

CONDITIONAL USE PERMIT NO. 3076-18

RESOLUTION NO. PC 1-19

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ORANGE APPROVING CONDITIONAL USE PERMIT NO. 3076-18 AUTHORIZING AN ALCOHOLIC BEVERAGE CONTROL LICENSE (TYPE 75- ON-SALE EATING PLACE – BREW PUB) TO OPERATE A RESTAURANT WITH ANCILLARY BREWING OPERATIONS WITHIN AN EXISTING COMMERCIAL BUILDING LOCATED AT 114 N. GLASSELL STREET

APPLICANT: BREWERY 1886

Moved by Commissioner Willits and seconded by Commissioner Simpson that the following resolution be adopted:

WHEREAS, the Planning Commission has authority per Orange Municipal Code Section 17.30.030 to take action on Conditional Use Permit No. 3076-18 for an Alcoholic Beverage Control Type 75 License (On-Sale Eating Place – Brew Pub) to operate a restaurant with ancillary brewing operations within an existing commercial building located at 114 N. Glassell Street; and

WHEREAS, the application for Conditional Use Permit No. 3076-18 was filed by the applicant in accordance with the provisions of the City of Orange Municipal Code; and

WHEREAS, the application for Conditional Use Permit No. 3076-18 was processed in the time and manner prescribed by state and local law; and

WHEREAS, Conditional Use Permit No. 3076-18 is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities), as the project consists of licensing for the sale and production of alcoholic beverages in an existing commercial building, and results in negligible or no expansion of the commercial use beyond that existing at the time of the City's determination; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on February 20, 2019, at which time interested persons had an opportunity to testify either in support of, or opposition to, the proposed Conditional Use Permit No. 3076-18, upon property described as follows:

SEE ATTACHMENT A

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Orange hereby approves Conditional Use Permit No. 3076-18 to allow a restaurant, with ancillary brewing operations, at property located at 114 N. Glassell Street based on the following findings:

SECTION 1 – FINDINGS

General Plan Finding:

1. *The project must be consistent with the goals and policies stated within the City's General Plan.*

The project consists of authorizing the sale of alcohol (beer, wine, and distilled spirits) and production of beer in an existing commercial building and is consistent with the goals and policies stated within the City's General Plan in that the Land Use Element supports a wide variety of commercial; uses that contributes to a healthy and diverse economic base. The sale of alcohol in a restaurant, with ancillary beer production, is an appropriate use in the commercial zone. The applicant is required to develop a tenant improvement plan consistent with building code and municipal code development requirements, and is in communication with the Public Works Department to arrange for appropriate waste hauling services for the restaurant and brewery operations. Therefore, the proposed use should be not disruptive to surrounding businesses in the district. Although the project does not involve site redevelopment, authorizing the production and sale of beer within an existing commercial building helps to support diverse uses in the zone, thereby maintaining economic activity on the property and demonstrating economic vitality in the area.

The Orange Police Department review of the ABC request and their recommendation of conditions supports the General Plan Public Safety Element Goals related to Crime Prevention. The Public Safety Element requires that the City maintain an adequately manned and equipped police force, maintain crime prevention programs designed to protect residents and property from crime, and ensures the business' production and sale of beer does not create a nuisance to surrounding businesses.

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.*

The granting of this Conditional Use Permit is based 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 allow the sale of alcohol (beer, wine, and distilled spirits) in a bonafide restaurant on a site zoned for a mix of commercial uses on a mixed-use property

within the city. The production of beer will be within an existing commercial building, for sale within the restaurant only, and will not have detrimentally affects to adjacent land uses.

Strong consideration was given to the manner that the business will operate and will continue to operate under the provisions of this Conditional Use Permit. As conditioned, its operation should not create a nuisance to the community or a burden on police services during its time of operation. Consideration was given to the high crime levels in the Reporting District, and conditions have been placed on the project to compensate for potential detrimental effects that could be caused by the sale of alcohol and the operation of the brewery. As conditioned, neither the restaurant nor associated brewery operations should not increase or 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 proposal for the sale of alcohol and production of beer in a brewpub is not anticipated to have an adverse impact on surrounding land uses or create a special problem, because the site is located in an area that is intended to function as a commercial sector. Surrounding properties are commercial in nature, with a mix of restaurants and food establishments that also sell alcohol. Furthermore, the applicant is required to development a tenant improvement plan consistent with building code and municipal code development requirements, and is in communication with the Public Works Department to arrange for appropriate waste hauling services for the restaurant and brewery operations.

