

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA DENYING APPELLANT'S APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL DEVELOPMENT PERMIT NO. 2021-0006.

WHEREAS, APN: 0133-391-11 has a zoning designation of C-P within the Foothill Specific Plan,

WHEREAS, the applicant currently possesses a Type 20 license from the California Department of Alcoholic Beverage Control (“ABC”) allowing the sale of beer and wine only for off-site consumption from the existing convenience market; and

WHEREAS, the applicant proposes to sell distilled spirits for off-site consumption, in addition to the existing sale of beer and wine for off-site consumption, from within the existing convenience market (“Project”); and

WHEREAS, pursuant to Section 18.110.040 of the Rialto Municipal Code, the Project requires a Conditional Development Permit, and the applicant has agreed to apply for Conditional Development Permit No. 2021-0006 (“CDP No. 2021-0006”); and

WHEREAS, the applicant will seek, or has sought, to obtain a Type 21 license from ABC for the sale of beer, wine, and distilled spirits for off-site consumption; and

WHEREAS, on September 8, 2021, the Planning Commission of the City of Rialto conducted a duly noticed public hearing, as required by law, on CDP No. 2021-0006, took testimony, at which time it received input from staff, the city attorney, and the applicant; heard public testimony; discussed the proposed CDP No. 2021-0006; and closed the public hearing; and

1 **WHEREAS**, on September 8, 2021, the Planning Commission voted 7-0 to approve CDP
2 No. 2021-0006 and to adopt the Planning Commission Resolution No. 21-39 to formally approve
3 CDP No. 2021-0006; and

4 **WHEREAS**, on September 22, 2021, pursuant to Chapter 18.68 (Appeals) of the Rialto
5 Municipal Code, Mr. Mtanous Issa, the appellant filed with the office of the City Clerk an appeal
6 to the City Council requesting a review and reversal of the decision previously made by the
7 Planning Commission approving CDP No. 2021-0006 (“Appeal”); and

8 **WHEREAS**, on November 9, 2021, the City Council Scheduled a public hearing for the
9 Appeal for December 14, 2021; and

10 **WHEREAS**, on December 14, 2021, in accordance with Chapter 18.68 (Appeals) of the
11 Rialto Municipal Code, the City Council conducted a public hearing of the Appeal, took
12 testimony, discussed the Appeal; and closed the public hearing; and

13 **WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

14 **NOW, THEREFORE**, the City Council hereby finds, determines, and resolves as follows:

15 **SECTION 1.** The City Council hereby specifically finds that all of the facts set forth in the
16 recitals above of this Resolution are true and correct and incorporated herein.

17 **SECTION 2.** Based on substantial evidence presented to the City Council during the
18 public hearing conducted for the Appeal, including written staff reports, verbal testimony, project
19 plans, other documents, and the conditions of approval stated herein, the City Council hereby
20 determines that CDP No. 2021-0006 satisfies the requirements of Section 18.66.020 of the Rialto
21 Municipal Code pertaining to the findings which must be made precedent to granting a Conditional
22 Development Permit. The findings are as follows:

- 23
- 24 1. The proposed use is deemed essential or desirable to provide a service or facility
25 which will contribute to the convenience or general well-being of the neighborhood
 or community; and

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

27 The Project will provide a benefit to the community and customers within the vicinity by
28 providing sales of distilled spirits in addition to typical convenience goods and beer and

1 wine. Distilled spirits sales are commonly conducted within convenience markets,
2 including others in the nearby area. Additionally, crime prevention measures contained
3 within the conditions of approval herein will ensure that the establishment contributes to
4 the well-being of the community and that it does not become a nuisance or hazard to the
5 public.

- 6
- 7 2. The proposed use will not be detrimental or injurious to health, safety, or general
8 welfare of persons residing or working in the vicinity; and

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

10 The Site consists of a 1,700 square foot tenant space within the Rialto Town Center
11 commercial center located at the northeast corner of Foothill Boulevard and Eucalyptus
12 Avenue to the north is the Rialto Eucalyptus Head Start State Preschool, and to the east is
13 the San Bernardino County Department of Behavioral Health Rialto facility. To the
14 south, across Foothill Boulevard, is the Holiday Manor mobile home park and another
15 commercial center comprised of four (4) buildings totaling approximately 16,650 square
16 feet, and to the west, across Eucalyptus Avenue, are several single-family residences, the
17 Chandler Court apartment complex, and approximately 0.45 acres of vacant land.

18 The conditions of approval contained herein require the applicant to implement and
19 permanently maintain all the safety measures documented within the Crime Prevention
20 Plan prepared for the Project. Proper maintenance of these safety measures will
21 minimize crime and nuisance activities associated with the Project to the fullest extent
22 possible.

