City of Santa Ana
Planning Commission Meeting
Agenda
AUGUST 10, 2015
City Council Chamber
22 Civic Center Plaza
Santa Ana, California
5:30 P.M.

JAMES R. GARTNER, Chairman
Ward 5 Representative

ALEXANDER NALLE
Citywide Representative

ERIC ALDERETE
Ward 1 Representative

LYNNETTE VERINO
Ward 2 Representative

BRUCE T. BAUER
Ward 3 Representative

PHIL BACERRA
Ward 4 Representative

SEAN H. MILL, Vice Chair
Ward 6 Representative

Lisa E. Storck
Legal Counsel

Hassan Haghani, AICP
Executive Director

Karen Gerardo
Commission Secretary
(714) 667-2732

The Planning Commission Agenda can be found online at http://www.ci.santa-ana.ca.us/pba/documents/agenda_pc.pdf

If you need special assistance to participate in this Planning Commission meeting, please contact Michael Ortiz, City ADA Program Coordinator, at (714) 647-5624. Please call prior to the meeting date, to allow the City time to make reasonable arrangements for accessibility to this meeting. [Americans with Disabilities Act, Title II, 28 CFR 35.102]

Si tiene preguntas en español, favor de llamar a Karen Gerardo al (714) 667-2732.
Nếu cần liên lạc bằng tiếng Việt, xin điện thoại cho Tony Lai số (714) 565-2627.
### Basic Planning Commission Meeting Information

**Five-Year Strategic Plan (2014-2019)**

Detailed information at: [http://www.santa-ana.org/strategic-planning/](http://www.santa-ana.org/strategic-planning/)

**Vision, Mission and Guiding Principles** - The City of Santa Ana is committed to achieving a shared vision for the organization and its community. The vision, mission and guiding principles (values) are the result of a thoughtful and inclusive process designed to set the City and organization on a course that meets the challenges of today and tomorrow.

**Vision** - The dynamic center of Orange County which is acclaimed for our: • Investment in youth • Safe and healthy community • Neighborhood pride • Thriving economic climate • Enriched and diverse culture • Quality government services

**Mission** – “To deliver efficient public services in partnership with our community which ensures public safety, a prosperous economic environment, opportunities for our youth, and a high quality of life for residents.”

**Guiding Principles**

- Collaboration • Efficiency • Equity • Excellence • Fiscal Responsibility • Innovation • Transparency

**Strategic Plan Goals/Objectives/Strategies:**

- **Goal 1 - Community Safety**
- **Goal 2 - Youth, Education, Recreation**
- **Goal 3 - Economic Development**
- **Goal 4 - City Financial Stability**
- **Goal 5 - Community Health, Livability, Engagement & Sustainability**
- **Goal 6 - Community Facilities & Infrastructure**
- **Goal 7 - Team Santa Ana**

#### Code of Ethics and Conduct

The people of the City of Santa Ana, at an election held on February 5, 2008, approved an amendment to the City Charter which established the Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees to assure public confidence. A copy of the City’s Code can be found on the Clerk of the Council’s webpage. The following are the core values expressed: Integrity · Honesty · Responsibility · Fairness · Accountability · Respect · Efficiency

**Agenda Information** - The agenda descriptions provide the public with a general summary of the items of business to be considered by the Planning Commission. The Planning Commission is not limited in any way by the “Recommended Action” and may take any action which the Commission deems to be appropriate on an agenda item. Except as otherwise provided by law, no action shall be taken on any item not listed on the agenda.

**Public Comments/Public Input** - Pursuant to Government Code Sec. 54954.3, the public may address the Planning Commission on any and all matters within its jurisdiction.

At the discretion of the Chair, at the first Public Comment portion of the meeting, all comments may be considered jointly. The public will be given the opportunity to speak on any and all matters contained on any of the Consent Calendar and Business Calendar items and/or on issues of public interest within the jurisdiction of the Commission. Members of the public shall be given three (3) minutes for each duly noticed hearing (unless the matter is continued prior to taking public testimony). All requests to speak shall be submitted in writing to the Commission Secretary at the beginning of the meeting and before Public Comments begin. Speaker forms will be available at the meeting.

