

**RESOLUTION NO. 2022-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR A DRIVE-THROUGH FAST FOOD RESTAURANT TO BE LOCATED AT 1900 EAST PLAZA BOULEVARD. CASE FILE NO. 2021-11 CUP APN: 557-420-31**

**WHEREAS**, the Planning Commission of the City of National City considered a Conditional Use Permit for a drive-through fast food restaurant to be located at 1900 East Plaza Boulevard at a duly advertised public hearing held on August 1, 2022, at which time the Commission denied the Conditional Use Permit; and,

**WHEREAS**, subsequent to the Planning Commission denial of the Conditional Use Permit, the applicant (“APPELLANT”) appealed the decision of the Planning to the City Council; and

**WHEREAS**, the City Council of the City of National City considered the appeal of the Planning Commission’s denial of the Conditional Use Permit at a duly advertised public hearing held on September 6, 2022, at which time oral and documentary evidence was presented; and,

**WHEREAS**, at said public hearing the City Council considered the staff report contained in Case File No. 2021-11 CUP maintained by the City and incorporated herein by reference along with evidence and testimony at said hearing; and,

**BE IT FURTHER RESOLVED** that the City Council hereby upholds the appellants’ appeal of and overturns the Planning Commission’s decision to deny Conditional Use Permit No. 2021-11 CUP for a drive-through fast food restaurant to be located at 1900 East Plaza Boulevard.

**WHEREAS**, this action is taken pursuant to all applicable procedures required by State law and City law; and,

**WHEREAS**, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of National City, California, that the evidence presented to the City Council at the public hearing held on September 6, 2022, support the following findings:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code, because drive-through businesses are identified as a conditionally-allowed use in the Major Mixed-Use District (MXD-2) zone, and the conditions of approval will assure the proposed drive-through aisle will meet all requirements as contained in NCMC §18. 41 – Site Planning Standards.
2. The proposed use is consistent with the General Plan and any applicable specific plan, because the Land Use Code conditionally allows drive-through businesses in the MXC-2 zone; the Land Use Code is consistent with the General Plan. Additionally, there are no Specific Plans affecting this location.
3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity, because the property will be completely redeveloped and will provide enough parking spaces based on provisions outlined in the Land Use Code. In addition, the proposed drive-through aisle, subject to the conditions of approval, meets all requirements for such uses outlined in the Land Use Code, as discussed above.
4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints, because the project is expected to generate a reduction in approximately 60 AM peak hour trips and an increase of 103 PM peak hour trips and 1,655 net new daily trips, which can be accommodated by existing road network. Intersections in this location are currently operating at an LOS of D or better (passing), with the exception of Palm Avenue and East Plaza Boulevard, and are calculated by the provided traffic impact analysis to continue to have a passing LOS after construction. The intersection of Palm Avenue and East Plaza Boulevard has a LOS E and is calculated to have a less than significant increase in delay.
5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located, because noise issues related to drive-through businesses are usually related to vehicle queuing and ordering windows/speakers. Noise is not likely to be an issue given that the area is close to both arterial streets and a freeway. Residential areas will be physically separated from the proposed development by a solid six-foot high wall. Recent approvals for drive-through businesses have required noise-attenuating speakers at the ordering board. This type of speaker automatically adjusts its volume to compensate for ambient noise (streets, vehicles, etc.). Therefore, the volume is lower during quieter

periods, such as at night. There is a condition requiring the noise-attenuating speakers. In addition, the new business will be a benefit the public interest by providing new jobs.

6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and has been determined to be categorically exempt from environmental review pursuant to Class 32, Section 15332 (In-fill Development Projects) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit.

