

Planning Commission Agenda Item

January 21, 2013

TO: Chair Steiner and

Members of the Planning Commission

THRU: Leslie Aranda Roseberry

Planning Manager

FROM: Doris Nguyen

Associate Planner

SUBJECT

PUBLIC HEARING: Conditional Use Permit 2868-12 – Wahoo's Fish Taco, located at 234 West Chapman Avenue

SUMMARY

The applicant proposes to upgrade the alcohol license at the existing Wahoo's Fish Taco restaurant. The applicant currently has Conditional Use Permit (CUP) 2735-08 for a Type 41 (On-Sale Beer and Wine for a Bona Fide Public Eating Place) and would like to upgrade to an Alcoholic Beverage Control (ABC) Type 47 license (On-Sale General for a Bona Fide Public Eating Place). The proposal would include the interior of the restaurant, covered raised patio, and shared outdoor patio. The applicant is also requesting to surrender and replace the alcohol Conditions of Approval related to the existing CUP 2735-08.

RECOMMENDED ACTION

Adopt Planning Commission Resolution No. PC 1-13 entitled:

A RESOLUTION OF THE PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2686-12 TO ALLOW A 2,650 SQUARE FOOT RESTAURANT WITH A 300 SF COVERED RAISED PATIO, AND 1,340SF SHARED OUTDOOR PATIO TO SERVE BEER, WINE, AND DISTILLED SPIRITS UNDER AN ALCOHOLIC BEVERAGE TYPE 47 LICENSE (ON-SALE GENERAL FOR A BONA FIDE PUBLIC EATING PLACE) LOCATED AT 234 WEST CHAPMAN AVENUE

AUTHORIZATION/GUIDELINES

Orange Municipal Code (OMC) Section 17.30.030.C. and Table 17.08.020 authorizes the Planning Commission to review and take action on Conditional Use Permits for eating establishments with the sale of alcohol beverages in the Old Towne Mixed Use-24 (OTMU-24) District. Section 17.10.080 requires that the project be reviewed in accordance with California Environmental Quality Act provisions and the City of Orange Environmental Review Guidelines.

PUBLIC NOTICE

On January 10, 2013, the City sent a Public Hearing Notice to a total of 130 property owners/tenants within a 300-foot radius of the project site, and persons specifically requesting notice. The project site was also posted in two locations with the notification.

ENVIRONMENTAL REVIEW

Categorical Exemption: 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) because the project consists of the operation and licensing of an existing private structure. There is no environmental public review required for a Categorically Exemption.

PROJECT BACKGROUND

Applicant:	Wahoo's Fish Tacos	
Property Owner:	International Church of the Foursquare Gospel	
Property Location:	234 West Chapman Avenue	
Existing General Plan	Old Towne Mixed Use 1.0-1.5 FAR (OTMU24)	
Land Use Element designation:		
Existing Zoning	Old Towne Mixed Use-24 (OTMU-24)	
Classification:		
Old Towne:	Yes	
Specific Plan/PC:	Not Applicable	
Site Size:	0.41 acres	
Circulation:	The restaurant is located on the north side of Chapman	
	Avenue. This segment of Chapman Avenue is considered	
	a Primary Arterial.	
Existing conditions:	The site is developed with the existing 2,650 SF Wahoo's	
	restaurant, 300 SF covered patio, 1,340 SF at-grade patio,	
	996 SF future LinX restaurant, and 1,000 SF office space	
	on the second floor above LinX.	
Surrounding land uses	West - Santa Fe Depot Specific Plan (SP)	
and Zoning:	East - OTMU-24	
	North - Santa Fe Depot Specific Plan (SP) & OTMU-15	

	South - OTMU-24	
Previous	CUP 2735-08, DRC No. 4340-08, MNSP 550-08, &	
Applications/Entitlements:	ENV1810-08 permitted the demolition of a non-	
	contributing one-story facade addition, restore the two-	
	story "Vineland Hotel" to construct the restaurant,	
	attached two-story office/retail building and ABC Type	
	41 license new square foot restaurant. on Sept 21, 2009	

PROJECT DESCRIPTION

The existing fast casual Wahoo's Fish Taco restaurant currently possesses Conditional Use Permit (CUP) 2735-08 for a Type 41 Alcohol Beverage Control (ABC) License to sell beer and wine at a bona fide public eating place. The applicant is requesting approval of CUP 2868-12 to allow an ABC Type 47 license in order to sell beer, wine, and distilled spirits at a bona fide public eating place. The applicant is requesting the Type 47 license in order to sell margaritas and margarita-style drinks at the restaurant. At this time, they do not intend on selling other kinds of distilled spirits, such as other types of hard liquor.