REQUESTS TO SPEAK SHALL NOT BE ACCEPTED AFTER THE PUBLIC COMMENT SESSION BEGINS WITHOUT PERMISSION OF THE CHAIR. When speaking, all persons addressing the Planning Commission shall follow the rules of decorum as detailed on the back of the speaker form. The presiding officer shall have the power and responsibility to enforce decorum and order of the meeting as set forth in Section 2-104(c) of the Santa Ana Municipal Code.

**Consent Calendar** - All matters listed under the Consent Calendar are considered to be routine by the Planning Commission and will be enacted by one motion without discussion unless a member of the Commission “pulls” an item(s) from the consent calendar for a separate vote.

**Senate Bill 343** - As required by Senate Bill 343, any non-confidential writings or documents provided to a majority of the Planning Commission members regarding any item on this agenda will be made available for public inspection in the Planning & Building Agency during normal business hours.

**Agenda & Minutes** - Staff reports and documents relating to each agenda item are on file in the office of the Planning & Building Agency and are available for public inspection during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and alternate Fridays. The Planning & Building Agency is located in City Hall Ross Annex, 20 Civic Center Plaza, 2nd Floor, Santa Ana, California, (714)667-2700. Council meeting agendas, staff reports, and minutes are available the Friday before a Planning Commission meeting at the following website address: [www.santa-ana.org](http://www.santa-ana.org)
CALL TO ORDER  5:30 P.M.

ROLL CALL

PLEDGE OF ALLEGIANCE

A. PUBLIC COMMENTS (on non-agenda items)

**CONSENT CALENDAR**

RECOMMENDED ACTION: Approve staff recommendations on the following Consent Calendar items listed.

B. MINUTES FROM THE REGULAR MEETING OF JULY 13, 2015 {STRATEGIC PLAN NO. 5, 1}

RECOMMENDED ACTION: Approve minutes.

*** END OF CONSENT CALENDAR ***

**BUSINESS CALENDAR**
1. ELECTION OF REPRESENTATIVE FOR THE HISTORIC RESOURCES COMMISSION

**RECOMMENDED ACTION:** Elect a Representative from the Planning Commission to serve on the Historic Resources Commission for the remaining 2015 term.

PUBLIC HEARINGS

2. PUBLIC HEARING – CONDITIONAL USE PERMIT NO. 2013-27
   {STRATEGIC PLAN NO. 3, 2} (Ann Ni)

Carlos Guzman, representing Tacos y Mariscos El Picante, is requesting approval of a conditional use permit to allow a Type 41 Alcoholic Beverage Control (ABC) license at an existing restaurant at 2223 West Fifth Street, Units F, G & H located in the Single Family Residential (R1) and the Two Family Residential (R2) zoning districts.

Legal notice published in the Orange County Reporter on July 31, 2015 and notices mailed July 30, 2015.

**RECOMMENDED ACTION:**
Adopt a resolution approving Conditional Use Permit No. 2013-27 to allow a Type 41 ABC license.

3. PUBLIC HEARING – CONDITIONAL USE PERMIT NO. 2015-13
   {STRATEGIC PLAN NO. 3, 2} (Ricardo Soto)

Victor Burrola, representing El Nuevo Ensenada, is requesting approval of a conditional use permit to allow a Type 41 Alcoholic Beverage Control (ABC) license at an existing restaurant at 3622 West Fifth Street located in the Harbor Mixed Use Transit Corridor Specific Plan (SP2) zoning district.
RECOMMENDED ACTION:
Adopt a resolution approving Conditional Use Permit No. 2015-13 to allow a Type 41 ABC license.

*** END OF BUSINESS CALENDAR ***

ABSENCES

4. EXCUSED ABSENCES

RECOMMENDED ACTION: Excuse absent Commission members.