**BE IT FURTHER RESOLVED** that the application for Conditional Use Permit is approved subject to the following conditions:

#### General

1. This Conditional Use Permit authorizes a new drive-through fast food restaurant (In-N-Out) to be located at 1900 East Plaza Boulevard. Plans submitted for permits associated with this project shall conform to Exhibit A, Case File No. 2021-11 CUP, dated 6/2/2021.
2. Before this *Conditional Use Permit* shall become effective, the applicant and the property owner shall both sign and have notarized an Acceptance Form, provided by the Planning Division, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the *Conditional Use Permit*. The applicant shall also submit evidence to the satisfaction of the Planning Division that a Notice of Restriction on Real Property is recorded with the County Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the *Conditional Use Permit* are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Director of Community Development prior to recordation.
3. *Within four (4) days of approval*, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. Checks shall be made payable to the *County Clerk* and submitted to the National City Planning Department.

4. This permit shall become null and void if not exercised within one year after adoption of the resolution of approval unless extended according to procedures specified in the Municipal Code.
5. This permit shall expire if the use authorized by this resolution is discontinued for a period of 12 months or longer. This permit may also be revoked, pursuant to provisions of the Land Use Code, if discontinued for any lesser period of time.
6. This *Conditional Use Permit* may be revoked if the operator is found to be in violation of any Conditions of Approval.

## Engineering

7. The Property is in the Federal Flood Plain area. Flood hazard permit shall be obtained from the Engineering Department.
8. A Hydrology study (100 year flood) is required for the new project. The study should consider the proposed project area to the closest municipal storm drain collection point. The study should consider the adequacy of the existing storm drain system to convey any additional run off. All Hydrology study findings and recommendations are part of Engineering Department requirements.
9. The Storm Water BMP Requirements Applicability Form I-1 and if required I-2 checklist for the National Pollutant Discharge Elimination System (NPDES) is required to be completed and submitted to the Engineering Department. The checklist will be required when a project site is submitted for review of the City Departments. The checklist is available at the Engineering Division web site at the link below \*. If it is determined that the project is subject to the "Priority Project Permanent Storm Water BMP Requirements" and the City of National City Storm Water Best Management Practices of the Jurisdictional Urban Runoff Management Program (JURMP) approved Standard Urban Storm Water Mitigation Plan (SUSMP) documentation will be required prior to issuance of an applicable engineering permit. The SUSMP shall be prepared by a Registered Civil Engineer.  
  
\*<http://www.nationalcityca.gov/city-government/engineering-public-works/engineering-division/online-services-forms-fees>.
10. The Best Management Practices (BMPs) for the maintenance of the proposed construction shall be undertaken in accordance with the National Pollutant Discharge Elimination System (NPDES) regulations which may require a Storm Water Pollution Prevention Plan (SWPPP) for the project. An approved SWPPP will be required prior to issuing of a construction permit.

11. All surface run-off shall be treated with an approved Standard Urban Runoff Mitigation Plan (SUSMP) Best Management Practice (BMP) for all Priority SUSMP projects. No runoff will be permitted to flow over the sidewalk. Adjacent properties shall be protected from surface run-off resulting from this development.
12. The property owner, or its successors and assigns shall be responsible for the maintenance, repair, or reconstruction of all irrigation and landscaping improvements installed within the public right-of-way. Sprinkler heads shall be adjusted so as to prevent overspray upon the public sidewalk or the street. The proposed sprinkler heads shall be installed behind the sidewalk, and the irrigation mainline upon private property only, as required by the City. The property owner or, its successors or assigns, shall be remove and relocate all irrigation items from the public right-of-way at no cost to the City, and within a reasonable time frame upon a written notification by the City Engineer.
13. Metallic identification tape shall be placed between the bottom layer of the finished surface and the top of all irrigation lines in the public right-of-way.
14. A grading and drainage plan shall be submitted showing all of the proposed and existing on-site and off-site improvements. The plan shall be prepared in accordance with the City's standard requirements by a Registered Civil Engineer. All necessary measures for prevention of storm water pollution and hazardous material run-off to the public storm drain system from the proposed parking lot or development shall be implemented with the design of the grading. This shall include the provision of such devices as storm drain interceptors, clarifiers, or filters. Best Management Practices for the maintenance of the parking lot, including sampling, monitoring, and cleaning of private catch basins and storm drains, shall be undertaken in accordance with the National Pollution Discharge Elimination System (NPDES) regulations. A private storm water treatment maintenance agreement shall be signed and recorded. A check list for preparation of the grading plan/drainage plan is available at the Engineering Department.
15. All existing and proposed curb inlet on property shall be provided with a "No Dumping" signage in accordance with the NPDES program.
16. A National Pollutant Discharge Elimination System (NPDES) permit is required for discharges of storm water runoff associated with construction greater than 1 acre activity where clearing, grading, and excavation results in a land disturbance. A construction storm water permit shall be obtained from the Regional Water Quality Control Board. A copy of shall be given to the City of National City Engineering Department prior to any work beginning on the project.

