



**REGULAR MEETING OF THE
MONTCLAIR PLANNING COMMISSION**

to be held in the Council Chambers
5111 Benito Street, Montclair, California

Monday, August 28, 2023
7:00 P.M.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/95858571900>
Dial Number: 1-(669)-900-6833
Meeting ID: 95858571900

*To make a public comment or speak on an agenda item, including a public hearing, please complete a Speaker Card located in the Council Chambers or online before the meeting at <https://www.cityofmontclair.org/public-comment/>. Written comments (200-word limit per agenda item and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to pcclerk@cityofmontclair.org at least one hour before the meeting begins. The chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate time during the meeting. Those participating remotely may request to speak using the "raise hand" function in Zoom (dial *9 if on the phone, and then *6 to un-mute when called on to speak).*

Please be advised that those participating via Zoom do so at their own risk. The meeting will not be suspended or cancelled if any technical issues occur during the meeting.

AGENDA

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **APPROVAL OF MINUTES**

June 26, 2023

5. **ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS**

The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.

Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete an online public comment form as described above.

6. **AGENDA ITEMS**

| | |
|--------------------------|---------------------------------------------------|
| A. CASE NUMBER | 2023-21 |
| Project Address | 4432 Holt Boulevard, Units A, B, and C |
| Project Applicant | 4480 Holt Boulevard Montclair LLC/KZMB LLC |
| Project Planner | Silvia Gutiérrez |

Request:

A request for a Conditional Use Permit to allow a Type 41 (On-Premises consumption of Beer and Wine License) in conjunction with bona fide meals in the 3,100 square-foot Habachihana Grill restaurant.

CEQA Determination:

The project qualifies as Class 1 exempt under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed on-premises sale of beer and wine (Type 41). Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine.

- B. CASE NUMBER 2023-25**
- Project Address 5474 Moreno Street**
- Project Applicant A-SF, Inc.**
- Project Planner Silvia Gutiérrez**

Request:

A request for a Conditional Use Permit to allow a Type 41 (On-Premises consumption of Beer and Wine License) in conjunction with bona fide meals in the 1,300 square-foot at SED Cocina Mexican Food Restaurant.

CEQA Determination:

The project qualifies as Class 1 exempt under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed on-premises sale of beer and wine (Type 41). Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine.

7. INFORMATION ITEMS

Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back, or place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly, report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.

8. ADJOURNMENT

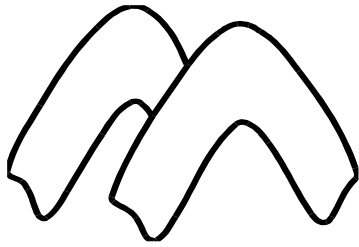
The next regular meeting of the Planning Commission will be held on September 11, 2023, at 7:00 P.M.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Planning Commission after the publication of the agenda packet are available for public inspection on the City's website at www.cityofmontclair.org/agendas or at Montclair City Hall in the Community Development Department located at 5111 Benito Street, Montclair, from 7:00 A.M. to 6:00 P.M., Monday through Thursday.

If you need special assistance to participate in this meeting, please call (909) 625-9477 or e-mail pcclerk@cityofmontclair.org. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

CERTIFICATION OF AGENDA POSTING

I, Michael Diaz, Secretary of the Montclair Planning Commission, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on August 24, 2023.



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 08/28/23

AGENDA ITEM 6.a

Case No. 2023-21

Application: A request for a Conditional Use Permit to allow a Type 41 (On-Premises consumption of Beer and Wine License) in conjunction with bona fide meals in the 3,100 SF Habachihana Grill restaurant.

Project Address: 4432 Holt Boulevard, Units A, B, and C

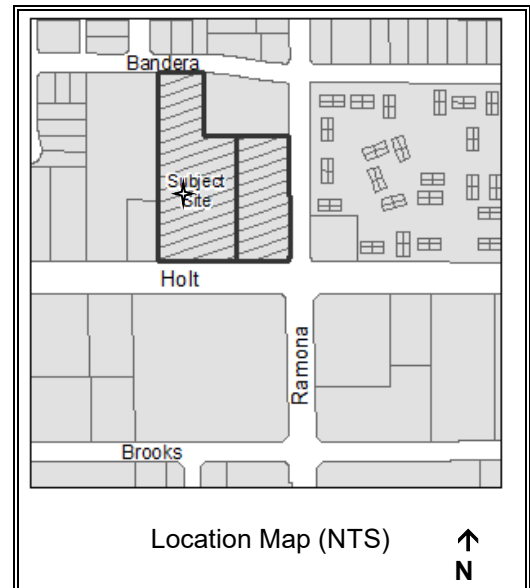
Assessor Parcel Nos: 1009-493-10-0000

Property Owners: 4480 HOLT BLVD MONTCLAIR LLC/KZMB LLC

General Plan: General Commercial

Zoning: Commercial - Holt Boulevard Specific Plan

City/Public Utility Easements: None



| Adjacent Land Use Designations and Existing Uses | | | |
|--------------------------------------------------|---------------------------|-----------------------------------------------------|----------------------------------------------------------|
| | <i>General Plan</i> | <i>Zoning</i> | <i>Existing Use of Property</i> |
| Site | Commercial | "Commercial" Holt Boulevard Specific Plan (HBSP) | Commercial Center "Orchard Plaza" |
| North | Commercial | "Commercial" - HBSP | Multi-Tenant Commercial w/Laundromat/Market/Fast Food |
| East | Commercial | "Commercial" - HBSP | 7-11 Store |
| | Medium 8-14 units/ac | R-3 Multiple Family Residential | Townhomes |
| South | Commercial | "Business Park" – HBSP | Multi-tenant Industrial Park |
| West | Medium 8-14 Units/acre | "Commercial" - HBSP "Mobile Home Park" HBSP | Scuba Rental Business and Mobile Home Park |

Report on Item Number 6.a

PUBLIC HEARING – CASE NUMBER 2023-21

| | |
|-----------------------------|-----------------------------------------------|
| APPLICATION TYPE(S) | Conditional Use Permit |
| NAME OF APPLICANT | 4480 Holt Boulevard Montclair LLC/KZMB LLC |
| LOCATION OF PROPERTY | 4432 Holt Boulevard, Units A, B, C |
| GENERAL PLAN DESIGNATION | General Commercial |
| ZONING DESIGNATION | Commercial - Holt Boulevard Specific Plan |
| EXISTING LAND USE | Orchard Plaza Shopping Center |
| ENVIRONMENTAL DETERMINATION | Categorically Exempt (Section 15301) |
| PROJECT PLANNER | Silvia Gutiérrez |

Project Description

The applicant is requesting approval of a Conditional Use Permit (CUP) to allow the on-premises sale of beer and wine Type 41 Alcoholic Beverage Control (ABC) license in conjunction with an existing eating establishment. The Habachihana Grill restaurant, which specializes in *Teppanyaki-style* cuisine, occupies an endcap lease space within the Orchard Plaza retail center located at the northwest corner of Holt Boulevard and Ramona Avenue. The request does not include outdoor consumption of beer and wine.