COMMENTS

5. STAFF MEMBER COMMENTS

6. PLANNING COMMISSION MEMBER COMMENTS

ADJOURNMENT - The next meeting of the Planning Commission is scheduled for Monday, August 24, 2015 at 5:30 p.m. in the Council Chamber, 22 Civic Center Plaza, Santa Ana, California.
MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION OF THE
CITY OF SANTA ANA, CALIFORNIA

JULY 13, 2015

CALLED TO ORDER

COUNCIL CHAMBER
22 CIVIC CENTER PLAZA
SANTA ANA, CALIFORNIA
5:31 P.M.

ATTENDANCE

COMMISSIONERS Present:
JAMES R. GARTNER, Chairman
SEAN H. MILL, Vice Chairman
ERIC ALDERETE
PHIL BACERRA
BRUCE T. BAUER
ALEXANDER NALLE (departed at 8:21pm)
LYNNETTE VERINO

COMMISSIONERS Absent: None

STAFF Present:
VINCE FREGOSO, Acting Planning Manager
LISA STORCK, Assistant City Attorney
KAREN GERARDO, Commission Secretary

PLEDGE OF ALLEGIANCE

Chairman Gartner

A. PUBLIC COMMENTS (on non-agenda items)

- Cheri Kerr discussed an issue related to lack of parking availability near her place of business and expressed how this is affecting the surrounding local businesses.

CONSENT CALENDAR

MOTION: Approve the Consent Calendar item per staff's recommendation.
Items removed for separate action or modified are highlighted. Separate actions show the actual vote. Items without votes are adopted as part of the consent motion.

MOTION: Nalle                SECOND: Verino
VOTE: AYES: Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)
       NOES: None (0)
       ABSTAIN: None (0)
       ABSENT: None (0)

B. MINUTES

MOTION: Approve the minutes of the regular meeting of June 22, 2015.

*** END OF CONSENT CALENDAR ***

BUSINESS CALENDAR

COMMISSIONER COMMUNICATION DISCLOSURE (REGARDING AGENDIZED PROJECTS):

- Commissioner Bacerra disclosed that he spoke with Patrick Murphy regarding item no. 6, with Pam Sapetto regarding agenda item no. 4 and 6 and phone conversation with Carl Overmyer regarding item no. 5.
- Commissioner Bauer stated his children currently attend Mater Dei, but has not had any communication with anyone regarding agenda item no. 6.
- Commissioner Nalle disclosed that he received a call from Tyler Maddox regarding agenda item no. 4 and did not speak with him, but did converse with his colleague Peter Cheng; also disclosed that his two children attended Mater Dei.
- Commissioners Alderete disclosed that he received a telephone message from Pam Sapetto, but was unavailable to return the call.
- Commissioner Verino disclosed that she also received a call from Pam Sapetto and did converse regarding agenda item no. 6.
1. **APPOINTMENTS TO PLANNING COMMISSION SUBCOMMITTEES**

**RECOMMENDED ACTION:** Appoint two to three members to the:

A) Design Review Board;
B) General Plan and Zoning Ordinance Advisory Group

**MOTION:** Appoint:

A) Commissioners Bauer, Verino and Gartner to the Design Review Board;
B) Commissioners Bacerra, Mill and Nalle to the General Plan and Zoning Ordinance Advisory Group.

**PUBLIC HEARINGS**

2. **VARIANCE NO. 2015-05**  
(Applicant: Smart and Final)

Legal notice published in the Orange County Reporter on June 30, 2015 and notices mailed July 1, 2015.

A project overview was provided by Ricardo Soto, Assistant Planner I. Chairman Gartner opened the public hearing. The applicant spoke in support of the project.

**MOTION:** Adopt a resolution approving Variance No. 2015-05 as conditioned.

**MOTION:** Mill  
**SECOND:** Bauer

**VOTE:**

**AYES:** Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)
**NOES:** None (0)
**ABSTAIN:** None (0)
**ABSENT:** None (0)
3. **CONDITIONAL USE PERMIT NO. 2015-14**  
(Applicant: Verizon Wireless)

Legal notice published in the Orange County Reporter on June 30, 2015 and notices mailed July 1, 2015.

A project overview was provided by Melanie McCann, Associate Planner. Chairman Gartner opened the public hearing. There were no other speakers and the hearing was closed.

*MOTION:* Adopt a resolution approving Conditional Use Permit No. 2015-14 as conditioned.

