

RESOLUTION NO. 2024-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2023-15 AS CONDITIONED TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION AT PALOMA NEGRA FUSION BAR LOCATED AT 3420 SOUTH BRISTOL STREET

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. Daniel and Marco Andrade, business owners of Paloma Negra Fusion Bar (“Applicants”) and on behalf of BSG McArthur Sunflower Center, LLC (“Property Owner”), is requesting approval of Conditional Use Permit (“CUP”) No. 2023-15 to allow the sale of alcoholic beverages (beer, wine, and spirits) for on-premises consumption at a new eating establishment located at 3420 South Bristol Street.
- B. Section 41-196 of the Santa Ana Municipal Code (“SAMC”) requires approval of a CUP for establishments wishing to sell alcoholic beverages for on-premises consumption.
- C. The eating establishment will meet all required standards specified by Section 41-196 of the SAMC and the State Department of Alcoholic Beverage Control (“ABC”) for the sale of alcoholic beverages for on-premises consumption by containing a full kitchen and a menu of hot and cold food items for purchase.
- D. On February 26, 2024, the Planning Commission held a duly-noticed public hearing on CUP No. 2023-15.
- E. The Planning Commission of the City of Santa Ana determines that the following findings, which must be established in order to grant a CUP pursuant to Section 41-638 of the SAMC, have been established for CUP No. 2023-15 to allow the sale of alcoholic beverages for on-premises consumption at a new eating establishment located at 3420 South Bristol Street.
 1. That the proposed use will provide a service or facility which will contribute to the general wellbeing of the neighborhood or community.

The sale of alcoholic beverages for on-premises consumption at this location will provide an ancillary service to the eating establishment’s customers by allowing them the ability to purchase alcoholic beverages with their meal. This will thereby benefit the community by providing an

eating establishment with an additional and complementary food related amenity. Operational standards applicable to the 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 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 ABC license and conditions of approval will address any potential negative or adverse impacts created by the use. The subject establishment is surrounded by commercial land uses to the north, east, and south, and the Peartree multi-family apartment complex to the west, which is buffered by a surface parking lot, a dense landscape division, a perimeter block wall, and a private vehicular lane. The use will have minimal impact on residents. Paloma Negra Fusion Bar will be established as a bona-fide restaurant and the addition of alcohol will be ancillary to the main use. Paloma Negra Fusion Bar will comply with all of the operational standards identified in Section 41-196(g) of the SAMC. Therefore, 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. The sale of alcoholic beverages for on-premises consumption will allow the eating establishment to compete with other nearby eating establishments that offer a full selection of alcoholic beverages for sale to their customers and will allow the eating establishment to remain economically viable, thereby contributing to the overall success of the City. The alcohol license for on-premises sale and consumption will benefit the surrounding area, as the reinvestment on the commercial site will increase economic activity during additional business hours.

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

The sale of alcoholic beverages for on-premises consumption will be in compliance with all applicable regulations and operational standards imposed on an eating establishment selling alcoholic beverages for on-premises consumption pursuant to Section 41-196(g) of the SAMC. The facility will be maintained as a bona-fide eating establishment, having

suitable kitchen facilities and supplying an assortment of foods. Additionally, the eating establishment will utilize no more than five percent (5%) 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 sale of alcoholic beverages for on-premises consumption at the subject site will not adversely affect the General Plan. The project is located in the District Center-Low (DC-1) General Plan land use designation, which allows for distinctly urban retail, residential mixed-use, and employment centers that are well connected to public transportation and the granting of CUP No. 2023-15 supports several policies contained in the General Plan. Goal 2 of the Land Use Element (LU) encourages a balance of land uses that meet Santa Ana's diverse needs. Policy 2.2 of the LU encourages a range of commercial uses to capture a greater share of local spending and offer a range of employment opportunities. Policy 2.7 of the LU supports land use decisions that encourage the creation, development, and retention of business in Santa Ana. Goal 3 encourages the preservation and improvement of the character and integrity of the existing neighborhoods and districts. Policy 3.7 of the LU supports the promotion of a clean, safe, and creative environment for Santa Ana's residents, workers, and visitors. Goal 4 supports a sustainable Santa Ana through improvements to the built environment. Lastly, Policy 4.1 of the LU encourages the promotion of complete neighborhoods by encouraging a mix of complementary uses, community services, and people places within a walkable area. The CUP will allow for additional service to Santa Ana residents and visitors, thereby positively contributing to the economic viability of the area by promoting local spending, offering employment opportunities, and providing a safe workplace. In addition, the eating establishment is located within an existing commercial area and its operations will be compatible with the surrounding commercial businesses.