The existing restaurant is 3,100 SF in size and contains a dining area with tables and 93 seats, a kitchen area, a walk-in freezer, and four restrooms. The restaurant operates Monday through Sunday, from 11:00 a.m. to 10:00 p.m. Floor plans showing the interior layout of the existing restaurant are provided in the Commission packets for reference.

Background

- Section 11.42.040.A of the Montclair Municipal Code requires approval of a CUP for the on-sale of beer and wine in conjunction with a bona fide eating establishment.
- There are Habachihana Grill restaurants currently in operation in Southern California including the cities of Anaheim, Huntington Beach, and Los Angeles. The Montclair restaurant opened in 2022.

- Habachichana Grill took over the lease space from a previous food use (Pho Noodle) and made interior improvements in 2022 to suit its restaurant format.

Planning Division Comments

Staff is supportive of the request to offer beer and wine in conjunction with meals served at the establishment. The Habachihana Grill restaurant is a sit-down/take-out restaurant that serves cooked-to-order food and typically includes on-premises beer and wine sales as an incidental portion of the business. The restaurant offers a variety of sushi, bowls, and plates cooked on a “Teppan Grill” and traditionally enjoyed with an alcoholic beverage such as beer or sake. Habachihana has maintained this tradition by offering alcoholic beverages at its Anaheim and Huntington Beach restaurants. Staff reached out to planning staff in those cities and no issues were reported.

The sale and consumption of alcoholic beverages in conjunction with a bona fide restaurant at this location is a compatible and consistent land use with other commercial retail-type businesses in the center. Accordingly, conditions of approval have been included to ensure the safety and general welfare of the surrounding area are maintained. Moreover, Habachichana Grill is a restaurant and does not include more problematic elements such as a dance floor, live entertainment, or pool tables as part of its business format.

The Orchard Plaza retail center was developed with 229 parking spaces, which provides sufficient spaces to accommodate all tenants in the center including restaurant and food uses, including the subject food use. With 93 seats, the restaurant requires 22 spaces, within the center parking lot. Staff visited the site at different times of the day on the weekend and observed an ample amount of parking spaces within the parking field. The addition of beer and wine with meals (Type 41 ABC license) to the existing restaurant is not expected to make a significant difference in the existing parking situation at the center.

The Police Department reviewed the proposed application and did not object to the proposal to allow for the on-premises sale of beer and wine in conjunction with the existing food use because the sale of alcoholic beverages is not intended to be a major portion of the business, such as would be the case with a bar or nightclub. The Police Department provided conditions of approval that include the requirement for video surveillance of the premises, which is consistent with recent City approvals allowing the on-premises sale and service of alcoholic beverages for restaurant uses.

Lastly, the applicant will be required to install signs stating “No Loitering or Consumption of Alcoholic Beverages on the Premises” on the exterior of the building and within all parking areas in plain view of employees and customers.

Concentration of Businesses Serving Alcoholic Beverages

The project site is located within Census Tract Number 3.05, which allows up to four on-sale ABC licenses. According to ABC records, there is currently one on-sale (Type 41 License) within the census tract; therefore, ABC does not require a finding of public convenience or necessity in order to issue a new license.

City staff and the Police Department support and find the request for the on-premises sale of beer and wine for the existing restaurant desirable to the public convenience and necessity. The sale of beer and wine will not be a major portion of the business but will simply offer customers an expanded choice of beverage options for those who are interested.

The Type 41 ABC License application is not anticipated to negatively affect the surrounding area, given:

1. The beer and wine sales would be an ancillary portion of the business;
2. The restaurant has limited hours of operation;
3. The restaurant is operated in a professional manner; and
4. There is no bar associated with this request.

Moreover, the proposed restaurant is located within a flourishing and well-established shopping center, in a primary commercial area of the City where another restaurant in the center offers alcoholic beverages to customers. With this approval, there would be two Type 41 Licenses (On-sale Beer and Wine only) in the subject census tract.

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP for on-sale beer and wine in conjunction with a bona fide eating establishment can be made as follows:

- A. The proposed on-premises sale of beer and wine (Type 41 ABC License) in conjunction with the full menu and food service provided within a bona fide eating establishment (restaurant) is essential and desirable to the public convenience and public welfare, in that the existing restaurant use increases the variety of food uses offered within the community that allows patrons the option of purchasing beer and wine to consume with their meal. Moreover, the proposed restaurant is located within a well-maintained commercial center.
- B. That granting the CUP for the proposed restaurant with the on-premises sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that, the restaurant is located in properly developed lease space within a newer retail commercial development with adequate parking, security, lighting, etc. Moreover, the existing restaurant use and proposed on-sale of beer and wine with bona fide meals is compatible with

surrounding commercial uses and will not negatively influence any sensitive land uses in the surrounding area.

- C. The existing restaurant with the on-premises sale of beer and wine at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-premises sale of beer and wine in the Commercial zoning district of the Holt Boulevard Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use so that the on-sale of beer and wine does not detract from the general quality of the subject use, commercial center, or the surrounding area. The project has been conditioned so that the restaurant use will be operated in a manner that will not be detrimental to the health and safety of the surrounding community. In addition, the Police Department reviewed the proposal and supports the application subject to the attached conditions of approval.
- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses (including food uses) within the retail commercial area.

Public Notice and Comments from the Public

This item was published as a public hearing notice in the Inland Valley Daily Bulletin newspaper on August 18, 2023, as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet from the boundaries of the subject property and courtesy notices were distributed to tenants within the adjacent portion of the center in which the property is located. As of the preparation of this agenda report, no comments were received from the public or neighboring businesses regarding the application.

Environmental Assessment

The project qualifies as Class 1 exempt under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed on-premises sale of beer and wine (Type 41 License). Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine.

Planning Division Recommendation

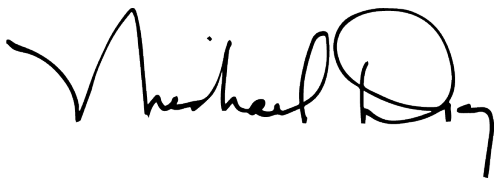
Staff recommends that the Planning Commission take the following action(s):

- A. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines

Section 15301, because this request does not require any significant physical changes to the existing lease space or to the fully developed site.

- B. Move to approve a Conditional Use Permit under Case No. 2023-21 for the on-premises sale of beer and wine (Type 41 ABC license) in conjunction with an existing 3,100 SF bona fide eating establishment known as Habachihana Grill restaurant at 4432 Holt Boulevard, Units A, B, and C, per the submitted plans and as described in the staff report, subject to the conditions of approval in attached Resolution 23-1985.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz". The signature is fluid and cursive, with a large, prominent "D" at the end.