17. A Notice of Intent (NOI) shall be filed with the Regional Water Quality Control Board (RWQCB).
18. Industrial facilities shall comply with NPDES regulations. A Storm Water Pollution Prevention plan shall be prepared and submitted to the Engineering Department for approval. The facility shall satisfy the sampling and monitoring requirements of the NPDES regulations.
19. A sewer permit will be required. The method of sewage collection and disposal shall be shown on the grading/drainage plan. Any new sewer lateral in the City right-of-way shall be 6 inch in size with a clean out. A sewer stamp "S" shall be provided on the curb to mark the location of the lateral.
20. Separate street and sewer plans prepared by Registered Civil Engineer, shall be submitted showing all of the existing and proposed improvements. The plans shall be in accordance with City requirements.
21. A soils engineering report shall be submitted for the Engineering Department's review, after Planning Commission approval. The report shall address the stability of all of the existing and proposed slopes on the property. It shall also address the adequacy of the building pads, the criteria for any new retaining wall design, the maximum allowable soil bearing pressure and the required pavement structural sections for the proposed streets, the parking areas, and the driveways. As a minimum, the parking lot pavement sections shall be 2 inch A.C. over 4 inch Class II aggregate base. The street pavement sections shall be in accordance with National City modified Standard Drawing G-34. All soils report findings and recommendations shall be part of the Engineering Department requirements.
22. The deteriorated portions of the existing street improvements along the property frontages shall be removed and replaced. Specifically the existing cross gutter across the driveway opening, approximately 540 square feet, and that portion of the sidewalk which is now undermined, approximately 75 square feet as marked out in the field.
23. Street pavement repair will be required. The work shall be as follows: Along the inside and outside edges of the deteriorated cross gutter, a minimum cut back of twelve inches from the gutter edge outward (or as directed by the city engineer, and full depth removal and replacement of the asphalt.
24. The existing street improvements along the property frontage(s) shall be kept free from weed growth by the use of special weed killers, or other approved methods.

25. All existing survey monuments, including any benchmark, within the boundaries of the project shall be shown on the plans. If disturbed, a licensed land surveyor or civil engineer shall restore them after completion of the work. A Corner Record shall be filed with the County of San Diego Recorder. A copy of the documents filed shall be given to the City of National City Engineering Department as soon as filed.
26. The driveway on Plaza Boulevard shall be an alley entrance type driveway with pedestrian ramps.
27. A permit shall be obtained from the Engineering Department for all improvement work within the public right-of-way, and any grading construction on private property.
28. Street improvements shall be in accordance with the City Standards.
29. A title report shall be submitted to the Engineering Department, after the Planning Commission approval, for review of all existing easements and the ownership at the property.
30. All NEW restaurants are subject to a sewer district fee of \$1,930 for each count of seven seats or portion thereof. A count of the number of proposed seats shall be included together with a seat count of the existing restaurant.
31. A traffic study is required for the proposed development. The traffic study shall include queuing analysis for left turns into the property from west bound Plaza Boulevard and right turns in from East bound Plaza Boulevard. Traffic Analysis shall also include analysis of vehicle volumes entering Super Star Car Wash and determine any impacts to In-N-Out due to shared driveway.
32. All electrical, telephone and similar distribution service wires for the new structure(s) shall be placed underground.
33. A cost estimate for all of the proposed grading, drainage, street improvements, landscaping and retaining wall work shall be submitted with the plans. A performance bond equal to the approved cost estimate shall be posted. A deposit in the amount of three percent (3%) of the estimated cost or \$10,000 (whichever is greater) shall also be deposited with the City as an initial cost for plan checking and inspection services at the time the plans are submitted. The deposit is subject to adjustment according to actual worked hours and consultant services.

