



Planning Commission

Agenda Item

January 7, 2013

TO: Chair Steiner and Members of the Planning Commission

THRU: Leslie Aranda Roseberry
Planning Manager

FROM: Doris Nguyen
Associate Planner

SUBJECT

PUBLIC HEARING: CUP 2872-12, Marisqueria and Taqueria Mexico, 4509 E. Chapman Ave

SUMMARY

The applicant proposes to sell beer and wine under a California Department of Alcoholic Beverage Control Type 41 (On-Sale Beer and Wine for a Bona Fide Public Eating Place) license in association within an existing 1,984 square foot restaurant.

RECOMMENDED ACTION

Adopt Planning Commission Resolution No. 2-13 entitled:

**A RESOLUTION OF THE PLANNING COMMISSION
APPROVING CONDITIONAL USE PERMIT NO. 2872-12, TO
ALLOW AN ALCOHOLIC BEVERAGE CONTROL TYPE 41
LICENSE (ON-SALE BEER AND WINE - EATING PLACE)
FOR AN EXISTING RESTAURANT LOCATED AT 4509 EAST
CHAPMAN AVENUE**

AUTHORIZATION/GUIDELINES

Orange Municipal Code (OMC) Sections 17.08.020 and 17.30.030.C authorize the Planning Commission to review and take action on Conditional Use Permits for eating establishments with the sale of alcoholic beverages in the Limited Business (C-1) zone. Section 17.10.080 requires that the project be reviewed in accordance with California Environmental Quality Act provisions and the City of Orange Environmental Review Guidelines.

PUBLIC NOTICE

On December 20, 2012, the City sent a Public Hearing Notice to a total of 104 property owners/tenants within a 300-foot radius of the project site, and persons specifically requesting notice. The project site was also posted in two locations with the notification on that same date.

ENVIRONMENTAL REVIEW

Categorical Exemption: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project only involves the licensing of alcohol sales and no new construction is proposed in association with the request. There is no environmental public review required for a Categorical Exemption.

PROJECT BACKGROUND

<i>Applicant:</i>	Antonio Ramirez Cruz dba Marisqueria & Taqueria Mexico
<i>Property Owner:</i>	ABCD Co Ltd
<i>Property Location:</i>	4509 E Chapman Avenue
<i>Existing General Plan Land Use Element designation:</i>	General Commercial Max. 1.0 FAR (GC)
<i>Existing Zoning Classification:</i>	Limited Business (C-1)
<i>Old Towne:</i>	Not Applicable
<i>Redevelopment Project Area:</i>	Not Applicable
<i>Specific Plan/PC:</i>	Not Applicable
<i>Site Size:</i>	3.6 SF lot with square foot commercial center
<i>Circulation:</i>	The development is located at the northeast corner of Chapman Avenue and Hewes Street. This portion of Chapman Avenue is considered a Major Arterial and Hewes Street is a Secondary Arterial. The rear side of the property abuts Pearl Street, which is designated as a local street.
<i>Existing conditions:</i>	The site is currently developed with three, single-story freestanding buildings serving as a strip center, anchored by the La Carreta Supermarket.
<i>Surrounding land uses and Zoning:</i>	East: Office Commercial development and SCE substation zoned (C-1) West: Retail Commercial development zoned (C-1) South: Retail Commercial development zoned (C-1) North: Single Family residential homes within the Orange County jurisdiction
<i>Previous</i>	CUP 2593-06 and APP 512-06: Planning Commission

<i>Applications/Entitlements:</i>	and City Council denied a request for Tropi Jugos to have an ABC Type 41 license in 2006 (PC Reso 38-06). This will be discussed further in the Analysis Section.
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PROJECT DESCRIPTION

The applicant proposes to sell beer and wine under a California Department of Alcoholic Beverage Control (ABC) Type 41 license (On-Sale Beer and Wine for a Bona Fide Eating Place) at an approximately 1,984 square foot restaurant use. The existing restaurant is a fast casual concept where patrons order food at the front counter. It has 58 seats inside with no outdoor dining (Exhibit A – Floor Plan). No bar area or bar seating is proposed. All alcohol will be located behind the service counter. The restaurant serves breakfast, lunch, and dinner (Attachment No. 8 – Menu). The business owner stated that the current hours of operation are from 7:00 am to midnight daily. They stated to the Police Department that the proposed hours would be 7:00am to 11:00pm daily if alcohol is served. Alcohol sales are proposed during all hours of operation. There are 3 employees plus the owner working during the hours of operation. No bands, live entertainment, dancing, drink specials, amplified music, disc jockey, karaoke, pool tables, or entertainment devices are proposed with the use. There are no proposed changes to the restaurant floor plan or site plan. The Orange Police Department does not oppose the applicant’s effort to obtain an Alcoholic Beverage Control Type 41 License subject to the recommended Conditions of Approval.