Michael Diaz
Director of Community Development

MD/sgutiérrez

c: 4480 Holt Boulevard Montclair LLC/KZMB LLC, 606 S. Olive Street, Suite 600, Los Angeles, CA 90014
Angelyn Mendoza, ARA Liquor Consultants, 444 E. Huntington Drive, Suite 309 Arcadia, CA 91006

RESOLUTION NUMBER 23-1985

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2023-21 GRANTING AN ABC TYPE 41 (ON-PREMISES SALE OF BEER AND WINE) IN CONJUNCTION WITH BONA FIDE MEALS WITHIN THE DINING AREA OF AN EXISTING 3,100 SF RESTAURANT AT 4432 HOLT BOULEVARD, UNITS A, B, AND C IN THE COMMERCIAL ZONING DISTRICT OF THE HOLT BOULEVARD SPECIFIC PLAN (APN 1009-493-10-0000)

A. Recitals.

WHEREAS, on June 29, 2023, 4432 Holt Boulevard Montclair LLC/KZMB LLC, the property owner, filed an application for a Conditional Use Permit under Case No. 2023-21 to allow a Type 41 license (On-Sale Beer and Wine) within the dining area of an existing restaurant; and

WHEREAS, the application applies to an existing full-service restaurant use occupying a lease space of approximately 3,100 SF located at 4432 Holt Boulevard ,Units A, B, and C; and

WHEREAS, a CUP is required when alcoholic beverages are intended to be sold and served in a restaurant under Section 11.42.020 of the Montclair Municipal Code; and

WHEREAS, the existing restaurant is within Orchard Plaza, a multi-tenant commercial retail center situated on 4.34 acres in a Commercial zoning district of the Holt Boulevard Specific Plan, and

WHEREAS, the on-premises sale of beer and wine at the existing restaurant is consistent with the use and development standards of the underlying Commercial zoning district of the Holt Boulevard Specific Plan and the intent and requirements of the Montclair Municipal Code, subject to the approval of a Conditional Use Permit; and

WHEREAS, staff has determined the proposed on-premises sale of beer and wine in conjunction with a bonafide eating establishment meets the intent and requirements of the ordinance for such use and the applicable development standards of the Commercial zoning district of the Holt Boulevard Specific Plan and Chapter 11.42 MMC ("Alcoholic Beverages – Regulation of Sale"); and

WHEREAS, the Planning Division has determined this project to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed on-premises sale of beer and wine (Type 41 License). Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine.

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on August 28, 2023, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission conducted a meeting at which time all persons wishing to testify in connection with the said project were heard, and said proposal was fully studied.

B. Resolution.

SECTION 1. This Commission hereby specifically finds that all of the facts outlined in the Recitals, Part A, of this Resolution, are true and correct.

SECTION 2. Based upon the entire record before the Planning Commission during the above-referenced hearing on August 28, 2023, including written and oral staff reports together with public testimony, this Planning Commission hereby finds as follows concerning the recommendation of approval of Conditional Use Permit under Case No. 2023-21, subject to the conditions of approval contained in this resolution enumerated below:

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts outlined in the Recitals, Part A, of this Resolution, are true and correct.
2. Based upon substantial evidence presented to this Commission during the above-referenced public hearing on August 28, 2023, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP for on-sale beer and wine in conjunction with a bona fide eating establishment can be made as follows:

- A. The proposed on-premises sale of beer and wine (Type 41 ABC license) in conjunction with the full menu and food service provided within a bonafide eating establishment (restaurant) is essential and desirable to the public convenience and public welfare, in that the existing restaurant use increases the variety of food uses offered within the community that allows patrons the option of purchasing beer and wine to consume with their meal. Moreover, the proposed restaurant is located within a well-maintained commercial center.
- B. That granting the CUP for the proposed restaurant with the on-premises sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that the restaurant is located in properly developed lease space within a newer retail commercial development with adequate parking, security, lighting, etc. Moreover, the existing restaurant use and proposed on-sale of beer and wine with bona fide meals is compatible with surrounding commercial uses and will not negatively impact any sensitive land uses in the surrounding area.
- C. That the existing restaurant with the on-premises sale of beer and wine at the subject site conforms to good zoning practice, in that the Municipal Code permits the on-premises sale of beer and wine in the Commercial zoning district of the Holt Boulevard Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use so that the on-sale of beer and wine does not detract from the general quality of the subject use, commercial center, or the surrounding area. The project has been conditioned so that the restaurant use will be operated in a manner that will not be detrimental to the health and safety of the surrounding community. In addition, the Police Department reviewed the proposal and supports the application subject to the attached conditions of approval.
- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses (including food uses) within the retail commercial area.

C. Conditions of Approval

Based upon the findings and conclusions outlined in the paragraphs above, this Commission hereby approves the application subject to every condition set forth below.

Planning Division

1. Conditional Use Permit (CUP) Amendment approval is hereby granted to allow the following at 4432 Holt Boulevard, Units A, B, and C:
 - a. A Type 41 ABC License to allow the on-premises sale of beer and wine in the dining area within the existing 3,100 SF restaurant.
 - b. Outdoor consumption of alcoholic beverages of any kind (with or without meals) shall be prohibited.
2. This CUP approval shall be valid for six months (180 calendar days) from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action unless the applicant is diligently pursuing ABC approval of the required license and/or the commencement of operations pursuant to this approval. The applicant and/or property owner shall be responsible for applying for a time extension at least 30 days before the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
3. In establishing and conducting the subject use, the applicant shall at all times comply with any laws, ordinances, and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this CUP shall not waive compliance with any such requirements.
4. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
5. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of **\$50.00**, payable to the "Clerk of the Board of Supervisors," to cover the fee for filing a Notice of Exemption for the project as required by the California Environmental Quality Act (CEQA).

- b. A check in the amount of **\$505.94**, made payable to the "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
6. The overall floorplan for the existing restaurant shall be as illustrated and noted on approved floor plans reviewed on August 28, 2023, on file with the Planning Division, and as described in the prepared staff report. No changes to the approved set of plans shall be permitted without prior City review and approval. Any modification, intensification, or expansion of the use, or floor area, beyond that which is specifically approved by this CUP shall require review and approval by the Planning Commission.
7. Restaurant hours shall be Monday through Sunday, from 11:00 a.m. to 10:00 p.m. The applicant may close the restaurant earlier than the hours stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and is subject to City approval.
8. Any substantial changes to the operation or increase in the floor area of the existing building shall require prior City approval.
9. The serving of beer and wine beverages shall be allowed only in conjunction with the operation of a bona fide restaurant as defined by Section 23038 of the California Business and Professions Code. The restaurant shall be in operation and shall provide a full-service menu to customers during regular business hours. The business shall employ not less than one full-time cook who is engaged in the preparation of meals for patrons during the permissible hours of operation.
10. No live entertainment activities are included with this approval. It shall be the responsibility of the business owner to submit an application for an Entertainment Permit pursuant to the Montclair Municipal Code. Entertainment Permits shall be reviewed and approved by the Montclair Police Department.
11. The approved restaurant use shall be subject to the following operating requirements:
 - a. The dining room shall be limited to a maximum of 96 seats as shown on the approved floor plan.

