

RESOLUTION NO. 2023-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2023-04 AS CONDITIONED AND MAKING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION FOR THE TARGET STORE LOCATED AT 1330 EAST SEVENTEENTH 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. Beth Aboulafia with Hinman and Carmichael, LLP and representing Target Corporation (“Applicant”) and RGA Group, LLC (“Property Owner”), is requesting approval of Conditional Use Permit (“CUP”) No. 2023-04 and approval to make a determination of Public Convenience or Necessity (“PCN”) to allow the sale of alcoholic beverages for off-premises consumption at an existing Target store located at 1330 East Seventeenth Street.
- B. Santa Ana Municipal Code (“SAMC”) Section 41-196 requires approval of a CUP for establishments wishing to sell alcoholic beverages for off-premises consumption.
- C. SAMC Section 41-645.5, in accordance with Section 23958.4 of the California Business and Professions Code, requires a determination of PCN when a request for the sale of alcoholic beverages for off-premises consumption is located within an area deemed to have an undue concentration of off-premises alcohol licenses as determined by the Department of Alcoholic Beverage Control (“ABC”).
- D. On April 10, 2023, the Planning Commission held a duly noticed public hearing for CUP No. 2023-04 and determination of PCN.
- 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 SAMC Section 41-638, have been established for CUP No. 2023-04 to allow the sale of alcoholic beverages for off-premises consumption at an existing Target store located at 1330 East Seventeenth Street:

1. That the proposed use will provide a service or facility which will contribute to the general wellbeing of the neighborhood or community.

The sale of alcoholic beverages for off-premises consumption at the subject location will provide an ancillary service to Target's customers by allowing them the ability to purchase alcoholic beverages with other products. This will thereby benefit the community by providing an additional establishment that will provide goods and services via a one-stop store. Operational standards applicable to the ABC license, per SAMC Section 41-196(f), 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 sale of alcoholic beverages for off-premises consumption at the subject site 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 ABC license, per Section 41-196(f), 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. The City has not received any complaints or issued any notice of violations to the property owner or previous tenants.

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

The sale of alcoholic beverages for off-premises consumption at the subject site will not adversely affect the economic stability of the area, but will instead allow Target to compete with other nearby stores that offer a full selection of alcoholic beverages for sale to their customers. The offering of alcoholic beverages for off-premises consumption will allow Target to remain economically viable and will contribute to the overall success of the City.

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

The sale of alcoholic beverages for off-premises consumption will be in compliance with all applicable regulations and operational standards imposed on an establishment selling alcoholic beverages for off-premises consumption pursuant to Chapter 41 of the SAMC. The establishment will be maintained as a commercial building with primary retail, having suitable storage facilities and supplying an assortment of essential goods. Moreover, operational standards, per Section 41-196(f), and conditions of approval, will ensure the establishment 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 sale of alcoholic beverages for off-premises consumption at the subject site will not adversely affect the General Plan or any specific plan. The granting of CUP No. 2023-04 supports several policies contained in the General Plan. Policy 2.2 of the Land Use Element (LU) encourages a range of commercial uses to capture a greater share of local spending and employment opportunities. The sale of alcoholic beverages at the subject site will provide Target's customers with a one-stop store service which will contribute to capturing local spending. Policy LU-2.7 supports land use decisions that encourage the creation, development, and retention of businesses in Santa Ana. The granting of CUP No. 2023-04 will ensure Target remains competitive with other stores offering similar services in other cities, therefore ensuring Target's retention in Santa Ana. Lastly, Policy LU-4.1 encourages complete neighborhoods by creating a mix of complementary uses, community services, and places within a walkable area. The additional sales of alcoholic beverages for off-premises consumption will create a one-stop store within walking distance for residents residing in the general vicinity of Target.

- F. The Planning Commission of the City of Santa Ana determines that the following findings, which must be established in order to determine a PCN pursuant to SAMC Section 41-645.5, have been established for CUP No. 2023-04 to allow the sale of alcoholic beverages for off-premises consumption at an existing Target store located at 1330 East Seventeenth Street:

1. The proposed use will not be detrimental to the character of development in the immediate neighborhood and will be in harmony with the overall objectives of the General Plan.

The sale of alcoholic beverages for off-premises consumption will

not be detrimental to the character of development in the immediate neighborhood. Target is a full-scale department store located in an integrated shopping center that is designed to minimize intrusion into surrounding neighborhoods. The primary entrance to the store is located on the west side of the building and faces away from any sensitive land uses nearby. A solid block wall separates the site from residential uses abutting the site to the east. Moreover, operational standards applicable to the 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 immediate neighborhood. The granting of CUP No. 2023-04 will be in harmony with the overall objective of the General Plan as stated in Section 1.E.5, above.

2. The economic benefit outweighs the negative impacts to the community as whole.

The economic benefit associated with the sale of alcoholic beverages for off-premises consumption at the subject site will outweigh any potential negative impacts to the community as a whole. The sale of alcoholic beverages for off-premises consumption will positively affect the economic welfare of the community by adding a service to an existing department store with grocery store located within its existing operations. The additional service will offer additional community services at an existing department store with its own policies and standards for the sale of alcoholic beverages, which complement policies and standards imposed by State ABC, and generates additional sale tax revenue for the City.

