

RESOLUTION NO. 2022-12

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2021-09 AS CONDITIONED TO UPGRADE AN EXISTING TYPE 41 ON-SALE BEER AND WINE LICENSE TO A TYPE 47 ON-SALE BEER, WINE AND DISTILLED SPIRITS LICENSE FOR SALE AND CONSUMPTION AT EL CANGREJO NICE 3 LOCATED AT 2525 N. GRAND AVENUE, UNIT A

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

**Section 1.** The Planning Commission of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Blanca Toriz, representing El Cangrejo Nice Restaurants, Inc. ("Applicant"), is requesting approval of Conditional Use Permit ("CUP") No. 2021-09 to upgrade an existing Type 41 on-sale beer and wine license, to a Type 47 on-sale beer, wine and distilled spirits license for on-premise consumption at an existing restaurant located at 2525 N. Grand Avenue, Unit A.
- B. Santa Ana Municipal Code ("SAMC") Section 41-196 requires approval of a CUP for establishments wishing to sell alcoholic beverages for on-premises consumption.
- C. On June 26, 2013, the Zoning Administrator held a continued public hearing and approved CUP 2013-11 to allow a Type 41 alcoholic beverage license to allow the on-premise consumption of beer and wine at a restaurant (Avocado Grill) located at 2525 N. Grand Avenue, Unit A.
- D. On July 8, 2013, the Planning Commission confirmed the Zoning Administrator's action approving CUP 2013-11, as conditioned.
- E. On April 25, 2022, the Planning Commission held a duly noticed public hearing on CUP No. 2021-09.
- F. The Planning Commission determines that the following findings, which must be established in order to grant a CUP pursuant to SAMC Section 41-638, have been established for CUP No. 2021-09 to upgrade an existing Type 41 on-sale beer and wine license, to a Type 47 on-sale beer, wine and distilled spirits license for on-premise consumption at 2525 N. Grand Avenue, Unit A.
  1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The proposed sale of alcoholic beverages for on-premises consumption at this location will provide an ancillary service to the restaurant's customers by allowing them the ability to purchase alcoholic beverages with their meal. This will thereby benefit the community by providing a restaurant with an additional and complementary food related amenity. Operational standards applicable to the alcoholic beverage control ("ABC") license and conditions of approval will mitigate any potential impacts created by the use and will ensure that the use will not negatively affect the surrounding community.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed sale of alcoholic beverages for on-premises consumption at this location will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity because the operational standards applicable to the alcoholic beverage control license and conditions of approval will address any potential negative or adverse impacts created by the use. The granting of the CUP will not negatively impact any sensitive land uses that may be nearby.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The proposed use will not adversely affect the economic stability of the area, but will instead allow the restaurant to compete with other nearby restaurants that offer a full selection of alcoholic beverages for sale to their customers. Moreover, the offering of alcoholic beverages will allow the restaurant to be economically viable and compete with nearby full-service restaurants in Santa Ana and will contribute to the overall success of the City.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed conditional use permit will be in compliance with all applicable regulations and operational standards imposed on a restaurant selling alcoholic beverages for on-premises consumption pursuant to Chapter 41 of the SAMC. The facility will be maintained as a full-service, bona-fide restaurant, having suitable kitchen facilities and supplying an assortment of foods. Additionally, the restaurant will utilize less than five (5%) percent of the gross floor area for display

and storage of alcoholic beverages, which is the maximum threshold established by the SAMC. In addition, operational standards will ensure the project remains in compliance with all applicable codes and regulations related to alcohol sales to ensure that the use does not impact neighboring properties or create an attractive nuisance.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed sale of alcoholic beverages for on-premises consumption at this location will not adversely affect the General Plan or any specific plan. The granting of CUP No. 2021-09 supports several policies contained in the General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. Providing a variety of full-service restaurants that provide alcoholic beverages as part of their menu offers additional dining options for Santa Ana residents and visitors. Furthermore, Policy 2.9 of the Land Use Element supports developments that create a business environment that is safe and attractive. Operational standards for the proposed ABC license will maintain a safe and attractive environment in the neighborhood. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. El Cangrejo Nice is located within a commercial center and its operations will be compatible with the surrounding commercial businesses. Finally, the City has not received any complaints or issued any notice of violations to the property owner or previous tenants.

**Section 2.** In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The project proposes to allow the operation of an alcoholic beverage control license to sell alcoholic beverages at a bona-fide restaurant. Based on this analysis, a Notice of Exemption, Environmental Review No. 2022-16, will be filed for this project.