- b. Alcoholic beverages shall be sold to customers only when food is ordered and consumed within the subject restaurant. The sale and serving of alcoholic beverages for consumption outside the restaurant is prohibited.
 - c. No signs (temporary or permanent) or banners, advertising alcoholic beverage “specials” or any similar promotions shall be displayed or allowed on exterior walls, fascia, or in windows (either inside or outside) that are visible to the street.
 - d. No outdoor patio seating or product display areas for food and/or merchandise shall be allowed.
 - e. No exterior sound systems for music or paging shall be allowed.
 - f. No public telephones, vending machines, collection boxes, children's rides, or other coin-operated machines shall be located on the exterior of the site or building.
 - g. The restaurant shall have no coin-operated amusements, such as pool tables, jukeboxes, video games, or other similar equipment at any time. Applicant shall install signs stating “No Loitering or Consumption of Alcoholic Beverages on the Premises” on the exterior of the building and within all parking areas in plain view of employees and customers.
12. Any discontinuation or substantial changes to the full-service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale, or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees, or assignees.
13. The Type 41 ABC license (On-Premises Sale of Beer and Wine) may be modified or revoked for failure to abide by the conditions of this approval or in the event the use is determined to be a nuisance to surrounding properties, businesses, or the community at large.
14. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar with no bona fide restaurant component, entertainment venue, nightclub, dance hall, or banquet hall operated by either the restaurant owner or outside vendors or promoters.

15. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 10 days of receipt of the Planning Commission Resolution.
16. The applicant and/or property owner shall ensure that a copy of the Planning Commission Resolution, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
17. A copy of this Planning Commission Resolution, shall be kept on the premises at all times to be made immediately available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
18. The business owner shall obtain a City of Montclair Business License and shall maintain a valid City business license at all times. Should such licensing be denied, expire, or lapse at any time in the future, this permit shall become considered a violation of this condition and the user shall be subject to revocation proceedings.
19. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Director, or designee.
 - c. Alcoholic beverages shall not be allowed to be consumed outside of the permitted restaurant premises, which shall consist of the demised lease space described herein as permitted by the Planning Commission. The applicant shall post notification of this limitation within plain view of employees and customers.
 - d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate area to not cause blight or deterioration or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all California Department of Alcohol Beverage Control statutes, rules, and regulations relating to

the sale, purchase, display, possession, and consumption of alcoholic beverages.

- f. The permittee shall acknowledge and agree the City has a legitimate and compelling governmental interest in the permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules, and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule, or regulation concerning the sale to or consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:
 - i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of the permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City. Given such deleterious secondary effects, the permittee shall acknowledge the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, , rule or regulation concerning the sale to or consumption of beer and wine by a minor.
 - g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
20. During all hours of business operation, the permittee shall have a "manager" present at the establishment and on duty. The permittee and manager shall be responsible for the conduct of all employees and shall not cause, permit, allow, aid, abet, or suffer any violation of the conditions of this permit or any provision of the Montclair Municipal Code. Failure to comply with any or all of the conditions of approval shall be deemed sufficient grounds to initiate revocation proceedings regarding the Conditional Use Permit approval.

21. The on-site manager shall take whatever steps are deemed necessary to ensure the orderly conduct of employees, patrons, and visitors on the premises.
22. No exterior security bars and roll-up doors shall be installed on windows and pedestrian building entrances.
23. Any landscape material disturbed or destroyed during construction shall be replanted subject to the approval of the Director.
24. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer, wine, or distilled spirits.
25. No outdoor display areas for merchandise are allowed at any time.
26. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
27. Amplified music shall comply with the City's Noise Ordinance.
28. On-site electronic arcades and amusement games shall be prohibited.
29. Any rooftop or roof-mounted equipment, including satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be fully screened from view to the satisfaction of the Director of Community Development.
30. No portable flags, pennants, spinners, painted-on signs, off-premise signs, trailer-mounted electronic sign/message boards, or other similar types of portable signs shall be allowed.
31. No exterior public telephones, vending machines, children's rides, or other coin-operated machines shall be located on the site.
32. At no time shall any storage occur in the area outside the rear exit of the tenant space, including shelving, boxes, supplies, etc., as the said area is a designated emergency exit path for the subject building.
33. Before the installation of any signs, the applicant shall apply for a Sign Permit and submit a prepared set of plans to the Planning Division for review and approval. The plans shall also comply with the following standards:

- a. All wall signs shall utilize individual channel letters.
 - b. Exposed raceways shall be prohibited for all building-mounted and freestanding signs.
34. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
- a. Temporary banners to announce the grand opening or advertising promotions shall require a banner permit from the Planning Division before installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
35. All signs shall be maintained at all times, in good appearance and operating condition. Exposed surfaces shall be cleaned and painted as necessary. Broken and defective parts shall be repaired or replaced.
36. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
37. The original conditions of the Orchard Plaza shopping center under Case 2014-32 shall apply.
38. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (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 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 City), for or concerning the project, whether such actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that the applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The city shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Building Division

39. In the event the applicant decides to alter, add, or remove any part of the existing structure the following shall comply with the latest adopted California Building Code, and other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of the submitted plans.
40. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well-fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.

Environmental/Engineering

41. Recycling and Recovery (CalRecycle). Sufficient facilities must be provided and maintained for the mandatory recycling of all recyclable materials and food waste/organics. For additional information, contact Monica Heredia, Public Works Director/City Engineer at mheredia@cityofmontclair.org at (909) 625-9441.

Police Department

42. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, state, and Federal requirements placed upon them by any regulatory or governing entity.
43. This Conditional Use Permit (CUP) shall be reviewed one year from the date of approval and may be reviewed each year thereafter. The review

shall be conducted jointly by the Community Development Director and Police Chief or designees. The purpose of this review shall be to identify uniquely adverse issues such as curfew, loitering, vandalism, criminal activity, noise, or nuisance issues. If such issues are identified, the CUP shall be presented to the Planning Commission for their consideration of conditions, modifications, or revocation.

44. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications, or revocation.
45. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Department unless otherwise agreed upon in advance through the Community Development Department.
46. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
49. There shall be no special promotional events held on the property unless a written request for such is received and approved by the Director of Community Development and the Police Chief or their designee.
50. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
51. The premises shall install and maintain a closed-circuit video surveillance (CCVS) system for the restaurant. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner that allows for the widest view from the entrance, without significant lens distortion. Typically acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels,

otherwise known as 1080p. IR (night-vision) is preferred, however, cameras shall at minimum be capable of low-light operation.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for no less than 90 days. To conserve storage space, cameras may reduce frame-rate when no motion is detected, however, must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required.

