RESOLUTION NO. 15-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF PLANNING APPLICATION 14-39 FOR A CONDITIONAL USE PERMIT FOR A CONVENIENCE STORE AT 2281 NEWPORT BOULEVARD

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Shawn Mehr, as the authorized agent on behalf of the property owner, Sam Rahimian, requesting approval of a conditional use for the construction of a convenience store and replacement of the existing canopies at the gasoline service station located at 2281 Newport Boulevard in the C2 zone;

WHEREAS, the proposed 1,125 square foot convenience market will replace a cashier kiosk and will be a complementary use to the existing gasoline service station;

WHEREAS, on March 28, 1983, the City Council approved the Conditional Use Permit for the remodeling of the gas station with a variance for the setbacks, landscaping and parking.

WHEREAS, on October 24, 2005, the Planning Commission denied Conditional Use Permit (PA-05-28) for a convenience market and concurrent sales of alcoholic beverages.

WHEREAS, on October 6, 2014, an application to construct a new 1,125 square foot convenience market was filed to replace the existing kiosk. The applicant noted that no sale of alcoholic beverages is proposed.

WHEREAS, on February 9, 2015, the Planning Commission held a public hearing and approved the request to construct a 1,125 square foot convenience market with conditions prohibiting sales of alcoholic beverages and a recordation of a buyer notification referring to this restriction;

WHEREAS, on February 17, 2015, a request to appeal the decision of the Planning Commission was requested by the applicant.

WHEREAS, a dully noticed public hearing was held by the City Council on April 21, 2015 with all persons having the opportunity to speak for and against the proposal.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the City Council **UPHOLDS** the Planning Commission's decision and hereby **APPROVES** Planning Application PA-14-39 with respect to the property described above

with conditions to prohibit sales of alcoholic beverages and recordation of a buyer notification referring to the restriction.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-14-39 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 21st day of April, 2015.

_____

Mayor, City of Costa Mesa

ATTEST:

_____

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

_____

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 15__ as considered at a regular meeting of said City Council held on the 21st day of April, 2015, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 21st day of April, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2015

EXHIBIT A

FINDINGS

A. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) because:

Finding: The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

Facts in Support of Finding: The proposed convenience store and replacement of the existing canopies are a significant upgrade to the property at a highly visible intersection. As conditioned, adequate landscaping will be provided along both street frontages. In addition, the conditions require use of decorative block for the new trash enclosure and decorative paving at the driveway entries. Because of previous actions by the Planning Commission and high concentration of off-sale ABC license in the area, conditions of approval prohibits the sales of alcoholic beverages and require recordation of a land use restriction indicating this restriction.

Finding: Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

Facts in Support of Finding: Granting the conditional use permit for the convenience store will not detrimentally affect properties in the immediate neighborhood because alcoholic beverage sales are not permitted. The proposed convenience store is designed with Mission-revival style architecture and the replacement canopies incorporate the same materials and finishes that will be an upgrade to the property. The proposed site plan allows for adequate on-site circulation and provide required six parking spaces as required by code for the convenience market. By provided sufficient parking spaces on site, it is not anticipated that spill over parking to adjoining properties will occur.

Finding: Granting the conditional use permits will not allow a use, density or intensity which is not in accordance with the General Plan designation for the property.

Facts in Support of Finding: The General Plan permits a wide range of commercial uses in the General Commercial designation, including gasoline service stations. The proposed convenience store at the gasoline station would provide commercial goods and services to the community, and employment opportunities in consideration of the needs of the businesses and residential segments of the community, as called for in the General Plan (LU-1A.1). In accordance with Land Use Objective LU-1F.1, compliance with the conditions of approval will help protect established residential neighborhoods from potentially disruptive land uses and activities. The proposed convenience store would result in a floor area ratio (FAR) of 0.09. The maximum allowed FAR for high traffic generating uses in the General Commercial designation is 0.20. Therefore, the proposed project is consistent with the General Plan.

B. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(1) because:

Finding: Because of special circumstances applicable to the property, the strict application of development standards deprives such property of privileges enjoyed by others in the vicinity under identical zoning classifications.

Facts in Support of Finding: The triangular shape of the lot limits the development area of the site for a convenience store and the required six parking spaces for a retail use. The applicant revised the plans based on staff recommendations to provide the minimum number of parking spaces with sufficient turning and backing distances from the pump islands. There is no landscaping at the site with the exception of a triangular area at the corner. The current landscaped setback areas will be improved with the proposed parking configuration and relocation of the northerly driveway along the Newport Boulevard.

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be categorically exempt under Section 15303, Class 3, Construction of Small Structures, of the CEQA Guidelines.

Finding: The deviation granted shall be subject to such conditions as will assure that the deviation authorized shall not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and zone in which the property is situated.