**MOTION:** Bauer  
**SECOND:** Nalle

**VOTE:**  
**AYES:** Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)  
**NOES:** None (0)  
**ABSTAIN:** None (0)  
**ABSENT:** None (0)

4. **SPECIAL USE PERMIT NO. 2015-01 AND PARCEL MAP NO. 2015-01**  
(Applicant: Peter Cheng)

Legal notice published in the Orange County Reporter on June 30, 2015 and notices mailed July 1, 2015.

A project overview was provided by Ann Ni, Associate Planner. Ms. Ni answered questions from the commission related to the current minor exception related to parking reduction and water meter service. Nasser Rizk, Senior Engineer, answered questions related to the association’s covenants, conditions and restrictions (CC&Rs) that are currently in place. Chairman Gartner opened the public hearing. The applicant answered questions from the commission as to how the water service is subdivided between tenants. There were no other speakers and the hearing was closed.
MOTION:
1. Adopt a resolution approving Tentative Parcel Map No. 2015-01 (County Map No. 2014-179) as conditioned.
2. Adopt a resolution approving Special Use Permit No. 2015-01 as conditioned.

MOTION: Nalle SECOND: Alderete
VOTE: AYES: Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)
NOES: None (0)
ABSTAIN: None (0)
ABSENT: None (0)

5. TENTATIVE TRACT MAP NO. 2015-02
(Applicant: Santa Ana 5, Inv., LLC)

Legal notice published in the Orange County Reporter on June 30, 2015 and notices mailed July 1, 2015.

A project overview was provided by Ann Ni, Associate Planner. Ms. Ni answered questions from the commission related to elevations, public/private space, inclusionary housing, and Sunshine Ordinance public meeting notice requirements. Chairman Gartner opened the public hearing. The applicant answered questions related to square footage of units and as to why the proposal did not include additional stories as allowed in the Harbor Mixed Use Transit Corridor Specific Plan and stated that the height level was chosen due to its location entering the corridor. There were no other speakers and the hearing was closed.

MOTION: Adopt a resolution approving Tentative Tract Map No. 2015-02 as conditioned.

MOTION: Mill SECOND: Verino
VOTE: AYES: Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)
NOES: None (0)
ABSTAIN: None (0)
ABSENT: None (0)
6. ENVIRONMENTAL IMPACT REPORT NO. 2013-01 AND SECOND AMENDMENT TO DEVELOPMENT AGREEMENT NO. 1999-01
(Applicant: Mater Dei High School)

Legal notice published in the Orange County Reporter on June 30, 2015 and notices mailed July 1, 2015.

A project overview was provided by Vince Fregoso, Acting Planning Manager. Mr. Fregoso answered questions regarding the parking structure setbacks, the consideration of subterranean parking, traffic and parking impacts to the neighborhood. Chairman Gartner opened the public hearing. The applicant, Patrick Murphy, spoke in support of the project and explained the need for additional parking and expansion of the school site. Public comments were received as follows:

- Azucena Simon spoke on behalf of a group of homeowners opposing the project and expressing frustration with Mater Dei's property acquisition team offering short sales for their properties and/or prices below fair market value, and of using scare tactics.
- Angel Bravo stated opposition to the project and requested a meeting with Councilmember Michele Martinez as representative of his ward to make her aware of the homeowners' concerns. (Commissioner Verino stated that Council member Martinez is interested in meeting with the residents and would have a meeting scheduled soon.)
- Roberto Medina expressed concerns with Mater Dei's property acquisition manager, Chris Correa and stated that his family has been the subject of intimidation tactics.
- Chris Correa explained the goals of the acquisition team and stated he has been working on acquisition with the last seven homeowners on an individual basis.
- Delia Sanchez shared concerns regarding traffic circulation near her home and requested the vote to be delayed.
- Jaime Nunez also shared concerns with traffic impacts and hopes the acquisition team offers the homeowners an equitable offer on their home.
- Veronica shared concerns over future air pollution and how that would affect her health.
- Mayra Brito requested that Mater Dei offer a fair deal for purchase of her family home.
MOTION: Recommend that the City Council:

1. Adopt a resolution certifying Final Environmental Impact Report No. 2013-01 and approve the Mitigation Monitoring Program and Statement of Overriding Considerations, with the amendment to Noise Mitigation Measure N-1 to increase the construction schedule noticing from 15 days to 30 days, and extending the notification area from a 500-foot to a 1,000-foot radius.

