

RESOLUTION NO. 2023-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2023-08 AS CONDITIONED TO ALLOW AFTER-HOURS OPERATIONS UNTIL 2:00 A.M. ON SATURDAY AND SUNDAY AT TACOS SIN FRONTERA LOCATED AT 310 EAST FOURTH STREET

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. Ganie Dino Design, LLC., and representing Mucho Power Inc., dba Tacos Sin Frontera, ("Applicant") and The Georges and Lane Avery Revocable Trust ("Property Owner"), is requesting approval of Conditional Use Permit ("CUP") No. 2023-08 to allow after-hours operations at a new eating establishment located at 310 East Fourth Street.
- B. Section 41-196(g)(3) of the Santa Ana Municipal Code ("SAMC") and Section 41-2007 of the Transit Zoning Code/Specific Plan No. 84 (SD-84) requires approval of an after-hours operations CUP for establishments wishing to operate between 12:00 a.m. (midnight) and 7:00 a.m.
- C. The proposed eating establishment meets all required standards specified by Section 41-196 of the SAMC and the State Department of Alcoholic Beverage Control ("ABC") for the sale of alcoholic beverages for on-premises consumption by containing a full kitchen and a menu of hot and cold food items for purchase.
- D. On April 24, 2023, the Planning Commission held a duly-noticed public hearing on CUP No. 2023-08.
- E. The Planning Commission of the City of Santa Ana determines that the following findings, which must be established in order to grant a CUP pursuant to Section 41-638 of the SAMC, have been established for CUP No. 2023-08 to allow for after-hours operations until 2:00 a.m. on Saturday and Sunday at a new eating establishment located at 310 East Fourth Street.
  1. That the proposed use will provide a service or facility which will contribute to the general wellbeing of the neighborhood or community.

After-hours operations at the subject site will provide an extended dining opportunity to the eating establishment's customers by allowing them to visit between the hours of 12:00

a.m. and 2:00 a.m. This will thereby benefit the community by providing an eating establishment with extended hours of food related amenity in a manner that is compatible with the surrounding area. Operational standards applicable to after-hours eating establishments 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.

After-hours operations at this location will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity as the use will be occupying a commercial building that is located within an established commercial area offering similar and compatible services as neighboring business. Additionally, conditions of approval will address any potential negative and/or adverse impacts created by the use. Furthermore, Tacos Sin Frontera would be an established bona-fide restaurant and would continue to operate as such throughout the extended hours of operation. The proposed outdoor dining area is designed and located in a manner that minimizes any potential impacts onto sensitive receptors. 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.

After-hours operations will not adversely affect the economic stability of the area, but will instead allow the eating establishment to compete with other nearby eating establishments that offer extended hours of operation to their customers. Moreover, operating at extended hours would allow the eating establishment to remain economically viable, thereby contributing to the overall success of the City.

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

After-hours operations at the subject site will be in compliance with all applicable regulations and operational standards imposed on an eating establishment operating after-hours pursuant to Chapter 41 of the SAMC. The facility will be maintained as a bona-fide eating establishment, having suitable kitchen facilities and supplying an assortment of foods throughout the hours of operation. In addition, operational

standards will ensure the project remains in compliance with all applicable codes and regulations related to after-hours operations 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.

Approval of proposed CUP would be consistent with several goals and policies of the General Plan. Goal 2 of the LU encourages a balance of land uses that meet Santa Ana's diverse needs. Policy 2.2 of the LU encourages a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities. Approval of the CUP would allow for extended hours of operation, which would directly result in additional hours to capture local spending in the Downtown Santa Ana area. In addition, extended hours would offer a wider range of employment opportunity for community members that need nontraditional working hours therefore, promoting the economic viability of the business. Additionally, Goal 4 of the LU supports a sustainable Santa Ana through improvements to the built environment and a culture of collaboration and Policy 2.7 of the LU encourages a mix of complementary uses, community services, and people places within a walkable area. Consistent with these goals and policies the proposed afterhours operation is requested by an eating establishment located within a built environment that is surrounded by a variety of nightlife oriented business. The proposed CUP would be complementary to other similar business in the area and provide an additional option to patrons of Downtown Santa Ana area.

**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) of the CEQA Guidelines. 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 after-hours operations at a bona-fide eating establishment. As such, a Notice of Exemption, Environmental Review No. 2023-23, 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. 2023-08, as conditioned in Exhibit A, attached hereto and incorporated herein, and grants the request for after-hours operations for Tacos Sin Frontera located at 310 East Fourth Street. 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 April 24, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 24th day of April 2023 by the following vote.

AYES: Commissioners: ESCAMILLA, LEO, MCLOUGHLIN, OLIVA, PHAM, WOO

NOES: Commissioners:

ABSENT: Commissioners: RAMOS

ABSTENTIONS: Commissioners:

  
\_\_\_\_\_  
Bao Pham  
Chairperson

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

By:  \_\_\_\_\_

John M. Funk  
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-08 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on April 24, 2023.

Date: 4/24/2023

*Nuvia Ocampo*  
Nuvia Ocampo  
Recording Secretary  
City of Santa Ana

## EXHIBIT A

### **Conditions of Approval for Conditional Use Permit No. 2023-08**

Conditional Use Permit (“CUP”) No. 2023-08 allowing after-hours operations 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 Administrative 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 if the conditional use permit must be amended.
2. The eating establishment is permitted to operate on Sunday through Thursday from 7:00 a.m. to 12:00 a.m. (midnight) and Friday and Saturday from 7:00 a.m. to ~~4:30~~ 2:00 a.m. However, the sale of alcoholic beverages for on-premises consumption shall only occur on Sunday through Thursday from 7:00 a.m. to 10:00 p.m. and Friday and Saturday from 7:00 a.m. to 12:30 a.m. ***Modified by the Planning Commission on April 24, 2023.***
3. The sale of alcoholic beverages for on-premises consumption shall be permitted in accordance with the operational standards for on-premises establishments pursuant to Section 41-196(g) of the SAMC, in accordance with the provisions of an on-premises 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.
4. The Planning Division shall review CUP No. 2023-08 no later than twelve (12) months after full execution of this CUP. Should any issues arise during such review, CUP No. 2023-08 shall be scheduled for public hearing at the applicant’s full expense for condition modification(s).
5. Violations of the CUP, as contained in Section 41-647.5 of the SAMC, will be grounds for permit suspension and/or revocation as described in Section 41-651 of the SAMC.
6. Prior to the release of this resolution, the applicant shall submit a sign application for all proposed exterior signage to the Planning Division for review and approval.
7. The premises shall not be exclusively used for private parties, including promotional events, in which the public is excluded.

8. 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 not adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
9. The business owner shall maintain and adhere to a "Good Neighbor Policy," implementing measures to ensure patrons comply with applicable noise, parking, and outdoor smoking regulations, and removing litter and preventing loitering on the areas on the immediate vicinity of the business.
10. 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 contact information shall be posted in a conspicuous location at the restaurant's front entry. 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 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.
11. The applicant shall maintain the site as necessary, including but 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.
12. Prior to the release 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; and
- 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.