34. A hydromodification plan or a letter sealed and signed by the Engineer of Work explaining why the project is exempt from hydromodification requirements shall be submitted.
  
35. If public safety concerns arise due to unforeseen traffic issues following the opening of In-N-Out, the City may construct a median between east and westbound lanes of Plaza Blvd. west of Interstate 805 to be extended 300 feet further to the west at the applicant's sole cost. The median shall be required at the sole discretion of the City Engineer if public safety concerns occur related to left turns occurring either entering or exiting the driveway located on the property. The applicant shall provide complete public improvement plans for the possible median extension and shall agree to provide either a Payment Bond or a cash bond, at In-N-Out's preference, in an amount equivalent to 200% of a certified engineer's estimate for said improvements for a period of three years from the opening of this In-N-Out location. As a condition of approval, the applicant agrees to cover any cost that exceeds the 200% cost estimate. Alternatively, the applicant may include a yearly escalator in the bond agreement as negotiated with the Engineering Department. At the expiration of the three year period, if the City has not decided to require construction of the median, the City shall release and/or return any and all bonds held.
  
36. Other miscellaneous requirements:
  - i. The developer is solely responsible for submitting a set of plans to Sweetwater Authority for their review and approval.
  - ii. A drainage easement shall be granted from Plaza Boulevard through the property to the drainage channel along the westerly property line to allow city crews to access, maintain and clean the channel.
  - iii. On the south easterly corner of the lot the developer shall grant an access easement to the City around the proposed patio structure to allow for the removal of miscellaneous debris
  - iv. The developer shall construct a new access ramp for city equipment from the parking lot area, where the new easement terminates at the channel, down to the top of the channel wall.
  - v. The Developer shall replace the existing fence along the drainage channel with a wrought iron fence.



- vi. The developer shall fill in the storm channel forebay with an approved design of rock and concrete.

## Fire

- 37. Project shall be designed to code.
- 38. The National City Fire Department utilizes all current codes and ordinances. Currently, we are using the 2019 editions of NFPA, CFC and the current edition of the CCR.
- 39. Fire sprinkler, fire alarm, Co2 beverage system, and cooking suppression system, shall be evaluated and installed for intended use per code. All fire related plan designs shall be submitted directly to the National City Fire Department through permit.
- 40. Fire apparatus access roads shall comply with the requirements of this section (Section 5 CFC 2013) and shall extend to within 150 feet of **all** portions of the facility and **all** portions of the exterior walls of the first story of the building as measured by an **approved** route around the exterior of the building. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus.
- 41. The required width of emergency fire apparatus access roads shall not be **obstructed in any manner**, including parking of vehicles. All access roads shall be no less than 20 feet wide, no less than 14 feet high and shall have an all weathered road with the ability to support 75 thousand pounds or greater. Where a fire hydrant is located on a fire apparatus road, the minimum road width shall be 26 feet. A 28 foot turning radius is required for fire department access through site. All fire department access roads shall be painted and signed to prevent parking in these required designated emergency areas.
- 42. Fire hydrants that may be located throughout the project as not to have a separation distance greater than 300 feet. Fire hydrants to be located within 300 feet of all locations which are roadway accessible. (Measurement starts from nearest public fire hydrant to project)
- 43. The following items pertain to fire hydrants:
  - a. Size and location, including size and number of outlets and whether outlets are to be equipped with independent gate valves.