Alcohol service is currently allowed within the 2,650 SF building, on the 300 SF covered patio and 1,340 SF at-grade patio areas of the establishment. The current hours of operation are 10:30 A. M. to 9:00 P.M. Sunday through Thursday and 10:30 A.M. to 9:30 P. M. Friday and Saturday, and are not proposing to change. The restaurant serves serve fish tacos and an assortment of Mexican foods (See Attachment No. 5 – Wahoo's Fish Taco Restaurant Menu). There is no bar area in the restaurant and no live entertainment or happy hours are proposed.

On September 21, 2009, the Planning Commission approved CUP 2735-08 to allow a Type 41 ABC License on site. The landowner would like to voluntarily surrender the existing CUP 2735-08 if the proposed upgrade to a Type 47 ABC license is approved through CUP 2868-12. Since the existing Planning Commission Resolution 37-09 also covers the approval and construction of the historic building, only those Conditions related to alcohol would be replaced by CUP 2868-12/PC Reso 1-13. The other conditions in PC Reso 37-09 related to the design and construction of the historic building will remain in effect. This application is a true modification of the previous CUP.

Development Standards

A review of the development standards is not merited for this application, because no new construction is proposed and no new parking standards or parking review is triggered due to the fact that a restaurant exists in the subject tenant space. Hence the table typically found in this section of the staff report to compare proposed, existing, and code required conditions has been omitted.

APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

<u>Conditional Use Permit:</u> Conditional Use Permit (CUP) 2868-12 is proposed for the sale, service, and consumption of beer, wine, and distilled spirits under an Alcoholic Beverage Control Type 47 license (On-Sale General for a Bona Fide Public Eating Place).

Required Findings:

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

ANALYSIS/STATEMENT OF THE ISSUES

Issue 1: Existing Licenses within 600 feet of the Site

For information purposes, staff identified the following facilities selling alcoholic beverages that are located within a 600-foot proximity to the restaurant's entrance (See Attachment 3, PC Radius Evaluation Map).

Existing Licenses

Establishment	License Type	Address
Name		
Paul's Cocktail's	Type 48 (On-Sale General – Public Premises)	207 W Chapman Ave
The District Lounge	Type 48 (On-Sale General – Public Premises)	223 W Chapman Ave
Wahoo's Fish Tacos	Type 41 (On-Sale Beer & Wine – Eating Place)	234 W Chapman Ave
Byblos	Type 41 (On-Sale Beer & Wine – Eating Place)	129 W Chapman Ave
Taco Adobe	Type 40 (On-Sale Beer)	121 N Lemon St
Rod's Plaza Store	Type 21 (Off-Sale General)	118 W Chapman Ave
American Legion	Type 52 (Veteran's Club)	143 S Lemon St
	Type 58 (Caterer's Permit)	
Felix Continental	Type 41 (On-Sale Beer & Wine – Eating Place)	36 Plaza Square
Café		
Citrus City Grille	Type 41 (On-Sale Beer & Wine – Eating Place)	122 N Glassell St
Café Lucca	Type 41 (On-Sale Beer & Wine – Eating Place)	106 N Glassell St
Smoqued BBQ	Type 41 (On-Sale Beer & Wine – Eating Place)	128 N Glassell St
Francoli Italian	Type 41 (On-Sale Beer & Wine – Eating Place)	100 S Glassell St
Restaurant		

Establishment	License Type	Address
Name		
Blue Frog Bakery	Type 41 (On-Sale Beer & Wine – Eating Place)	136 S Glassell St
Haven Gastro Pub	Type 47 (On-Sale Beer, Wine & Distilled Spirits	190 S Glassell St
	– Eating Place)	
Gabbi's Mexican	Type 47 (On-Sale Beer, Wine & Distilled Spirits	141 S Glassell St
Kitchen	– Eating Place) & Type 58 (Caterer's Permit)	
Zito's Pizza	Type 41 (On-Sale Beer & Wine – Eating Place)	156 N Glassell St
O'Hara's Pub	Type 48 (On-Sale General – Public Premises)	150 N Glassell St
Jalapeno's Restaurant	Type 41 (On-Sale Beer & Wine – Eating Place)	154 N Glassell St

<u>Issue 2: Sensitive Receptors</u>

The OMC requires a Conditional Use Permit (CUP) for the sale of alcoholic beverages, and for any subsequent modifications to such CUPs, to ensure there will be no adverse impact on surrounding land uses or allow the availability of alcoholic beverages to minors. For reviewing alcohol permits, the Zoning Ordinance details specific land uses that are sensitive to alcohol activities, but does not establish any specific distances for these uses. The State Alcoholic Beverage Control Board investigation requires applicants to identify the sensitive land uses within 600 feet of the site. There is one church and approximately 40 residences within 600' of the subject property as listed below.

