

CONDITIONAL USE PERMIT NO. 3231

RESOLUTION NO. PC 34-24

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ORANGE APPROVING CONDITIONAL USE PERMIT NO. 3231, ALLOWING THE SALE OF ALCOHOLIC BEVERAGES FOR ON-SITE CONSUMPTION IN CONJUNCTION WITH A STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL TYPE 47 LICENSE (ON-SALE GENERAL – EATING PLACE) AT A PROPOSED RESTAURANT LOCATED AT 180 N. GRAND STREET

APPLICANT: 191 Retail, LLC dba Fellows Hall

WHEREAS, the Planning Commission has authority pursuant to Orange Municipal Code (OMC) Table 17.08.020 and Sections 17.10.030.C and 17.30.030 to take action on Conditional Use Permit No. 3231, allowing the sale of alcoholic beverages for on-site consumption in conjunction with a State of California Department of Alcoholic Beverage Control (ABC) Type 47 License (On-Sale General - Eating Place) at a proposed restaurant, located at 180 N. Grand Street (Project); and

WHEREAS, the application for Conditional Use Permit No. 3231 was filed by the applicant in accordance with the provisions of the OMC; and

WHEREAS, Conditional Use Permit No. 3231 is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities), as the project consists of licensing the sale of alcoholic beverages at a proposed restaurant that results in negligible or no expansion of use beyond that existing at the time of the City’s determination; and

WHEREAS, the Planning Commission conducted one duly advertised public hearing on December 2, 2024, at which time interested persons had an opportunity to testify either in support of, or opposition to, the proposed Conditional Use Permit No. 3231.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Orange hereby approves Conditional Use Permit No. 3231 allowing the sale of alcoholic beverages for on-site consumption in conjunction with a ABC Type 47 License (On-Sale General - Eating Place) at a proposed restaurant, located at 180 N. Grand Street, based on the following findings:

SECTION 1 – FINDINGS

Conditional Use Permit Findings:

- 1. A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.*

Consideration has been given as to whether the proposed use will detrimentally affect adjacent land uses. The proposed use provides an opportunity to those customers desiring to purchase alcohol with food at a restaurant. It will occur on a site that has been zoned for a mix of uses, and the subject property is adjacent to similar uses in the Old Towne downtown core, a commercial destination that serves City residents as well as visitors. The sale of alcohol is accessory to the proposed restaurant and will occur only when a complete restaurant menu is available. This is a service typically expected by the public in association with a restaurant.

Strong consideration was given to the manner in which the business will operate under the provisions of this Conditional Use Permit. As conditioned, its operation should not create a nuisance to the community. Consideration was given to sensitive land uses and the over-concentration of on-sale licenses and crime rate in the Reporting District. Conditions of approval have been placed on the proposed use to compensate for potential detrimental effects that could be caused by alcohol consumption. As conditioned, alcohol service should not contribute to the crime rate in the Reporting District.

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.*

The request to serve alcohol with food at the proposed restaurant is not anticipated to have adverse impacts on surrounding land uses or create a special problem, because the site is located in the Old Towne downtown core, which is intended to function as a commercial and mixed-use center. While there are sensitive land uses within 600 feet of the site, these properties do not have direct access to the subject property and the sale of alcohol would be accessory to the primary function of the restaurant. Specific project features combined with conditions of approval mitigate or eliminate potential detrimental effects that could be caused by alcohol service.

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.*

The location is within the Old Towne downtown core, a mixed-use zone where shopping and dining establishments are expected to be concentrated. The City's General Plan encourages the development of mixed use, pedestrian-oriented projects in Old Towne. The proposed accessory alcohol service at a restaurant will support the success of the restaurant and the continuation of a vibrant mixed-use district. The use is not anticipated to have an adverse impact on neighboring land uses and the community because granting an additional on-sale license with appropriate conditions of approval would not affect sensitive land uses in the immediate area.

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.*

The conditions of approval for the Conditional Use Permit are put forth with the purpose of approval preserving the general welfare of the community. If the restaurant is not operating as required the Planning Commission revoke this CUP. Other conditions of approval have been

placed on the project to reduce crime-inducing activities by requiring food service with alcohol service at all times, prohibiting alcoholic beverage promotions, restraining certain methods of dispensing alcoholic beverages, addressing graffiti and litter removal, and requiring employee training.

SECTION 2 – ENVIRONMENTAL REVIEW

The proposed Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project consists of licensing the sale of alcoholic beverages at a proposed restaurant in an existing building that results in negligible or no expansion of use beyond that existing at the time of the City’s determination.

