RESOLUTION 2017-60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL UPHOLDING THE PLANNING COMMISSION’S DECISION AND APPROVING CONDITIONAL USE PERMIT 2017-07, A REQUEST TO AMEND CONDITIONAL USE PERMIT 87-4 FOR THE OFF-SALE OF BEER AND WINE AS AN ACCESSORY USE TO A CONVENIENCE MARKET AT 3727 GAGE AVENUE

WHEREAS, on August 3, 1987, the Planning Commission and City Council of the City of Bell concluded a duly noticed Public Hearing and adopted Resolution 87-27 approving a conditional use permit (“CUP”) to allow the off-sale of beer and wine as an accessory use to a convenience market located at 3727 Gage Avenue, Bell, California (“Property”); and

WHEREAS, on July 11, 2017, the applicant submitted an application for Conditional Use Permit 2017-07 to eliminate one condition of approval (Condition 9) to Resolution 87-27 for CUP Permit No. 87-4 relating to the hours of operation; and

WHEREAS, the City reviewed the project’s environmental impacts under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the “CEQA Guidelines”) and deemed the project to be exempt pursuant to section 15301 (Class 1 Existing Facilities) of the CEQA Guidelines (Title 4, Chapter 3 of the California Code of Regulations); and

WHEREAS, staff is recommending the elimination of one condition of approval (Condition 8) and the addition of three conditions of approval (Conditions 8, 9, and 12); and

WHEREAS, notice of the Planning Commission’s August 17, 2017 public hearing on CUP 2017-07 (Amendment to CUP 87-4) was published in compliance with State law, in a local newspaper of general circulation. In addition, a public notice was mailed 10 days in advance of the hearing to each property owner indicating the date and time of the public hearing for CUP 2017-07 (Amendment to CUP 87-4) in accordance with California Government Code 65091; and

WHEREAS, on August 17, 2017, the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed amendments, including without limitation, information provided to the Planning Commission by City staff; and

WHEREAS, the Planning Commission adopted Resolution 2017-11-PC approving Conditional Use Permit 2017-07 (Amendment to CUP 87-7) subject to added conditions of approval; and

WHEREAS, on September 1, 2017, Councilmember Valencia filed an appeal of the Planning Commission’s decision to grant Conditional Use Permit 2017-07 (Amendment to CUP 87-7); and

WHEREAS, notice of the City Council’s September 27, 2017 public hearing on the appeal of Conditional Use Permit 2017-07 was published in a local newspaper of general
circulation. In addition, a public notice was mailed 10 days in advance of the hearing to each property owner within a 500-foot radius of the project site indicating the date and time of the public hearing for CUP 2017-07 (Amendment to CUP 87-4) in accordance with California Government Code 65091; and

WHEREAS, on September 27, 2017, the City Council held a public hearing regarding the appeal, including without limitation, information provided to the City Council by City Staff, the Applicant, the Appellant and, other public testimony; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the City Council at its September 27, 2017 public hearing.

WHEREAS, All legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY FIND, DETERMINE AND DECLARE AS Follows:

SECTION 1. All of the facts set forth in the recitals are true and correct and are incorporated herein by reference.

SECTION 2. All necessary public hearings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Bell, and the decision herein is based on the evidence presented.

SECTION 3. Based upon substantial evidence presented to the City Council during the public hearing conducted with regard to the appeal, including written staff reports and verbal testimony, The City Council hereby specifically finds as follows:

A. Eliminating Condition of Approval #9, which limits the business’ hours of operation to 8:00 a.m. to 9:00 p.m. daily, is necessary to permit reasonable operation of the business under the conditional use permit. The subject business is a convenience store/market that caters to customers on their way to work in the morning, customers who want to make a quick stop to purchase an item throughout the day, and/or neighborhood residents who run out of essential items (i.e. milk, toilet paper, sugar) in their home and is in immediate need of it. It is necessary for the subject business to open before 8:00 a.m. and close after 9:00 p.m. in order to compete with similar businesses in the area and to adequately provide its services to the neighborhood.

The elimination of Condition of Approval #8 is necessary to permit reasonable operation of the business. Eliminating Condition of Approval #8 would avoid any interpretation issues that may come up in the future because this condition is not legally valid since CUPs run with the land and are not issued to specific applicants, property owners, or business owners.

B. The additional conditions of approval (Conditions of Approval #8, 9, 12, and 13) is necessary to protect the public peace, health, and safety. The condition of approval commemorating the hours of operation would ensure that the business would not operate beyond their proposed hours.
of operation without Planning Commission review and approval because the review of the application was based on the proposed hours of operation indicated on the application. The conditions of approval requiring the installation of a video surveillance system and adequate lighting on the building are designed to prevent and deter crime.

SECTION 4. Conditions of Approval of Resolution 87-27-PC for CUP Permit 87-4 is hereby amended to eliminate original Conditions of Approval #8 and #9, and to add new Conditions of Approval #8, 9, 12, and 13 as so that Conditions 8, 9, 12, and 13 read in its entirety as follows:

8. The store’s hours of operation shall be limited to 6:00 a.m. to 12:00 a.m., daily. Any change that would result in additional time that the store would be open shall require Planning Commission review and approval.

9. The business owner shall install a video surveillance system and obtain the necessary Building and Safety permits for its installation prior to occupancy. The system used shall be capable of providing an image sufficient to identify faces under all lighting conditions at the location. The video surveillance system shall be properly maintained in good working order at all times. All systems shall have the ability to record all cameras for later playback in the event of an incident at the location. The recording media shall be made available to law enforcement agencies for law enforcement purposes upon request.

12. The business owner shall install adequate lighting along the south and east side of the building and obtain the necessary Building and Safety permits prior to occupancy. The light fixtures shall face away and be shielded from the residential properties located north of the project site.

13. The Chief of Police shall monitor whether the business generates excessive complaints or incidents and shall work with the operator to address all issues. If excessive complaints or issues continue, the Director may initiate a review of the CUP by the Council including adjusting the hours of operation.

SECTION 5. Upon independent review and consideration of all pertinent information and the information contained in the Notice of Exemption for the Conditional Use Permit, the City Council hereby finds and determines that the proposed project, as amended by the Application, is exempt from California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 et seq.) pursuant to the Class 1 categorical exemption in Section 15301 of the CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations) in that the project is a longstanding use within an existing building. The City Council further finds that the proposed project will not result in direct or indirect significant impact on the environment. Accordingly, the City Council adopts the Notice of Exemption and directs the Staff to file the Notice of Exemption as required by law.

SECTION 6. The City Council finds that all of the findings in Resolution 87-27-PC remain the same for this project as amended and hereby upholds the Planning Commission’s decision and approves Conditional Use Permit 2017-07 to allow the modifications to Conditional Use Permit 87-4 by this Resolution as set forth in Section 3 above.
PASSED, ADOPTED, AND APPROVED this 27th day of September, 2017.

Fidencio Joel Gallardo, Mayor

APPROVED AS TO FORM

David Aleshire, City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Angela Bustamante, City Clerk of the City of Bell, California, do hereby certify that Resolution No. 2017-60 was duly introduced and adopted at a regular meeting of the City Council of the City of Bell, held on the 27th day of September, 2017, and approved by the following vote, to wit:

AYES:  Councilmembers Romero, Saleh, Vice Mayor Quintana and Mayor Gallardo

NOES:  Councilmember Valencia

ABSENT:  None

ABSTAIN:  None

Angela Bustamante, City Clerk