

Exhibit D

RESOLUTION NO. 739(17)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A CONDITIONAL USE PERMIT TO ALLOW A PROPOSED CONVENIENCE STORE TO SELL BEER AND WINE FOR OFF-SITE CONSUMPTION (TYPE 20 OFF SALE BEER & WINE), AND FOR THE OPERATION OF A FUELING STATION ON PROPERTY LOCATED AT 2200 ARROW HIGHWAY IN THE M-2 (HEAVY MANUFACTURING) ZONE, SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF

A. RECITALS.

- (i) Athens Services, the Applicant, 14048 Valley Boulevard, City of Industry, CA 91746 has made a request for a Conditional Use Permit (CUP 08-2016) for the establishment of a convenience store that sells beer and wine for off-site consumption and the operation of a fueling station, located at 2200 Arrow Highway, pursuant to Sections 17.80.030(22), and 17.36.010(23) of the Irwindale Municipal Code.
 - (ii) The Property is located on a 17.22-acre parcel on the south side of Arrow Highway. The convenience store will be approximately 2,587 square feet with eight gas or diesel pumps on an island with an overhead canopy. The convenience store will sell beer and wine for off-site consumption. The Subject Property is zoned M-2 (Heavy Manufacturing).
 - (iii) On June 8, 2016, the City Council, at a public hearing, certified Final Environmental Impact Report (FEIR) (SCH#2013051029) which analyzed potential environmental impacts from the proposed MRF/TS project.
 - (iv) Addendum No. 1 to the FEIR has been prepared to address minor, internal site plan adjustments made in the final design of the Materials Recovery Facility and Transfer Station project.
 - (v) The City, as the Lead Agency, has analyzed the project and has determined that the proposed project has been adequately analyzed in the certified FEIR and Addendum No. 1 to the FEIR.
 - (vi) On September 20, 2017, the Planning Commission, at a public hearing, at which time they received input from staff, the City Attorney, and the Applicant; heard public testimony; discussed the proposed project; closed the public hearing; and, after discussion, approved this Resolution.
- (iv.) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

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

1. The Planning Commission hereby specifically finds that all of the facts set forth in Recitals, Part A, of this Resolution are true and correct.
2. The Planning Commission hereby specifically finds and determines that the project, as proposed, pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and on June 8, 2016 certified the Final Environmental Impact Report (FEIR) (SCH#2013051029). A copy of the EIR and Mitigation Monitoring and Reporting Program was posted on the City's website.
3. The Planning Commission hereby specifically finds and determines the project, as proposed, pursuant to the authority and criteria contained in CEQA of 1970, as amended, the 2017 State CEQA Guidelines Section 15164, and with reference to Section 15162, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has reviewed and considered the FEIR, including Addendum No. 1 to the FEIR and determines that the minor project modifications would not result in new significant impacts, increase the severity of significant impacts, or otherwise trigger additional review.
4. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to the Application, including written staff reports, verbal testimony, site plans and Conditions of Approval attached hereto as Exhibit "A", this Planning Commission hereby specifically finds as follows:

- a. That the site is adequate in size and shape for the proposed use.

The site is adequate in size and shape for the proposed use for the following reasons: The site is 17.22 acres and zoned M-2 (Heavy Manufacturing). The proposed 2,587 square foot convenience store is less than .3% of the site. The proposed CUP is for the operation of a fueling station and Type 20, Off-Sale Beer and Wine permit and alcohol sales will be a small part of the merchandise sold at the convenience store. No more than 500 square feet of floor area is permitted for the sale of beer and wine. The store will also sell non-alcoholic beverages, snacks, and sundries. The proposed use is a typical product sold at similar-type convenience stores. The convenience store is carefully designed and located on the site to adequately accommodate parking and on-and-off site circulation with access from multiple driveways along Arrow Highway. 26 parking stalls are provided for the convenience store use, located in front of the store and to the west of the store.