SECTION 3 – APPROVAL AND CONDITIONS OF APPROVAL

The Planning Commission hereby approves Conditional Use Permit No. 3231, with the following conditions:

General Conditions:

1. Any future change in the nature and operation of the use approved by Conditional Use Permit (CUP) 3231 shall require an application for a new or amended CUP.
2. The applicant agrees, as a condition of City’s approval of CUP No. 3231, to indemnify, defend, and hold harmless, at applicant’s expense, the City, its officers, agents, and employees (City) from and against any claim, action, or proceeding brought against the City, including, but not limited to, any claim, action or proceeding commenced within the time period provided in Government Code Section 66499.37 to attack, review, set aside, void or annul the City’s approval, to challenge the determination made by the City under the California Environmental Quality Act (CEQA) or to challenge the reasonableness, legality or validity of any condition attached hereto. City shall promptly notify applicant of any such claim, action or proceeding to which the City receives notice and to cooperate fully with the applicant in the defense thereof. Applicant shall reimburse the City for any and all costs and expenses, including, but not limited to, court costs and attorney’s fees that the City may be required to pay, including any expenses ordered by a court or expenses incurred through the Office of the City Attorney in connection with said claim, action or proceeding. City may, in its sole discretion, participate in the defense of any claim, action or proceeding but such participation shall not relieve applicant of the obligations of this condition. In the event the applicant is required to defend City in connection with such claim, action or proceeding, City shall have the right to approve counsel to so defend the City, approve all significant decisions concerning the manner in which the defense is conducted and approve any all settlements, which approval(s) shall not be unreasonably withheld. The obligations set forth herein remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgment rendered in the proceeding. Further, applicant agrees to indemnify, defend and hold harmless the City for all costs and expenses incurred in enforcing this provision.

3. The applicant shall comply with all federal, state, and local municipal laws, including local City ordinances and regulations. Any violations of these laws in conjunction with this use may be a cause for revocation of this permit.
4. Prior to the operation of the business, the applicant shall file for, or if applicable, amend a business license with the Business License Division. Failure to obtain the required business license may be cause for revocation of this approval.

Operational Conditions:

5. In conjunction with the ongoing operation of the business, the premises shall comply with all requirements placed upon it by the State Alcoholic Beverage Control (ABC) Board.
6. This CUP shall be reviewed one year from the date of approval and may be reviewed each year thereafter. The review shall be conducted jointly by the Community Development Director and Police Chief or designees. The purpose of this review shall be to identify uniquely adverse issues such as curfew, loitering, vandalism, criminal activity, noise, or nuisance resulting from approval of the CUP. If such issues are identified, the CUP shall be presented to the Planning Commission for its consideration of conditions, modifications, or revocation.
7. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of merchant items that include food within the restaurant during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available upon request.
8. The use of the business is considered a restaurant. No changes to the floor plan will occur unless a revised floor plan is approved by the Community Development Department. None of the floor area will be designated for dancing or live entertainment unless a subsequent CUP is approved by the Planning Commission.
9. The subject ABC license shall not be exchanged for a public premise Type 48 (On-Sale General – Public Premises) license nor operated as a public premise.
10. The sale of beer and/or wine for consumption off the premises shall be prohibited.
11. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
12. All alcohol shall be consumed on the subject site, within the defined dining areas. Signs shall be posted on all exits of the premises, which prohibit alcoholic beverages from leaving the confines of the premises.
13. The premises shall be maintained as a bona fide restaurant and shall provide a menu containing an assortment of foods normally offered in such restaurants.

14. The business shall be limited to the following hours, Sunday through Thursday 7:00 a.m. to 10:00 p.m., and Friday through Saturday 7:00 a.m. to 12:00 a.m. (midnight). These hours do not restrict employees from being on the premises before opening for preparations and deliveries or after close for clean-up. Clean-up may not be conducted by patrons.
15. At no time shall there be a fee for entrance/admittance into the premises.
16. Employees and/or contract security personnel shall not consume any alcoholic beverages prior to or during their work shift. Any and all security officers provided shall comply with all state and local ordinances regulating their services, including, without limitation, Chapter 11.5 of Division 3 of the California Business and Profession Code.

