

RESOLUTION NO. 2024-17

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2024-09 AS CONDITIONED AND MAKING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW A TYPE 21 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR THE SALE OF BEER, WINE, AND DISTILLED SPIRITS FOR OFF-PREMISES CONSUMPTION AT THE NEXUS MARKET CONVENIENCE STORE LOCATED AT 1951 EAST DYER ROAD, UNIT H

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. Shar Pourdanesh with Nexus Market (Applicant), and on behalf of PR / Broadstone Heritage I, LLC. (Property Owner), is requesting approval of Conditional Use Permit (CUP) No. 2024-09 to allow the sale of beer, wine, and distilled spirits for off-premises consumption at a proposed Nexus Market convenience store located at 1951 East Dyer Road, Unit H.
- B. Santa Ana Municipal Code (SAMC) Section 41-196 and Section 4 of Specific Development No. 88 (SD-88) require approval of a CUP for establishments wishing to sell alcoholic beverages for off-premises consumption.
- C. SAMC Section 41-645.5 and California Business and Professions Code Section 23958.4, 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 July 22, 2024, the Planning Commission held a duly noticed public hearing for CUP No. 2024-09.
- 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. 2024-09 to allow the sale of beer, wine, and distilled spirits for off-premises consumption at a proposed Nexus Market convenience store located at 1951 East Dyer Road, Unit H:
  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 beer, wine, and distilled spirits for off-premises consumption at the subject location will provide an ancillary service to Nexus Market 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, pursuant to 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 beer, wine, and distilled spirits 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, pursuant to Section 41-196(f) of the SAMC, 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 beer, wine, and distilled spirits for off-premises consumption at the subject site will not adversely affect the economic stability of the area, but will instead allow Nexus Market 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 Nexus Market 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 beer, wine, and distilled spirits 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 component to a mixed-use building with retail, having suitable storage facilities and supplying an assortment of essential goods. Moreover, operational standards, pursuant to Section 41-196(f) of the SAMC, 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 beer, wine, and distilled spirits for off-premises consumption at the subject site will not adversely affect the General Plan or any specific plan. The granting of CUP No. 2024-09 supports several policies contained in the General Plan. Policy 1.1 of the Land Use Element (LU) encourages development that is compatible with and supporting of surrounding businesses and community needs. Similarly situated markets offering alcoholic beverages are increasingly situated in mixed-use villages in neighboring communities, such as those at the Spectrum and Los Olivos villages in Irvine. The nearest market that that offers similar goods, is the 7-11 market/gas station, open 24-hours, located approximately 0.3 miles away from the Nexus Market. By allowing the Nexus Market to remain open after-hours, this action not only provides balanced land uses, but discourages driving on a principal arterial, thus promoting a reduction of vehicle miles traveled (LU-2.5), to obtain the same goods that could be found within a brief walking distance. Policy LU-2.2 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 Nexus Market's customers with a one-stop store service which will contribute to capturing local spending. The community will benefit both from the convenience of having access to an increase in product selection that is within walking distance from the surrounding neighborhood (LU-3.1), and by alcohol being sold at an established neighborhood convenience store that is in sound compliance with all local and State ABC regulations. The granting of CUP No. 2024-09 will ensure Nexus Market remains competitive with other stores offering similar services in other cities, therefore ensuring Nexus Market'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 beer, wine, and distilled spirits for off-premises consumption will create a one-stop store within walking distance for residents residing in the general vicinity of Nexus

Market.

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. 2024-09 to allow the sale of beer, wine, and distilled spirits for off-premises consumption at a proposed Nexus Market convenience store located at 1951 East Dyer Road, Unit H:

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 beer, wine, and distilled spirits for off-premises consumption will not be detrimental to the character of development in the immediate neighborhood. Nexus Market is a convenience store located in a mixed-use development that is designed to minimize intrusion into surrounding neighborhoods. The primary entrance to the store is located on the northeast side of the building and is adjacent to other commercial establishments. 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. 2024-09 will be in harmony with the overall objective of the General Plan as stated in Section 1.G.5. above.

