

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA TO CONDUCT A DE NOVO REVIEW OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. 2023-09 AS CONDITIONED TO ALLOW SALE OF DISTILLED SPIRITS IN ADDITION TO EXISTING BEER AND WINE SALES FOR ON-PREMISES CONSUMPTION AT MARISCOS HECTOR SPORTS GRILL LOCATED AT 1208 EAST MCFADDEN AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Maria Sebold with Mariscos Hector Sports Grill ("Applicant") and representing McFadden Shopping Center, LLC. ("Property Owner"), is requesting approval of Conditional Use Permit (CUP) No. 2023-09 to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at an existing restaurant located at 1208 East McFadden Avenue.
- B. Section 41-196 of the Santa Ana Municipal Code ("SAMC") requires approval of a CUP for establishments wishing to sell alcoholic beverages for on-premises consumption.
- C. On November 8, 1971, the Planning Commission approved CUP No. 1971-34 allowing the sale of beer and wine for on-premises consumption, through a Type 41 license from the State Department of Alcoholic Beverage Control ("ABC"), at the subject site.
- D. On February 24, 2023, the applicant submitted a CUP application to the Planning Division to upgrade its existing ABC license from a Type 41 to a Type 47 license to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at the existing restaurant.
- E. On April 24, 2023, the Planning Commission held a duly noticed public hearing for Conditional Use Permit No. 2023-09. At the conclusion of this hearing, the Commission approved Conditional Use Permit No. 2023-09 subject to modified conditions of approval.
- F. The restaurant meets all required standards specified by Section 41-196 of the SAMC and ABC for the sale of alcoholic beverages for on-premises consumption by containing a full kitchen and a menu of hot and cold food items for purchase.

- G. On April 25, 2023, the Planning Division provided a summary of the Planning Commission's action to the City Council, after which a member of the City Council requested that the item be discussed during the May 2, 2023 City Council meeting.
- H. On May 2, 2023, the City Council discussed Conditional Use Permit No. 2023-09 and voted 7:0 to have the item presented to the City Council for a de novo public hearing.
- I. On June 6, 2023, the City Council held a duly noticed public hearing for a de novo review of Conditional Use Permit No. 2023-09.
- J. The City Council determines that the following findings, which must be established in order to grant a CUP pursuant to Section 41-638 of the SAMC, have been established for CUP No. 2023-09 to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at an existing eating establishment located at 1208 East McFadden Avenue.
 - 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 distilled spirits, in addition to beer and wine sales, for on-premises consumption at this location will provide an ancillary service to the eating establishment's customers by allowing them the ability to purchase alcoholic beverages with their meal. This will thereby benefit the community by providing an eating establishment with an additional and complementary food related amenity. Operational standards applicable to the ABC license, per Section 41-196 of the SAMC, 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 distilled spirits, in addition to beer and wine, for on-premises consumption at this location 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 of the SAMC, and conditions of approval will address any potential negative or adverse impacts created by the use. Existing conditions illustrate that the restaurant is located at the north end of the existing commercial building, closest to McFadden Avenue and the main

entry is facing Standard Avenue, away from residential uses. In addition, the existing block wall and landscape buffer remain in sound condition. The granting of the CUP will not negatively impact any sensitive land uses that may be nearby.

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 distilled spirits, in addition to beer and wine, for on-premises consumption at the subject location will not adversely affect the economic stability of the area, but will instead allow the eating establishment to compete with other nearby eating establishments that offer a full selection of alcoholic beverages to their customers. Moreover, the offering of distilled spirits will allow the eating establishment to remain economically viable, thereby contributing 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 distilled spirits, in addition to beer and wine, for on-premises consumption at the subject location will be in compliance with all applicable regulations and operational standards imposed on an eating establishment selling alcoholic beverages for on-premises consumption pursuant to Chapter 41 of the SAMC. The restaurant will be maintained as a bona-fide eating establishment, having suitable kitchen facilities and supplying an assortment of foods. Additionally, the eating establishment will utilize less than five percent (5%) of the gross floor area for display and storage of alcoholic beverages, which is the maximum allowed threshold established by Section 41-196(g)(25) of the SAMC. In addition, operational standards and conditions of approval will ensure the project 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 distilled spirits in addition of beer and wine for on-premises consumption at the subject location will not adversely affect the General Plan or any specific plan. The granting of CUP No. 2023-09 supports several goals and policies of the General Plan. Goal 2 of the Land Use Element (LU) encourages a balance of land uses that meet Santa Ana's diverse needs.

