to the general wellbeing of the neighborhood or community.

The proposed grocery store would offer alcoholic beverages for off-premise consumption to the residents and community of Santa Ana. This will thereby benefit the community by providing an additional establishment that provides goods and services to the City. Operational standards applicable to the alcoholic beverage control ("ABC") license and conditions of approval will mitigate any potential impacts created by the use and will ensure that the use will not negatively affect the surrounding community.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed grocery store selling alcoholic beverages for off-premises consumption would not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity because the operational standards applicable to the ABC license and conditions of approval will address any potential negative or adverse impacts created by the use. The granting of the CUP will not negatively impact any sensitive land uses that may be nearby.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The proposed use will not adversely affect the economic stability of the area, but will instead will contribute to the City. The use will provide another establishment with sales of goods, identifying the use as an economically viable establishment in Santa Ana. In addition, the proposed establishment will contribute to the overall success of the City. Additionally, the overall site improvement proposed by Northgate market represent a major reinvestment to the commercial center.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed CUP would be in compliance with all applicable regulations and operational standards imposed on off-sale establishments selling alcoholic beverages for off-premise consumption pursuant to Chapter 41 of the SAMC. In addition, operational standards will ensure the project remains in compliance with all applicable codes and regulations related to alcohol sales to ensure that the use does not impact neighboring properties or create an attractive nuisance.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed sale of alcoholic beverages for off-premise consumption will not adversely affect the General Plan or any specific plan. The granting of CUP No. 2021-16 supports several policies contained in the General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. Furthermore, Policy 2.9 of the Land Use Element supports developments that create a business

environment that is safe and attractive. Operational standards for the proposed ABC license will maintain a safe and attractive environment in the neighborhood. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. Spectrum Wine is located within a multi-tenant industrial use center and its operation is compatible with the surrounding industrial use businesses.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The project proposes to allow the operation of an alcoholic beverage control license to sell alcoholic beverages at a bona-fide eating establishment. As such, a Notice of Exemption, Environmental Review No. 2021-115, will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2021-16, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 2603 West Westminster Avenue. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated February 28, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 28th day of February, 2022 by the following vote.

AYES: Commissioners: CALDERON, MCLOUGHLIN, MORRISSEY, PHAM,
RAMOS, WOO (6)

NOES: Commissioners:

ABSENT: Commissioners: ALDERETE (1)

ABSTENTIONS: Commissioners:



Thomas Morrissey
Chairperson

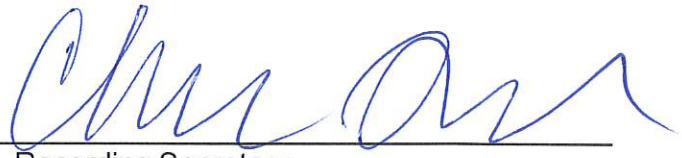
APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, CHRISTINA LEONARD, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2022-06 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on February 28, 2022.

Date: 3/14/22

A handwritten signature in blue ink, appearing to read 'Chr An', written over a horizontal line.

Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2021-16

Conditional Use Permit No. 2021-16 for off-sale of alcoholic beverages is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Building Standards Code, and all other applicable regulations:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the conditional use permit must be amended.
2. All site improvements must conform to the staff report exhibits, the site plan, floor plan and elevations incorporated herein by reference.
3. Prior to issuance of the Certificate of Occupancy, the property shall be brought into full maintenance compliance with all applicable SAMC standards. Maintenance shall include, but is not limited to: the repair and upkeep of the property; cleanup of trash and debris; repair and upkeep of any damaged and/or weathered components of the historic building (e.g., siding, windows, historic features); repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements.
4. The sale of alcoholic beverages shall be permitted in accordance with the operational standards for off-sale for off-premise consumption establishments pursuant to Section 41-196(f) of the SAMC and in accordance with the provisions of an off-sale alcoholic beverages license by the State Alcohol Beverage Control Board (ABC).
5. At least one on-duty manager with authority over the activities within the facility shall be on the premises during business hours. The on-duty manager's responsibilities shall include the monitoring of the premises to ensure compliance with all applicable State laws, Municipal Code requirements and the conditions imposed by the Department of Alcoholic Beverage Control (ABC) and the conditional use herein. Every effort shall be undertaken in managing the subject premises and the facility to discourage illegal and criminal activities and any exterior area over which the building owner exercises control, in effort to ensure that no activities associated with such problems as narcotics sales, use or possession, gambling, prostitution, loitering, theft, vandalism and truancy occur.

6. The applicant shall be responsible for monitoring both patron and employee conduct on the premises and within the parking areas under his/her control to assure such conduct does adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
7. The business shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the California Department of Alcoholic Beverage Control, California Business and Profession Code Sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with the City's business license annual renewal.
8. The market owner shall work cooperatively with the Santa Ana Police Department on an ongoing basis to establish an effective theft prevention and security program.
9. Violations of the Conditional Use Permit as contained in Section 41-647.5 of the Santa Ana Municipal Code will be grounds for permit revocation as described in Section 41-651 of the Santa Ana Municipal Code.
10. The sales of alcoholic beverages shall be permitted only between the hours of 7:00 a.m. and 12:00 a.m. (midnight) each day of the week unless otherwise modified by the granting of an after-hours conditional use permit pursuant to SAMC Section 41-196(f)(14).
11. Outside loading, unloading, and delivery shall take place only between 7:00 a.m. and 8:00 p.m. daily. The Owner shall post the contact information for onsite management in a conspicuous location at the business's front entry to facilitate communication by surrounding owners and tenants of any noise or site maintenance issues.
12. The east trellis area is to be reserved in perpetuity as an ADA path of travel and not to be used as cart storage. **Added by Planning Commission February 28, 2022.**
13. Within 90 days of adoption of this resolution, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the

construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);

- b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses;
- c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
- f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h) The execution and recordation of the maintenance agreement shall be a

condition precedent to the issuance of the ABC license.