- b. That the site has sufficient access to streets and highways adequate in width and pavement type to carry the quantity of traffic generated by the proposed use.

The site is bordered by Arrow Highway on the North and Northeast and Live Oak Avenue on the South. Access to the I-605 Freeway is provided via Arrow Highway and Live Oak Avenue. The certified EIR (SCH#2013051029) analyzed traffic volumes, trip distances, and overall circulation of the project, including the convenience store and fueling station. The site has sufficient access to streets and highways adequate to carry the quantity of traffic generated by the proposed use because Arrow Highway, a multi-lane street, is classified in the General Plan as a major arterial, sufficient to accommodate additional travel generated by the use.

- c. That the proposed use will not have an adverse effect on adjacent property.

The proposed use, as conditioned, will not have an adverse effect upon adjacent properties because the Applicant will develop an existing vacant parcel with specific mitigation measures which will be enforced to reduce dust, noise and visibility from adjacent properties. The use will provide goods and services to surrounding businesses and commuters on Arrow Highway and Live Oak Avenue. The site has been designed to accommodate vehicle circulation and meet parking standards. The adjacent properties to the west and south are developed with industrial uses that create loud noise, including a distribution center with heavy trucking. Properties to the south, across Live Oak Avenue (a 4-lane road) have industrial uses including a machining company, an industrial business park, and a large tank facility for the Valley County Water District. The subject site is located at the back of the Santa Fe Dam Recreation Area and is separated by Arrow Highway, a multi-laned arterial roadway and the proposed use is located at such a distance so as not to have an adverse effect on the recreation area.

1. That the proposed use serves the public convenience or necessity, based upon the factors outlined in Section 17.58.060.

This finding is supported by the following facts:

- a. The issuance of the conditional use permit would not duplicate services and therefore contribute to an over-concentration of alcoholic beverage establishments because the nearest off-sale use is over one mile from the subject site;
- b. Alcohol sales are related to the function of the proposed use in that it is common that similar-type convenience stores sell beer and wine, and it would place the business in an economic disadvantage with other similar convenience stores that sell beer and wine;
- c. The proposed establishment will serve a niche in the market not filled by other alcoholic beverage establishment licenses in the area, in that the nearest off-sale use is over one mile from the subject site;

- d. The proposed establishment will provide the convenience of purchasing alcoholic beverages in conjunction with other beverage and food sales as well as other merchandise;
 - e. The aesthetic character and ambiance of the proposed establishment will be consistent with the City's Commercial and Industrial Design Guidelines;
 - f. There are conditions of approval that prescribe the manner in which the proposed establishment is to be conducted, including the extent to which the establishment will provide an adequate and well trained staff.
 - g. The proposed establishment complements the established or proposed businesses in the surrounding area in that it will provide goods and services, including packaged food, alcoholic and non-alcoholic beverages, and sundries to the surrounding industrial and warehouse businesses and commuters;
 - h. According to the Irwindale Police Department, the proposed establishment, location and/or operator has no history of law enforcement problems;
 - i. According to the Irwindale Police Department, the crime rate in the reporting district and adjacent reporting districts is comparable to other areas in the city and adjacent cities;
 - j. According to the Irwindale Police Department, the number of alcohol-related police calls for service, crimes or arrests in the reporting district and in adjacent districts is comparable to other areas of the city and adjacent cities;
 - k. Conditions of approval have been included to ensure that the proposed establishment will maintain security, or surveillance, both inside and outside the premises and comply with all applicable laws.
2. That the proposed establishment will comply with the conditions of approval at Section 17.58.070; 17.58.080; and 17.58.090 of this chapter.

This finding is supported by the following facts:

The conditions of approval contained in Sections 17.58.070; 17.58.080; and 17.58.090 of the IMC have been incorporated into the conditions of approval for this proposal, including, but not limited to, convenience store staff training, adequate exterior lighting, graffiti removal, and requiring the applicant or operator to obtain all required licenses and permits.

