

RESOLUTION NO. 2022-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2022-01 AS CONDITIONED TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISE CONSUMPTION AT GOPUFF LOCATED AT 2420 CAPE COD WAY FROM 7:00 A.M. UNTIL 12:00 A.M.

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. Jennifer Oden, representing Gopuff, on behalf of property owner Rick D. Kagasoff, is requesting approval of Conditional Use Permit (CUP) No. 2022-01 to allow the sale of alcoholic beverages for off-premise consumption at a new storage and warehouse facility with ancillary retail and delivery services located at 2420 Cape Cod Way.
- B. Santa Ana Municipal Code ("SAMC") Section 41-196 requires approval of a CUP for establishments wishing to sell alcoholic beverages for off-premise consumption.
- C. On March 14, 2022, the Planning Commission held a duly noticed public hearing on CUP No. 2022-01.
- D. The Planning Commission determines that the following findings, which must be established in order to grant a CUP pursuant to SAMC Section 41-638, have been established for CUP No. 2022-01 to allow the sale of alcoholic beverages for off-premise consumption at a new storage and warehouse facility with ancillary retail and delivery services located at 2420 Cape Cod Way
  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 establishment will provide an economically viable and safe method of offering additional off-premise sales available for pickup or delivery to Santa Ana visitors and residents. This will thereby benefit the community by providing an additional establishment that provide 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 sale of alcoholic beverages for off-premise consumption at this location will 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 alcoholic beverage control license and conditions of approval will address any potential negative or adverse impacts created by the use. Light industrial uses that are compatible with the proposed use including manufacturing, warehousing and wholesale uses surround and are adjacent to the site. Gopuff is intended to be a warehouse and storage facility with ancillary retail and delivery services and the addition of alcohol will be ancillary to the main use. All of the operational standards identified in SAMC Sec. 41-196 will apply to this establishment. Therefore, 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 contribute to the City. The use will provide another establishment with sales of essential 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, as it will reinvest in a vacant building by introducing a unique operations model for a traditional storage and warehouse facility. Moreover, after-hours operations would increase activity during additional business hours, thereby preserving safety and encouraging further economic development of the surrounding area.

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

The proposed conditional use permit will be in compliance with all applicable regulations and operational standards

imposed on an establishment selling alcoholic beverages for off-premise consumption pursuant to Chapter 41 of the SAMC. The facility will be maintained as a warehouse and storage facility with ancillary retail and delivery services, having suitable storage facilities and supplying an assortment of essential goods. Additionally, the establishment will utilize less than five percent of the gross floor area for ancillary retail uses and less than thirty percent for ancillary office uses, which are the maximum thresholds established by the SAMC. Moreover, 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 at this location will not adversely affect the General Plan or any specific plan. The granting of this CUP 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. A storage and warehouse facility that offers ancillary retail and delivery services of essential goods, including alcoholic beverages for off-premise consumption, presents an additional location and method of receiving goods and services, thereby positively contributing to the general wellbeing of the surrounding community. 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. A storage and warehouse facility with ancillary retail and delivery services at this location will be compatible with the surrounding businesses as it supports the light industrial environment and may reduce vehicle trips made to retailers that offer similar products since residents would have the option to have their orders delivered. Moreover, its operations are compatible with the surrounding industrial 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 sale of alcoholic beverages for off-premise consumption and after-hours operations of a storage and warehouse facility with ancillary retail and delivery services within an existing light industrial building. As such, a Notice of Exemption, Environmental Review No. 2022-2, 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. 2022-01, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 2420 Cape Cod Way. 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 March 14, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 14<sup>th</sup> day of March 2022 by the following vote.

AYES: Commissioners: ALDERETE, CALDERON< MORRISSEY, PHAM,  
RAMOS, WOO (6)  
NOES: Commissioners:  
ABSENT: Commissioners: MCLOUGHLIN (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. 2022-08 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on March 14, 2022.

Date: 5/10/22



Recording Secretary  
City of Santa Ana

## EXHIBIT A

### **Conditions of Approval for Conditional Use Permit No. 2022-01**

Conditional Use Permit No. 2022-01 to allow the sale of alcoholic beverages for off-premise consumption 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. The sale of alcoholic beverages for off-premise consumption shall be permitted in accordance with the operational standards for off-sale establishments pursuant to Section 41-196(f) of the Santa Ana Municipal Code (SAMC), in accordance with the provisions of an off-premise alcohol license by the California Department of Alcoholic Beverage Control (ABC), and in accordance with the site and floor plans attached to the staff report documenting the approved scope of the project.
3. The sale of alcoholic beverages for off-premise consumption shall occur from 7:00 a.m. to 12:00 a.m. (midnight) seven days per week, unless modified through a subsequent and separate conditional use permit application for after-hours operations pursuant to SAMC Section 41-196(f)(14).
4. The Planning Division shall review Conditional Use Permit No. 2022-01 and No. 2022-03 no later than twelve (12) months after full execution of this conditional use permit. Should any issues arise during such review, the Conditional Use Permit shall be scheduled for public hearing at the applicant's full expense for condition modification(s).
5. 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 and/or suspension as described in Section 41-651 of the Santa Ana Municipal Code.
6. At all times, the Applicant shall comply with operational standards for off-sale establishments set forth in Santa Ana Municipal Code Section 41-196(f).
7. Prior to release of the ABC license, a new trash enclosure that is fully integrated into the project, provides an off-street loading area of three hundred square feet,

and is screened from public streets, alleys and adjacent properties shall be constructed at the site.

8. Prior to release of the ABC license, parking stalls shall be restriped to provide double-line striping.
9. Prior to issuance of a 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 building ; repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements.
10. 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 on or 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.