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 sales of alcohol would be accessory to the primary function of the restaurant. Although the property is in an area with a higher than average crime rate, there are specific project features combined with project conditions that compensate for detrimental effects that could be caused by alcohol service. The conditions of approval should compensate for the higher than average crime rate and over-concentration of alcohol licenses within the Reporting District and census tract as follows:

- Project conditions require food service with alcohol service at all times, restrict areas of consumption, establish a food to alcoholic beverage sales ratio, prohibit alcoholic beverage promotions, restrain certain methods of dispensing alcoholic beverages, address graffiti and litter removal, and require employee training.
- Potential undesired side effects of overconsumption of alcohol are not anticipated to occur at the casual dining restaurant where food service is the primary function.

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 of the premises is located within Old Towne Historic District. The area around

the Plaza is a mixed-use historic district where shopping and dining establishments are expected to be concentrated. The use is not anticipated to have an adverse impact on neighboring land uses and the community because granting an additional on-sale license is subject to appropriate project conditions designed to address potential negative effects on sensitive land uses in the immediate area. In addition, the operation of the brewery is subject to the regulations contained in the Conditions of Approval, which are crafted to avoid potential effects that could occur as a result of the approval of this Conditional Use permit.

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.*

Granting of the Conditional Use Permit for the subject property in conjunction with the conditions of approval would preserve the general welfare. The Orange Police Department conditions include a review of the operation and police records for excessive calls one year after the beginning of alcoholic beverages sales. If the Police Department finds that the restaurant and brewery operation is not operating as required, or if there is a history of criminal or nuisance behavior, the Department will recommend that the Planning Commission reconsider this application. Other conditions have been placed on the project to reduce crime-inducing activities by requiring exterior lighting and building security.

SECTION 2 – ENVIRONMENTAL REVIEW

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

SECTION 3– CONDITIONS OF APPROVAL

BE IT FURTHER RESOLVED that the following conditions are imposed with the approval of Resolution No. PC 1-19:

1. The project shall conform in substance and be maintained in general conformance with plans and exhibits date stamped October 20, 2018, including any modifications required by conditions of approval, and as approved by the Planning Commission.
2. Except as otherwise provided herein, this project is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Community Development Director for approval. If the Community Development Director determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the

approved plan, the Community Development Director may approve the changed plan without requiring a new public hearing. Otherwise, a new public hearing will be required to accommodate any changes to the approved plan.

3. Any future expansion in area or in the nature and operation of the use approved by Conditional Use Permit No. 3076-18 shall require an application for a new or amended Conditional Use Permit.
4. The applicant agrees to indemnify, hold harmless, and defend the City, its officers, agents and employees from any and all liability or claims that may be brought against the City arising out of its approval of this permit, save and except that caused by the City's active negligence. The City shall promptly notify the applicant of any such claim, action, or proceedings and shall cooperate fully in the defense.
5. The applicant shall comply with all federal, state, and local laws, including all City regulations. Violation of any of those laws in connection with the Conditional Use Permit or the conditions herein, may be cause for revocation of this permit.
6. Conditional Use Permit No. 3076-18 shall become void if not vested within two years from the date of approval. Time extensions may be granted for up to one year, pursuant to OMC Section 17.08.060.
7. Prior to 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 permit.
8. Violations of the Conditions of Approval constitute a violation of the Orange Municipal Code, per Section 17.10.030.G., and may be cause for revocation of this permit.
9. If tenant improvements are needed, all structures shall comply with the requirements of Municipal Code – Chapter 15.52 (Building Security Standards), which relates to hardware, doors, windows, lighting, etc. (Ord. 7-79). Approved structural drawings shall include sections of the security code that apply. Specifications, details, or security notes may be used to convey the compliance.
10. Prior to approval of a business license, the applicant shall contact the Public Works Department and the city's waste hauling contractor to coordinate appropriate waste hauling services for the restaurant and brewery operations. The approved service contract for waste hauling services may include, at the applicant's expense, improvements to the city's trash enclosure, purchase of a vertical trash compactor, and weekly hauling of trash, recycling, and organics at a frequency appropriate to the waste generation of the business.

The following conditions are in accordance with the Police Department's Security Standards for alcohol sales:

1. 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.
2. This Conditional Use Permit 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 designee(s). 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 Conditional Use Permit. If such issues are identified, the Conditional Use Permit shall be presented to the Planning Commission for their consideration of conditions, modifications, or revocation.
3. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.
4. The quarterly gross sales of alcoholic beverage shall not exceed the gross sales of food and meals during the same time period. The licensee shall at all times maintain records that 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.
5. The premises shall be maintained as an On-Sale General Brew Pub that allows for small beer manufacturing. The interior construction will remain consistent with plans submitted for review by the Planning Commission. No changes to the floor plans will occur unless a permit is issued by the Community Development Director.
6. The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premises.
7. The sale of beer, wine, and distilled spirits for consumption off premises shall be prohibited.
8. No alcohol beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
9. All alcohol shall be consumed on the subject site, within the defined dining, bar and patio areas. Signs shall be posted on all exists of the premises, which prohibit alcoholic beverages from leaving the confines of the premises.