The Secretary shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 20^h day of September 2017.

Chair

ATTEST:

Secretary

I, William Tam, Development Services Director/City Engineer of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Irwindale held on the 20th day of September 2017, by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

Secretary

EXHIBIT "A"

PLANNING COMMISSION RESOLUTION NO. 739(17)

CONDITIONAL USE PERMIT NO. 08-2016

Athens Services
2200 Arrow Highway
Irwindale, CA 91706

FINAL CONDITIONS OF APPROVAL

GENERAL

1. The activities authorized by this Conditional Use Permit for the establishment and operation of a convenience store that sells beer and wine (Type 20 ABC license – Off Sale Beer and Wine) and a fueling station with eight pumps and overhead canopy. The timing and any expiration of this Conditional Use Permit approval shall be consistent with the provisions in Development Agreement No. 02-2016. To the extent that any inconsistencies occur, the development agreement provisions shall prevail.
2. The Applicant shall agree and consent, in writing, to each and every condition of permit approval set forth herein within twenty (20) days from the adoption of this Resolution by the City Council approving the Conditional Use Permit.
3. The signed Final Conditions of Approval shall be photocopied and included as a sheet in the plans.
4. Plans for any proposed site improvements shall be submitted to the Los Angeles County Fire Department and City Building Department for review and approval prior to the issuance of Building Permits.
5. Prior to the issuance of an occupancy permit and final inspection by the Planning Division, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.
6. All graffiti shall be adequately and completely removed or painted over within 48 hours of such graffiti being affixed on any structure or fence at the Property, or notification thereof, whichever is later.
7. This Conditional Use Permit may be revoked for any violation of or noncompliance with any of these conditions or other codes, regulations of standards enforced by or beneficial to the City of Irwindale in accordance with IMC Section 17.90.
8. The Applicant shall defend, indemnify and hold harmless the City of Irwindale, its agents, officers, or employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul, approval of the City, its advisory agencies, appeal boards, or legislative body

concerning Conditional Use Permit No. 08-2016. The City will promptly notify the permittee of any such claim, action or proceeding against the City and will cooperate fully in the defense.

9. City inspectors shall have access to the Property to reasonably inspect the Property during normal working hours to assure compliance with these conditions and other codes.
10. Any and all fees (current and retroactive) required to be paid to any public agency shall be paid prior to obtaining any permit for this Project.
11. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this Project, if any, are subject to protest by the Applicant at the time of approval or conditional approval of the Project or within 90 days after the date of the imposition of the fees, dedications, reservations, or exactions imposed on the Project.
12. The Property shall be maintained free and clear of any accumulations of trash, debris, waste, and combustible and/or flammable materials, other than the related materials specifically authorized under this Conditional Use Permit.
13. The use and improvements authorized by the Conditional Use Permit shall conform to the plans as finally approved by the City as conditioned herein, and any appreciable modification as determined by the Development Services Director/City Engineer shall require the prior approval of the Planning Commission.

PLANNING DIVISION

1. The Project shall substantially conform to submitted plans submitted September 12, 2017, consistent with plans in Addendum No. 1 to the certified Final EIR, SCH #2013051029, except as modified herein. Future modifications that are not in substantial conformance, as determined by the Development Services Director/City Engineer (Director), shall require modification of this approval subject to the provisions of IMC Section 17.80.160 "Modification".
2. No convenience store business operations shall be conducted outside of an enclosed building.
3. A separate sign permit, subject to the approval of the City's Development Services Director/City Engineer, shall be required for any proposed signage. The proposed signage must be approved by the property owner.
4. The hours of operation for the convenience store shall be 4:00 AM to 12:00 AM. If the Director determines that the hours of operation should be changed (based upon information such as police calls for service to the site, or complaints from the community), the matter shall be referred to the Planning Commission.

