

RESOLUTION NUMBER 2023-30

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT (PEN22-0179) TO ALLOW FOR THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION (TYPE 20 LICENSE) WITHIN AN EXISTING MARKET (TRES ISLAS SEAFOOD MARKET) (PEN22-0179) LOCATED AT 12125 DAY STREET, SUITE T101, ON THE SOUTH SIDE OF BOX SPRINGS ROAD, WEST OF DAY STREET (APN: 291-050-067)

WHEREAS, the City of Moreno Valley ("City") is a general law city and a municipal corporation of the State of California; and

WHEREAS, Jaime Verde ("Applicant") has filed an application for the approval of a Conditional Use Permit to allow for the sale of beer and wine for off-site consumption (Type 20 License) within an existing market (Tres Islas Seafood Market) (PEN22-0179), located within 300 feet of a residential zone and residential structure ("Application") within an existing 3,040 square-foot suite ("Proposed Project"), located at 12125 Day Street, Suite T101 (APN: 291-050-067) ("Project Site"); and

WHEREAS, Section 9.02.020 (Permitted Uses) provides that convenience stores with alcohol sales located within three hundred (300) feet or less from a residential zone or use may be allowed within the Community Commercial (CC) District, with a properly secured conditional use permit approved through the Planning Commission; and

WHEREAS, Section 9.02.060 (Conditional Use Permits) of the Moreno Valley Municipal Code acknowledges that the purpose of conditional use permits is to allow the establishment of uses that may have special impacts or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location and that the conditional use permit application process involves the review of location, design and configuration of improvements related to the Proposed Project, and the potential impact of the Proposed Project on the surrounding area based on fixed and established standards; and

WHEREAS, the Application has been evaluated in accordance with Section 9.02.060 (Conditional Use Permits) of the Municipal Code with consideration given to the City's General Plan, Zoning Ordinance, and other applicable laws and regulations; and

WHEREAS, Section 9.02.060 of the Municipal Code imposes conditions of approval upon projects for which a Conditional Use Permit is required, which conditions may be imposed by the Planning Commission to address on-site improvements, off-site improvements, the manner in which the site is used and any other conditions as may be deemed necessary to protect the public health, safety and welfare to ensure that the proposed Project will be developed in accordance with the purpose and intent of Title 9 (Planning and Zoning) of the Municipal Code; and

WHEREAS, pursuant to the provisions of Section 9.02.200 (Public Hearing and Notification Procedures) of the Municipal Code and Government Code Section 65905, a public hearing was scheduled for June 22, 2023, and notice thereof was duly published and posted, and mailed to all property owners of record within 600 feet of the Site; and

WHEREAS, on June 22, 2023, the public hearing to consider the Application was duly conducted by the Planning Commission at which time all interested persons were provided with an opportunity to testify and to present evidence; and

WHEREAS, consistent with the requirements of Section 9.02.060 (Conditional Use Permits) of the Municipal Code, at the public hearing the Planning Commission considered Conditions of Approval to be imposed upon Conditional Use Permit PEN22-0179 (“CUP”), which conditions were prepared by Planning Division staff who deemed said conditions to be necessary to protect the public health, safety and welfare and to ensure the Proposed Project will be developed in accordance with the purpose and intent of Title 9 (“Planning and Zoning”) of the Municipal Code; and

WHEREAS, at the public hearing, the Planning Commission reviewed and considered the Planning Division’s recommendation that the Proposed Project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA¹) and the CEQA Guidelines², Section 15301 (Existing Facilities) in that the Proposed Project has been found to meet all of the conditions of the Class 1 Exemption as the Proposed Project involves interior alterations and no expansion of use; and

WHEREAS, at the public hearing, the Planning Commission considered whether each of the requisite findings specified in Section 9.02.060(C) of the Municipal Code and set forth herein could be made with respect to the proposed Project as conditioned by the Conditions of Approval.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals and Exhibits

That the foregoing Recitals and attached Exhibits are true and correct and are hereby incorporated by this reference.

Section 2. Notice

That pursuant to Government Code section 66020(d)(1), notice is hereby given that the proposed Project is subject to certain fees, dedications, reservations and other exactions as provided herein, in the staff report and conditions of approval (collectively, “Conditions”); and these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the ninety-day approval period in which you may protest

¹ Public Resources Code §§ 21000-21177

² 14 California Code of Regulations §§ 15000-15387

these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun.

