

RESOLUTION NO. 18-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIALTO, STATE OF CALIFORNIA, MODIFYING CONDITIONAL DEVELOPMENT PERMIT NO. 714 GRANTED TO RAMON GUERRERO BY EXTENDING THE HOURS OF OPERATION FOR LIVE ENTERTAINMENT BY TWO HOURS TO END AT 12:00 AM IN CONJUNCTION WITH A RESTAURANT USE LOCATED AT 611 E. FOOTHILL BOULEVARD WITHIN THE C-P (COMMERCIAL PEDESTRIAN) ZONE OF THE FOOTHILL BOULEVARD SPECIFIC PLAN.

WHEREAS, on November 14, 2012, the Planning Commission of the City of Rialto adopted Resolution No. 12-30, which granted Conditional Development Permit No. 714 (“CDP No. 714”) allowing live entertainment in conjunction with a restaurant use located at 611 E. Foothill Boulevard within the C-P (Commercial Pedestrian) Zone of the Foothill Boulevard Specific Plan (“Property”); and

WHEREAS, on November 13, 2013, the Planning Commission reviewed an annual inspection report for Conditional Development Permits within the City to determine compliance with the conditions of approval contained in each of the Conditional Development Permits; and

WHEREAS, the Planning Commission reviewed CDP No. 714 and the Rialto Police Department’s numerous calls for service to the Property between November 2012 and November 2013 for criminal activity, including but not limited to possession and sales of controlled substances, drunkenness in public, and assault with a deadly weapon; and

WHEREAS, on March 12, 2014, the Planning Commission of the City of Rialto adopted Resolution No. 14-09, which incorporated conditions of approval implementing a Police Department approved Security Plan, the prohibition of live entertainment after **9:00 p.m.**, and the quarterly review of CDP No. 714 for compliance; and

WHEREAS, in October 2015, the Rialto Police Department reviewed implementation of the Security Plan and calls for service and confirmed the reduction in criminal activity at the

Property; therefore the Rialto Police Department recommended that any modification to CDP No. 714 regarding live entertainment be restored to end at 10:00 p.m.; and

WHEREAS, on November 25, 2015, the Planning Commission of the City of Rialto adopted Resolution No. 15-42, which modified the conditions of approval for CDP No. 714 to prohibit live entertainment after **10:00 p.m.**; and

WHEREAS, on May 2, 2018, the applicant submitted a new request to modify the conditions of approval for CDP No. 714, including an upgrade to the type of ABC license from Type 41 (on-sale beer and wine) to a Type 47 (on-sale general alcohol), and an extension of operating hours to prohibit live entertainment after **12:00 a.m. midnight**; and

WHEREAS, past Police Department records and calls for service indicate a direct relationship between increased alcohol consumption and the increase in calls for service occurring at the Property; and

WHEREAS, staff has reviewed the applicant request and the recent calls for service at the establishment, and no significant incidents have occurred at the Property, indicating that the extended hours of live entertainment use can be compatible with the surrounding area under current restrictions; and

WHEREAS, staff can support an extension of operating hours prohibiting live entertainment after **12:00 a.m.**, but the Police Department has conveyed to the business owner that the request to upgrade the ABC license to a Type 47 is not recommended; and

NOW, THEREFORE, the Planning Commission of the City of Rialto does hereby find, determine, and resolve as follows:

SECTION 1. The above recitals are all true, correct, and hereby adopted herein as findings of fact.

SECTION 2. Pursuant to Section 18.66.060 of the Rialto Municipal Code, which permits the modification of a conditional development permit if any conditional use or development is modified, subject to new findings under Section 18.66.020, and based on substantial evidence presented to the Planning Commission during the various public hearings conducted with regard to

modification of CDP No. 714, including written staff reports, verbal testimony, other documents, and the conditions of approval, the Planning Commission hereby finds and determines as follows:

1. The proposed modified use is deemed essential or desirable to provide a service or facility which will contribute to the convenience or general well-being of the neighborhood or community; and

This finding is supported by the following facts:

The applicant has implemented a Security Plan and has worked diligently on safety concerns to provide a live music experience in conjunction with the restaurant with minimum to non-existent incidences in over two years. The restaurant with live music has served to attract additional customers and created an economically stable restaurant in the area. During the last request for modification the applicant provided a significant list of patronage as evidence that an extension of operating hours for live music is desirable which has contributed to convenience of the neighborhood and community. The applicant maintains that the same demand for extended operating hours for live music exists today.

However, due to the past Police Department records and calls for service indicating a direct relationship between increased alcohol consumption and the increase in calls for service occurring at the Property, the Police Department has conveyed to the business owner that the request to upgrade the ABC license to a Type 47 is not recommended. Accordingly, the proposed change in ABC license from Type 41 to Type 47 is not desirable to provide a service or facility which will contribute to the convenience or general well-being of the neighborhood, as such change in ABC license will likely have the opposite effect.