5. The operation of video or other electronic games is prohibited.
6. Adult magazines shall be kept behind the cash register and their covers obscured with “modesty panels”.
7. The sale of paraphernalia for use with illicit drugs is prohibited.
8. The sale or display of adjudicated pornographic material is prohibited.
9. The sale or display of adjudicated pornographic material and inappropriate material in outside newspaper dispensers is prohibited.
10. All conditions of approval and requirements set forth in Development Agreement No. 02-2016 and Site Plan and Design Review Permit No. 06-2016 shall be complied with as part of this application.
11. That the establishment complies with the Irwindale Municipal Code, including those regulations for off-street parking, noise, signs, drinking in public, landscape and irrigation, and graffiti removal.
12. That exterior lighting of the parking area shall be kept at an intensity of between one and two footcandles, so as to provide adequate lighting for patrons while not disturbing surrounding residential or commercial areas. Light sources shall be screened or shielded from adjacent properties and from the sky.
13. That adequate security measures shall be provided as specified by the police department, including retaining trained staff and security personnel and providing security devices such as surveillance or burglar alarm systems.
14. The operator of the establishment shall ensure that no trash or litter originating from the site is deposited onto neighboring properties or onto the public right-of-way. The owner or operator shall provide for daily removal of trash, litter and debris from the premises and on all abutting sidewalks within twenty feet of the premises.
15. That the owner of the establishment shall maintain all required permits and/or licenses for the sale of alcoholic beverages in good standing.
16. That a copy of the current business license shall be kept on the premises of the establishment and be presented to any planning director, city code enforcement officers, law enforcement officers or their duly authorized representatives, upon request.
17. The following conditions shall apply to the convenience store:
 - a. The permittee at all times shall comply with all terms and provisions of the license issued by the State Department of Alcoholic Beverage Control and/ or the terms and provisions of the Alcoholic Beverage Control Act.

- b. No more than 500 square feet of the convenience store shall be used for the sale and display of alcoholic beverages.
- c. No alcohol sales shall be permitted between the hours of 10:00 p.m. and 10:00 a.m.
- d. Upon a showing of good cause, and after notice and an opportunity to be heard, the sale of alcohol in the convenience store may be restricted.
- e. No beer or wine shall be displayed within five (5) feet of the cash register or the front door unless it is in a permanently affixed cooler.
- f. The sale of alcoholic beverages for consumption on the premises is prohibited and appropriate posting of signs stating that drinking on the premises is prohibited by law shall be posted both inside and outside the establishment.
- g. No sale of alcoholic beverages shall be made from a drive-up window.
- h. No sales of single-serving containers of beer and/ or wine shall be made.
- i. Paper or plastic cups shall not be sold or given away in quantities less than their usual and customary packaging.
- j. Exterior storage of any kind is prohibited.
- k. Employees shall be provided a copy of these Conditions of Approval and shall be trained in accordance with applicable ABC rules and regulations.

BUILDING & PUBLIC WORKS

1. Comply with all necessary NPDES requirements pertaining to the proposed use.
2. The applicant shall obtain applicable building permits for the proposed use.

FIRE DEPARTMENT

1. Plans for modification to existing sprinkler system shall be submitted to Fire Department for plan review and approval.
2. The means of egress travel shall be illuminated at any time the building is occupied with a light intensity of not less than 1 foot-candle at the floor level. Building Code 1003.2.9.1.
3. The power supply for the means of egress exit illumination shall be supplied from separate sources in accordance with the Building Code 1003.2.9.2.
4. Illuminated exit signs shall be located as necessary to clearly indicate the direction of egress travel. Additional exit signs may be required at time of field inspection. Building Code 1003.2.8.2.
5. Portable Fire Extinguisher requirements shall be determined by Fire Department Field Inspector in accordance with Fire Code 1002.1.

6. Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cu. ft.) or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings or combustible roof eaves, unless areas containing dumpsters or containers are protected by an approved automatic fire sprinkler system. Fire Code 1103.2.2.