

DECISION NO. 1739-16

A DECISION OF THE ZONING ADMINISTRATOR OF THE CITY OF GARDEN GROVE APPROVING CONDITIONAL USE PERMIT NO. CUP-062-2016.

BE IT RESOLVED that the Zoning Administrator of the City of Garden Grove does hereby approve Conditional Use Permit No. CUP-062-2016 for a parcel of land located on the southwest corner of Harbor Boulevard and Trask Avenue, at 13501 Harbor Boulevard, Parcel No. 100-122-31.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-062-2016, the Zoning Administrator of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by United Oil – Michael Sanchez.
2. A request for Conditional Use Permit (CUP) approval to continue the operation of an existing Shell service (gas) station, which is improved with an existing 1,358 square foot convenience store. Also, a request for CUP approval to operate the existing convenience store with an Alcoholic Beverage Control (ABC) Type "20" (Off-Sale, Beer and Wine) License.
3. The City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act.
4. The property has a General Plan Land Use Designation of Heavy Commercial, and is zoned C-3 (Heavy Commercial).
5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.
6. Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on April 14, 2016, and all interested persons were given an opportunity to be heard.
8. The Zoning Administrator gave due and careful consideration to the matter at its meeting on April 14, 2016, and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Zoning Administrator, as required under Municipal Code Section 9.32.030, are as follows:

FACTS:

The subject property is a 29,427 square foot lot, located at the southwest corner of Harbor Boulevard and Trask Avenue. The property has a General Plan Land Use Designation of Heavy Commercial and is zoned C-3 (Heavy Commercial). The subject property is adjacent to C-3 zoned properties to the west and south, a C-1 (Neighborhood Commercial) zoned property to the north, across Trask Avenue, and C-2 (Community Commercial) zoned properties to the east, across Harbor Boulevard.

In August of 1997, the City of Garden Grove approved Site Plan No. SP-193-97, to allow the reconstruction of the existing service station with a one-story 1,358 square foot convenience store, and also approved Conditional Use Permit No. CUP-348-97 to operate the service station. The subject property is currently improved with the existing service station development, which includes the existing fuel pumps, fuel tanks, one (1) canopy, the convenience store, and eight (8) parking spaces on-site. The existing service station is currently in operation as a Shell gas station.

The convenience store is located in a low-crime district, and is located in an area with an under-concentration of Alcoholic Beverage Control Off-Sale Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 136.
- The crime count for the District is 110.
- Average crime count per district in the City is 85.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 29% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 890.03.
- ABC Census Reporting District No. 890.03 allows for three (3) off-sale licenses within the District. Currently, there is one (1) off-sale license in the District. The approval of this CUP will increase the number of off-sale licenses in the district by one (1). Therefore, the total number of off sale licenses will be two (2).

PUBLIC CONVENIENCE OR NECESSITY:

A finding for public convenience or necessity would have to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license that is located within a district with a high crime rate and/or in an area with an over-concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the ABC from issuing new alcoholic licenses in areas

of over-concentration. Business and Professions Code Section 23817.7 provides the following exception:

(a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license in areas covered by Section 23817.5, if the applicant shows that public convenience or necessity would be served by the issuance, and where all of the following conditions are found to exist:

(1) The applicant premises are located in a crime reporting district that is below that specified pursuant to paragraph (1) of subdivision (a) of Section 23958.4.

(2) The applicant premises are located in an area that falls below the concentration level provided in paragraph (3) of subdivision (a) of Section 23958.4.

(3) The local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance.

Furthermore, California Business and Professions Code Section 23958 states the following:

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4

California Business and Professions Code Section 23958.4(b) provides the following exception:

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt of the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

ABC Census Reporting District No. 890.03 shows the subject site to be located in a high-crime area with an under-concentration of off-sale ABC licenses. The census tract allows for three (3) off-sale licenses, and there is currently one (1) off-license in the district. The approval of this CUP will increase the number of off-sale licenses in the district by one (1). Therefore, the total number of off sale licenses will be two (2). Staff is supportive of the request for a new original ABC Type "20" (Off-Sale, Beer and Wine) License. Staff is able to support a finding for public convenience or necessity given the potential community benefit through the addition of an ABC Type "20" License, which would provide an additional amenity that would enhance the customer shopping experience. Staff has determined that the use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

The Community Development Department and the Police Department have reviewed the request and are supporting the request. All standard conditions of approval for a Type "20" License will apply.