2. Adopt an ordinance approving the Amendment to Development Agreement No. 1999-01 (DA No. 2015-02) for the Mater Dei High School campus expansion project.

MOTION: Mill
SECOND: Bacerra

VOTE:
AYES: Alderete, Bacerra, Bauer, Gartner, Mill, Nalle, Verino (7)
NOES: None (0)
ABSTAIN: None (0)
ABSENT: None (0)

** END OF BUSINESS CALENDAR ** *

ABSENCES

7. EXCUSED ABSENCES (None)

COMMENTS

8. STAFF COMMENTS

Vince Fregoso
- Stated that there would be a special Planning Commission meeting on July 20 to discuss the Housing Opportunity Ordinance and Adaptive Reuse Ordinance.
- Informed Commission that the July 27 meeting will be cancelled.

Ali Pezeshkpour
- Shared that the City won an award from the Orange County Chapter of the American Planning Association for the Harbor Plan and was recently informed that the City will also be receiving a state award in October.
9. PLANNING COMMISSION MEMBER COMMENTS

Commissioner Alderete
- Shared that he has utilized his planning degree and commission experience in litigation cases in Pennsylvania and New Jersey and appreciates the work involved by staff.

Commissioner Verino
- Appreciated the opportunity to hear residents' concerns and hoped that tonight's meeting provided some clarification.

Commissioner Mill
- Stated disappointment with graffiti at the Sexlinger property.

Commissioner Bauer
- Congratulated Commissioner Mill on his recent nuptials.
- Disclosed that he will regretfully have to resign from the Historic Resources Commission.
- Stated issues with homeowners renting out rooms on a nightly basis, similar to a hotel.

Chairman Gartner
- Mentioned that his son recently received a scholarship for jet training.
- Had the privilege of attending Commissioner Mill's wedding.

ADJOURNED 8:25 P.M. - The next meeting of the Planning Commission is scheduled for Monday, July 20, 2015 at 5:00 p.m. in the Council Chamber, 22 Civic Center Plaza, Santa Ana, California.

Karen Gerardo
Commission Secretary
REQUEST FOR
Planning Commission Action

PLANNING COMMISSION MEETING DATE:
AUGUST 10, 2015

TITLE:
PUBLIC HEARING – FILED BY CARLOS GUAMAN
FOR CONDITIONAL USE PERMIT NO. 2013-27
TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE
CONTROL LICENSE AT THE TACOS Y MARISCOS
EL PICANTE RESTAURANT LOCATED AT 2223 WEST
FIFTH STREET, UNITS F, G & H {STRATEGIC PLAN
NO. 3, 2}

Prepared by Ann Hsin-An Ni

Executive Director

PLANNING COMMISSION SECRETARY

APPROVED
☐ As Recommended
☐ As Amended
☐ Set Public Hearing For

DENIED
☐ Applicant’s Request
☐ Staff Recommendation

CONTINUED TO

RECOMMENDED ACTION

Adopt a resolution approving Conditional Use Permit No. 2013-27.

Request of Applicant

Carlos Guaman is requesting approval of a conditional use permit to allow a Type 41 Alcoholic Beverage Control (ABC) license for the on-premise sale and consumption of beer and wine at Tacos Y Mariscos El Picante Restaurant at 2223 West Fifth Street, Units F, G and H. Pursuant to Section 41-196 of the Santa Ana Municipal Code (SAMC), establishments that sell alcoholic beverages require a conditional use permit.

Project Location and Site Description

Tacos Y Mariscos El Picante Restaurant currently operates within a multi-tenant shopping center that is known as the Tiny Tim Plaza located at the northeast corner of Fifth and Sydney Streets. The site is 1.83 acres in size, L shaped and contains two buildings: An 11,730 square foot structure and a 7,575 square foot structure that were both constructed in 1962.