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

The economic benefit associated with the sale of beer, wine, and distilled spirits for off-premises consumption at the subject site will outweigh any potential negative impacts to the community as a whole. The sale of beer, wine, and distilled spirits 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 a proposed convenience store with its own policies and standards for the sale of alcoholic beverages, which complement policies and standards imposed by State ABC, and will generate 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 beer, wine, and distilled spirits for off-premises consumption at the subject site will provide a needed service not currently being met at the subject property. A significant component of the Nexus Market

store is its convenience store retail selection. The selection offers a full-range of prepared sandwiches, snacks, charcuterie supplies, and other food products, along with a variety of dry goods. The ability to purchase alcoholic beverages with other market items will offer customers a more customer-centric shopping experience and will provide a service to Nexus Market 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.

Nexus Market will provide its shoppers with a broad selection of goods and merchandise in a one-stop service. The sale of beer, wine, and distilled spirits 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, accessories, health and beauty products, baby products, and other every-day essentials. Although there are other establishments selling alcoholic beverages for off-site consumption on other properties in the vicinity, none of those establishments are located in Santa Ana and do not offer the same customer-centric shopping opportunities as Nexus Market in a one-stop, convenient 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 beer, wine, and distilled spirits for off-premises consumption at the subject site will allow Nexus Market to remain competitive with other stores offering similar services and will contribute to the on-going economic viability of its grocery selection. The addition of alcoholic beverages for off-premises consumption at this Nexus Market location ensures the store will remain economically viable and that it offer a full selection of items that 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 Nexus Market were sent letters notifying them of Nexus Market's application request for the sale of beer, wine, and distilled spirits for off-premises consumption. No objections were received. Nexus Market 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 pursuant to 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 as determined by the lead agency. The project proposes to approve CUPs to allow the sale of beer, wine, and distilled spirits for off-premises consumption and after-hours operations at a proposed convenience store located at 1951 East Dyer Road, Unit H. As such, a new Notice of Exemption (NOE), ER No. 2024-44, 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. 2024-09, as conditioned in Exhibit A, and in Exhibit B, *Operational Standards for Off-Sale Establishments*, attached hereto and incorporated herein, and grants the request for determination of Public Convenience or Necessity to allow the sale of beer, wine, and distilled spirits for off-premises consumption at a proposed Nexus Market convenience store located at 1951 East Dyer Road, Unit H. 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 July 22, 2024, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

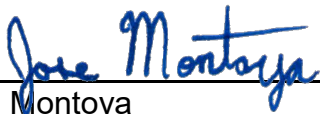
[Signatures on the following page]

ADOPTED this 22<sup>nd</sup> day of July 2024 by the following vote.

AYES: Commissioners: Carl Benninger, Christopher Leo, Jennifer Oliva, Bao Pham,  
NOES: Commissioners: Isuri Ramos, Alan Woo (6)  
ABSENT: Commissioners: (0)  
ABSTENTIONS: Commissioners: Manuel J. Escamilla (1)  
ABSTENTIONS: Commissioners: (0)

  
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Jennifer Oliva  
Chairperson

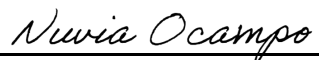
APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By:   
\_\_\_\_\_  
Jose Montoya  
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, NUVIA OCAMPO, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2024-17 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on July 22, 2024.

Date: 7/22/2024

  
\_\_\_\_\_  
Recording Secretary  
City of Santa Ana

## EXHIBIT A

### **Conditions of Approval for Conditional Use Permit No. 2024-09**

Conditional Use Permit No. 2024-09 to allow the sale of beer, wine, and distilled spirits 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/Licensee (hereinafter, "Applicant") shall comply with each and every condition listed below in order to exercise the rights conferred by this conditional use permit.

The Applicant shall 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), attached hereto as Exhibit B for reference, 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. 2024-09 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. 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.



7. 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.
8. Site illumination levels in the area immediately adjacent to the establishment must remain in compliance with Section 8-211 (Special Commercial Building Provisions) of the Santa Ana Municipal Code at all times.
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.

## EXHIBIT B

### **Operational Standards for Conditional Use Permit No. 2024-09**

Conditional Use Permit No. 2024-09 to allow the off-premise consumption 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 ("SAMC"), the California Building Standards Code, and all other applicable regulations.