3. The issuance of the license will provide a needed service not currently being met in the community.

The sale of alcoholic beverages for off-premises consumption at the subject site will provide a needed service not currently being met at the subject department store or on the same site in its immediate vicinity. A significant component of the Target store is its market section. The market section offers a full-range of grocery products, including fresh meats and produce, along with a variety of dry goods. The ability to purchase alcoholic beverages with other grocery items will offer customers a more complete shopping experience and will provide a service to Target customers by eliminating the need for an additional shopping trip to other off-sale alcoholic beverage establishments nearby.

4. There exist special and unusual circumstances present here to justify a new retail alcohol outlet when there are already similar alcohol uses existing nearby.

Target will provide its shoppers with a broad selection of goods and merchandise in a one-stop store service. The sale of alcoholic beverages for off-premises consumption at the subject location will add an additional convenience to the broad selection of goods and merchandise, which includes a mix of grocery items, apparel and accessories, health and beauty products, home decor items, baby products, toys and electronics and other every-day essentials that Target already provides to the community. Although there are other establishments selling alcoholic beverages for off-site consumption on other properties in the vicinity, none of those establishments offers the same shopping opportunities as Target in a one-stop, department store location, which will assist in creating an inclusive and economically diverse neighborhood.

5. The business cannot operate profitably without a liquor license.

The sale of alcoholic beverages for off-premises consumption at the subject site will allow Target to remain competitive with other stores offering similar services and will contribute to the on-going economic viability of its grocery selection. Over 95-percent of Target stores in California sell alcoholic beverages for off-premises consumption as part of the company's grocery offerings. The addition of alcoholic beverages for off-premises consumption at this Target location ensures the store will remain economically viable and that it offer a full selection of items that grocery customers expect.

6. The applicant has demonstrated reasonable efforts to seek community input.

As part of the application process, residents, business owners, and property owners within 1,000 feet of the Target were sent letters notifying them of Target's application request for the sale of alcohol beverages for off-premises consumption. Target and staff both contacted the representatives of the Grand Sunrise, Fairhaven, Mabury Park, and Portola Park neighborhood associations to identify any areas of concerns due to the proposed application request and no objections were received. Target will continue to seek community input and coordinate with the community to first identify and then resolve any issues should they arise.

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 the sale of alcoholic beverages for off-premises consumption at an existing Target store. As such, a Notice of Exemption, Environmental Review No. 2023-11, 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. 2023-04, as conditioned in Exhibit A, attached hereto and incorporated herein, and grants the request for determination of Public Convenience or Necessity for the sale of alcoholic beverages for off-premises consumption at an existing Target store located at 1330 East Seventeenth 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 10, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 10th day of April 2023 by the following vote.

AYES: Commissioners: ESCAMILLA, LEO, McLOUGHLIN, OLIVA,
RAMOS, WOO (6)
NOES: Commissioners: (0)
ABSENT: Commissioners: Bao Pham (1)
ABSTENTIONS: Commissioners: (0)



Bao Pham
Chairperson

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

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

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, CHELSEA SHAFER Acting Recording Secretary, do hereby attest to and certify the attached Resolution No. 2023-03 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on April 10, 2023.

Date: 4/10/2023

Chelsea Shafer
Acting Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2023-04

Conditional Use Permit No. 2023-04 to allow the sale of alcoholic beverages for off-premises 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 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 sale of alcoholic beverages for off-premises consumption shall be permitted in accordance with the operational standards for off-premises establishments pursuant to Section 41-196(f) of the Santa Ana Municipal Code (SAMC), in accordance with the provisions of an off-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.
3. The sale of alcoholic beverages for off-premises 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. 2023-04 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 SAMC, will be grounds for permit revocation and/or suspension as described in Section 41-651 of the SAMC.
6. Prior to the release of this resolution, the applicant shall conduct the following site improvements:
 - a. All rooftop equipment shall be properly screened. Applicant shall submit plans

detailing the type of screening to the Planning and Building Agency for review, approval and permit issuance.

- b. All missing or dead landscape located around the Target building and the throughout the entire site shall be rehabilitated, including, but not limited to, rehabilitation along the eastern and southern perimeter walls and along Grand Avenue. Applicant shall rehabilitate landscape and contact the Case Planner for a final walk-through inspection of the site.
 - c. All unpermitted storage containers located on the east and south of the property shall be removed.
 - d. All damaged components of cart containment system shall be repaired as needed.
 - e. All visible screw holes along the west elevation of the building shall be patched and wall repainted as needed.
 - f. The chain-link fence serving as a screen wall and located on the northeast of the property shall be repaired as needed.
7. 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 in the areas in the immediate vicinity of the business.
 8. The contact information for onsite management shall be posted in a prominent location at the primary entrance to the business to allow prompt reporting of any site issues.
 9. 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.