The front portion of the project site has a Single-Family Residence (R1) zoning designation and the rear portion has a Two-Family Residence (R2) zoning designation. In 1961, a variance was approved (VA No. 1441) to allow a commercial retail center including a grocery store, retail, medical office and a gas station on the Two-Family Residence (R2) section of the site. A total of 78 parking spaces are provided in a surface parking lot. The site is surrounded by commercial and industrial uses to the west and south, and residential uses to the north and east (Exhibits 1, 2 and 3).

Project Description

Tacos Y Mariscos El Picante Restaurant is requesting approval of a Type 41 Alcoholic Beverage Control (ABC) license to allow the on-premise sale of beer and wine as part of the eating establishment. The restaurant is a full service, sit-down establishment that is 1,350 square feet in
size and holds approximately 48 seats. The on-premise sale of alcoholic beverages to customers is intended to provide a service ancillary to the primary restaurant use. The hours of operation for the restaurant are from 9:00 a.m. to 12:00 a.m., seven days per week.

The storage for alcoholic beverages will be inside of an existing refrigerator that is located in the kitchen and a dry storage area. The overall storage of alcohol consists of approximately 49 square feet, which is four percent of the floor area and is less than five percent of the gross floor area of the restaurant. This falls below the Planning Division Standards for establishments serving alcoholic beverages (Exhibits 4 and 5).

**Project Background**

Tacos Y Mariscos El Picante restaurant is a locally-owned and operated restaurant that specializes in Mexican seafood cuisine. The restaurant occupies an existing space within Tiny Tim Plaza that has been used by various eating establishments since 1966. This business has been operating at the present location since July 2012. There was no previous conditional use permit issued for this location to allow the on-site sale of alcoholic beverages.

**General Plan and Zoning Consistency**

The General Plan land use designation for the site is General Commercial (GC) and Low Density Residential at seven dwelling units per acre (LR7). General Commercial land-use districts are key components in the economic development of the City as they provide highly visible and accessible commercial development along the City's arterial transportation corridors and provide important neighborhood facilities and services, such as this restaurant. The project site is consistent with this General Plan land use designation.

The parcel is located within the Single-Family Residence (R-1) and Two-Family Residence (R-2) zoning districts with a use variance approved in 1961 (VA No. 1441). The variance allows for retail and service uses such as restaurants, making the proposed use a legal non-conforming use with the R-1 and R-2 zoning designations.

**Project Analysis**

Conditional use permit requests are governed by Section 41-638 of the SAMC. Conditional use permit requests may be granted when it can be shown that the following can be established:

- That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.
- 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.
• That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

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

• 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.

If these findings can be made, then it is appropriate to grant the conditional use permit. Conversely, the inability to make these findings would result in a denial. Using this information staff has prepared the following analysis, which, in turn forms the basis for the recommendation contained in this report. In analyzing the conditional use permit request, staff believes that the following findings of fact warrant approval of the conditional use permit.

• The proposed alcohol beverage license will provide an ancillary service to the restaurant customers by allowing them the ability to purchase beer and wine with their food throughout the establishment. This will thereby benefit the community by providing a restaurant with an additional and complementary food-related amenity. Standards are applicable to the alcoholic beverage control license which will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.

• The proposed license for the on-sale consumption of beer and wine at this location will not be detrimental to persons residing or working in the vicinity because standards are applicable to the alcoholic beverage control license that will mitigate any potential negative or adverse impacts created by the use. In addition, the use will occur within the premises and is incidental to the restaurant use.

• The proposed use will not adversely affect the economic stability of the area, but will instead allow the restaurant to economically compete with other restaurants in the area that also offer beer and wine for sale to their guests.

• The proposed project will be in compliance with all applicable regulations and standards imposed on a restaurant selling beer and wine pursuant to Chapter 41 of the Santa Ana Municipal Code. The facility has the kitchen equipment necessary to be considered a bona fide restaurant use and is eligible to obtain a restaurant related alcoholic beverage control license. Additionally, the restaurant will utilize less than five percent of the gross floor area for the storage of alcoholic beverages, which is below the maximum threshold established by the Municipal Code.
The proposed use will not adversely affect the General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. A restaurant with an ancillary alcohol license provides a dining service to the residents of Santa Ana and strengthens the economic vitality of the non-conforming commercial uses along Fifth Street. Moreover, Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. The proposed alcoholic beverage service will be located entirely within an enclosed building and its operations will be compatible with the surrounding mix of uses.

