

CONDITIONAL USE PERMIT NO. 3142-21

RESOLUTION NO. PC 26-21

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ORANGE APPROVING CONDITIONAL USE PERMIT NO. 3142-21 FOR A STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, TYPE 41 LICENSE (ON-SALE BEER & WINE) FOR A 2,610 SQUARE FOOT RESTAURANT LOCATED AT 112 E. MAPLE AVENUE

APPLICANT: CHIPOTLE MEXICAN GRILLE

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

WHEREAS, the Planning Commission has authority per 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. 3142-21 for an Alcoholic Beverage Control (ABC) Type 41 License (On-Sale Beer and Wine – Eating Place), for a 2,610 square foot restaurant, located at 112 E. Maple Avenue; and

WHEREAS, Conditional Use Permit No. 3142-21 was filed by the applicant in accordance with the provisions of the City of OMC; and

WHEREAS, Conditional Use Permit No. 3142-21 was processed in the time and manner prescribed by state and local law; and

WHEREAS, Conditional Use Permit No. 3142-21 is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities); and

WHEREAS, the Planning Commission conducted a duly advertised public hearing on September 20, 2021, at which time interested persons had an opportunity to testify either in support of or opposition to Conditional Use Permit No. 3142-21 upon property described in Exhibit A, attached hereto and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission approves Conditional Use Permit No. 3142-21 for an Alcoholic Beverage Control Type 41 License (On Sale Beer and Wine – Eating Place) for a 2,610 square foot restaurant, located at 112 E. Maple Avenue, 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 is consistent with the goals and policies stated in the City's General Plan Land Use and Economic Development Elements in that service of beer and wine for on-site consumption in a restaurant promotes commercial enterprise, supports a revenue-generating business, and encourages the creation of a successful commercial district. Permitting the new restaurant to serve beer and wine in conjunction with meals allows the establishment to be competitive with other restaurants in the area that are already permitted to sell alcoholic beverages. Authorizing alcohol service for a new restaurant may help to retain the restaurant, thereby maintaining economic activity and demonstrating economic vitality in the Old Towne Plaza commercial area.

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 for those residents desiring to purchase alcohol in association with food service at a restaurant. It will occur on a site that has been zoned for commercial uses that serves City residents as well as visitors. The sale of beer and wine is accessory to the restaurant, and alcohol service 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 or a burden on police services. Consideration was given to the over-concentration of on-sale and off-sale licenses and crime rate in the Reporting District, and conditions have been placed on the project to compensate for potential detrimental effects that could be caused by alcohol consumption. As conditioned, alcohol service 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 request to sell beer and wine within the restaurant is not anticipated to have adverse impacts on surrounding land uses or create a special problem, because the site is located in the OTMU-15 zone, which is intended to function as a mixed use residential and commercial area. 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. Specific project features combined with project conditions

compensate for detrimental effects that could be caused by alcohol service and an over-concentration of alcohol licenses within the Reporting District and Census Tract, namely:

- Project conditions require food service with alcohol service at all times, restrict areas of consumption, limit 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 project location is at the intersection of N. Glassell Street and E. Maple Avenue, within the Old Towne Plaza commercial area. The area around the site is the historic downtown core of the city, where shopping and dining establishments are expected to be concentrated. The proposed accessory alcohol service at a restaurant will support the success of the restaurant and the continuation of an active downtown 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 that establish parameters for responsible operating practices 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 for the Conditional Use Permit are put forth with the purpose of preserving the general welfare of the city and community. The Police Department conditions include a review of the operation and police records for excessive calls one year after the beginning of the sale of alcoholic beverages. If the Police Department finds that the restaurant is not operating as required, or if there is a history of criminal or nuisance behavior, the Police 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 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 – FINDING OF CONVENIENCE OR NECESSITY

The ABC establishes an over-concentration of alcohol licenses based on the average number of alcohol licenses for the population in a given census tract. However, the ABC and the City recognize that licenses should be reviewed on a case-by-case basis to ensure that such sales will not adversely affect surrounding residents, businesses, and institutions and to ensure that any such use operates in a manner compatible with existing and future adjacent uses. This site is located within a major commercial corridor in the City, which is expected to have an over-concentration of alcohol licenses. The Planning Commission finds that the sale of beer and wine for on-site consumption within the proposed restaurant is an appropriate accessory use and is a service

typically expected by the public. As such, the finding for public convenience or necessity can be made for this use.

