

Attachment '1'
Resolution No. 2024-__

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2024-03, TO ALLOW FOR A TYPE 41 (ON-SALE BEER AND WINE) ALCOHOL LICENSE AND A REQUEST FOR A PARKING REDUCTION FROM THE OFF-STREET PARKING REQUIREMENTS FOR THE AMERICAN RHINO LOCATED AT 753 SOUTH MADERA AVENUE, IN KERMAN, CA (APN: 023-174-06S)

WHEREAS, the Planning Commission considered a request for a conditional use permit filed by The American Rhino (Applicant) on behalf of Gurbir Sapraj (Property Owner) requesting approval of a conditional use permit to allow for Type 41 (On-sale Beer and Wine) alcohol license and a request for a parking reduction from the off-street parking requirements for The American Rhino located at 753 S. Madera Ave., in Kerman, CA (APN: 023-148-02)

WHEREAS, a public notice was circulated to adjacent properties within a 300-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval for Conditional Use Permit 2024-03 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, Approval of the proposed CUP for a Type 41 alcohol license would not result in over-concentration in Census Tract 40.03; and

WHEREAS, a parking reduction request consistent with KMC 17.74.130 and 17.14.150 was considered by the Commission as part of this CUP approval; and

WHEREAS, the project was assessed under the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission, after hearing public testimony and deliberating, now desires to approve Conditional Use Permit 2024-03 subject to findings and conditions of approval and adopt a finding of a Class 1 Categorical Exemption (Existing Facilities) pursuant to CEQA Guidelines Section 15301

NOW, THEREFORE, BE IT RESOLVED by the City of Kerman Planning Commission as follows:

- 1) Recitals: The above recitals are true and correct and are incorporated herein:
- 2) CEQA: The Planning Commission makes findings and determines that a Class 1 Categorical Exemption (Existing Facilities) set forth in CEQA Guidelines Section 15301 applies to this Project as it consists of the use of an existing private facility on an existing site. No expansion of the building is proposed, and any maintenance or alteration of the building structure would be minor, and would not result in a significant, adverse impact on the environment. Furthermore, none of the exceptions set forth in CEQA Guidelines Section 15300.2 apply to this Project.
- 3) Conditional Use Permit: The Planning Commission has determined to approve Conditional Use Permit 2024-03 as permissible under Kerman Municipal Code Section 17.24.020 and determined that all findings required for approval of Conditional Use Permit 2024-03 can be made, including those required by the City of Kerman Municipal Code Section 17.12.040 (C) as follows:

- A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city.

Finding A (1). The project will not be detrimental to public health, safety, or welfare. It is located in a designated general commercial area with conditions of approval, which minimize any potential negative impacts to adjacent land uses. The conditions of approval (Exhibit 'A') limit types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience, or welfare of the city. The Planning Commission adopts the Police Chief's determination that the proposed use: (i) would not be detrimental to the public health, safety, comfort, or welfare of persons located within five hundred (500') feet of the site; and (ii) would not significantly increase the severity of existing law enforcement or public nuisance problems in the area (e.g. increase in service calls related public intoxication nuisance, vagrancy, or loitering).

- B. That the proposed use is consistent with the Kerman General Plan.

Finding B (1). Alcoholic beverage sales for on-site consumption is a permitted use subject to a conditional use permit in the (CG General Commercial), which is a consistent zone with the General Plan GC (General Commercial) land use designation. The project is consistent with the General Plan, including General Plan objectives ED-1.1, and ED-1.4.

Finding B (2). The Project is located along a general commercial corridor suitable for many retail, business professional, service commercial, and other similar activities and uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

- C. That the environmental document is prepared as per the California Environmental Quality Act.

Finding C (1). As stated in greater detail, above, a preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The project falls within a Categorical Exemption per CEQA Guidelines Section 15301 (Existing Facilities) as the project is characterized as a use occupying an existing structure within a developed site and meets the required conditions described in said section. There are no project-specific significant effects on the project or the site which would require additional environmental review.

- D. That the site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

Finding D (1). The location of the Project is within the CG - General Commercial zone district which is located along a commercial corridor suited for retail, office, commercial services, and other similar activities and uses along the Madera Avenue corridor in a developed parcel of land. Each respective tenant's hours of operation and peak hours are different and will generally not conflict with the proposed restaurant's hours of operation. Most patrons visiting the site utilize on-street parking on S. Madera Ave. For this reason, based on the current tenant uses, the project site's parking needs are lower than the number of parking stalls required by the code. Furthermore, no expansion of the existing building envelope of the site is required or proposed. Therefore, the project is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed

4. Conditions of Approval: Given the foregoing, the Planning Commission approves Conditional Use Permit 2024-03, subject to the conditions of approval attached herein as **Exhibit 'A'**.
5. Effective Date: This Resolution shall take effect immediately.