- 52. Alarm systems are encouraged to complement the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

The Secretary to this Commission shall certify the adoption of this Resolution.

APPROVED AND ADOPTED THIS 28TH DAY OF AUGUST 2023

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Manny Martinez, Chair

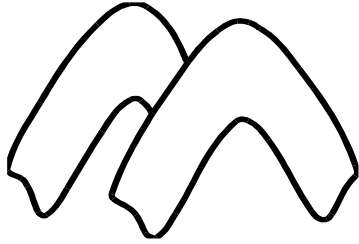
ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 28th day of August 2023, by the following vote, to-wit:

AYES:

NOES:

ABSENT:



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 08/28/23

AGENDA ITEM 6.b

Case No. 2023-25

Application: Request for a Conditional Use Permit to allow a Type 41 (On-Premises consumption of Beer and Wine License) in conjunction with the service of meals at an existing 1,300 SF restaurant.

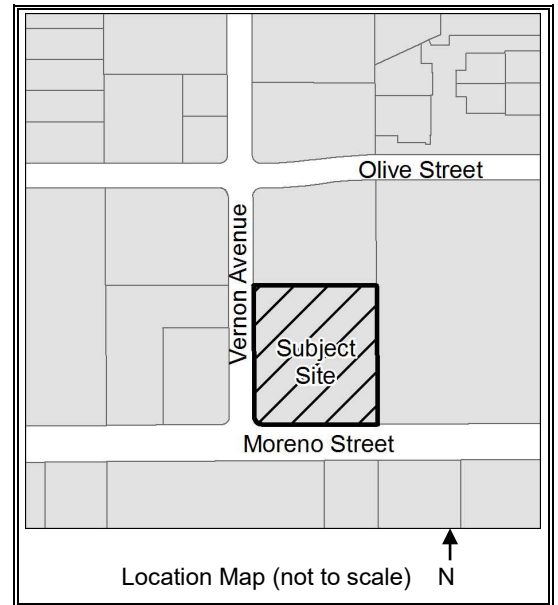
Project Address: 5474 Moreno Street

Property Owner: A-SF Limited, Inc.

General Plan: Regional Commercial

Zoning: "C-3" (General Commercial) per North Montclair Specific Plan (NMSP)

Assessor Parcel No.: 1008-042-01-0000



EXISTING SITE FEATURES/CONDITIONS

Structure: A single story, 27,250 SF, multi-tenant commercial building

Parking: 116 total parking spaces – 109 standard, 2 compact and 5 ADA accessible

ADJACENT LAND USE DESIGNATIONS AND USES

| | <i>General Plan</i> | <i>Zoning</i> | <i>Existing Use of Property</i> |
|--------------|----------------------|------------------------------------------------|-----------------------------------------------------|
| Site | Regional Commercial | "C-3" (General Commercial) per NMSP | Multi-tenant commercial center with surface parking |
| North | Industrial Park | "MIP" (Manufacturing Industrial Park) per NMSP | OPARC headquarters |
| South | Regional Commercial | "C-3" (General Commercial) per NMSP | Montclair East commercial center |
| East | Medium, 8-14 du/acre | "C-3" (General Commercial) per NMSP | Villa Montclair Mobile Home Park |
| West | Regional Commercial | "C-3" (General Commercial) per NMSP | Moreno Plaza commercial center |

Report on Item Number 6.b

PUBLIC HEARING – CASE NUMBER 2023-25

| | |
|-----------------------------|--------------------------------------------------------------------|
| APPLICATION TYPE(S) | Conditional Use Permit |
| NAME OF APPLICANT | A-SF, Inc. |
| LOCATION OF PROPERTY | 5474 Moreno Street |
| GENERAL PLAN DESIGNATION | Regional Commercial |
| ZONING DESIGNATION | "C-3" (General Commercial) North Montclair Specific Plan (NMSP) |
| EXISTING LAND USE | Multi-Tenant Commercial Center |
| ENVIRONMENTAL DETERMINATION | Categorically Exempt (Section 15301) |
| PROJECT PLANNER | Silvia Gutiérrez |

Project Description

The applicant is requesting approval of a Conditional Use Permit (CUP) to allow on-sale beer and wine (Type 41 ABC License) in conjunction with the service of meals at an existing Mexican food restaurant, located within the multi-tenant commercial center at the northeast corner of Moreno Street and Vernon Avenue. The 1,300 SF restaurant opened earlier this year and is named "SED Cocina." The restaurant offers an extensive menu that includes breakfast items, and entrées.

The existing hours of operation are 8:00 a.m. to 2:00 p.m., seven days a week. The applicant wishes to offer beer and wine for consumption with meals and extend the restaurant's hours of operation to 8:00 a.m. to 8:00 p.m. The existing restaurant does not have a bar counter, dance floor, live entertainment stage, or pool tables. A site plan, floor plan, and menu are included in the Commission packets for reference.

Background

- Based on City records, the 27,250 SF multi-tenant commercial center was built in 1978. The "L" shaped building is divided into multiple lease spaces.
- In January 1998, the City Council adopted the North Montclair Specific Plan, which governs land use and development standards on the subject property.
- In May 2001, La Estrellita Restaurant moved into the subject tenant space after remodeling the 1,300-square-foot lease space. On August 13, 2001, the Commission granted a CUP to the property owner to allow on-sale beer and wine in conjunction with

the bona fide restaurant. However, economic difficulties prompted the closure of the restaurant and the location has since gone through several tenant changes.

- Habaneras Mexican Grill operated on-site from 2014 until 2017. The restaurant lease space was subsequently taken over by Cinnamon Café in 2018 and closed this year before SED Cocina opened in its place.
- The overall design of the center is dated but generally in sound condition. New monument signs were installed in 2012 and the building was repainted in the last year.

Planning Division Comments

Staff supports the proposed request to allow the serving of beer and wine in conjunction with meals at the subject location. The site has been utilized as a restaurant since 2001 and has undergone several changes in business ownership. Staff's inspection of the premises confirms that it is indeed a bona fide restaurant offering sit-down family-style dining for breakfast and lunch. The owner desires to add dinner during the hours previously stated should this Conditional Use Permit be granted. Servers would take orders and deliver alcoholic beverages directly to patrons with their meals. As depicted on the floor plan, a modest dining area containing 42 seats is located at the front portion of the tenant space, with the kitchen and storage area to the rear (east side) of the tenant space.

The sale and consumption of beer and wine in conjunction with a bona fide restaurant at this location is a compatible and consistent land use when compared to the other commercial/retail type businesses in the surrounding area. Within the center, a similar-sized restaurant serves beer and wine with its sushi-based food menu and has no known problems. Accordingly, conditions of approval have been included that would ensure that the safety and general welfare of the surrounding area would be maintained.

A condition of approval for the adjusted time is included in the proposed resolution. Lastly, the applicant will be required to install signs stating "No Loitering or Consumption of Alcoholic Beverages on the Premises" on the exterior of the building and within all parking areas in plain view of store employees and customers.