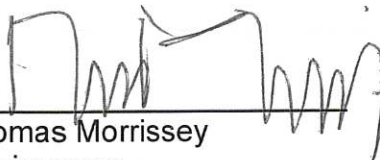
**Section 3.** The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought

against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

**Section 4.** The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2021-09, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 2525 N. Grand Avenue, Unit A. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated April 25, 2022, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 25<sup>th</sup> day of April, 2022 by the following vote.

AYES: Commissioners: ALDERETE, CALDERON, MCLOUGHLIN,  
MORRISSEY, RAMOS, WOO (6)  
NOES: Commissioners:  
ABSENT: Commissioners: PHAM (1)  
ABSTENTIONS: Commissioners:

  
Thomas Morrissey  
Chairperson

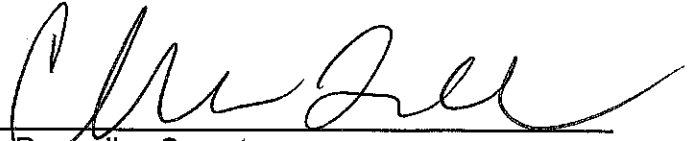
APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By: John M. Funk  
John M. Funk  
Sr. Assistant City Attorney

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, CHRISTINA LEONARD, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2022-12 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on April 25, 2022.

Date: 5/10/22



Recording Secretary  
City of Santa Ana

## EXHIBIT A

### **Conditions of Approval for Conditional Use Permit No. 2021-09**

Conditional Use Permit No. 2021-09 for on-premises consumption of alcoholic beverages is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Building Standards Code, and all other applicable regulations:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. The sale, service, and consumption of alcoholic beverages shall be permitted in accordance with the operational standards for on-sale establishments pursuant to Section 41-196(g) of the SAMC, in accordance with the provisions of an on-premises alcohol license by the California Department of Alcoholic Beverage Control (ABC), and in accordance with the site and floor plans attached to the staff report documenting the approved scope of the project.
2. The applicant shall remain in compliance with all conditions of approval listed as part of the approved Conditional Use Permit (CUP 2013-11), approved by the City of Santa Ana Zoning Administrator through Resolution No. 2013-06.
3. The sale, service, and consumption of alcoholic beverages shall be limited from 8:00 a.m. to 12:00 a.m. (midnight) Monday through Sunday, unless modified through a subsequent and separate conditional use permit application for after-hours operations pursuant to SAMC Section 41-196(g)(3).
4. Live Entertainment, including but not limited to, amplified music, karaoke, performers and dancing, is subject to compliance with Santa Ana Municipal Code ("SAMC") Chapter 11 and shall comply with all of the standards contained therein. Notwithstanding this requirement, music/noise shall not be audible beyond 20 feet from the exterior of the premises in any direction.
5. No after-hours use of the restaurant shall be permitted. The premises shall not be exclusively used for private parties, including promotional events, in which the public is excluded.
6. The applicant shall be responsible for monitoring both patron and employee conduct on the premises and within the parking areas under his/her control to assure such conduct does not adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
7. At least one on-duty manager with authority over the activities within the facility shall be on the premises during business hours. The on-duty manager's

responsibilities shall include the monitoring of the premises to ensure compliance with all applicable State laws, Municipal Code requirements and the conditions imposed by the Department of Alcoholic Beverage Control (ABC) and the conditional use herein. Every effort shall be undertaken in managing the subject premises and the facility to discourage illegal and criminal activities and any exterior area over which the building owner exercises control, in effort to ensure that no activities associated with such problems as narcotics sales, use or possession, gambling, prostitution, loitering, theft, vandalism and truancy occur.

8. The restaurant operator shall work cooperatively with the Santa Ana Police Department on an ongoing basis to establish an effective theft prevention and security program.
9. No signs advertising the sale of alcoholic beverages shall be displayed outside of the café or inside the café/restaurant window.
10. Kitchen food service shall be provided during all business-operating hours.
11. The business shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the California Department of Alcoholic Beverage Control, California Business and Profession Code Sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with the City's business license annual renewal.
12. Violations of the Conditional Use Permit as contained in Section 41-647.5 of the Santa Ana Municipal Code will be grounds for permit revocation as described in Section 41-651 of the Santa Ana Municipal Code.
13. Within 90 days of adoption of this resolution, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
  - a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
  - b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation,

security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);

- c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
- f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of the ABC license.