The Applicant/ Licensee (hereinafter, "Applicant") shall comply with each and every operational standard listed below, pursuant to SAMC Section 41-196(f), in order to exercise the rights conferred by this conditional use permit. Pursuant to SAMC Section 41-196(f), these SAMC operational standards are reprinted to establish compliance with SAMC requirements for the granting of a Conditional Use Permit for on-premises alcoholic beverage sales.

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

1. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
2. The applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which he or she has control.
3. There shall be no exterior advertising of any kind or type, including window signs or other signs visible from outside, promoting or indicating the availability of alcoholic beverages on the premises.
4. There shall be no coin-operated games maintained on the premises at any time.
5. All public telephones shall be located on the interior of the premises.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the applicant shall be removed or painted over within twenty-four (24) hours of being applied.
7. The applicant shall post a placard prohibiting loitering, pursuant to California Penal Code ("CPC") Section 602, on the exterior of the premises.
8. It shall be the applicant's responsibility to ensure that CPC Section 602 is complied with at all times that the premises are in operation.
9. The applicant shall at all times utilize an age verification device for all purchases of alcoholic beverages.

10. The owner or manager of the licensed premises shall maintain on the premises a written security policy and procedures manual, that has been approved by the Police Department, addressing at a minimum the following items; handling obviously intoxicated persons; establishing a reasonable ratio of employees to patrons, based upon activity level, in order to monitor beverage sales and patron behavior; handling patrons involved in fighting, arguing or loitering about the building and in the immediate adjacent area that is owned, leased, rented or used under agreement by the licensee(s); verifying age/checking identification of patrons; calling the police regarding observed or reported criminal activity.
11. If there is a marked or noticeable increase in the number of police-related incidents on or near the premises, as such increase may be determined by the chief of police, the applicant may be required to provide state-licensed, uniformed security guards at a number determined by the chief of police.
12. All managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The California Department of Alcoholic Beverage Control must approve said training program. Records of each employee's successful completion of the certified training program required by this section shall be maintained on the premises of the alcoholic beverage outlet and shall be presented upon request by a representative of the City of Santa Ana.
13. Alcoholic beverages in containers of less than sixteen (16) ounces cannot be sold by single containers, but must be sold in pre-packaged multi-unit quantities.
14. The sales of alcoholic beverages shall be permitted only between the hours of 7:00 a.m. and 12:00/midnight each day of the week unless otherwise modified by the granting of an after-hours conditional use permit.
15. Existing building and required parking must conform to the provisions of Chapter 8, Article II, Division 3 of the Santa Ana Municipal Code (building security ordinance). These code conditions will require that the existing project lighting, door/window locking devices and addressing be upgraded to current code standards. Lighting standards cannot be located in required landscape planters.
16. Cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.
17. Window displays must be kept to a minimum for maximum visibility and shall not exceed twenty-five (25) per cent of window coverage.
18. Window displays and racks must be kept to a maximum height of three (3) feet including merchandise.
19. A timed-access cash controller or drop safe must be installed.

20. A silent armed robbery alarm must be installed and operable at all times.
21. Clearly distinguishable height markers shall be installed on the inside door jamb of all doors used by the public to access the store. Horizontal marks, one (1) inch wide by three (3) inch long, in different colors, and in a contrasting color to the background, shall be placed every six (6) inches beginning at five (5) feet and ending at six (6) feet six (6) inches.
22. No person under the age of twenty-one (21) shall sell or deliver alcoholic beverages.
23. A closed-circuit television system shall be provided and approved by the police department and shall be capable of viewing and recording events inside and outside the premises including the parking areas with a resolution which will clearly identify individuals for later identification as follows:
  - a) A minimum of one (1) color camera at each cash register that views the front of a customer, from the waist to the top of the head.
  - b) A minimum of one (1) color camera that views the full length side of a customer at the cash register area.
  - c) A color camera recorder capable of recording events on all cameras simultaneously.
  - d) A tape or disc storage library of recorded cameras kept for a minimum of sixty (60) days.
  - e) If video tape is used, tapes cannot be taped over more than six (6) times.
  - f) An audio recording component that will record sounds occurring at the customer counter.
  - g) An internet protocol (IP)-based system is required.
24. It shall be the operator's responsibility to submit a shopping cart containment plan pursuant to SAMC Section 33.210.
25. The operator shall be responsible for obtaining all necessary permits for building tenant and freestanding signs. This shall include any window signs and temporary banners.