On November 28, 2006, the City Council denied an appeal application for an ABC Type 41 license for the Tropi Jugos Mexican Restaurant at the same location (CUP2593-06/Appeal 512-06). The denial findings cited resident’s testimony presented at the public hearing regarding the deteriorating conditions in the neighborhood. Photographic evidence of loitering, graffiti, trash around the restaurant and shopping center were presented at the hearing. The residents believed that the additional alcohol license would negatively affect the safety, welfare, and quality of life in the area.

This topic is discussed in further detail as Issue #4 below. The City Council Staff Report and November 14 & 28, 2006 City Council meeting minutes are included as Attachment 5. The Planning Commission Staff Report, PC Reso 38-06, and September 6, 2006 PC meeting minutes are included as Attachment 6. The 2006 Police Department Memo is included as Attachment 7.

Development Standards

Because no new construction is proposed and because no new parking standards or parking review is triggered due to the fact that a restaurant exists in the subject tenant space, a review of development standards is not merited for this application. Hence the table typically found in this section of the staff report to compare proposed, existing, and code required conditions has been omitted.

APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

Conditional Use Permit: The applicant is requesting a Conditional Use Permit to sell beer and wine under a California Department of Alcoholic Beverage Control Type 41 license in association with an existing 1,984 square foot restaurant.

Required Findings:

1. A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.
2. A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.
3. A Conditional Use Permit must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is located.
4. A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.

ANALYSIS/STATEMENT OF THE ISSUES

Issue 1: Existing Licenses within 600 feet of the Site

For information purposes, staff identified the following facilities selling alcoholic beverages that are located within a 600-foot proximity to the restaurant’s entrance (See Attachment 3, PC Evaluation Map).

Existing Licenses

Establishment Name	License Type	Address
La Carreta Supermarket	Type 21 (off sale general)	4639 E Chapman Ave
7 Eleven Convenience Store	Type 20 (off sale beer & wine)	4427 E Chapman Ave
Mattern Sausages	Type 41 (on sale beer & wine)	4327 E Chapman Ave
Ostioneria Bahia	Type 41 (on sale beer & wine)	4429 E Chapman Ave
Moreno’s Restaurant	Type 47 (on sale general)	4328 E Chapman Ave
Red Carpet Liquor	Type 21 (off sale general)	4536 E Chapman Ave
Albertson’s Supermarket	Type 21 (off sale general)	4550 E Chapman Ave
Previous Alameda Market*	Type 21 (off sale general)	122 S Hewes St

* The site is currently a vacant lot; however, CUP 2423-03 remains on site to allow a potential future market to sell alcohol.

Issue 2: Sensitive Receptors

The OMC requires a Conditional Use Permit for the sale of alcoholic beverages to ensure there will be no adverse impact on surrounding land uses or allow the availability of alcoholic beverages to minors. When reviewing alcohol permits, the Zoning Ordinance details specific

land uses that are sensitive to alcohol activities, but does not establish any specific distances for these uses. The State Alcoholic Beverage Control Board investigation requires applicants to identify the sensitive land uses within 600 feet of the site. There are potentially sensitive receptors in the vicinity of the subject property as described below:

Sensitive Receptors

Establishment Name	Address	Distance To Project Site
Single- and Multi-family residential	Residences are located within the County jurisdiction directly north of the project site.	Directly adjacent, across Pearl Street
Orange Parents and Children Together (free preschool, family support, nutrition, & literacy programs)	18702 E. Center Street	Within 600' of the subject property
El Modena Family Resource Center (counseling, family advocacy, therapy, & info)	18672 E. Center Street	Within 600' of the subject property

The selling of alcoholic beverages, from the project site, is not anticipated to have an adverse impact on “sensitive” land uses for the following reasons:

- A. There are a preschool and community center within 600’ of the entrance to the restaurant. They are located over a block away on Center Street within the County jurisdiction. La Purisima Catholic school (preschool through 8th grade) is approximately a quarter mile away, within the County jurisdiction.
- B. The residential uses are located buffered by Pearl Street, 60’ away from the building. The entrance to the restaurant is on the south side of the building, not facing the residences.
- C. Potential undesired side effects of overconsumption of alcohol is not anticipated to occur at the subject casual dining restaurant where food service consumption is the primary function.