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) of the CEQA Guidelines. Class 1 exemption applies to 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 as determined by the lead agency. The project will allow the sale of beer, wine, and distilled spirits for on-premises consumption at a new eating establishment. As such, a Notice of Exemption, Environmental Review No. 2023-112, 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 a public hearing, hereby approves Conditional Use Permit No. 2023-15, as conditioned in Exhibit A, attached hereto and incorporated herein, for the sale of alcoholic beverages for on-premises consumption at Paloma Negra Fusion Bar located at 3420 South Bristol Street. 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 February 26, 2024, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 26th day of February 2024 by the following vote:

AYES: Commissioners: Carl Benninger, Manuel J. Escamilla, Jennifer Oliva,
Isuri Ramos, Alan Woo (5)

NOES: Commissioners:

ABSENT: Commissioners: Christopher Leo, Bao Pham (2)

ABSTENTIONS: Commissioners:



Jennifer Oliva
Vice Chairperson

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

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2024-03 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on February 26, 2024.

Date: 2/12/2024

Nuvia Ocampo

Nuvia Ocampo
Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2023-15

Conditional Use Permit No. 2023-15 allowing the sale of alcoholic beverages for on-premises consumption 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. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the conditional use permit must be amended.
2. The sale, service, and consumption of alcoholic beverages shall be permitted in accordance with the operational standards for on-premises establishments pursuant to Section 41-196(g) of the Santa Ana Municipal Code ("SAMC"), which are hereby incorporated by reference as though fully set forth herein; in accordance with the provisions of the Type 47 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.
3. The sale, service, and consumption of alcoholic beverages shall be limited from 7:00 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 beyond 12:00 a.m. (midnight) pursuant to Section 41-196(g)(3) of the SAMC.
4. The business shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of ABC, 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.
5. The Planning Division shall review CUP No. 2023-15 no later than twelve (12) months after full execution of this conditional use permit. Should any issues arise during such review, CUP No. 2023-15 shall be scheduled for public hearing at the applicant's full expense for condition modification(s).
6. Violations of the CUP, as contained in Section 41-647.5 of the SAMC, will be grounds for permit revocation and/or suspension as described in Section 41-651 of the SAMC.

7. The business owner shall maintain and adhere to a “Good Neighbor Policy,” implementing measures to ensure patrons comply with applicable noise, parking, and outdoor smoking regulations, and removing litter and preventing loitering in the areas in the immediate vicinity of the business.
8. 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.
9. 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 contact information shall be posted in a conspicuous location at the restaurant’s front entry. 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 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.
10. Prior to the release of this resolution, the applicant shall conduct the following site improvements:
 - a. Remove the unpermitted wall-mounted air conditioning units located on the south and western exterior of the building;
 - b. Legalize or remove all unpermitted work including, but not limited to, the stainless steel doorway located to the west of the building and roof modifications to the existing trash enclosure. The applicant shall submit plans, which shall be compatible with the architectural style of the building, to the Planning and Building Agency for review, approval, and permit issuance;
 - c. The landscape of the site shall be rehabilitated and new landscape installed to comply with the City’s landscape requirements. A landscape plan in accordance with the City’s requirements shall be submitted to the Planning Division for review and approval. In addition to the landscape, the landscape irrigation system shall be repaired as needed. Applicant to contact the Case Planner for a final walk-through inspection of the site once landscape has been improved per the approved landscape plan.
 - d. Applicant to consult with the telecommunications facility operator to replace the deteriorated pine needles of the mono-pine and replant two (2) 36-inch box pine trees adjacent to the facility as approved required by CUP-2015-14.

11. Prior to the release 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 on or 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; and

- 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.