Based on the restaurant's size it requires a minimum of thirteen (13) parking spaces. The site has 116 parking spaces, five (5) of which are disabled-accessible. The existing parking spaces are adequate to support the subject use and other existing tenants, including a liquor store, hair salon, retail uses, and Rhino Records, which relocated from Claremont in 2022, and *U.S Colleges* technical school. Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine will not cause a significant issue. No problems with parking have been reported or were noted during site inspections. The improvements included restriping and slurry sealing of the parking lot, the building exterior was painted contemporary colors, and modern monument signs were installed.

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP for the on-premises sale of beer and wine in conjunction with a bona fide restaurant can be made, as follows:

- A. The proposed on-premises sale of beer and wine in conjunction with the full menu and food service provided within a bona fide eating establishment (restaurant) is beneficial to the public convenience and public welfare, in that the inclusion of beer and wine would make the dining experience more enjoyable to the general public of legal drinking age. Such availability of alcoholic beverages is common among other restaurants in the vicinity.
- B. Granting the CUP for the proposed on-premises sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed sale of beer and wine will be conducted in an established full-service restaurant within a commercial center that has adequate lighting and operational maintenance standards. Lastly, such use is compatible with surrounding commercial uses and with the added conditions of approval, is not anticipated to negatively impact any sensitive land uses in the surrounding area.
- C. The proposed on-premises sale of beer and wine at the subject location conforms to good zoning practice, in that the Municipal Code permits on-sale beer and wine in the "C-3" (General Commercial) land use district of the North Montclair Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use, hours of operation, and the sale of beer and wine so that it does not detract from the general quality of the commercial center and surrounding area.
- D. The subject use in the proposed location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan encourages a wide range of retail and service uses within the retail commercial area, including restaurant uses.

Department of Alcoholic Beverage Control (ABC) Finding

The project site is located within Census Tract Number 2.01, which allows up to four (4) on-sale ABC licenses. According to ABC records, as of December 2023, there are currently eleven (11) licenses existing within the census tract, and therefore ABC requires a finding of public convenience or necessity to issue a new license.

The majority of on-sale licenses in Census Tract Number 2.01 have been issued to restaurants located within or near the Montclair Place regional shopping mall district where these types of licenses would be expected to be found, thus increasing the number of on-sale licenses issued in the census tract.

City staff and the Police Department support and find the request for the on-premises sale of beer and wine for the existing restaurant desirable to the public convenience and necessity. The sale of beer and wine will not be a major portion of the business but will

simply offer customers an expanded choice of beverage options for those who are interested.

The Type 41 ABC License application is not an unusual request, nor is it expected to negatively affect the surrounding area, given:

1. The beer and wine sales would be an ancillary portion of the business;
2. The restaurant has limited hours of operation;
3. The restaurant has operated professionally; and
4. There is no bar associated with this request.

Moreover, the proposed restaurant is located within a flourishing and well-established shopping center, in a primary commercial area of the City where other restaurants are located and offer alcoholic beverages to customers. With this approval, there would be twelve (12) Type 41 Licenses, on-sale beer and wine only, in the subject census tract.

City staff and the Police Department support this request for on-sale beer and wine in conjunction with a bona fide restaurant as desirable to the public convenience and necessity in that the inclusion of beer and wine would make the dining experience more enjoyable to the public of the legal drinking age. Such availability of alcohol is common among other restaurants in the vicinity. The restaurant offers a full menu with two servers providing service directly to the customers with a reasonable closing hour. Lastly, local law enforcement indicated that the area in which the restaurant is located has not had significant calls for service within the last 12 months. Conditions of approval have been included that would ensure the safety and general welfare of the surrounding area would be maintained.

Comments from the Public

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on August 18, 2023, as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet of the boundaries of the subject property. In addition, courtesy notices were also distributed to all the tenants at the center. At the time the staff report was completed, staff had not received any comments or correspondence from the public regarding this application.

Environmental Assessment

The project qualifies as Class 1 exempt under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. The proposed project does not involve any site changes. The existing restaurant lease space is designed for an eating establishment and can accommodate the proposed on-premises

sale of beer and wine (Type 41). Ample parking is provided to support the restaurant use and the addition of ancillary on-sale beer and wine.

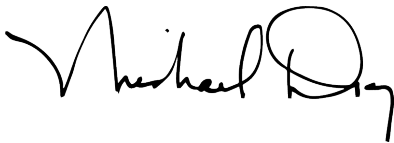
Planning Division Recommendation

Staff recommends that the Planning Commission take the following action(s):

- A. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301.

- B. Move to approve Conditional Use Permit under Case No. 2023-25 approving the on-premises sale of beer and wine (ABC Type 41 License) in conjunction with a 1,300 SF bona fide eating establishment at 5474 Moreno Street, per the submitted plans and as described in the staff report, subject to the conditions of approval in attached Resolution 23-1886.

Respectfully Submitted,



Michael Diaz
Director of Community Development

MD/sgutiérrez

Z:\COMMDEV\SG\CASES\2023-21\SED COCINA MEXICAN RESTAURANT\2023-25 RPT

RESOLUTION NO. 23-1886

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2023-25 TO ALLOW THE ON-PREMISES SALE OF BEER AND WINE (TYPE 41 ABC LICENSE) IN CONJUNCTION WITH A BONA FIDE EATING ESTABLISHMENT WITHIN THE “C-3” (GENERAL COMMERCIAL) LAND USE OF THE NORTH MONTCLAIR SPECIFIC PLAN AT 5474 MORENO STREET (APN 1008-042-01-0000).

A. Recitals.

WHEREAS, on July 2023, A-SF, Inc., the property owner, on behalf of SED Cocina Mexican Restaurant, applied for a Conditional Use Permit (CUP) to allow the on-premises sale of beer and wine in conjunction with a bona fide eating establishment at 5474 Moreno Street; and

WHEREAS, this application applies to a restaurant business within a 1,300 SF tenant space; and

WHEREAS, Table 3-1 of Chapter III ("Development Criteria") of the North Montclair Specific Plan allows bona fide eating establishments serving alcoholic beverages within the "C-3" (General Commercial) land use district, subject to the approval of a CUP; and

WHEREAS, a "bona fide public eating establishment" is generally defined as a licensed restaurant use with suitable kitchen facilities to provide regular service of meals to patrons commonly ordered at various hours of the day; and

WHEREAS, City staff has determined that the existing restaurant use meets the requirements of a bona fide public eating establishment to allow the on-premises sale of beer and wine in conjunction with meals and the applicable development standards of the "C-3" (General Commercial) land use district of the North Montclair Specific Plan in which the subject site and use are proposed to be located and Chapter 11.42 of the Montclair Municipal Code ("Alcoholic Beverages – Regulation of Sale"); and

WHEREAS, staff has determined that the proposed on-sale of beer and wine in conjunction with a bona fide eating establishment is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 (Class 1) in that the project involves no expansion or significant change in the interior of the lease space to accommodate the sale of beer and wine in conjunction with the existing restaurant use; and

WHEREAS, a Notice of Public Hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on August 28, 2023, commencing at 7:00 p.m. in the Council ChamberS at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said CUP were heard and said CUP was fully studied.

