

CITY COUNCIL RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING A CONDITIONAL USE PERMIT (CUP 23-006) TO ALLOW FOR A NEW 2,735 SQUARE FOOT POPEYE'S RESTAURANT TO OPERATE BETWEEN THE HOURS OF 10:00 A.M. AND 12:00 A.M. AND TO FEATURE A DRIVE-THROUGH LOCATED AT 7820 BRENTWOOD BOULEVARD (APN 016-150-106).

WHEREAS, Charlie Brown of C.C. Planning & Permitting Services, (the "Applicant") submitted an application to the City of Brentwood requesting approval of a Conditional Use Permit (CUP 23-006) to allow for a new 2,735 square foot Popeye's restaurant to operate between the hours of 10:00 a.m. and 12:00 a.m. and to feature a drive-through; and

WHEREAS, the Applicant concurrently submitted a request for a Design Review (DR 23-003) to allow for a new 2,735 square foot restaurant building; and

WHEREAS, collectively, DR 23-003 and CUP 23-006 constitute the "Project;" and

WHEREAS, the City referred the Project to various departments and agencies for review and recommendations; and

WHEREAS, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on April 5, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS, the proposed project is exempt from the California Environmental Quality Act ("CEQA") as it qualifies as a Class 32 categorical exemption under the CEQA Guidelines section 15332, as it is characterized as in-fill development, meeting the following conditions: i) the project is consistent with the existing General Plan designation and all applicable General Plan policies, as well as with the applicable zoning designation and regulations, ii) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, iii) the project site has no value for endangered, rare, or threatened species, iv) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and v) the site can be adequately served by all required utilities and public services; and

WHEREAS, the Planning Commission of the City of Brentwood considered this design review application at its regular meeting of April 16, 2024, and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties; and

WHEREAS, the Planning Commission was unable to make findings for approval of CUP 23-006 during the April 16, 2024 meeting and continued the item with direction to the applicant to resubmit the application without the drive-through component; and

WHEREAS, on June 11, 2024, the applicant submitted a revised proposal that still featured the drive-through component; and

WHEREAS, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on July 26, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS; the Planning Commission of the City of Brentwood considered this CUP 23-006 application in a public hearing at its regular meeting of August 6, 2024, and considered the staff report, all accompanying information, and testimony received from the applicant and other interested parties; and

WHEREAS; the Planning Commission approved the Project, subject to certain findings and conditions; and

WHEREAS, on August 8, 2024, Council Member Mendoza filed a Call for Review, pursuant to Brentwood Municipal Code Section 17.882.030; and

WHEREAS, the City distributed a Notice of Public Hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on August 30, 2024, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS, the City Council held a public hearing on this project at its regular meeting of September 10, 2024, and considered, among other things, the staff report, supporting documents, public testimony, and all appropriate information submitted with the proposed Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brentwood:

A. Hereby finds that:

- i. With respect to the California Environmental Quality Act, the proposed project is exempt from CEQA as it qualifies as a Class 32 categorical exemption under the CEQA Guidelines section 15332, as it is characterized as in-fill development, meeting the following conditions: i) the project is consistent with the existing General Plan designation and all applicable General Plan policies, as well as with the applicable zoning designation and regulations, ii) the proposed development occurs within city limits on a project site of no more than five acres substantially

surrounded by urban uses, iii) the project site has no value for endangered, rare, or threatened species, iv) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and v) the site can be adequately served by all required utilities and public services.

ii. With respect to the conditional use permit findings required pursuant to Brentwood Municipal Code Section 17.830.005:

a. The location, size, design and operating characteristics of the proposed development must be compatible with and must not adversely affect the livability of appropriate development of abutting properties and the surrounding neighborhood. Consideration shall be given, but shall not be limited to:

1. Harmony in scale, bulk, coverage and density;

The proposed drive-through use would be in harmony with the scale and bulk coverage of the greater Brentwood Plaza, given that the proposed building is proposed to be of compatible architectural design that features a flat roof with variations in height and linear features such as pilasters. The proposed building is further compatible with the existing development as the proposed materials (stucco, metal and ornamental brick) would be comparable to the existing buildings on site.

2. The availability of public facilities and utilities;

The site is served by the appropriate public facilities and utilities including water, sewer, refuse, and electricity.