23 The Project is consistent with the Commercial Pedestrian (C-P) land use district of the
24 Foothill Boulevard Specific Plan, the commercial uses within the Rialto Town Center
25 commercial center, and the commercial uses to the south of the Site. The nearest
26 sensitive uses are the preschool to the north of the Site and the single-family residences to
27 the west of the Site. These sensitive uses are not expected to be negatively impacted by
28 the Project since the applicant is required by the conditions of approval contained herein
to implement and permanently maintained the safety measures listed within the Crime
Prevention Plan.

Furthermore, conditions of approval contained herein restrict the display and advertising
of alcoholic beverages, and the age of employees who sell alcoholic beverages, and
require the applicant to provide public education regarding drinking laws in the form of
signage and decals at the register.

3. The site for the proposed 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:

1 The Site is within the Rialto Town Center commercial center. The commercial center
2 consists of seven (7) parcels of land, approximately 225,000 square feet or 5.17 acres in size,
3 located at the northeast corner of Foothill Boulevard and Eucalyptus Avenue. Four (4)
4 commercial buildings totaling approximately 46,300 square feet existing throughout the
5 commercial center. The applicant currently owns and operates a convenience market within
6 a 1,700 square foot tenant space within one (1) of the four (4) buildings. The applicant's
7 tenant space and the Rialto Town Center commercial center have adequate physical
8 characteristics to accommodate the addition of a new product for sale within the tenant
9 space.

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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 existing convenience market has adequate access to all utilities and services required through main water, electric, sewer, and other utility lines that are already hooked up to the Site. The Project will not require any additional utilities or services.

5. The proposed 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 and its objectives, the Foothill Boulevard Specific Plan, or any zoning ordinances; and

This finding is supported by the following facts:

The Site consists of an existing tenant space within an existing commercial center that has been developed and maintained in a manner that is consistent with the C-P land use district. The operation of the existing convenience market within the Site is also consistent with the C-P land use district. The Conditions of Approval contained herein require the applicant to conform to the standards for the sale of beer, wine, and distilled spirits set forth in Chapter 18.110 relating to visibility, sign requirements, employees, education of the public, and litter control and maintenance. If all Conditions of Approval contained herein are satisfied, the Project will not negatively impact any land uses within the vicinity.

Furthermore, the Project is consistent with Goal 3-1 of the General Plan by contributing to the strengthening of an economic base and employment opportunities.

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

This finding is supported by the following facts:

1 As conditioned, the Project's effects will be minimized through the implementation of the
2 applicant's Crime Prevention Plan, safety measures endorsed by the Rialto Police
3 Department, education of the public and employees, litter control, and maintenance.
4 Therefore, the adverse effects are outweighed by the benefits conferred upon the
community and neighborhood as a whole.

5 **SECTION 3.** The Project is categorically exempt from the requirements of the California
6 Environmental Quality Act (CEQA) pursuant to Section 15301, Existing Facilities. No new
7 construction or physical alterations are proposed as a part of the Project. The Planning Commission
8 directs the Planning Division to file the necessary documentation with the Clerk of the Board of
9 Supervisors for San Bernardino County.

10 **SECTION 4.** CDP No. 2021-0006 is granted to Samer Elian Ibrahim, in accordance with
11 the plans and application on file with the Planning Division, subject to the following conditions:
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- 13 1. CDP No. 2021-0006 is granted allowing the sale of distilled spirits for off-site
14 consumption, in addition to existing sales of beer and wine for off-site consumption,
15 from an existing convenience market located at 718 E. Foothill Boulevard and as
approved by the Planning Commission. If the Conditions of Approval specified herein
are not satisfied or otherwise completed, the Project shall be subject to revocation.
- 16 2. City inspectors shall have access to the site to reasonably inspect the site during
17 normal working hours to assure compliance with these conditions and other codes.
- 18 3. The applicant shall indemnify, protect, defend, and hold harmless, the City of Rialto,
19 and/or any of its officials, officers, employees, agents, departments, agencies, and
20 instrumentalities thereof (collectively, the "City Parties"), from any and all claims,
21 demands, law suits, writs of mandamus, and other actions and proceedings (whether
22 legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative
dispute resolutions procedures (including, but not limited to arbitrations, mediations,
23 and other such procedures), (collectively "Actions"), brought against the City, and/or
any of its officials, officers, employees, agents, departments, agencies, and
24 instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or
annul, the any action of, or any permit or approval issued by, the City and/or any of
25 its officials, officers, employees, agents, departments, agencies, and instrumentalities
thereof (including actions approved by the voters of the City), for or concerning the
26 Project (collectively, the "Entitlements"), whether such Actions are brought under the
California Environmental Quality Act, the Planning and Zoning Law, the Subdivision
27 Map Act, Code of Civil Procedure Chapter 1085 or 1094.5, the California Public
Records Act, or any other state, federal, or local statute, law, ordinance, rule,
28 regulation, or any decision of a court of competent jurisdiction. This condition to

