

CONDITIONAL USE PERMIT NO. 3134-21

RESOLUTION NO. PC 09-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ORANGE DENYING CONDITIONAL USE PERMIT NO. 3134-21, A REQUEST TO UPGRADE AN EXISTING STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) TYPE 20 LICENSE (OFF-SALE BEER AND WINE) TO A NEW ABC TYPE 21 LICENSE (OFF-SALE GENERAL) WITHIN AN EXISTING 2,400 SQUARE FOOT CONVENIENCE STORE, LOCATED AT 1095 NORTH GLASSELL STREET

APPLICANT: ORANGE WINE, INC.

Moved by Vice Chair Glasgow and seconded by Commissioner Martinez that the following resolution be adopted:

WHEREAS, the Planning Commission has authority per Orange Municipal Code (OMC) Table 17.08.020.B, and Sections 17.10.030.C and 17.30.050.4. to take action on Conditional Use Permit No. 3134-21 for a request to upgrade an existing State of California Department of Alcoholic Beverage Control (ABC) Type 20 License (Off-Sale Beer and Wine) to a new ABC Type 21 License (Off-Sale General) within an existing 2,400 square foot convenience store located at 1095 N. Glassell Street; and

WHEREAS, the application for Conditional Use Permit No. 3134-21 was filed by the applicant in accordance with the provisions of the OMC; and

WHEREAS, the application for Conditional Use Permit No. 3134-21 was processed in the time and manner prescribed by state and local law; and

WHEREAS, Conditional Use Permit No. 3134-21 is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15270(a), because CEQA does not apply to projects which a public agency rejects or disapproves; and

WHEREAS, Planning Commission public hearings occurred on August 2, 2021, and June 20, 2022, at which time interested persons had an opportunity to testify either in support of, or opposition to, proposed Conditional Use Permit No. 3134-21 upon property described as follows:

**LOTS 1 AND 2 OF TRACT NO. 2733, IN THE CITY OF ORANGE,
COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP
RECORDED IN BOOK 93, PAGE 42 OF MISCELLANEOUS MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.**

APN: 375-191-01

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission denies Conditional Use Permit No. 3134-21, a request to upgrade an existing ABC Type 20 License (Off-Sale Beer and Wine) to a new ABC Type 21 License (Off-Sale General) within an existing 2,400 square foot convenience store, 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.*

Crime prevention goals and policies stated within the Public Safety Element of the City of Orange General Plan strive to improve community safety and reduce opportunities for criminal activity in the City.

The Orange Police Department's assessment of crime data, along with the known history of criminal activity in the vicinity of the store location as documented in its Memorandum dated January 21, 2021, and supplemental Memo dated March 1, 2022 concluded that 1) the census tract is over concentrated with On-Sale licenses and Off-Sale licenses; 2) the Orange Wine store is located across the street from Reporting District 35e, which is the third highest ranked crime district in the City of Orange; and 3) the Orange Wine store is the closest convenience store to multiple-family residential properties within the "Hoover-Wilson Territory" safety zone, a known documented gang area of the Orange County Criminals (OCC) with a high volume of documented incidents of criminal behavior in the area with arrests ranging from alcohol arrests, robberies, assaults and weapon offenses. The Police Department opined that the sale of distilled spirits would contribute to the potential for loitering and criminal behavior in the area.

This finding cannot be made.

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.*

Granting the Type 21 (Off-Sale General) license to allow the sale of beer, wine, and distilled spirits for off-site consumption within the existing convenience store would not be based upon sound principles of land use or in response to services required by the community. The applicant is requesting a Type 21 license in a census tract that is over concentrated with On-Sale licenses and has exceeded the maximum number of allowed Off-Sale licenses. Census

Tract No. 762.05 has 10 existing On-Sale licenses with 8 allowed and 7 existing Off-Sale licenses with 4 allowed. In addition, the business is located adjacent to the third highest crime district within the City of Orange. The adjacent Reporting District 35e crime and arrests data show 276 crimes reported in 2021, which is 289% above the average of reported crime, a high crime area.