2. The proposed modified use will not be detrimental or injurious to health, safety, or general welfare of persons residing or working in the vicinity; and

This finding is supported by the following facts:

The Site is located within an existing shopping center. To the south of the Site are single-family residences; to the east, across Acacia Avenue is a retail shopping center; to the north, across Foothill Boulevard is a retail shopping center; and to the west, is approximately 3.3 acres of vacant land. The zoning of the Site and the properties to the north and west is Commercial Pedestrian (C-P). The zoning of the properties to the east is Commercial Mixed-Use (C-MU), and the zoning of the properties to the south is Single Family Residential (R-1C). The proposed modification in live entertainment hours is consistent with the Commercial Pedestrian (C-P) zone and the existing uses within the shopping center. The proposed extension in operating hours for the live entertainment to end at 12:00 a.m. is not anticipated to negatively impact the surrounding area or become nuisance provided strict adherence to the Rialto Police Department approved Security Plan, the Foothill Boulevard Specific Plan and other conditions of approval for CDP No. 714.

One the other hand, due to the past Police Department records and calls for service indicating a direct relationship between increased alcohol consumption and the increase in calls for service occurring at the Property, the Police Department has conveyed to the business owner that the request to upgrade the ABC license to a Type 47 is not recommended. Accordingly, the proposed change in ABC license from Type 41 to Type 47 is likely to result in detrimental or injurious to health, safety, or general welfare of persons residing or working in the vicinity.

3. The site for the proposed modified use is adequate in size, shape, topography, accessibility and other physical characteristics to accommodate the proposed use in a manner compatible with existing land uses; and

This finding is supported by the following facts:

The Site is located within an existing shopping center. No development will take place as a part of the proposed modifications. The entire shopping center has been designed and developed with adequate parking stalls. Adequate provisions for parking will continue to be available to serve all uses within the shopping center.

4. The site has adequate access to those utilities and other services required for the proposed use; and

This finding is supported by the following facts:

The Property is an existing retail shopping center. Existing utility and services such as water, sewer, electricity, and gas have been made, and no new utility connections are required as part of the modified use.

5. The proposed modified use will be arranged, designed, constructed, and maintained so as it will not be injurious to property or improvements in the vicinity or otherwise be inharmonious with the General Plan, its objectives, and any zoning ordinances; and

This finding is supported by the following facts:

The Site is located within an existing building that has been developed and maintained in a manner which is consistent with the Commercial Pedestrian (C-P) zone of the Foothill Boulevard Specific Plan. The proposed extension of operating hours for live music with the restaurant is consistent with the Commercial Pedestrian (C-P) zone of the Foothill Boulevard Specific Plan. The proposed extension in operating hours for the live entertainment to end at 12:00 a.m. is not anticipated to negatively impact the surrounding area or become nuisance provided strict adherence to the Rialto Police Department approved Security Plan, the Foothill Boulevard Specific Plan and other conditions of approval for CDP No. 714.

1 Due to the past Police Department records and calls for service indicating a direct
2 relationship between increased alcohol consumption and the increase in calls for service
3 occurring at the Property, however, the proposed change in ABC license from Type 41 to
4 Type 47 is likely to negatively impact the surrounding area or become a nuisance, even
5 with adherence to the Security Plan and other conditions of approval.

- 6 6. Any potential adverse effects upon the surrounding properties will be minimized to
7 every extent practical and any remaining adverse effects shall be outweighed by the
8 benefits conferred upon the community or neighborhood as a whole.

9 *This finding is supported by the following facts:*

10 The effects of the extension of live entertainment hours will be minimized through the
11 implementation of the Security Plan endorsed by the Rialto Police Department, and all
12 other conditions contained herein. The proposed extension of operating hours for live
13 music with the restaurant is anticipated to bring economic stimulus to the area in the form
14 of patrons that might not otherwise dine in the area. Therefore, any potential adverse
15 effects are outweighed by the benefits conferred upon the community and neighborhood as a
16 whole.

17 SECTION 3. CDP No. 714 is hereby modified based on the findings contained in Sections 1
18 and 2, subject to the following conditions:

- 19 1) The proposed use shall be restricted to live musical entertainment performed in
20 conjunction with the restaurant use. A dance floor and disc jockey (DJ) shall be
21 prohibited.
- 22 2) The proposed use shall adhere to the requirements, goals and objectives of the C-P
23 (Commercial Pedestrian) zone of the Foothill Boulevard Specific Plan.
- 24 3) All necessary approvals and permits from all local and state agencies shall be obtained
25 prior to issuance of a Certificate of Occupancy.
- 26 4) The development shall conform to all applicable State and local laws and ordinances.
- 27 5) A San Bernardino County Health Department certificate shall be obtained as necessary,
28 related to food and beverage service.
- 1) Entertainment uses shall only be conducted between the hours of 10:00 a.m. to 12:00 a.m..
Live entertainment shall not be conducted after 12:00 a.m.
- 7) Outdoor entertainment, music, and speakers shall be prohibited.