Alcohol and Food Service Conditions:

17. At all times when the premises is open for business, the sale and service of alcoholic beverages shall be made only in conjunction with the sale of food.
18. Food service, with an available menu, shall be made available until closing time on each day of operation.
19. Alcoholic beverages shall be served by a waiter/waitress only, and only to seated patrons at permitted counters/tables.
20. Alcoholic beverages shall be sold and served in containers, which are distinguishable from other non-alcoholic beverages sold at the premise or other establishment sharing the patio.
21. The business may offer alcoholic beverages in combination with non-alcoholic beverages and food items at a reduced price Monday to Friday from 3 p.m. to 6 p.m.
22. There shall be no promotions encouraging intoxication or drinking contests.
23. There shall be no requirement to purchase a minimum number of drinks.
24. No alcoholic beverages shall be sold from any temporary locations on the premises such as ice tubs, barrels, or any other such containers.
25. The petitioner shall not employ or permit any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission percentage salary or other profit.

Patio Conditions:

26. The patio shall be enclosed and any gates located on the patio shall remain closed during business hours and used as an emergency exit only. Sign(s) shall be posted on all patio gates indicating "Emergency Exit Only".

27. Exterior speakers are not allowed in the outdoor dining area. This shall be verified by the Planning Division on the construction documents prior to the issuance of Building Permits for tenant improvements.
28. Use of the outdoor dining area shall conclude by 10:00 p.m. seven days a week. No customers shall be seated in the outdoor dining area after 9:00 p.m. as a means of concluding patron use and restaurant service outside by 10:00 p.m. No pressure washing or mechanical cleaning methods shall occur in the outdoor dining area after 10:00 p.m. or before 6:00 a.m.

Special Events:

29. No portion of the premises shall be deemed to be “private” for the purposes of dispensing alcoholic beverages to selected patrons, where the permittee recognizes any form of membership cards, keys, or passes which would entitle the holder entry or preferential admittance or exclusive use of any portion of the mentioned premises.
30. The use of a promoter (such as a night-club operator) or sub-leasing the premises to be used in conjunction with dancing and/or live entertainment is prohibited.
31. There shall be no live entertainment (including karaoke), disc jockey, or dancing permitted on the premises at any time. Amplified music of any kind, including over a built-in system designated for background music, shall be permitted so long as the music is not audible outside when the doors are open or beyond the premises in such a manner as to disturb the peace, quiet, and comfort of neighboring occupants, or any reasonable person residing or working in the area
32. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Department’s Vice Unit at least one week in advance of the event.

Coin Operated Machines:

33. There shall be no pool tables or coin-operated games or machines maintained on the premises at any time.

Security and Exterior:

34. The permittee shall install and maintain a closed-circuit television system capable of readily identifying facial features, and stature of all patrons entering the establishment during hours of operation and monitoring the rear of the premises. The camera system shall keep a minimum 30-day library of events, which shall be available for downloading and inspection by Orange Police Department.
35. The permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

36. There shall be no exterior advertising for alcoholic beverages of any kind or type. This includes advertising directly to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages that are clearly visible to the exterior shall constitute a violation of this condition.
37. Exterior doors and windows, as well as the interior of the business, shall be protected by an approved alarm system, which shall detect an attempted entry or presence of people within the business during closing hours.
38. The premises shall be provided with an interior night light to illuminate the interior and an unobstructed view shall be maintained through storefront windows to provide police patrol officers the ability to observe unlawful activity within the business.
39. The permittee shall maintain on the premises a written security policy and procedures manual addressing at a minimum the following items: handling obviously intoxicated persons; establishing a reasonable ratio of employees to patrons, based upon activity level, in order to monitor alcoholic beverage sales and patron behavior; handling patrons involved in fighting or arguing; handling loitering about the building and in the immediate adjacent area that is owned, leased, rented, or used under agreement by the permittee(s); verifying age/checking identification of patrons; warning patrons of reaching their drinking limit/potential intoxication and refusing to serve; calling the police regarding observed or reported criminal activity.

Training:

40. All employees of the permittee who sell or serve alcoholic beverage products shall be required to complete a training program in alcoholic beverage compliance, crime prevention techniques, and the handling of violence. For new employees, such training program must be completed within 30 days of the date of hire. The permittee shall maintain an active list of the employees who have completed the training. The list shall be furnished, upon request, to any sworn police officer or member of the Community Development Department. The employees must provide the Orange Police Department a copy of the completed Alcohol Management Program certificate.

Miscellaneous:

41. Graffiti shall be removed from the exterior walls, doors, windows, and any additional part of the property (including signage, etc.) within 72 hours of the time the City of Orange Notice of Violation is received by the business operator.

ADOPTED this 2nd day of December 2024.

David Vazquez
Planning Commission Chair

I hereby certify that the foregoing Resolution was adopted by the Planning Commission of the City of Orange at a regular meeting thereof held on the 2nd day of December 2024, by the following vote:

AYES:

NOES:

RECUSED:

ABSENT:

Anna Pehoushek, FAICP
Assistant Community Development Director