FINDINGS AND REASONS:

1. That the proposed use will be consistent with the City's adopted General Plan and redevelopment plan.

The site has a General Plan Land Use Designation of Heavy Commercial and is zoned C-3 (Heavy Commercial). Service stations and retail sales of alcohol are conditionally permitted uses in the C-3 zone. Provided that the conditions of approval are complied with, the use is consistent with the General Plan.

2. That the requested use at the location proposed will not: adversely affect the health, peace, comfort, or welfare of the persons residing or working in the surrounding area, or unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site, or jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare.

The use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The existing use will not change and will continue to be consistent and compatible with the existing uses. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

The use will not unreasonably interfere with the use, enjoyment or valuation of the property of other persons located within the vicinity of the site. The proposed development will be similar to the existing uses. Provided that the project adheres to the conditions of approval, the project will not unreasonably interfere with the use, enjoyment or valuation of the property of other persons located within the vicinity of the site

The use will not jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. The City's Departments have reviewed the plan, and all appropriate conditions of approval have been incorporated. The conditions of approval will ensure the public health, safety, and welfare.

3. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title or as is otherwise required in order to integrate such use with the uses in the surrounding area.

The site, with the existing site improvements and modifications, is of adequate size to accommodate the proposed uses within the surrounding area.

4. That the proposed site is adequately served: by highways or streets or sufficient width and improved as necessary to carry the kind and quantity of traffic such as to be generated, and by other public or private service facilities as required.

The site is adequately served by Harbor Boulevard and Trask Avenue and has accessible driveways providing both ingress and egress. The site is also adequately served by the public service facilities required such as public utilities: gas, electric, water, and sewer facilities.

INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Zoning Administrator incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Zoning Administrator does conclude:

1. Conditional Use Permit No. CUP-062-2016 does possess characteristics that would indicate justification of the request in accordance with Municipal Code Sections 9.32.030 (Conditional Use Permits) and 9.16.020.080 (Alcoholic Beverage Sales).

2. In order to fulfill the purpose and intent of the Municipal Code, and thereby promote the health, safety, and general welfare, the following conditions of approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-062-2016.

Dated: April 14, 2016



KARL HILL
ZONING ADMINISTRATOR

EXHIBIT "A"

Conditional Use Permit No. CUP-062-2016

13501 Harbor Boulevard

CONDITIONS OF APPROVAL

General Conditions

1. Each owner of the property shall execute, and the applicant shall record against the property, a "Notice of Discretionary Permit Approval and Agreement with Conditions of Approval," as prepared by the City Attorney's Office, within 30 days of approval. This Conditional Use Permit runs with the land and is binding upon the property owner, his/her/its heirs, assigns, and successors in interest.
2. All Conditions of Approval set forth herein shall be binding on and enforceable against each of the following, and whenever used herein, the term "applicant" shall mean and refer to the project applicant, the owner(s) and tenant(s) of the property, and each of their respective successors and assigns, including all subsequent purchasers and/or tenants. The applicant and subsequent owner/operators of such business shall adhere to the conditions of approval for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Zoning Administrator, except as otherwise provided herein.
3. This Conditional Use Permit only authorizes the operation of a service station and a convenience store with ancillary alcoholic beverage as identified on the site plan and floor plan attached to this Conditions of Approval. Approval of this Conditional Use Permit shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Modifications which do not change the intent of the project may be approved by the Community Development Director.
4. If major modifications are made to the approved floor plan, site plan, or other related changes that result in the intensification of the project or create impacts that have not been previously addressed, the proper entitlements shall be obtained reflecting such changes.
5. All conditions of approval shall be implemented at the applicant's expense, except where specified in the individual condition.