10. The hours of the tasting operations are proposed to be Sunday to Thursday 11:30 A.M. until 11:00 P.M and Friday and Saturday 11:30 A.M. to 12:00 A.M. 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.
11. At no time shall there be a fee for entrance/admittance into the premises.
12. Employees and/or contract security personnel shall not consume any alcoholic beverages prior to or during their work shift. Any and all security officers provide shall comply with all state and local ordinances regulating their services, including without limitation, Ch.11.5 of Division 3 of the California Business and Professions Code.
13. At times when the premises is open for business, the sales and service of alcoholic beverages shall be made only in conjunction with the sale of food.
14. Food service, with an available menu, shall be available until closing time on each day of operation.
15. Alcoholic beverages shall be served by a waiter/waitress only, and only to seated patrons at permitted tables or bar areas.
16. Alcoholic Beverages shall be sold and served in containers, which are distinguishable from non-alcoholic beverages sold at the premise or other establishment sharing the patio.
17. Alcoholic 'samplers' served for on-site consumption will be served in the following quantities: samplers will consist of no more than 5 glasses containing either 2 or 4 ounces depending on alcohol content (ac). For a beer with more than 10% ac. the pour may be no more than 2 ounces, and for a beer with less than 10% ac. the pour may be no more than 4 ounces.
18. Beer served for on-site consumption will be served in the following quantities depending on alcohol content (ac): For a beer with more than 10% ac the pour would be 4 ounces. For a beer with 8%-10% ac. The pour would be 10 ounces. For a beer with less than 8% ac the pour would be 16 ounces.
19. There shall be no "Happy Hours" when alcoholic beverages are offered at a reduced rate.
20. There should be no time when alcoholic beverages are sold at a ratio of two for one; no "stacking" of beverages, which means the serving of two alcoholic beverages at one time to the same customer and no sales to an "empty chair", which means that each customer must be physically present at the time of the order of any alcoholic beverage.
21. There shall be no promotions encouraging intoxication or drinking contests.

22. There shall be no requirement for a minimum number of drinks.
23. No alcoholic beverages shall be sold from any temporary locations on the premises such as ice tubs, barrels, or any other containers.
24. 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.
25. The sale of beer or malt beverages in quantites of quarts, 22 ounces, 32 ounces, 40 ounces, or similar size containers is prohibited. Beer, malt beverages, and wine coolers in containers of 16 ounces or less cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
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(s) indicating "Emergency Exit Only".
27. Patrons in the patio shall be seated by a host/hostess only, no self-seating permitted.
28. Employees will always be present in the bar/tasting room and patio area. Also, employees will have constant view on the patio from inside the business. The patio area will be enclosed by a fence no less than 72 inches tall equipped with an alarmed exit.
29. No portion of the premises shall be deemed to be "private" for the purposes of dispensing alcoholic beverages to selected patrons, where the licensee 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 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 over a built-in system designed for background music shall be permitted, provided that the music is not audible outside when doors are open.
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 30 days in advance of the event.
33. There shall be no pool tables or coin-operated games maintained upon the premises at any time.

34. The use of any music or amplified sound in the outdoor patio area shall not be audible 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.
35. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which he/she has control.
36. There shall be no exterior advertising of any kind or type, including advertising directed 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. Uniformed security will be provided by the applicant on days/nights when special event broadcast(s) are being promoted. One security guard per 100 customers shall be present during these broadcasts/events.
39. An interior night light shall be provided to illuminate the interior and maintain an unobstructed view through the storefront windows to provide police patrol officers the ability to observe potential unlawful activity within the business.
40. The owner or manager of the licensed premises 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 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 Licensee(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.
41. All employees of the applicant 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 of the applicant, such training program must be completed within 30 days of the date of hire. Upon request, the applicant must provide the City of Orange Police Department, Vice Unit, a copy of completed Alcohol Management Program (AMP) certificate.
42. Graffiti shall be removed from exterior walls and windows of the premises within 72 hours of discovery.

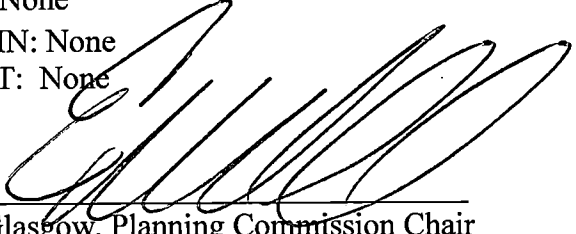
I hereby certify that the foregoing resolution was adopted on February 20, 2019 by the Planning Commission of the City of Orange by the following vote:

AYES: Commissioners Glasgow, Martinez, Simpson, Vazquez and Willits

NOES: None

ABSTAIN: None

ABSENT: None



Ernest Glasgow, Planning Commission Chair

3-18-2019
Date