Issue 3: Census Tract Alcohol and Crime Statistics Information

The Orange Police Department’s Vice Unit reviewed the proposal and has determined that the location is not over-concentrated for on-sale alcohol serving businesses; however, they are over-concentrated for off-sale licenses. The area is not considered to be high crime. The Police Department does not oppose the application due to the applicant’s business plan and its history of not causing a burden on police resources, combined with the proposed project conditions which are anticipated to reduce if not eliminate any detrimental effects of on-site alcohol sales. The number of alcohol licenses in Census Tract 219-13, followed by a summary of crime statistics in the project area is as follows:

Alcohol Licenses

	Existing	Allowed
On Sale Licenses	3	9
Off-Sale Licenses	5	4

Crime Statistics in 2011 for RD 54E

Census Tract Arrests	Citywide Average Arrests	Percent Difference
40	77 per district	48%

The statistics show that Census Tract 219-13 is below concentration levels for on-sale licenses because there are 3 licenses issued when 9 on-sale licenses are allowed. The crime statistics show that Reporting District 54E is 48% below the average of 77 crimes per district citywide. For these reasons, the Police and Planning Departments do not oppose the applicant’s request to obtain an on-sale alcohol license.

Issue 4: Previous Denial of ABC Type 41 License at this Location

In 2006, a previous restaurant at the same location, Tropi Jugos, requested an ABC Type 41 license to sell beer and wine. Both the Police and Planning Departments supported the 2006 proposal because there was a low crime rate (215 crimes with a city average of 299) and the census tract was not over concentrated with on sale licenses (3 existing when 9 were permitted).

Public testimony was taken at the September 6, 2006 Planning Commission hearing and residents stated that there were deteriorating conditions in the neighborhood. Photographic evidence of loitering, graffiti, and trash around the restaurant and shopping center were presented to the Commissioners. The residents believed that the additional alcohol license would negatively affect the safety, welfare, and quality of life in the area. The Planning Commission denied the application and the applicant appealed the decision to the City Council.

On November 14, the City Council heard the item and continued the application due to a lack of information. They requested that the Police Department provide crime statistics for the County area to the north of the shopping center. The matter was then heard at the November 28, 2006 City Council meeting, where the Council denied the appeal without prejudice. Neighbors opposed the application, citing crime, loitering, litter, graffiti, and deterioration of the neighborhood. The meeting minutes state that the Councilmember’s decisions were based on the thoughts that alcohol will deteriorate the area and exacerbate the existing loitering and public drunkenness issues.

During field visits to the center, Staff observed loitering adjacent to the restaurant on Hewes Street, but did not see trash or graffiti. The center is newly painted with new parking lot trees to improve visibility throughout the center.

The City Council Staff Report and November 14 and 28, 2006 City Council meeting minutes are included as Attachment 5. The Planning Commission Staff Report, PC Reso 38-06, and September

6, 2006 PC meeting minutes are included as Attachment 6. The 2006 Police Department Memo is included as Attachment 7.

ADVISORY BOARD RECOMMENDATION

No departments other than the Planning Division and Police Department needed to review the proposal. Hence, no advisory board review occurred. Staff is recommending approval subject to the recommended conditions.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. Planning Commission Resolution 2-13
2. Vicinity Map
3. PC Evaluation Map
4. Police Department Memo (date stamped received Nov 1, 2012)
5. CUP 2593-06/Appeal 512-06 City Council Staff Report and November 14 & 28, 2006 CC meeting minutes
6. CUP 2593-06 Planning Commission Staff Report, PC Reso 38-06, and September 6, 2006 PC meeting minutes
7. CUP 2593-06 Police Department Memo (date stamped received May 10, 2006)
8. Menu
9. Alcohol Management Plan

Exhibits provided to the Planning Commission:

- A. Site Plan and Floor Plan

cc: All Star Realty
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Mike Monjaraz, OPD