Police Department

6. There shall be no gaming tables or gaming machines as outlined in City Code Sections 8.20.010 and 8.20.050 on the premises at any time.
7. The service station and the new convenience store shall be permitted to operate 24-hours a day, seven days a week. However, if problems arise when the hours of operation need to be reduced in order to minimize any problems, the operator shall change the hours of operation as prescribed by the Police Department.
8. The sale of alcoholic beverages shall cease between the hours of 2:00 a.m. and 6:00 a.m. every day. The operator shall lock the doors to the refrigerated cooler(s) where the alcohol is displayed between the hours of 2:00 a.m. and 6:00 a.m. to ensure that patrons do not have access to alcohol beverages.
9. Refrigerated alcoholic beverages in containers of 16 ounces or less shall not be sold in single containers, and shall be sold in manufactured, pre-packaged, multiple unit quantities. Alcoholic beverages shall be stored only in the refrigerated areas shown on the floor plan.
10. All pay phones located adjacent to the premises shall be limited to out-going calls only. This condition shall be complied with within 30 days following approval of this application.
11. There shall be no customers or patrons loitering in or about the premises during the service station and convenience store hours of operation. If the store operators decide to close the store for short periods of time, there shall be no customers or patrons on or about the premises when the establishment is closed.
12. In the event security problems occur, and at the request of the Police Department, the applicant, at his own expense, shall provide a California licensed, uniformed security guard(s) on the premises during such hours as requested by the Police Department.
13. The sale of alcoholic beverages for on-site consumption on the premises is prohibited.
14. The business, prior to obtaining the Type "20" ABC License, shall show proof to the Police Department that all members of the business staff have completed the LEAD training (Licensee Education on Alcohol and Drugs) through the Alcoholic Beverage Control Department or an ABC approved "Responsible Beverage Service (RBS) Training" program.

15. In addition to, and without limiting, any other legal remedies available to the City, any violations or noncompliance with the conditions of approval may result in the issuance of an Administrative Citation of up to \$1,000 pursuant to GGMC § 1.22.010 (a).

Building Services

16. The project shall comply with the California Building Standard Code.

Community Development Department

17. The approved site plan, floor plan, and elevations are an integral part of the decision approving this Conditional Use Permit. There shall be no additional changes to the design of the plans without the approval of the Community Development Department, Planning Division. Any additional changes in the approved site plan and floor plan, which have the effect of expanding or intensifying the present use, shall require obtaining the proper entitlement (s).
18. A prominent, permanent sign, stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THE PREMISES," shall be posted in a place that is clearly visible to patrons of the licensee. The sign lettering shall be four (4) to six (6) inches high with black letters on a white background. The sign shall be displayed near or at the store's entrance, and shall also be visible to the public.
19. Any adult merchandise (books, magazines, videos) shall be kept under the control of the management, behind the cashier's counter, and must be segregated and screened from minors.
20. There shall be no pool tables or incidental amusement devices on the premises at any time.
21. There shall be no uses or activities of an adult-oriented nature permitted as outlined in City Code Section 9.08.070.
22. All on-site curbs, not associated with a parking space, shall be painted red.
23. The site improvements and subsequent operation of the site/business (es) shall adhere to the following:
 - a. There shall be no business activities, display of merchandise or storage permitted outside of the building. All business related equipment and material shall be kept inside the building except for loading or unloading purposes.

