



# Agenda Item

## City Council

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Item #: 9.1.

4/8/2025

File #: 25-0141

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, City Manager

**FROM:** Russell Bunim, Community Development Director

### 1. SUBJECT

Public Hearing to consider an appeal of Planning Commission approval of Conditional Use Permit No. 3225, a request for alcohol sales in conjunction with a proposed restaurant located at 191 N. Orange Street and finding of California Environmental Quality Act Exemption (Appeal No. 25-0009).

### 2. SUMMARY

On February 20, 2025, the Planning Commission approved Conditional Use Permit No. 3225, a request by CDO Orange, LLC, dba Culinary Dropout for alcohol sales under a Type 47 ABC License (On-Sale General) at a proposed restaurant. The approval was appealed to the City Council on March 3, 2025, by the applicant based on objections to the conditions of approval included in Planning Commission Resolution No. PC 33-24.

### 3. RECOMMENDED ACTION

The City Council shall consider the record and such additional evidence as may be offered and may affirm, reverse, or modify, in whole or in part the action that was appealed. Such action may include:

1. Conduct and close the Public Hearing; and
2. Deny Appeal No. 25-0009 and affirm Planning Commission approval of Conditional Use Permit No. 3225.

OR

1. Conduct and close the Public Hearing; and
2. Adopt Resolution No. 11603. A Resolution of the City Council of the City of Orange approving Conditional Use Permit No. 3225, a request by CDO Orange, LLC, dba Culinary Dropout for a Type 47 ABC License (On-Sale General) at a proposed restaurant located at 191 N. Orange Street; and
3. Find the request categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15301 of the State CEQA Guidelines.

### 4. FISCAL IMPACT

None.

### 5. STRATEGIC PLAN GOALS

Goal 2: Enhance Economic Development and Achieve Fiscal Sustainability.

2.4: Diversify tax revenue

**6. DISCUSSION AND BACKGROUND**

On February 20, 2025, the Planning Commission approved Planning Commission Resolution No. PC 33-24, a resolution approving Conditional Use Permit (CUP) No. 3225 for alcohol sales under a Type 47 ABC License (On-Sale General) at a proposed full-service restaurant, Culinary Dropout. The project was approved by a vote of 4-3. A detailed overview of the proposed use and hours of activity is provided in Attachment 4 (Planning Commission Staff Report).

The proposed 7,425 sq ft restaurant includes a total of 230 seats, with 164 seats indoors and 66 seats on the outdoor patio (Attachment 7). For purposes of discussion, the outdoor seating adjacent to Maple Street is referenced as the "North Patio," while the seating area facing Orange Street is referenced as the "West Patio."

The operating hours, as approved by the Planning Commission are as follows:

Permitted Operating Hours for Indoor Seating	
Sunday - Thursday	7:00 a.m. - 10:00 p.m.
Friday - Saturday	7:00 a.m. - 11:00 p.m.

Permitted Operating Hours for Outdoor Patio Seating ( <b>North Patio Area</b> )		
Days	Hours	Last Customer Seated Time
Every Day	10:00 a.m. - 8:00 p.m.	7:00 p.m.

Permitted Operating Hours for Outdoor Patio Seating ( <b>West Patio Area</b> )		
Days	Hours	Last Customer Seated Time
Sunday - Thursday	7:00 a.m. - 10:00 p.m.	9:00 p.m.
Friday - Saturday	7:00 a.m. - 11:00 p.m.	10:00 p.m.

Outdoor Dining Area Use:

Of the 66 seats on the proposed outdoor dining area, 24 are proposed along the E. Maple Avenue frontage. As presented in the Planning Commission Minutes (Attachment 5), the Commission adopted operating hours for the restaurant and outdoor patio that were more restrictive than staff's recommendation.

Noise

The Planning Commission Resolution (Condition No. 24) prohibits the use of any outdoor sound system or outdoor amplifying system. As part of this appeal, the applicant is requesting that outdoor amplification be allowed so long as the music is not audible at the edge of the property line. As

shown in the outdoor speaker location exhibit (Attachment 9), the applicant proposes two speakers for amplified sound along the North Patio and six speakers along the West Patio.

