

RESOLUTION NUMBER R 311465

DATE OF FINAL PASSAGE DEC 11 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING CONDITIONAL USE PERMIT NO. 1848686 FOR THE VILLAGE MISSION VALLEY – PROJECT NO. 522479.

ITEM # 210 B
12/11/17

WHEREAS, The Village Mission Valley, LLC, filed an application with the City of San Diego for a Conditional Use Permit to operate an off-site alcoholic beverage outlet to sell beer, wine and distilled spirits from an existing retail convenience market; and

WHEREAS, the project site is located at 6555 Ambrosia Drive, and is an 18,000 square-foot area within The Village Mission Valley apartment complex within the Tierrasanta Community Plan area; and

WHEREAS, the project site is legally described as Lot 2 of Hilltop, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9577, filed in the office of the County Recorder of San Diego County on February 26, 1980; and

WHEREAS, on August 31, 2017, the Planning Commission of the City of San Diego considered the Conditional Use Permit No. 1848686, and pursuant to Resolution No. 4885-PC voted to recommend approval of the Permit; and

WHEREAS, on May 23, 2017, the City of San Diego as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301 (Existing Facilities); and there was no appeal of the Environmental Determination filed within the time period provided by the San Diego Municipal Code Section 112.0520; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on December 11, 2017, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 1848686:

CONDITIONAL USE PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0305

1. The proposed development will not adversely affect the applicable land use plan. The proposed alcoholic beverage outlet will be located within an existing marketplace within The Village Mission Valley apartment complex. The General Plan is supportive of complementary neighborhood shops and services that address specific community needs. The General Plan recommends providing commercial development which uses land efficiently, offers flexibility to changing resident and business shopping needs, and improves environmental quality. General Plan policies are also supportive of creating mixed use areas where residential uses are complemented by neighborhood shops and services that address specific community needs. The proposed alcoholic beverage outlet will allow residents of The Village Mission Valley apartment complex to walk to meet their shopping needs within the apartment complex. This will not only provide flexibility and create mixed uses, but will eliminate additional car trips and associated Green House Gas (GHG) emissions. The provision of alcohol sales for off-site consumption will allow residents to complete much of their convenience shopping needs within the apartment complex area consistent with General Plan and Tierrasanta Community Plan policies to provide commercial areas near residential areas. Therefore the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. Providing an alcoholic beverage outlet within this restricted residential development will allow residents to access the outlet by foot, reducing traffic congestion and vehicle miles traveled. The apartment complex is gated, therefore, access to the marketplace from outside the development is restricted. As such, the likelihood that potential patrons from outside the residential complex would visit the outlet is remote. In addition, the apartment complex will not advertise the outlet outside of the Village complex. The restricted access, and provision for off-site sales only within the residential complex will protect the health and safety

of apartment complex residents as well as the general public. The San Diego Police Department Vice Unit has reviewed the application and has approved the area for alcohol sales for off-site consumption with restrictive conditions. Therefore, the proposed development will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. This proposed alcoholic beverage outlet will be limited to off-site consumption and subjected to the limited use regulations as identified in Section 141.0502(b) and 141.0502(c). The permit controlling the development and continued use of the development for this site contains conditions addressing the project compliance with the San Diego Municipal Code and regional, state and federal regulations to prevent detrimental impacts to persons residing and/or working in the area. No deviations or variances are being requested. Therefore, the proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

4. The proposed use is appropriate at the proposed location. The alcoholic beverage outlet will be located within an existing market currently serving the adjacent residential development with a variety of convenience products. The Village Mission Valley apartments is a large, isolated apartment complex with 1,500 units and over 3,000 residents. The General Plan and Tierrasanta Community Plan encourage locating community supporting services within close proximity to residential uses. Therefore, the alcoholic beverage outlet, located within an existing market, with a full range of convenience retail products and within walking distance of residential units, is an appropriate location. The alcoholic beverage outlet will be located within an apartment complex with restricted access and it will not be advertised outside the residential development. Therefore, alcohol sales from the market will not likely be made to those living outside of the apartment complex. The apartment complex is also patrolled by private security which will protect against negative impacts to area residents associated with alcohol sales. No expansion of the existing market is required to accommodate the alcoholic beverage outlet. Therefore, the proposed use is appropriate at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Conditional Use Permit No. 1848686 is hereby granted to The Village Mission Valley, LLC, Owner/Permittee, under the terms and conditions as set forth in attached permit which is made a part of this resolution, contingent on the final passage of Ordinance No. O- 20890.