- b. Property owners, employees, and business operators shall not store vehicles anywhere on the site.
 - c. There shall be no auto detailing or auto prep work conducted on the site at any time.
24. There shall be no deliveries to or from the premises between the hours of 10:00 p.m. and 7:00 a.m., seven days a week.
 25. Litter shall be removed daily from the premises, including adjacent public sidewalks, and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris. The property owner shall be responsible for keeping the private sidewalk continuously maintained in a clean and orderly condition.
 26. Graffiti shall be removed, from the premises and all parking lots under the control of the licensee and/or the property owner, within 120 hours upon notification.
 27. In the event that a refuse storage enclosure is not already provided, the developer/property owner shall construct and maintain on the property one (1) standard refuse storage enclosure per current City standard to accommodate a trash bin for use by the convenience market and service station. Trash enclosure doors shall be kept closed and secured except during trash disposal or pickup.
 28. The applicant is advised that the establishment is subject to the provisions of State Labor Code Section 6404.5 (ref: State Law AB 13), which prohibits smoking inside the establishment as of January 1, 1995.
 29. Any satellite dish antennas installed on the premises shall be screened, subject to approval by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
 30. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. No signs advertising alcoholic beverages shall be placed on the windows or on exterior of the building.
 31. All signs shall comply with Section 9.20.070, Service Station Signs, of Title 9 of the Municipal Code. The entire property shall be limited to 200 square feet of information and directional signage, which includes all wall, canopy and freestanding signs. The pump island canopy signs shall be limited to no more than 30 square feet of sign area per canopy face allowed per street frontage, not to exceed two sign faces. Signs shall be incorporated into the canopy and shall be architecturally consistent with the overall building

- theme. All signs require a separate permit and shall be installed in accordance with the provision of the sign ordinance. A detailed signage program governing the entire property that includes that height, size, color and locations of all signs, shall be approved by the Community Development Department, Planning Division prior to installation. All exterior wall signage shall be comprised of individual channel letters.
32. Exterior advertisements displays or exterior wall advertisements shall not be allowed.
 33. The applicant shall comply with the adopted City Noise Ordinance.
 34. All lighting structures shall be placed so as to confine direct rays to the subject property. All exterior lights shall be reviewed and approved by the Planning Services Division. Lighting adjacent to residential properties shall be restricted to low, decorative type, wall-mounted lights, or ground lighting system. Lighting in the common and parking areas shall be directed, positioned or shielded in such manner so as not to unreasonably illuminate the window area of nearby residences. Parking area lighting shall be provided during the hours of darkness the establishment is open at a minimum of two-foot candles of light, and one-foot candle of light during all other hours of darkness.
 35. No exterior piping, plumbing, roof top access ladders, or mechanical ductwork shall be permitted on any exterior facade and/or be visible from any public right-of-way or adjoining property.
 36. No roof-mounted mechanical equipment shall be permitted unless a method of screening complementary to the architecture of the building is approved by the Community Development Department prior to issuance of building permits. Said screening shall block visibility of any roof-mounted mechanical equipment from view of public streets and surrounding properties.
 37. In the event that remediation equipment is required, the applicant shall install the equipment within an enclosure. The final location shall be reviewed and approved by the Community Development Department.
 38. All new on- and off-site utilities shall be installed underground.
 39. All new above-ground utility equipment (e.g., electrical, gas, telephone, cable TV) shall not be located in the front (street) setback area and shall be screened to the satisfaction of the Community Development Department.
 40. Any and all correction notice(s) generated through the plan check and/or inspection process is/are hereby incorporated by reference as conditions of approval and shall be fully complied with by the owner, applicant and all agents thereof.

41. The Conditional Use Permit is subject to periodic review by City staff, the City Council, and/or the Planning Commission, if noise or other complaints are filed and verified as valid by the Code Enforcement office or other city department concerning the violation of approved conditions, the Garden Grove Municipal Code, or any other applicable provisions of law.
42. The applicant shall submit a signed letter acknowledging receipt of the decision approving Conditional Use Permit No. CUP-062-2016, and his/her agreement with all conditions of the approval.
43. A copy of the resolution including the conditions approving Conditional Use Permit No. CUP-062-2016 shall be kept on the premises at all times.
44. The Conditional Use Permit shall be reviewed one year from the date of this approval, and every three (3) years thereafter in order to determine if the business is operating in compliance.
45. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Conditional Use Permit No. CUP-062-2016. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City including, but not limited, to any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.
46. The applicant is advised that if the use of the establishment ceases to operate for more than 90 days, then the Conditional Use Permit for the sale of alcohol shall become null and void and the new applicant shall be required to apply for a new Conditional Use Permit subject to the approval by the Community Development Department, Planning Services Division.