B. Resolution.

SECTION 1. This Commission hereby specifically finds that all of the facts outlined in the Recitals, Part A, of this Resolution, are true and correct.

SECTION 2. Based upon the entire record before the Planning Commission during the above-referenced hearing on August 28, 2023, including written and oral staff reports together with public testimony, this Planning Commission hereby finds as follows concerning the recommendation of approval of Conditional Use Permit under Case No. 2023-25, subject to the conditions of approval contained in this resolution enumerated below:

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts outlined in the Recitals, Part A, of this Resolution, are true and correct.
2. Based upon substantial evidence presented to this Commission during the above-referenced public hearing on August 28, 2023, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Conditional Use Permit Findings

- A. The proposed on-premises sale of beer and wine in conjunction with the full menu and food service provided within a bona fide eating establishment (restaurant) is beneficial to the public convenience and public welfare, in that the inclusion of beer and wine would make the dining experience more enjoyable to the general public of legal drinking age. Such availability of alcoholic beverages is common among other restaurants in the vicinity.
- B. Granting the CUP for the proposed on-sale of beer and wine will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed sale of beer and wine will be conducted in an established full-service restaurant within a commercial center that has adequate lighting and operational maintenance standards. Lastly, such use is compatible with surrounding commercial uses and with the added conditions of approval is not anticipated to negatively impact any sensitive land uses in the surrounding area.

- C. The proposed on-sale of beer and wine at the subject site conforms to good zoning practice, in that the Municipal Code and North Montclair Specific Plan permit the on-sale of beer and wine in the "C-3" (General Commercial) land use district of the Specific Plan, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use, hours of operation, and the sale of beer and wine so that it does not detract from the general quality of the commercial center and surrounding area.
- D. The subject use in the proposed location is not contrary to the objective of any part of the adopted General Plan, in that the General Plan encourages a wide range of retail and service uses within the retail commercial area, including restaurant uses.

SECTION 3. The Planning Commission finds the proposed on-sale of beer and wine (Type 41 ABC License) associated with the bona fide eating establishment desirable to the public convenience and necessity in that the inclusion of beer and wine would make the dining experience more enjoyable to the general public of legal drinking age. The availability of alcohol served in conjunction with meals is common among other restaurants in the immediate vicinity and around the City. Lastly, local law enforcement indicated that the area in which the restaurant is located has not had significant calls for service within the last 12 months. Conditions of approval have been included that would ensure that the safety and general welfare of the surrounding area would be maintained.

SECTION 4. Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment of the application, the Planning Commission concurs with the staff's determination that the project is exempt from additional environmental review under CEQA in connection with the City's consideration of Case No. 2023-25 for the proposed Conditional Use Permit to allow the on-premises sale of beer and wine in conjunction with an established bona fide restaurant use. Further, the Planning Commission directs staff to prepare a Notice of Exemption.

SECTION 5. The location and custodian of the documents and any other material constituting the record of proceedings upon which the Planning Commission based its decision is as follows: Planning Division, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

C. Conditions of Approval.

Based upon the findings and conclusions set forth in the paragraphs above, this Commission hereby approves the application subject to each condition set forth below.

Planning Division

1. This Conditional Use Permit (CUP) approval shall allow the on-premises sale of beer and wine (Type 41) in conjunction with meals in a bona fide eating establishment known as “Sed Cocina” Mexican Restaurant, a 1,300 square-foot restaurant, at 5474 Moreno Street. Any substantial changes to the operation, increase in floor area, or upgrade of ABC license to full alcohol (distilled spirits) sales shall require prior City review and approval. Outdoor consumption of alcoholic beverages of any kind (with or without meals) shall be prohibited.
2. The approval of this CUP shall supersede all CUP approvals previously issued for the subject lease space.
3. In establishing and conducting the subject use, the applicant shall at all times comply with any laws, ordinances, and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this CUP shall not waive compliance with any such requirements.
4. This CUP approval shall be valid for six months (180 calendar days) from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action unless the applicant is diligently pursuing a building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible for applying for a time extension at least 30 days before the approval’s expiration date. No further notice from the City will be given regarding the project’s CUP expiration date.
5. This decision or any aspect of this decision, may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
6. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A **\$50.00** check, payable to the “Clerk of the Board of Supervisors,” to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Quality Act (CEQA).
 - b. A **\$498.80** check payable to the “City of Montclair,” to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
7. The applicant/property owner shall submit to the Planning Division a signed copy of the approval letter in which he/she acknowledges acceptance of the

conditions of approval within 15 days from the date of approval by the Planning Commission.

8. The serving of beer and wine beverages shall be allowed only in conjunction with the operation of a bona fide restaurant as defined by Section 23038 of the California Business and Professions Code. The restaurant shall be in operation and shall provide a full-service menu to customers during regular business hours. The business shall employ not less than one full-time cook who is engaged in the preparation of meals for patrons during the permissible hours of operation.
9. At no time shall the premises be modified to add or be converted into other uses where minors are excluded, such as a bar, sports bar, entertainment venue, nightclub, dance hall, or banquet hall operated by either the restaurant owner or outside vendors or promoters. Occasional rental of the dining room for private functions where meals are also served may be permitted.
10. Approved business hours for the restaurant shall be 8:00 a.m. to 8:00 p.m., seven days a week. Beer and wine shall only be served in conjunction with bona fide meals from 8:00 a.m. to 8:00 p.m., seven days a week. The applicant may open or close the restaurant anytime within the hours stated above. Any requests to extend restaurant hours shall require written notification to the Planning Division and shall be subject to City approval.
11. The approved restaurant use shall be subject to the following operating requirements:
 - a. The dining room shall be limited to a maximum of 42 seats as shown on the approved floor plan.
 - b. Alcoholic beverages shall be sold to customers only when food is ordered and consumed within the subject restaurant. The sale and serving of alcoholic beverages for consumption outside the restaurant is prohibited.
 - c. No signs (temporary or permanent) or banners, advertising alcoholic beverage "specials" or any similar promotions shall be displayed or allowed on exterior walls, fascia, or in windows (either inside or outside) that are visible to the street.
 - d. No outdoor patio seating or product display areas for food and/or merchandise shall be allowed.
 - e. No exterior sound systems for music or paging shall be allowed.