The immediate interface between the northern outdoor seating area of the restaurant and single-family residences on the north side of E. Maple Avenue warrants attention in order to support the required conditional use permit findings established by the Orange Municipal Code; specifically, those pertaining to potential negative effects the proposed use may have on surrounding land uses. Outdoor amplification has the potential to create noise issues that could be disruptive to adjacent residents, particularly in the evening.

### **Appeal of Planning Commission Action**

The Planning Commission approval was appealed to the City Council on March 3, 2025, by the applicant, CDO Orange, LLC (Leezie Kim). The grounds for that appeal are presented in Attachment 1. The Planning Commission upheld staff's findings and recommendation for approval with modifications to the draft conditions of approval on February 20, 2025.

The grounds for the appeal are as follows:

*We are appealing the 2/20/2025 Planning Commission decision because the Commission's recommendation has an unreasonably negative effect on the restaurant by placing restrictions on its operations that are unheard of in the industry and unprecedented in the City of Orange. Specifically, we are appealing two decisions by the Planning Commission:*

- 1. The Planning Commission rejected the City Staff's recommended restaurant hours of operation, which generally matched or were shorter than the operating hours of other neighboring CUP holders and other restaurants that operate close to residential neighbors. The Planning Commission recommended the restaurant be required to stop seating guests on parts of its patio at 7:00 p.m., seven nights a week. In addition, the Planning Commission recommended the interior of the restaurant close on Fridays and Saturdays by 11:00 p.m., at least an hour earlier than the neighboring CUP holders and earlier than staff had recommended. No other restaurant, even those located close to residential neighbors, has such restrictions placed on it. Even the immediate neighboring CUP holders (the Richland and Grand Gimeno) are permitted later hours of operation both on the interior of their patios.*
- 2. We are also appealing a recommendation of the Planning Commission that the restaurant patios be prohibited from playing background music. Unlike hours of operation, this silent patio was a staff recommendation. Background music is important to the atmosphere of a restaurant. The requirement put on other restaurants (even those close to residential neighbors) is that background music is allowed on their patios so long as the music is not audible at the edge of the property line. That is the standard we are requesting be applied to this restaurant as well.*

### **Staff Determination**

At the time the project was presented to the Planning Commission, staff recognized the potential sensitivity of the outdoor dining area interface with single-family residences on E. Maple Avenue and considered the public comment on the Design Review Committee's review of the building rehabilitation in March 2022. Therefore, for purposes of Planning Commission review of the subject CUP, staff included conditions of approval in the draft Planning Commission Resolution deemed necessary to make the Code-required findings that a CUP does not have detrimental effects on

surrounding properties. The proposed conditions also reflect consistent treatment of the proposed restaurant with CUPs for other restaurants in the Old Towne Mixed Use zoning district.

The conditions of approval were discussed extensively with the applicant prior to the Planning Commission hearing. The findings and conditions of approval as originally presented by staff to the Planning Commission are reflected in the City Council Resolution provided as Attachment 2. Conditions of approval 8, 13, 25, 26, and 27 differ between Attachment 2 and Attachment 4.

Staff maintains that the conditions of approval originally presented to the Planning Commission would provide protection to the neighborhood adjacent to the restaurant and treat Culinary Dropout similar to other Old Towne restaurants. The content of the original draft Planning Commission Resolution has been repackaged for Council consideration as Option 2 for Recommended Action with the following modifications to the hours of operation:

Permitted Operating Hours for Indoor Seating	
Sunday - Thursday	7:00 a.m. - 10:00 p.m.
Friday - Saturday	7:00 a.m. - 12:00 a.m.
Permitted Operating Hours for Outdoor Seating	
Daily	7:00 a.m. - 10:00 p.m.

## **7. ATTACHMENTS**

- Attachment 1 Appeal to Planning Commission Resolution No. PC 33-24 (APP 25-0009)
- Attachment 2 Draft City Council Resolution No. 11603
- Attachment 3 Vicinity Map
- Attachment 4 Planning Commission Resolution No. PC 33-24
- Attachment 5 Planning Commission Staff Report, February 20, 2025
- Attachment 6 Planning Commission Minutes, February 20, 2025
- Attachment 7 Applicant Business Narrative Letter
- Attachment 8 Site Plan and Proposed Seating Chart
- Attachment 9 Outdoor Speaker Locations