3. The harmful effect, if any, upon desirable neighborhood character or the planned specialization of retail, commercial or community service areas;

The Project would not have a harmful effect upon the planned specialization given that the COIR zoning district's intent is to provide a transition between employment areas and residential areas located primarily near the Downtown and to serve as an attractive gateway to the Downtown and the proposed restaurant would serve as a transition between employment areas and residential areas found east and south of the project site. Further, there would be no harmful effect upon the neighborhood character with approval of this permit due to the location of the use within an existing commercial development and the fact that the drive-through would be adequately screened and would face Brentwood Boulevard.

4. *Generation of traffic and the capacity of surrounding streets;*

A traffic analysis was submitted demonstrating that the proposed project would not generate a significant amount of traffic or impact the capacity of the surrounding streets given that the surrounding streets are designed for vehicle use and calculated to adequately handle the proposed increase in vehicular use. Additionally, Brentwood Boulevard is a major north-south arterial street and is able to handle expanding traffic needs.

5. *Other relevant impacts of the development; and*

The location, size, design, and operating characteristics for the proposed project are the same as envisioned for the overall purpose and intent of the COIR zone. The proposed speaker boxes will be located on the western portion of the building, which would not impact any existing residential uses. The only residential use that the speaker boxes would face directly is a single family home at the pocket of the cul-de-sac where Berry Lane and Curtis Drive intersect. However, this home would be approximately 305 feet away from the edge of the subject parcel, across Brentwood Boulevard and through the Napa Auto Parts' parking lot, and is thus not projected to be impacted by the speaker box.

6. *The criteria set forth in Chapter 17.820 for design and site criteria and conditional use permit criteria, if applicable.*

The Project would be in compliance with BMC Chapter 17.820, as documented in the City Council resolution analyzing the design review (DR 23-003) application that was submitted as part of this project. Said findings are incorporated herein as if stated here in full.

b. *The location, design, landscaping and screening, and overall site planning of the proposed development will provide an attractive, useful and convenient living, working, shopping or community service area.*

The proposed location, design, landscaping and screening and overall site planning is well thought out to provide an attractive, useful and convenient eating area, in that the drive-through feature would be adequately screened and the project is located close to public transportation and arterial streets.

B. Hereby approves this Conditional Use Permit (CUP 23-006), subject to the above findings and the conditions set forth in Exhibit "A" attached to and incorporated into this resolution.

- C. This permit shall terminate on September 10, 2025, unless actual construction or alteration under valid permits, or the actual operation of the business authorized hereby, begins prior to that date. However, such deadline may be extended by the Planning Commission upon the filing of an extension request at any time before said period expires.

ADOPTED by the City Council of the City of Brentwood at its regular meeting of September 10, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED

Joel R. Bryant
Mayor

ATTEST:

Amanda McVey
Interim City Clerk

EXHIBIT 'A'**Conditions of Approval for
Conditional Use Permit (CUP 23-006)**

1. The Permittee, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Conditional Use Permit No. 23-006 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. The proposed project shall be operated in substantial conformance with the project description, dated "Received February 12, 2024" unless otherwise amended by the Planning Commission or the conditions of approval contained herein. Minor changes to plans and operation may be allowed subject to the approval of the Community Development Director if found to be in substantial conformance with the approved exhibits.
3. All applicable Standard Conditions of Approval for Commercial and Industrial Projects, dated May 2005, are hereby incorporated by reference and shall be complied with, unless modified by any of the conditions below.
4. Permittee shall maintain the project site in a clean and orderly manner at all times.
5. No signage is approved as part of this conditional use permit. The Permittee is required to submit an application for a sign permit for review and approval in accordance with the BMC.
6. The restaurant and drive-through window shall be open only during the hours between 10:00 a.m. – 12:00 a.m. every day of the week. Any requests to open between 12:01 a.m. – 9:59 a.m. shall be at the discretion of the Community Development Director, who may refer any requested change to drive-through window hours to the Planning Commission for subsequent review at a public hearing for consideration and approval.
7. If operation of this use results in conflicts pertaining to noise, traffic, vehicular overflow or other impacts, at the discretion of the Community Development Director, this conditional use permit may be referred to the Planning Commission for subsequent review at a public hearing. If necessary, the Commission may modify or add conditions of approval to mitigate such impacts, or may revoke said conditional use permit.
8. Permittee shall comply with Brentwood Municipal Code Chapter 9.32 "Noise Regulations."
9. The Permittee will indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and

commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the project approved herein, including adoption of this Permit, and any environmental determination made with regard thereto. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense.

10. In the event modifications to this Permit are sought, the Planning Commission shall have jurisdiction to consider any such changes or hear any enforcement hearings.