- f. No public telephones, vending machines, collection boxes, children's rides, or other coin-operated machines shall be located on the exterior of the site or building.
 - g. The restaurant shall have no coin-operated amusements, such as pool tables, jukeboxes, video games, or other similar equipment at any time. Applicant shall install signs stating "No Loitering or Consumption of Alcoholic Beverages on the Premises" on the exterior of the building and within all parking areas in plain view of employees and customers. Applicant shall install signs stating "No Loitering or Consumption of Alcoholic Beverages on the Premises" on the exterior of the building and within all parking areas in plain view of employees and customers.
12. Live entertainment is not included as part of this approval and requires separate review and approval from the City.
 13. Any substantial changes to the operation or increase in the floor area of the existing building shall require prior City approval.
 14. The approved restaurant shall be operated, maintained, and open to the general public as a full-service (bona fide) eating establishment, serving meals at all times that beer, wine, and distilled spirits are offered for sale and consumption on the premises.
 15. No live entertainment activities are included with this approval. It shall be the responsibility of the business owner to apply for an Entertainment Permit under the Montclair Municipal Code. Entertainment Permits shall be reviewed and approved by the Montclair Police Department.
 16. No alcoholic beverages shall be consumed outside the enclosed building.
 17. Any discontinuation or substantial changes to the full-service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale, or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees, or assignees.
 18. The Type 41 ABC license (on-premises sale of beer and wine) may be modified or revoked for failure to abide by the conditions of this approval or in the event the use is determined to be a nuisance to surrounding properties, businesses, or the community at large.
 19. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar with no bona fide restaurant component,

entertainment venue, nightclub, dance hall, or banquet hall operated by either the restaurant owner or outside vendors or promoters.

20. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 30 days of receipt of the Planning Commission Resolution.
21. The applicant and/or property owner shall ensure that a copy of the Planning Commission Resolution, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
22. A copy of this Planning Commission Resolution shall be kept on the premises at all times to be made immediately available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
23. The business owner shall obtain and maintain a valid City of Montclair Business License at all times. Should such licensing be denied, expire, or lapse at any time in the future, this permit shall become considered a violation of this condition and the user shall be subject to revocation proceedings.
24. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Director, or designee.
 - c. Alcoholic beverages shall not be allowed to be consumed outside of the permitted restaurant premises, which shall consist of the demised lease space described herein as permitted by the Planning Commission. The applicant shall post notification of this limitation within plain view of employees and customers.
 - d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate area to not cause blight or deterioration or to substantially diminish or impair property values within the neighborhood.

- e. The permittee shall comply with all California Department of Alcohol Beverage Control statutes, rules, and regulations relating to the sale, purchase, display, possession, and consumption of alcoholic beverages.
 - f. The permittee shall acknowledge and agree the City has a legitimate and compelling governmental interest in the permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules, and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule, or regulation concerning the sale to or consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:
 - i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of the permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City. Given such deleterious secondary effects, the permittee shall acknowledge the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule, or regulation concerning the sale to or consumption of beer and wine by a minor.
 - g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
25. During all hours of business operation, the permittee shall have a "manager" present at the establishment and on duty. The permittee and manager shall be responsible for the conduct of all employees and shall not cause, permit, allow, aid, abet, or suffer any violation of the conditions of this permit or any provision of the Montclair Municipal Code. Failure to comply with any or all of the conditions of approval shall be deemed sufficient grounds to initiate revocation proceedings regarding the Conditional Use Permit approval.
26. The on-site manager shall take whatever steps are deemed necessary to ensure the orderly conduct of employees, patrons, and visitors on the premises.

27. No exterior security bars and roll-up doors shall be installed on windows and pedestrian building entrances.
28. Any landscape material disturbed or destroyed during any construction shall be replanted subject to the approval of the Director of Community Development.
29. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer, wine, or distilled spirits.
30. No outdoor display areas for merchandise are allowed at any time.
31. All graffiti vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
32. Amplified music shall comply with the City's Noise Ordinance.
33. On-site electronic arcades and amusement games shall be prohibited.
34. Any rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the Director of Community Development.
35. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner by the provisions of Chapter 11.46 of the Montclair Municipal Code.
36. No portable flags, pennants, spinners, painted-on signs, off-premise signs, trailer-mounted electronic sign/message boards, or other similar types of portable signs shall be allowed.
37. No exterior public telephones, vending machines, children's rides, or other coin-operated machines shall be located on the site.
38. At no time shall any storage occur in the area outside the rear exit of the tenant space, including shelving, boxes, supplies, etc., as the said area is a designated emergency exit path for the subject building.
39. Before the installation of any signs, the applicant shall apply for a Sign Permit and set of plans to the Planning Division for review and approval. The plans shall also comply with the following standards:
 - a. All wall signs shall utilize individual channel letters.

- b. Exposed raceways shall be prohibited for all building-mounted and freestanding signs.
40. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
- a. Temporary banners to announce the grand opening or advertising promotions shall require a banner permit from the Planning Division before installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
41. All signs shall be maintained at all times, in good appearance and operating condition. Exposed surfaces shall be cleaned and painted as necessary. Broken and defective parts shall be repaired or replaced.
42. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
43. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (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 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 City), for or concerning the project, whether such actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that the applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The city shall promptly notify the applicant of any

action brought and City shall cooperate with the applicant in the defense of the Action.

Building Division

44. In the event the applicant decides to alter, add, or remove any part of the existing structure the following shall comply with the latest adopted California Building Code, and other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of the submitted plans.
45. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well-fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.

Environmental/Engineering

46. Recycling and Recovery (CalRecycle). Sufficient facilities must be provided and maintained for the mandatory recycling of all recyclable materials and food waste/organics. For additional information, contact Engineering Manager, Monica Heedia, Public Works Director/City Engineer at mheredia@cityofmontclair.org (909) 625-9441.

Police Department

47. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, state, and Federal requirements placed upon them by any regulatory or governing entity.
48. This Conditional Use Permit (CUP) shall be reviewed one year from the date of approval and may be reviewed each year thereafter. The review shall be conducted jointly by the Community Development Director and Police Chief or designees. The purpose of this review shall be to identify uniquely adverse issues such as curfew, loitering, vandalism, criminal activity, noise, or nuisance issues. If such issues are identified, the CUP shall be presented to the Planning Commission for their consideration of conditions, modifications, or revocation.
49. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications, or revocation.

50. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Department unless otherwise agreed upon in advance through the Community Development Department.
51. Premises falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
52. There shall be no special promotional events held on the property unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
53. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
54. The premises shall install and maintain a closed-circuit video surveillance (CCVS) system in the restaurant. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner that allows for the widest view from the entrance, without significant lens distortion. Typically acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. IR (night vision) is preferred, however, cameras shall at minimum be capable of low-light operation.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for no less than 90 days. To conserve storage space, cameras may reduce frame rate when no motion is detected, however, must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required.

55. Alarm systems are encouraged to complement the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

The Secretary to this Commission shall certify the adoption of this Resolution.

APPROVED AND ADOPTED THIS 28TH DAY OF AUGUST, 2023.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Manny Martinez, Chair

ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 28th day of August, 2023, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

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