

RESOLUTION NO. 2024-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2024-10 AS CONDITIONED TO ALLOW AFTER-HOURS OPERATIONS UNTIL 2:00 A.M. FOR 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. 2024-10 to allow after-hours operations until 2:00 a.m., including the 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(f) and Specific Development No. 88 (SD-88) requires approval of a CUP for establishments wishing operate between the hours of 12:00 a.m. and 7:00 a.m. The Applicant is proposing to operate the business on Friday and Saturday from 8:00 a.m. to 2:00 a.m. and sell alcohol during these hours, two hours later than the SAMC prescribed limits.
- C. On July 22, 2024, the Planning Commission held a duly noticed public hearing for CUP No. 2024-10.
- D. 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. 2024-10 to allow after-hours operations 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 proposed after-hours operations will provide an ancillary service to individuals that wish to purchase the range of prepared sandwiches, snacks, charcuterie supplies, and other food products, in addition to convenient retail necessities, from their neighborhood convenience store within walking distance to their residence. This will thereby benefit the community by

providing food-related and convenient retail amenities offering service after 12:00/midnight. Conditions of approval have will mitigate any possible nuisance associated to after-hours operations.

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 proposed after-hours operations at the subject location will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The proposed retail component use will provide an additional service to the nearby residents. The purpose of regulating establishments that operate after-hours is to set forth operating practices and procedures and to minimize impacts to surrounding areas. Staff has reviewed the applicant's request for after-hours operation and has determined that after-hours operation at the subject location, with recommended conditions of approval, will not be detrimental to the health, safety, and welfare of the community. For example, the "Good Neighbor Policy," will ensure patrons comply with applicable noise, parking, and loitering regulations. In addition, the storefront windows will be glazed in compliance with all SAMC standards to mitigate any light intrusion from the interior of the business to the nearby residential units. Furthermore, the property currently has on-site security guards that will be increased during the nighttime hours to ensure safety. In addition, the Police Department does not object to granting the conditional use permit.

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

The project site is situated along a commercial corridor that it is appropriate for the proposed commercial use and after-hours operations. The establishment will promote a balance of land uses that enhance the City's economic and fiscal viability. Providing a variety of land uses in the area strengthens the economic base of the City and improves the economic stability of the area in a positive manner.

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

The proposed project is in compliance with all applicable regulations and conditions imposed on a retail establishment operating after-hours pursuant to Chapter 41 of the Santa Ana

Municipal Code.

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 proposed use will not adversely affect the General Plan. The granting of CUP No. 2024-10 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 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 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). This will provide Nexus Market's customers with a one-stop store service which will contribute to capturing local spending. The granting of CUP No. 2024-10 will ensure Nexus Market remains competitive with other stores offering similar services in other cities, therefore ensuring Nexus Market's retention in Santa Ana.

Furthermore, Nexus Market hours of operation are in-line with SD-88 goals and Policy 3.6 of the Economic Prosperity Element (EP) since both documents encourage flexibility and up-to-date land use regulations that are responsive to best practices and community needs. 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 hours of operation will create a one-stop store within walking distance for residents residing in the general vicinity of Nexus Market, thereby greatly reducing vehicles miles traveled and prioritizing safety.

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 a CUP to allow after-hours operation a proposed Nexus Market 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. 2024-10, as conditioned for the after-hours operation of a proposed Nexus Market convenience store located at 1951 East Dyer Road, Unit H., as conditioned in Exhibit A, attached hereto and incorporated herein. 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 22nd day of July 2024 by the following vote.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Bao Pham
Chairperson

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

By: Jose Montoya
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-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on July 22, 2024.

Date: _____

Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2024-10

Conditional Use Permit No. 2024-10 to allow the after-hours operation 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), CUP No. 2024-09, 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 after-hours operation for Nexus Market shall occur from 12:00 a.m. (midnight) to 2:00 a.m. on Saturday and Sunday mornings only, unless modified through a subsequent and separate conditional use permit application for after-hours operations.
4. The Planning Division shall review Conditional Use Permit No. 2024-10 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.