Sensitive Receptors

Establishment Name	Address	Distance To Project Site	
Plaza Bible Church	240 W. Chapman Avenue	Adjacent to project site	
S Lemon Residential (12 units)	146, 156, 166, 176, 186,	Approx 200' to the closest	
	& 173 #1-7 S Lemon St	residence	
N Lemon Residential (12 units)	149-191 N Lemon St	Within 600' of the parcel	
W Almond Residential (7 units)	206, 229, 230, 237, 242,	Within 600' of the parcel	
	305, 335 W Almond Ave		
S Cypress Residential (8 units)	125 A/B, 135 A/B, 145,	Within 600' of the parcel	
	153/155, 163, 173, 191,		
	193 S Cypress St		
N Cypress Residential (1 units)	171 N Cypress St	Within 600' of the parcel	

Issue 3: Census Tract Alcohol and Crime Statistics Information

The Police Department reports, in Attachment 4, that the business is proposed within a census tract that is considered over concentrated with on-sale Department of Alcohol Beverage Control (ABC) licenses and is below saturation point with off-sale licenses as follows:

Alcohol Licenses

	Existing	Allowed
On Sale Licenses	10	7
Off-Sale Licenses	3	5

The ABC establishes an over concentration of alcohol licenses based on the average of alcohol licenses versus 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.

The applicant is applying for an ABC license in a census tract that is considered to be a high crime area as follows:

2011 Crime Statistics

Census Tract Arrests	Citywide Average Arrests	Percent Difference
236	77	206% over average

Census tracts are defined as small geographical areas established by local committees and approved by the Census Bureau, which contain a population segment with relatively uniform economic and social characteristics and clearly identifiable boundaries averaging approximately 1,200 households.

The Police Department recommends approval of this applicant's request for a Type 47 license. This recommendation is based on:

- 1. The influx of restaurants within downtown supports the revitalization of the area through new restaurants and related beverage service to area restaurant patrons.
- 2. The crime rate is not exponentially increasing and remains relatively stable in the Plaza Area.
- 3. The operation of this particular restaurant has not had an adverse effect on the surrounding community.
- 4. The Downtown Plaza does not have a significant problem with gangs.
- 5. Wahoo's Fish Tacos existing restaurants have not been a source of problems, complaints or a burden on police services in other jurisdictions.
- 6. The restaurant does not have a bar area.

Issue 4: Outdoor Seating Area

In addition to the 2,650 SF building, Wahoo's has a 300 SF outdoor, raised covered patio. There is also a 1,340 SF outdoor, at-grade patio that it will share with the adjacent LinX restaurant once it opens. The 300 SF raised patio would remain exclusively for Wahoo's. Wahoo's currently serves alcohol on both patios with their existing Type 41 (On-Sale Beer and Wine for a Bona Fide Public Eating Place) license. Wahoo's proposes to sell beer, wine, and margaritas on both patios.

LinX has the approval through CUP 2869-12 to sell beer and wine with a Type 41 license on the shared patio. Conditions have been recommended requiring the two restaurants to have different serving containers to be able to differentiate between alcohol served by the two restaurants (Condition 18).

ADVISORY BOARD RECOMMENDATION

The application includes the upgrade of an alcohol license; therefore, no advisory boards were required to review the application.

ATTACHMENTS/EXHIBITS

Attachments to Report:

- 1. Draft Planning Commission Resolution No. PC 1-13
- 2. Vicinity Map
- 3. PC Radius Evaluation Map
- 4. Orange Police Department Memorandum
- 5. Restaurant Menu
- 6. Draft Alcohol Management Plan
- 7. Voluntary Surrender of existing CUP 2735-08

Exhibits provided to the Planning Commission:

A. Site Plan and Floor Plan

cc: Palmieri, Tyler, Wiener, Wilhelm, & Waldron ATTN: Michael Cho 2603 Main Street East Tower – Suite 1300 Irvine, CA 92614

Ascension Monjaraz, Orange Police Department