Facts in Support of Finding: Similar deviations were approved for an Arco Gas Station at 3003 Newport Boulevard in January 2010. A 24-hour convenience store and car wash building was approved with the following deviations, based on the unique size and location of that property. Deviations included variances from rear and side setbacks:

a. Variances (32-foot rear and side setbacks required for car wash tunnel; 12-13 feet proposed);
b. Administrative adjustments (20-foot front, rear and side setbacks required; 12-15 feet proposed for fuel canopy and 13 feet for car wash storage);
c. Minor modification (20-foot Newport side setback required; 12 feet proposed for fuel canopy).

Finding: The granting of the deviation will not allow a use, density, or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property.

Facts in Support of Finding: The proposed convenience store at the gasoline station would provide commercial goods and services to the community, and employment opportunities in consideration of the needs of the businesses and residential segments of the community, as called for in the General Plan (LU-1A.1). In accordance with Land Use Objective LU-1F.1, compliance with the conditions of approval will help protect established residential neighborhoods from potentially disruptive land uses and activities. The proposed convenience store would result in a floor area ratio (FAR) of 0.09, below the maximum allowed FAR of 0.20 for high traffic generating uses in the General Commercial designation.

C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

Plng.

1. The use shall be limited to the type of operation as described in the applicant's letter of description and staff report. Any change in the operational characteristics shall require review by the Planning Division and may require an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
2. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
3. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute appropriate security and operational measures are necessary to comply with this requirement.
4. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
5. Sale of alcoholic beverages shall be prohibited.
6. A buyer's notice shall be recorded on the property prior to the issuance of building permits, to inform future property owners of the prohibition of sales of alcoholic beverages. Applicant shall submit to the Planning Division a copy of the legal description for the property, and either a lot book report or current title report identifying the current legal property owner so that the document may be prepared. The form and content of the buyer's notice shall be approved by the City Attorney's office and Development Services Director.
7. The trash enclosure shall incorporate the use of decorative block and finishes that will be complementary to other structures on site.
8. Remove and replace the existing block wall with a three-foot minimum decorative block wall.
9. Provide a 10-foot wide decorative pavement (stamped concrete, pavers) at driveway entries on Fairview Road and along Newport Boulevard.
10. The parking lot shall be slurry sealed and restriped.
11. A minimum of three, 24-inch box canopy-type trees shall be planted within the landscaped area fronting Newport Boulevard; A minimum of three 24-inch box trees shall be planted in the landscaped areas facing Fairview Road.
12. All roof mounted equipment shall be screened by the parapet.
13. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts are permitted. This condition relates to visually prominent

features of scuppers or downspouts that not only detract from the architecture but may be spilling water from overhead without an integrated gutter system which would typically channel the rainwater from the scupper/downspout to the ground. An integrated downspout/gutter system which is painted to match the building would comply with the condition. This condition shall be completed under the direction of the Planning Division.

14. Demolition permits for existing structures shall be obtained and all work and inspections completed prior to final building inspections. Applicant is notified that written notice to the Air Quality Management District may be required ten (10) days prior to demolition.
15. The applicant shall contact the Planning Division to arrange Planning inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied
16. The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by City.

Eng. 17. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.

Parks 18. The applicant shall create not more than three (3) – 4'X4' tree wells adjacent to curb and plant three (3) seven foot tall or larger King Palm (*Archontophoenix cunninghamiana*) along Newport Boulevard.

19. The applicant shall remove the existing Liquidambar styraciflua in tree well adjacent to curb and plant one (1) seven foot tall or larger King Palm (*Archontophoenix cunninghamiana*) along Fairview Road.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

Plng.

1. Once the use is legally established, the planning application herein approved shall be valid until revoked. The Development Services Director or his/her designee may refer the planning application to the Planning Commission for modification or revocation at any time if, in his opinion, any of the following circumstances exist: 1) the use is being operated in violation of the conditions of approval; 2) the use is being operated in violation of applicable laws or ordinances or 3) one or more of the findings upon which the approval was based are no longer applicable.
2. Parking stalls shall be double-striped in accordance with City standards.
3. All landscaped areas shall be separated from paved vehicular areas by 6" high continuous Portland Cement Concrete curbing.
4. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
5. Two (2) sets of detailed landscape and irrigation plans, which meet the requirements set forth in Costa Mesa Municipal Code Sections 13-101 through 13-108, shall be required as part of the project plan check review and approval process. Plans shall be forwarded to the Planning Division for final approval prior to issuance of building permits.
6. Two (2) sets of landscape and irrigation plans, approved by the Planning Division, shall be attached to two of the final building plan sets.
7. Landscaping and irrigation shall be installed in accordance with the approved plans prior to final inspection or occupancy clearance.
8. Trash enclosure or other acceptable means of trash disposal shall be provided. Design of trash enclosure shall conform with City standards. Standard drawings are available from the Planning Division.

Const Hrs

9. All noise-generating construction activities shall be limited to 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. Saturday. Noise-generating construction activities shall be <u>prohibited</u> on Sunday and the following Federal holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Bldg.