1 indemnify, protect, defend, and hold the City harmless shall include, but not limited
2 to (i) damages, fees and/or costs awarded against the City, if any, and (ii) cost of suit,
3 attorneys' fees and other costs, liabilities and expenses incurred in connection with
4 such proceeding whether incurred by applicant, Property owner, or the City and/or
5 other parties initiating or bringing such proceeding (collectively, subparts (i) and (ii)
6 are the "Damages"). Notwithstanding anything to the contrary contained herein, the
7 Applicant shall not be liable to the City Parties under this indemnity to the extent the
8 Damages incurred by any of the City Parties in such Action(s) are a result of the City
9 Parties' fraud, intentional misconduct or gross negligence in connection with issuing
10 the Entitlements. The applicant shall execute an agreement to indemnify, protect,
11 defend, and hold the City harmless as stated herein within five (5) days of approval of
12 CDP No. 2021-0006.

- 13 4. In accordance with the provisions of Government Code Section 66020(d)(1), the
14 imposition of fees, dedications, reservations, or exactions for this Project, if any, are
15 subject to protest by the applicant at the time of approval or conditional approval of
16 the Project or within 90 days after the date of the imposition of the fees, dedications,
17 reservations, or exactions imposed on the Project.
- 18 5. The sale of beer by the individual bottle or can is prohibited.
- 19 6. The Crime Prevention Plan endorsed by the Rialto Police Department, attached to this
20 Resolution as "Exhibit A" shall be adhered to at all times. Crime prevention measures,
21 in the Crime Prevention Plan and as follows, shall be incorporated into the design and
22 operation of the business:
 - 23 a. The management shall be responsible for educating the public regarding drunken
24 driving laws and the related penalties for breaking those laws. This includes
25 minimum age laws, open container laws and laws related to driving under the
26 influence of alcohol and shall be accomplished by posting prominent signs or
27 decals, providing brochures at the point of purchase and providing adequate
28 training for employees.
 - b. Surveillance cameras shall be installed and shall be available to Rialto Police
Department upon request.
 - c. Any coolers containing alcoholic beverages shall automatically lock at 2:00 a.m.
and unlock at 6:00 a.m. daily.
 - d. Consumption of any alcoholic beverages on site is prohibited.
 - e. No advertisement of beer, wine, and distilled spirits on the exterior of the
building, including window decals, posters, signs, etc.

- 1 f. A minimum of one-and-one half (1.5) foot-candle of light shall be provided, as
2 measured at the ground level of the entire site, from the period of one-half hour
3 before sunset until one-half hour after sunrise. Lighting fixtures shall be so
4 situated and shielded as not to direct or reflect lighting glare on adjacent
5 properties or public rights-of-way.
- 6 g. A locking device shall be installed on the cash register. An adequate floor safe
7 shall be installed behind the counter. Only a minimum amount of cash shall be
8 kept in the cash register at all times.
- 9 h. Burglary and robbery alarm systems shall be installed as required and approved
10 by the Rialto Police Department. A telephone with speaker push button alarm
11 shall be installed. The telephone must have a separate button that automatically
12 dials into 911 and will transmit on-going conversations and activity.
13 Alternatively, a panic-button, which automatically contacts the Rialto Police
14 Department upon activation, may be installed at each register. A 24-hour
15 security camera system shall be installed on the premises with camera locations
16 approved by the Rialto Police Department. All surveillance and security
17 equipment shall be continuously maintained and in operation during business
18 hours. Surveillance footage shall be provided to the Rialto Police Department
19 within 12 hours after a request has been made for said footage. The software or
20 media player required to view the type of video format shall be provided to the
21 Rialto Police Department, if necessary. An R-P card must be filed with the
22 Rialto Police Department containing twenty-four (24) hour phone numbers of
23 persons to be contacted.
- 24 i. The height of the cash register counter shall be no more than forty-two (42)
25 inches above the floor level and shall be illuminated during the hours of darkness
26 so as to be clearly visible through the window areas.
- 27 j. Employees on duty who sell alcoholic beverages must be at least 21 years of age
28 and shall comply with the ABC rules and regulations.
- k. The business licensee for the convenience market shall maintain a litter control
program around the exterior of the convenience market in order to minimize the
resultant impacts of litter on properties adjacent to the store. An exterior trash
receptacle for employee and customer use shall be placed near the entrance of
the store.
- l. A building maintenance program shall be established for the purposes of
maintaining the building structure and landscaping on-site in good physical
appearance.
7. All signage shall comply with Section 18.102 (Regulation of Signs) of the Rialto
Municipal Code. The premises on which such business is located shall be posted to

1 indicate that it is unlawful for any person to drink or consume alcoholic beverages
2 in any public place or posted premises.