Section 3. **Evidence**

That the Planning Commission has considered all of the evidence submitted into the administrative record for the proposed CUP, including, but not limited to, the following:

- (a) Moreno Valley General Plan and all other relevant provisions contained therein;
- (b) Title 9 (Planning and Zoning) of the Moreno Valley Municipal Code and all other relevant provisions referenced therein;
- (c) Application for the approval of a Conditional Use Permit PEN22-0179 and all documents, records and references contained therein;
- (d) Conditions of Approval for Conditional Use Permit PEN22-0179, attached hereto as Exhibit A;
- (e) Staff Report prepared for the Planning Commission's consideration and all documents, records and references related thereto, and Staff's presentation at the public hearing;
- (f) Staff's determination that the Proposed Project is categorically exempt in compliance with the California Environmental Quality Act (CEQA) and CEQA Guidelines;
- (g) Testimony and/or comments from Applicant and its representatives during the public hearing; and
- (h) Testimony and/or comments from all persons that was provided in written format or correspondence, at, or prior to, the public hearing.

Section 4. **Findings**

That based on the content of the foregoing Recitals and the Evidence contained in the Administrative Record as set forth above, the Planning Commission makes the following findings:

- (a) The Proposed Project is consistent with the goals, objectives, policies and programs of the General Plan;
- (b) The Proposed Project complies with all applicable zoning and other regulations;
- (c) The Proposed Project will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity; and
- (d) The location, design and operation of the proposed Project will be compatible with existing and planned land uses in the vicinity.

Section 5. **Determination of Categorical Exemption**

That the Planning Commission hereby determines that the Proposed Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Existing Facilities) because it involves interior alterations and no expansion of use.

Section 6. **Notice of Exemption**

That the Planning Division is hereby directed to prepare, execute, and file a Notice of Exemption as required by Section 5.2 (Noticing Requirements) of the City's Rules and Procedures for the Implementation of the California Environmental Quality Act and CEQA Guidelines Section 15062.

Section 7. **Approval**

That based on the foregoing Recitals, Administrative Record and Findings, the Planning Commission hereby approves Conditional Use Permit PEN22-0179 subject to the Conditions of Approval for Conditional Use Permit PEN22-0179, attached hereto as Exhibit A.

Section 8. **Repeal of Conflicting Provisions**

That all the provisions as heretofore adopted by the Planning Commission that are in conflict with the provisions of this Resolution are hereby repealed.

Section 9. **Severability**

That the Planning Commission declares that, should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 10. **Effective Date**

That this Resolution shall take effect immediately upon the date of adoption.

Section 11. **Certification**

That the Secretary of the Planning Commission shall certify to the passage of this Resolution.

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PASSED AND ADOPTED THIS 22nd day of JUNE 2023.

CITY OF MORENO VALLEY
PLANNING COMMISSION

Alvin Dejohnette
Chairperson

ATTEST:

Sean P. Kelleher
Acting Community Development Director

APPROVED AS TO FORM:

Steven B. Quintanilla
Interim City Attorney

Exhibits:
Exhibit A: Conditions of Approval

Exhibit A

CONDITIONS OF APPROVAL

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Conditional Use Permit (PEN22-0179)

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CITY OF MORENO VALLEY CONDITIONS OF APPROVAL Conditional Use Permit (PEN22-0179)

EFFECTIVE DATE:

EXPIRATION DATE:

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

1. A change or modification to the land use or the approved site plans may require a separate approval. Prior to any change or modification, the property owner shall contact the City of Moreno Valley Community Development Department to determine if a separate approval is required.
2. This approval shall expire three years after the approval date of this project unless used or extended as provided for by the City of Moreno Valley Municipal Code; otherwise it shall become null and void and of no effect whatsoever. Use means the beginning of substantial construction contemplated by this approval within the three-year period, which is thereafter pursued to completion, or the beginning of substantial utilization contemplated by this approval. (MC 9.02.230)
3. The Developer shall defend, indemnify and hold harmless the City, city council, commissions, boards, subcommittees and the City's elected and appointed officials, commissioners, board members, officers, agents, consultants and employees ("City Parties") from and against any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following items: (i) any prior or current agreements by and among the City and the Developer; (ii) the current, concurrent and subsequent permits, licenses and entitlements approved by the City; (iii) any environmental determination made by the City in connection with the Project Site and the Project; and (iv) any proceedings or other actions undertaken by the City in connection with the adoption or approval of any of the above. In the event of any administrative, legal, equitable action or other proceeding instituted by any third party (including without limitation a governmental entity or official) challenging the legality, validity or adequacy of any of the above items or any portion thereof, the Parties shall mutually cooperate with each other in defense of said action or proceeding. Notwithstanding the above, the City, at its sole option, may tender the complete defense of any third party challenge as described herein. In the event the City elects to contract with special counsel to

CONDITIONS OF APPROVAL

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provide for such a defense, the City shall meet and confer with the Developer regarding the selection of counsel, and the Developer shall pay all costs related to retention of such counsel by the City.

4. The site shall be developed in accordance with the approved plans on file in the Community Development Department - Planning Division, the Municipal Code regulations, General Plan, and the conditions contained herein. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Planning Official. (MC 9.14.020)

Special Conditions

5. The Police Chief may require the business owner to provide future security within the restaurant and the shopping center parking lot to address issues that arise from the operation of the business.