APPROVED: MARA W. ELLIOTT, City Attorney

By: Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
11/08/2017
Or.Dept: DSD
Doc. No. 1611167

Attachment: Conditional Use Permit No. 1848686

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

INTERNAL ORDER NUMBER: 24007100 SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 1848686
THE VILLAGE MISSION VALLEY, PROJECT NO. 522479
CITY COUNCIL

This Conditional Use Permit No. 1848686 is granted by the City Council of the City of San Diego to The Village Mission Valley, LLC, Owner/Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0303. The 0.41-acre site is located at 6554 Ambrosia Drive, proposed to be rezoned to the CN-1-1 zone in the Tierrasanta Community Plan area. The project site is legally described as: Lot 2 of Hilltop, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9577, filed in the office of the County Recorder of San Diego County on February 26, 1980.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate an alcoholic beverage outlet as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated DEC 11 2017, on file in the Development Services Department.

The project shall include:

- a. Operation of an alcoholic beverage outlet for sales of beer, wine and spirits for off-sale consumption within an existing market conditioned upon the issuance of a Type 21 license from the California Department of Alcoholic Beverage Control;
- b. Sales of alcoholic beverages shall be permitted between the hours of 8 AM and 10 PM Sunday through Thursday, and 8 AM and 11 PM Friday and Saturday.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC

requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by DEC 11 2017, 2020.

2. The utilization of this CUP is contingent upon the approval of a Type-21 license to sell alcohol at this location by the California Department of Alcoholic Beverage Control (ABC). The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.

3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

12. Off-street parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision made in accordance with the SDMC.

POLICE DEPARTMENT REQUIREMENTS:

13. Open containers of alcoholic beverage will not be allowed on the Off-Sale licensed portion of the premises at any time.

14. Alcoholic beverage for patron consumption will only be obtained from the Off-Sale premises by those same persons. Said alcoholic beverages cannot be opened until after patrons have seated themselves within the On-Sale licensed premises.

15. There shall be no entertainment provided of any kind on the patio area at any time.

16. Signs shall be posted at the exit/entrance of the patio as depicted on Form ABC-257 dated 03/15/2016, stating: **“NO OPEN CONTAINERS OF ALCOHOLIC BEVERAGES BEYOND THIS POINT.”** Said sign(s) shall be no less than 7” x 11” in size and contain lettering no less than 1” in height.

17. Wine shall not be sold in containers of less than 750 milliliters, with the exception of wine coolers sold in four-pack containers or more per sale.

18. Malt beverages shall not be sold in less than-six-pack containers per sale.

19. Wine shall not be sold with an alcoholic content greater than 15 percent by volume.

20. The premises shall be maintained as a convenience store, and the quarterly annual sales of alcoholic beverages shall not exceed 10 percent of the quarterly annual sales of all other products.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on DEC 11 2017 and Resolution No. 311465.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Morris E. Dye
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

The Village Mission Valley, LLC
Owner/Permittee

By _____
Kevin Martin
Executive Director

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

DEC 11 2017

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DEC 11 2017


Date of final passage _____

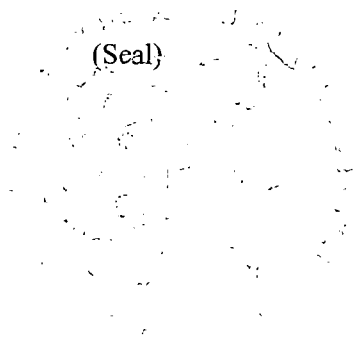
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy



<p>Office of the City Clerk, San Diego, California</p> <p>311465</p> <p>Resolution Number R-_____</p>
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