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 8th day of April 2024, and was fully adopted at the said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

ATTEST:

Jesus R. Orozco
Planning Commission Secretary

Exhibit 'A'

**Conditions of Approval
The American Rhino – CUP 2024-03
April 8, 2024**

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to the validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would, on the whole, enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2024-03 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, are based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require an operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result

in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to "developer" or "applicant" herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the use beyond its approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2024-03, including but not limited to; the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2024-03.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or applicant to ensure that any required permits, inspections, and approval from any regulatory agency are obtained from the concerned agency prior to the issuance of a business license or final occupancy issuance.
6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2024-03.
7. Approval of CUP 2024-03 is for the benefit of the applicant. The submittal of application(s) by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Kerman and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorney's fees, and damages arising therefrom (collectively "claim"). The City shall promptly notify the applicant of any claim.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Building Division

8. A building permit shall be required for all proposed or future tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.
9. The property owner shall submit plans consistent with the California Building Standards Code, including site development and ADA accessibility based upon the codes in effect at the time of plan check submittal.

North Central Fire Protection District

10. The applicant shall be responsible for contacting the NCFPD by email at Fire.Prevention@NorthCentralFire.org or by phone at (559) 878-4560 to schedule an over-the-counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the NCFPD will affect your ability to obtain final approval for your project.

Planning Division

General

11. On-site litter and graffiti shall be corrected per Kerman Municipal Code Chapter 9.09 – Abatement of Graffiti Nuisance.
12. The business and/or property owner shall keep the property clear of all trash, rubbish, and debris at all times. Dumping of refuse shall be restricted to the refuse containers scheduled to service the site.
13. The business and/or property owner shall comply with all applicable federal, state, or local laws, rules, and regulations. Material violations of said laws, rules, and regulations may be cause for review and possible revocation of the use permit.
14. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.

Conditional Use Permit 2024-03

15. Conditional Use Permit 2024-03 shall allow for the on-site sale and consumption of alcoholic beverages at 753 S. Madera Ave. Alcohol sales shall be consistent with ABC license Type 41 (On-sale Beer and Wine), as authorized by the State Department of Alcoholic Beverage Control. Any

modification to this license type shall require an amendment to CUP 2024-03. Alcohol consumption shall be restricted to the interior of the building.

16. Conditional Use Permit 2024-03 shall also allow for a parking reduction of eighteen (18) parking stalls. The site currently has twenty-five (25) parking stalls and is required by code to provide forty-three (43) parking stalls for the proposed and existing uses. Parking reduction requests are allowed by chapter 17.74.130 of the KMC. Any intensification by the proposed use or the change of a business resulting in a greater parking demand shall be cause for future review and consideration by the Commission.
17. In the event that the site's parking becomes substandard due to a greater demand in parking by the operation of The American Rhino, the use may be required to accommodate off-premise parking necessary to meet parking requirements as governed by the KMC.
18. The property owner shall restore any dilapidated awnings fronting the project site and shall make any necessary repairs to maintain the awnings in a refined condition.
19. On-site dining shall not exceed 50 seats, or as permitted by fired code, whichever is less. The business shall provide additional parking stalls if seating is increased.
20. The project site shall be permitted to provide alcohol sales between 11:00 AM and 11:00 PM, Monday through Sunday.
21. Outdoor dining shall not be permitted as part of this CUP approval.
22. Outdoor storage of equipment or material shall not be permitted as part of this CUP approval.
23. The business owner shall be responsible for ensuring compliance with all of the standards of operation as codified by KMC 17.100.050.

Signage

24. Proposed and future permanent signage shall comply with the sign ordinance in place at the site of submittal for a building permit.
25. No sign shall interfere with a driver's or pedestrian's view of public right-of-way or in any other manner impair public safety or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.
26. Temporary signage shall be permitted for special events (i.e. grand opening, local, State, or Federal recognized holidays), to be displayed for thirty (30) days or less per year and a promotional period.
27. The existing parking lot shall be restriped and shall be free of faded lines at all times.

28. The use shall provide the necessary type and quantity of trash receptacles as required by KMC 8.12A.050. A new trash enclosure accommodating all required containers shall be constructed, subject to space available on-site. The location and orientation of the trash enclosure shall be approved by the Planning Division.

Police Department

29. Video Surveillance shall be installed consistent with KMC 17.100.050 (D) – Video Surveillance. Surveillance system installed shall be in color and monitor areas where alcohol sales and consumption is permitted to occur under this CUP. The system shall have the correct date and time stamped and retained for no less than thirty (30) days. Footage shall be made available to law enforcement within 24 hours of initial request.
30. The operation of the business shall not result in criminal activity or repeated nuisance activities on the property as specified in KMC, Section 17.100.070 – Loitering and Other Nuisance Activities.
31. The business owner or operator shall be responsible for the removal of deterrent behavior including loitering and/or vagrancy in or upon the business site. The business owner shall install “No Trespassing” and “No Loitering” signs on the premise to the specifications of the Police Department.

End of Conditions