The multiple-family residential properties northwest of the project site are within the “Hoover-Wilson Territory” safety zone of the Orange County Criminals (OCC) gang injunction. This is west of Glassell Street and in another reporting district, 35e. This district is considered a high crime area with reported crimes from alcohol offenses to robberies, assaults and weapons offenses. The safety zone area is a known documented gang area of the Orange County Criminals (OCC) with documented incidents of criminal behavior in the area. The applicant’s request to sell distilled spirits in addition to beer and wine would create an undue burden on public safety resources and have an adverse impact on the surrounding community. A Type 21 (Off-Sale General) license may contribute to a potential increase in alcohol-related crimes within the surrounding commercial and residential neighborhoods.

This finding cannot be made.

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 ABC Board investigation requires applicants to identify sensitive land uses within 600 feet of the site. Based upon this criterion, there are several residential properties that are located within 600 feet of the subject property. A Type 21 (Off-Sale General) license may contribute to an increase in alcohol related crimes such as: driving under the influence, drinking in public, burglaries, robberies, disorderly conduct, utilization of controlled substances, and excessive noise, which would interfere with the quiet enjoyment of residential properties in the area. The applicant’s request may create and cause deterioration of bordering land uses and problems for other uses in the surrounding area.

This finding cannot be made.

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.*

Although the project is not within an identified or specific community or neighborhood plan, the request to upgrade to a Type 21 (Off-Sale General) license is anticipated to have an adverse impact on neighboring land uses and the community. The census tract is already over concentrated with on-sale and off-sale alcohol licenses, has exceeded the maximum number of allowed licenses, and is located adjacent to the third highest crime reporting district in the City of Orange. Granting this request may increase calls for service, increase the crime rate, and diminish quality of life in the area. A Type 21 (Off-Sale General) license may contribute to an increase in alcohol related crimes which may interfere with the quiet enjoyment of sensitive residential properties in the area.

This finding cannot be made.

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 the Type 21 (Off-Sale General) license to allow the sale of beer, wine, and distilled spirits for off-site consumption within the existing convenience store would not preserve the general welfare and would primarily benefit the business not the community. The census tract is considered over-concentrated with On-Sale licenses and has exceeded the maximum number of allowed off-sale licenses. The project is also in close proximity to residential sensitive land uses, which would interfere with the quiet enjoyment of the properties in the area. The applicant's request to would create an undue burden on public safety resources and have an adverse impact on the surrounding community.

This finding cannot be made.

SECTION 2 – FINDING OF PUBLIC CONVENIENCE OR NECESSITY

The request for a new Type 21 (Off-Sale General) License is within a census tract that is considered over-concentrated with on-sale licenses, that has exceeded the maximum number of allowed off-sale licenses yet is not considered a high-crime area. But the adjacent reporting district is the third highest ranked crime district in the City of Orange.

Granting a Type 21 (Off-Sale General) License to allow the sale of beer, wine, and distilled spirits for off-premise consumption would not be based upon sound principles of land use or in response to services required by the community. The proposal is anticipated to have an adverse impact on neighboring land uses and the community because the area is already over concentrated with on-sale alcohol licenses, and has exceeded the maximum number of allowed off-sale alcohol licenses. In addition, the granting of this proposal may impact sensitive land uses in the immediate area which consist of single family residential neighborhoods.

A finding of Public Convenience or Necessity cannot be made.

SECTION 3 – ENVIRONMENTAL REVIEW

The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines 15270(a), because CEQA does not apply to projects which a public agency rejects or disapproves.

I hereby certify that the foregoing Resolution was adopted on August 1, 2022, by the Planning Commission of the City of Orange by the following vote:

AYES: Glasgow, Martinez and Trapesonian
NOES: Simpson
ABSTAIN:
ABSENT: Vazquez

David Vazquez, Planning Commission Chair

Date