- b. Fire hydrant to be of three outlet design.
44. Provide calculation confirming flow availability to meet fire flow demands and supply large diameter hose (4 inch).
  45. Fire hydrants to be marked by use of blue reflective marker in the roadway.
  46. Upon submittal for an underground permit, the following shall be included:
    - Data sheet for Back-Flows
    - Data sheets for Private and Commercial Hydrants
    - Data sheets for Post Indicator Valves

*Information on required fire hydrants back-flow devices, etc.; can be acquired from Sweetwater Authority.*

*All pipe and their appliances, shall meet industry/code standards for underground use*

47. Approved signs or other approved notices or markings (Red Curb) that include NO PARKING – FIRE LANE shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. The means by which fire lanes are designed shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility. **All projects shall be evaluated for this necessary application.**
48. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in a specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.
49. The fire code official is hereby authorized to enforce the provisions of this code and shall have the authority to render interpretations of this code, and to adopt policies, procedures, rules and regulations in order to clarify the application of its provisions. Such interpretations, policies, procedures, rules and regulations shall be in compliance with the intent and purpose of this code and shall not have the effect of waiving requirements specifically provided for this code.
50. Please see all attachments provided, a copy of which has been provided by the Planning Division.

51. Should any plan corrections be required, contractor must correct the plan and re-submit to the Fire Department for approval once again prior to installation.

#### Planning

52. A landscape and underground irrigation plan shall be submitted as part of the construction permitting process. Installation and continued maintenance of minimum landscaping items required by the Land Use Code, including a minimum three-foot continuous hedge along the frontages, shall be provided for the life of the project.
53. Plans submitted for construction shall conform to minimum turning radius requirements for drive-through businesses unless the City Engineer approves a lesser radius.
54. Business operations shall comply with Municipal Code Title 12 (Noise) at all times. Plans submitted for construction shall reflect the use of sound-attenuating speakers that automatically reduce the volume of ordering speakers during periods of low ambient noise.
55. Plans submitted for construction shall conform to Land Use Code Chapter 18.46 (Outdoor Lighting) and Section 18.42.040 (Screening mechanical equipment and elevator housing).
56. Plans submitted for improvements must comply with the current editions of the California Building, Electrical, Plumbing, Mechanical, and Fire Codes.

#### Police

57. The permittee shall comply with all applicable law.

#### Sweetwater Authority

58. The most easterly service is a 2-inch lateral with a 1-1/2-inch meter. Revise on this and all associated sheets (Sheet C32 on plans).
59. Plans show 2-inch gas lines branching off 6-inch fire service. Gas and fire services must remain completely separate. In addition, water pipelines must be horizontally separated by a minimum of 10 feet from pipelines conveying sewer and 5 feet from other utility connections (Sheet C34).
60. Per Sweetwater Authority Standard Drawing 15-A, backflow connection details for devices larger than 2 inches are required to be designed by a registered civil engineer and shown on plans. Alternatively, backflows can be installed per

Standard Drawing 15-C. A copy of Standard Drawing 15-C has been enclosed with this letter (Sheet C34).

61. Add note stating make and model of all backflow devices or state that device shall be “Authority approved lead-free RP backflow preventer” for domestic and irrigation services and “Authority approved lead-free RPDA backflow preventer”, for fire service (Sheet C34).
62. Per Sweetwater Authority Rates & Rules, fire services must be entirely separated from domestic and irrigation connections (Sheet C34).
63. Show estimated daily irrigation usage in gallons per day (Sheet LPP.1).
64. The Owner is requested to revise and resubmit the Plans, along with fire protection plans with hydraulic calculation to the Authority for its review and approval.
65. The Owner will also be required to provide estimated domestic water usage in gallons per day.

**BE IT FURTHER RESOLVED** that this Resolution shall become effective, final, and conclusive on the day following the City Council meeting where this Resolution is adopted. The time within which judicial review of this decision may be sought is governed by the provisions of Code of Civil Procedures Section 1094.6.

**PASSED and ADOPTED** this 6<sup>th</sup> day of September, 2022.

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Alejandra Sotelo-Solis, Mayor

ATTEST:

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Luz Molina, City Clerk

APPROVED AS TO FORM:

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Barry J. Schultz  
Interim City Attorney