Public Works Agency

1. Final approved plans shall depict and note all the affected parcels that are part of this project. Additional comments may follow if additional parcels are included.
2. Final approved plans shall depict and note the proposed Lot Line Adjustment lines (existing and future).
3. Plans shall identify on a separate sheet the proposed parcel lines, common areas, number of parcels and letter parcels.
4. The applicant shall provide a copy of the easement agreement for reciprocal ingress/egress access, parking, and drainage as necessary.
5. Final approved plans shall depict and dimension all existing topography, within the public right-of-way, along the property frontage (i.e., trees, driveway approach, street signs, streetlights, sidewalk and street widths, etc.).
6. Final approved plans shall depict and note the installation of all public utilities required to service the project site (i.e., new sewer lateral, water laterals, fire service, irrigation laterals and storm drain). Additional paving requirements may be identified during street improvement plan check if excavation is needed for any new utility service(s).
7. Final approved plans shall depict and note all existing easements, per the current title report. Submit copies of all the referenced and supporting documents defining each easement. Clarify easements on the site plan and/or Alta/ACSM Land Title Survey. Structures are not allowed over existing easements or along a driving aisle. The rights of the easement holder shall remain in effect without interference. If a structure is proposed to be built over an easement, a signed non-interference letter from the easement holder is required or easement holder must quitclaim rights to the easement. An updated title report will be required if quitclaim process is selected. The quitclaim(s) need(s) to be submitted to the Public Works Agency prior to any permit issuance.
8. Final approved plans shall depict a 15-foot by 15-foot sight distance triangle area at the vehicular site access locations (See Exhibit A). The height of proposed back flow device may not exceed 2.5 feet.
9. Final approved plans shall depict and note the removal and reconstruction of the easterly driveway on Westminster Avenue, per City Standards, (W=28' min., A=38' min., X=4'). The driveways must be located a minimum of 10' away from any utility facility, such as power poles, streetlights, catch basins, etc.
10. Final approved plans shall depict the proposed planter(s) in alignment with the new/existing driveway widths along Westminster Avenue.
11. Final approved plans shall depict and note grinding and capping of a minimum of 2"-3" of the existing AC pavement on Westminster Avenue along project frontage for curb lane.
12. Final approved plans shall depict the safe and efficient access of trash vehicles to trash receptacles. The following are the guidelines and the minimum requirements:
 - Depict and note the exact location(s) of the trash and recycling receptacles.

- The project shall comply with all requirements specified in SAMC Sec. 16-37.
- Minimum 40' x 16' wide staging area shall be available on service days from 6 a.m. to 6 p.m.
- Minimum vertical clearance of 25' at the staging area for bin service clearance.
- Minimum 13' vertical clearance for scout truck.
- Per CALGreen, all commercial establishments must have adequate space in trash enclosures for three waste streams - trash, recycling, and food waste. Food waste service is offered in 2-yard bins.
- All staging areas are to be onsite. No street staging is permitted.
- 42' on a 90-degree turn radius
- **All driveway and staging areas must be able to sustain a minimum gross weight of 60,000 lbs. per vehicle.**
- Maximum size of bin shall be 4 cubic yards.
- Depict the trash trucks' turning radius at all proposed internal corners.
- Provide complete circulation for trash trucks, backing up into the streets is not allowed for safety reasons.
- **All items must be noted on the final site plan.**

In addition to the items above, the applicant shall provide a copy of the will-serve letter obtained from Waste Management, Inc.

13. Prior to Building plan check submittal, the applicant shall submit a preliminary evaluation of surface drainage showing the direction and means of flow to the adjacent streets and/or on/off site storm drain facilities. Include the estimated volumetric flow (Q) in each direction.
14. Final approved plans shall depict and note the drainage pattern of this site. Cross-lot drainage is allowed only by the means of recording a covenant, reviewed and approved by the City of Santa Ana. Should a Lot Merger be recorded, if required by the Planning and Building Agency, a Covenant will be unnecessary.
15. The applicant shall submit preliminary surface drainage/utility plan that depicts all applicable "Site Design," structural "Source Control," and "Treatment Control" Best Management Practices (BMPs) in accordance with the Orange County Drainage Area Management Plan (DAMP) and the City of Santa Ana Local Implementation Plan (LIP). Site drainage should go to the landscape swale and should not be in conflict with the landscape plantings.
16. Final approved plans shall contain the note "This site will be designed and constructed in accordance with the California Regional Water Quality Control Board Santa Ana Region Order No. R8-2009-0030 discharge requirements (MS4 Permit)."

Police Department

1. The applicant shall install burglary bars at any rooftop ventilation openings or air conditioning return and supply openings that exceed ninety-six square inches.