- 8) The security plan, reviewed and approved by the Rialto Police Department, shall be adhered to at all times.
- 9) A 24-hour security camera system shall be installed on the premises with camera locations inside and outside of the building and approved by the Rialto Police Department. All surveillance and security equipment shall be continuously maintained and in operation during business hours. An R-P card must be filed with the Rialto Police Department containing twenty-four (24) hour phone numbers of persons to be contacted.
- 10) A minimum of one-and-one half (1.5) foot-candle of light shall be provided, as measured at the ground level of the entire site, from the period of one-half hour before sunset until one-half hour after sunrise. Lighting fixtures shall be so situated and shielded as not to direct or reflect lighting glare on adjacent properties or public rights-of-way.
- 11) A City business license shall be obtained and maintained at all times.
- 12) The City business license and all regulations of this Conditional Development Permit shall be posted at all times in a conspicuous place within the establishment.
- 13) Signs displaying "No Loitering" and "No Trespassing" shall be posted on the property, to the satisfaction of the Rialto Police Department, at all times.
- 14) The service of alcohol shall be in strict compliance with the requirements of Alcoholic Beverage Control (ABC).
- 15) Outdoor lighting, except for the purpose of security, shall be prohibited.
- 16) All signage must comply with the City's Foothill Boulevard Specific Plan sign requirements and be approved by the Planning Division.
- 17) Any tinting or treating of the exterior windows, so as to obstruct visibility into the establishment, shall be prohibited.
- 18) Six (6) months after the date of issuance of the entertainment business license, the Planning Commission will review the approved facility to determine if the operator has complied with all conditions of approval of the Conditional Development Permit. Thereafter, the Planning Commission will review the approved facility on an annual basis.

1 19) If the applicant fails to comply with any of the conditions of approval placed upon
2 Conditional Development Permit No. 714, as modified and restated in this resolution, the
3 Planning Commission may initiate proceedings to revoke the Conditional Development
4 Permit in accordance with the provisions of sections 18.66.070 through 18.66.090,
5 inclusive, of the Rialto Municipal Code. Conditional Development Permit No. 703 shall
6 be revoked, suspended or modified in accordance with Section 18.66.070 of the Zoning
7 Ordinance at the discretion of the Planning Commission if:

- 8 a) The use for which such approval was granted has ceased to exist, been
9 subsequently modified or have been suspended for six (6) months or more;
10 b) Any of the express conditions or terms of such permit are violated;
11 c) The use for which such approval was granted becomes or is found to be
12 objectionable or incompatible with the character of the City and its
13 environs due to noise, loitering, criminal activity or other undesirable
14 characteristics including, but not strictly limited to uses which are or have
15 become offensive to neighboring property or the goals and objectives of
16 the City's General Plan or the Foothill Boulevard Specific Plan.

17 20) The privileges granted by the Planning Commission pursuant to approval of this
18 conditional development permit are valid for one (1) year from the effective date of
19 approval. If the applicant fails to commence the project within one year of said effective
20 date, this conditional development permit shall be null and void and any privileges granted
21 hereunder shall terminate automatically. If the applicant, or his or her successor in
22 interest, commence the project within one year of the effective date of approval, the
23 privileges granted hereunder will continue to inure to the property as long as the property
24 is used for the purpose for which the conditional development permit was granted, and
25 such uses remain compatible with adjacent property uses.

26 21) Except as otherwise provided in this resolution, the applicant(s) shall fully comply with all
27 other conditions of approval contained in CDP No. 714 that are not in conflict with this
28 CDP No. 714 Modification.

The conditions of approval restated herein shall supersede all prior conditions of approval for CDP
No. 714.

SECTION 4. The proposed modification in live entertainment hours is exempt under
CEQA Guidelines Section 15301, Existing Facilities, as the proposed modification involves
negligible or no expansion of use beyond those existing at the time of the City's determination
(E.A.R. 2018-0042). Furthermore, the proposed modification (i) by virtue of its existing location,

will not impact a sensitive environmental resource of hazardous or critical concern; (ii) will not have a cumulative impact on the environment through successive projects of the same type, in the same place, over time; (iii) does not have any unusual circumstances that will have a significant effect on the environment; (iv) does not impact a scenic highway; (v) is not located on a hazardous waste site; and (vi) will not adversely impact a historical resource. Accordingly, none of the exceptions to categorical exemptions set forth in the CEQA Guidelines, section 15300.2, apply to this proposed modification.

SECTION 5. The Chair of the Planning Commission shall sign this resolution and thereupon the same shall take effect and be in force.

PASSED, APPROVED AND ADOPTED this 30th day of May 2018.

JOHN PEUKERT, CHAIR
CITY OF RIALTO PLANNING COMMISSION