Policy 2.2 of the LU encourages a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities and Policy 2.7 of the LU supports land use decisions that encourage the creation, development, and retention of business in Santa Ana. Approval of CUP No. 2023-09 will contribute to providing a balance of diverse commercial land uses, which will then encourage local spending, strengthen local businesses and increase economic opportunities. Moreover, providing a variety of full-service restaurants that offer alcoholic beverages as part of their menu offers additional dining options for Santa Ana residents and visitors. Policy 4.1 of the LU, encourages complete neighborhoods by introducing a mix of complementary uses, community services, and people places within a walkable area. Approval of CUP No. 2023-09 will allow residents of Cornerstone Village neighborhood to walk to a restaurant that offers full service dining options, thereby positively contributing to the economic viability of the area by promoting local spending and walkability. Lastly, the eating establishment is located within an existing commercial area and its operations will be compatible with the surrounding commercial businesses.

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 operation of an alcoholic beverage control license to sell alcoholic beverages at a bona-fide eating establishment. As such, a Notice of Exemption, Environmental Review No. 2023-24, 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 City Council of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2023-09, as conditioned in Exhibit A, attached hereto and incorporated herein, for the sale of distilled spirits in addition to beer and wine for on-premises consumption at Mariscos Hector Sports Grill located at 1208 East McFadden Avenue. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for City Council Action dated June 6, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 6th day of June 2023 by the following vote.

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSTAIN: Councilmembers: _____
NOT PRESENT: Councilmembers: _____

Valerie Amezcua
Mayor

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, Jennifer Hall, City Clerk, do hereby attest to and certify the attached Resolution No. 2023-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on June 6, 2023.

Date: _____

City Clerk
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2023-09

Conditional Use Permit (“CUP”) No. 2023-09 allowing the sale of distilled spirits in addition to beer and wine for on-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 (“SAMC”), 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 CUP.

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 CUP.

1. Any amendment to this CUP must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the conditional use permit must be amended.
2. The sale of alcoholic beverages for on-premises consumption shall be permitted in accordance with the operational standards for on-premises establishments pursuant to Section 41-196(g) of the SAMC, in accordance with the provisions of an on-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 on-premises consumption shall be limited from 8:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 8:00 a.m. to 12:00 a.m. (midnight) on Friday and Saturday. The applicant shall notify the City in writing upon receipt of the Type 47 license issued by the State Department of Alcohol Beverage Control and of the date the business will initiate the alcohol services licensed by the State. After a six-month operating period following the initial service date, the Planning Commission shall be presented with a staff evaluation of any Police Department, Code Enforcement, Planning, and community-provided concerns. If no concerns are identified by the staff evaluation report and by the Planning Commission, the sale of alcoholic beverages may extend to 12:00 a.m. daily. **Modified by Planning Commission on February 24, 2023**
4. A modification of this CUP or a subsequent and separate CUP application shall be required for after-hours operations past 12:00 a.m. (midnight) pursuant to Section 41-196(g)(3) of the SAMC.
5. The Planning Division shall review CUP No. 2023-09 within six (6) months and again no later than one year after full execution of this conditional use permit. Should any

issues arise during such review, CUP No. 2023-09 shall be scheduled for public hearing at the applicant's full expense for condition modification(s).

6. Violations of the CUP, 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.
7. Prior to the release of the resolution, the applicant is responsible for meeting the window sign requirements contained in Section 41-872 (c) of the SAMC and obtaining the proper Planning approval and Building permits for any wall signs installed.
8. 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.
9. The applicant shall be responsible for monitoring both patron and employee conduct on the premises and within the parking areas under his/her control to assure such conduct does not adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
10. At least one on-duty manager with authority over the activities within the facility shall be on the premises during business hours. The on-duty manager's contact information shall be posted in a conspicuous location at the restaurant's front entry. The on-duty manager's responsibilities shall include the monitoring of the premises to ensure compliance with all applicable State laws, Municipal Code requirements and the conditions imposed by ABC and the conditional use herein. Every effort shall be undertaken in managing the subject premises and the facility to discourage illegal and criminal activities and any exterior area over which the building owner exercises control.
11. The applicant shall maintain the site as necessary, including but not limited to: the repair and upkeep of the property; cleanup of trash and debris; repair and upkeep of any damaged and/or weathered components of the building; repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements.
12. 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.