10. Comply with the requirements of the following adopted codes 2013 California Building Code, 2013 California Electrical code, 2013 California Mechanical code, 2013 California Plumbing code, 2013 California Green Building Standards Code, and 2013 California Energy Code (or the applicable adopted, California Building code, California Electrical code, California Mechanical code, California Plumbing Code, California Green Building Standards, and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa.
11. Submit precise grading plans, an erosion control plan and a hydrology study. A precise grading and a hydrology report plan shall not be required if any of the following are met:

1- An excavation which does not exceed 50 CY on any one site and which is less than 2 ft in vertical depth, or which does not create a cut slope greater than 1 ½:1 (excluding foundation area).

2- A fill less than 1 foot in depth placed on natural grade with a slope flatter than 5:1, which does not exceed 50 CY on any one lot and does not obstruct a drainage course.

3-A fill less than 3 ft in depth, not intended to support structures, which does not exceed 50 CY on any one lot and does not obstruct a drainage course.

12. Submit a soil's report for the project. Soil's Report recommendations shall be blueprinted on both the architectural and grading plans.
13. The ground adjacent immediately to the foundation shall be slopes away from the building at a slope of not less than 5% for a minimum distance of 10 feet measured perpendicular to the face of the wall CBC sec. 1804.3. See also exception. On graded sites the top of exterior foundation shall extend above the elevation of the street gutter at point of discharge or the inlet of an approved discharge devise a minimum of 12 inches plus two percent (2%).

Bus. Lic.

14. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.

Fire.

15. LPG exchange stations shall be located at least 10 feet from building doorways. CFC Table 6109.12
16. Combustible materials shall be kept at least 10 feet from containers. CFC Table 6109.12
17. When exposed to potential vehicular damage, LP-gas containers shall be protected. CFC 312 and 6107.4
18. Containers shall be located to minimize exposure to heat and physical damage and shall be stored in a covered and locked enclosure designed to prevent tampering. CFC 6109.2 and 6109.13
19. Used, empty containers shall be considered to be full when calculating the maximum quantity allowed. CFC 6109.5
20. Screw-on type caps or collars that are securely in place shall protect valves on all containers stored CFC 6109.8
21. Approved warning signs (e.g., "LIQUEFIED PETROLEUM GAS" and "NO SMOKING") shall be posted.
22. The plan shall show compliance with all applicable CFC sections and include the size and type of rack, size and quantity of bottles stored, and their location relative to exits, unprotected openings, roadways, and storage of other sales materials.
23. An operational permit is required for the storage and use of LP-gas. CFC 6101.2 and Section 105.6.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

AQMD

1. Applicant shall contact the Air Quality Management District (AQMD) at (800) 288-7664 for potential additional conditions of development or for additional permits required by AQMD.

CDFA	2.	Comply with the requirements of the California Department of Food and Agriculture (CDFA) to determine if red imported fire ants exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information.
OC Health Dept.	3.	Provide a plan to the County of Orange Health Department for review and approval.

RESOLUTION NO. PC-15-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO REVERSE THE PLANNING COMMISSION'S DECISION AND DENY PLANNING APPLICATION 14-39 A CONDITIONAL USE PERMIT FOR A CONVENIENCE STORE AT 2281 NEWPORT BOULEVARD

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Shawn Mehr, as the authorized agent on behalf of the property owner, Sam Rahimian, requesting approval of a conditional use for the construction of a convenience store and replacement of the existing canopies at the gasoline service station located at 2188 Newport Boulevard in the C2 zone; and

WHEREAS, on February 9, 2015, the Planning Commission held a public hearing and approved the request to construct a 1,125 square foot convenience market with conditions prohibiting sales of alcoholic beverages and a recordation of a buyer notification referring to this restriction;

WHEREAS, on February 17, 2015, a request to appeal the decision of the Planning Commission was requested by the applicant.

WHEREAS, a dully noticed public hearing was held by the City Council on April 21, 2015 with all persons having the opportunity to speak for and against the proposal.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council hereby **REVERSES** the Planning Commission's decision and hereby **DENIES** Planning Application PA-14-39 with respect to the property described above.

PASSED AND ADOPTED this 21st day of April, 2015.

_____

Mayor, City of Costa Mesa

ATTEST:

_____

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

_____

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 15__ as considered at a regular meeting of said City Council held on the 21st day of April, 2015, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 21st day of April, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2015.

EXHIBIT A

FINDINGS

A. The information presented substantially does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that:
   1. The proposed use is not substantially compatible with developments in the same general area and would be materially detrimental to other properties within the area.
   2. Granting the minor conditional use permit will be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
   3. Granting the minor conditional use permit will allow a use, density, or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.

B. The Costa Mesa City Council has denied Planning Application PA-14-39. Pursuant with the Public Resources Code Section 21080(b)(5) and the CEQA Guidelines Section 15270(a) CEQA does not apply to this project because it has been rejected and will not be carried out.

C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.