- 3 8. Six (6) months after the date of approval, the Planning Commission may review
4 Conditional Development Permit No. 2021-0006 to determine if the operator has
5 complied with all of the required conditions of approval. Thereafter, the Planning
6 Commission may review the approved facility on an annual or as needed basis.
- 7 9. The privileges granted by the Planning Commission pursuant to approval of this
8 Conditional Development Permit are valid for one (1) year from the effective date of
9 approval. If the applicant fails to commence the project within one year of said
10 effective date, this conditional development permit shall be null and void and any
11 privileges granted hereunder shall terminate automatically. If the applicant or his or
12 her successor in interest commences the project within one year of the effective date
13 of approval, the privileges granted hereunder will continue inured to the property as
14 long as the property is used for the purpose for which the conditional development
15 permit was granted, and such use remains compatible with adjacent property uses.
- 16 10. If the applicant fails to comply with any of the Conditions of Approval placed upon
17 Conditional Development Permit No. 2021-0006, the Planning Commission may
18 initiate proceedings to revoke the Conditional Development Permit in accordance
19 with the provisions of sections 18.66.070 through 18.66.090, inclusive, of the Rialto
20 Municipal Code. Conditional Development Permit No. 2021-0006 shall be revoked,
21 suspended or modified in accordance with Section 18.66.070 of the Zoning
22 Ordinance at the discretion of the Planning Commission if:
- 23 a) The use for which such approval was granted has ceased to exist, been
24 subsequently modified or have been suspended for six (6) months or more;
 - 25 b) Any of the express conditions or terms of such permit are violated;
 - 26 c) The use for which such approval was granted becomes or is found to be
27 objectionable or incompatible with the character of the City and its
28 environs due to noise, loitering, criminal activity or other undesirable
characteristics including, but not strictly limited to uses which are or have
become offensive to neighboring property or the goals and objectives of
the Commercial Pedestrian (C-P) land use district, the Foothill Specific
Plan, and the City's General Plan.

25 **SECTION 5.** The City Council hereby denies the Appeal and upholds the previous
26 decision of the Planning Commission approving CDP No. 2021-0006 on the grounds that the
27 Project complies with the requirements contained in Chapter 18.110 (Regulation of the Off-Sale of
28

Alcoholic Beverages) of the RMC or the required findings necessary for approval contained in
Section 18.66.020 of the RMC.

SECTION 6. The Mayor shall sign the passage and adoption of this resolution and
thereupon the same shall take effect and be in force.

PASSED, APPROVED AND ADOPTED this 14th day of December, 2021.

DEBORAH ROBERTSON, MAYOR

ATTEST:

BARBARA MCGEE, CITY CLERK

APPROVED AS TO FORM:

ERIC S. VAIL, CITY ATTORNEY

5. Any other Crime related measure required by the police department which are intended to mitigate the cost of the city provide services for the proposed convenience type store.

- The sale of drug paraphernalia, gang paraphernalia, and adult-oriented magazines and materials is prohibited.
- **Crime prevention measures, as endorsed by the City of Rialto Police Department, shall be incorporated into the design and operation of the business as follows:**
 - 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.
 - A locking device shall be installed on the cash register. An adequate floor safe shall be installed behind the counter. Only a minimum amount of cash shall be kept in the cash register at all times.
 - Self – locking refrigerator doors for the coolers that contain alcoholic beverages. The doors shall auto – lock at 2:00 am and unlock at 6:00 am without interaction from an employee.
 - Burglary and robbery alarm systems shall be installed as required and approved by the Rialto Police Department. A telephone with speaker push button alarm shall be installed. The telephone must have a separate button that automatically dials into 911 and will transmit on-going conversations and activity. Alternatively, a panic-button, which will be transferred to the Rialto Police Department upon activation, may be installed at each register. A 24-hour security camera system shall be installed on the premises with camera locations approved by the Rialto Police Department. All surveillance and security equipment shall be continuously maintained and in operation during business hours. Surveillance footage shall be provided to the Rialto Police Department within 12 hours after a request has been made for said footage. The software or media player required to view the type of video format shall be provided to the Rialto Police Department, if necessary. An R-P card must be filed with the Rialto Police Department containing twenty-four (24) hour phone numbers of persons to be contacted.
 - All tobacco products will be displayed and sold from behind the cash register counter area. The height of the cash register counter shall be no more than forty-two (42) inches above the floor level, and shall be illuminated during the hours of darkness so as to be clearly visible through the window areas.

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