SECTION 3 – ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from the provisions of CEQA per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of a restaurant in an existing commercial building, consistent with the property's zoning and General Plan designation. There is no public review required.

SECTION 4– CONDITIONS OF APPROVAL

BE IT FURTHER RESOLVED that the following conditions are imposed with approval:

1. The proposed project shall conform in substance and be maintained in general conformance with the floor plan submitted (dated June 8, 2021), and as recommended for approval by the Planning Commission.
2. Any future change in the nature and operation of the use approved by Conditional Use Permit No. 3124-20 shall require an application for a new or amended Conditional Use Permit.
3. The permittee 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.
4. The permittee shall comply with all federal, state, and local laws, including all City regulations. Violation of any of those laws in connection with the use may be cause for revocation of this permit.
5. These conditions shall be reprinted on the first page of the construction documents, if submitting to the Building Department for the plan check process.
6. The project shall comply with the requirements of OMC Chapter 15.52 (Building Security Standards), which relates to hardware, doors, windows, lighting, etc. Approved structural drawings, if any, shall include sections of the security code that apply. Specifications, details, or security notes may be used to convey the compliance.
7. If not utilized, this project approval expires two years from the approval date. An extension of time may be permitted upon a written request, if received before the expiration deadline.
8. 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 Board.
9. 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 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 Conditional Use

Permit. If such issues are identified, the Conditional Use Permit shall be presented to the Planning Commission for its consideration of conditions, modifications, or revocation.

10. 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 permittee 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.
11. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and meals during the same time period. The permittee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the business. Records shall be kept no less frequently than on a quarterly basis and shall be made available to the City on request.
12. The use of the business is a restaurant. The premises shall be maintained as a bona fide restaurant and food service with an available menu containing an assortment of foods normally offered in such restaurants shall be available each day until closing time.
13. The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premise.
14. The sale of beer and/or wine for consumption off the premises shall be prohibited.
15. No alcoholic beverages shall be consumed on any property adjacent to the premises under the control of the permittee.
16. All alcohol shall be consumed on the subject site, within the defined dining areas. Signs shall be posted on all exits of the premises that prohibit alcoholic beverages from leaving the confines of the premises.
17. The hours of operation shall be daily from 9:00 AM to 11:00 PM. The opening time may be amended with the approval of the Community Development Director. 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.
18. At no time shall there be a fee for entrance/admittance into the premises.
19. 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.
20. 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.
21. Alcoholic beverages served shall be served by a restaurant employee, and only to seated patrons at permitted tables.
22. There shall be no bar or lounge area upon the premises maintained for the purpose of the sale, service, or consumption of alcoholic beverages directly to patrons for consumption.
23. There shall be no "Happy Hours" when alcoholic beverages are offered at a reduced rate.

24. There shall 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.
25. There shall be no promotions encouraging intoxication or drinking contests.
26. There shall be no requirement to purchase a minimum number of drinks.
27. No alcoholic beverages shall be sold from any temporary locations on the premises such as ice tubs, barrels, or any other such containers.
28. The permittee shall not employ or permit any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the premises under any commission percentage salary or other profit.
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 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, amplified music, 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 one week in advance of the event.
33. There shall be no more than four coin-operated games maintained upon the premises at any time.
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 the Orange Police Department.
35. The use of any outdoor amplifying systems, outdoor sound system and paging system or any other such device is prohibited on the premises.
36. The permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which he/she has control.
37. 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, which are clearly visible to the exterior shall constitute a violation of this condition.

38. 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.
39. Uniformed security will be provided by the permittee on days/nights when special event broadcast(s) are being promoted. One security guard per 100 customers shall be present during these broadcasts/events.
40. 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.
41. 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 sell; calling the police regarding observed or reported criminal activity.
42. 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 must provide the City of Orange Police Department, Vice Unit a copy of its employees' certificate of completion of the Alcohol Management Program.
43. Graffiti shall be removed from the exterior surfaces of the premises within 72 hours of discovery and/or within 72 hours from the time a City of Orange Notice of Violation is received by the permittee and/or property owner.

I hereby certify that the foregoing Resolution was adopted on September 20, 2021, by the Planning Commission of the City of Orange by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dave Simpson, Planning Commission Chair

Date

EXHIBIT A

LEGAL DESCRIPTION