Tacos Y Mariscos El Picante has been in operation at the subject location since July 2012, with the commercial building on the project site occupied by retail and restaurants since the 1960s. The site is in compliance with all standards of SAMC Section 41-196(g) for the on-site sale and consumption of alcoholic beverages (Exhibit 6). In addition to these 25 operational standards, an additional condition of approval is proposed to mitigate potential impacts on the adjacent uses and ensure the site does not become an attractive nuisance to the community.

Police Department Analysis

The Police Department reviews conditional use permit applications for the sale and service of alcoholic beverages in order to ensure that the potential crime and nuisance behaviors associated with alcohol consumption are mitigated to the greatest extent possible. For on-sale licenses the Police Department analyzes the crime rate in the area using the standards and definitions contained in the Business and Professions Code Section 23948.4(c)(2), which also are utilized by the State Department of Alcoholic Beverage Control (ABC). This section defines "reported crimes" as criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

The Police Department then compares the number of such crimes in the reporting district as compared to the number of crimes in other reporting districts. In keeping with the standard used by State ABC and Business and Professions Code, should the Police Department determine that the reporting district has a 20 percent greater number of reported crimes than the average number found in all reporting districts, the Police Department will consider this information in making its recommendation.

The Police Department considered two factors when reviewing this type of application: crime rate and sensitive land uses. It has been determined that 2223 West Fifth Street is located in Reporting District No. 105, an area that is 32 percent below the number of reported crimes than the average number reported for all crime reporting districts and is considered average in police-related incidents based on standards established under the Business and Professions Code Section 23958.4. There are single family residential units immediately adjacent to the proposed use, which may be impacted by noise and/or late night activity.
Conditional Use Permit No. 2013-27
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Based on the average crime rate and adjacent residences, the Police Department recommends approval of the CUP, provided that the proposed standards are complied with to ensure that this location operates as a bona fide eating establishment and does not aggravate existing conditions or negatively impact adjacent residents.

Public Notification

The project site is located within the Artesia Pillar Neighborhood Association. Staff contacted the president of the association, who identified no concerns with the project. Additionally, the project site was posted with a notice advertising this public hearing, a notice was published in the Orange County Reporter and mailed notices were sent to all property owners and tenants within 500 feet of the project site. At the time of this printing, no correspondence, either written or electronic, had been received from any members of the public.

CEQA Compliance

In accordance with the California Environmental Quality Act the recommended action is exempt for further review per Section 15301. The Class 1 exemption allows the operating, permitting and licensing of existing private structures with negligible or no expansion of the existing use. The proposed application is to approve an alcoholic beverage control license and allow the sale of beer and wine within an existing commercial building. Categorical Exemption Environmental Review No. 2013-61 will be filed for this project.

Strategic Plan Alignment

Approval of this item supports the City’s efforts to meet Goal No. 3 Economic Development, Objective No. 2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies).

Conclusion

Based on the analysis provided within this report, staff recommends that the Planning Commission approve Conditional Use Permit No. 2013-27.

Ann Ni
Associate Planner

AN: jm
AnlwpS1\pncomm2\CUP13-27.TacosElPicentie.pce
Conditional Use Permit No. 2013-27
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Attachments:
Exhibit 1 – Vicinity Map
Exhibit 2 – Land Use Map
Exhibit 3 – Site Photo
Exhibit 4 – Site Plan
Exhibit 5 – Floor Plan
Exhibit 6 – Operational Standards for On-Sale Establishments
CUP 2013-27
TACOS Y MARISCOS EL PICANTE
2223 WEST 5TH STREET, SUITES F, G & H

PLANNING AND BUILDING AGENCY
EXHIBIT 1
VICINITY MAP
CUP 2013-27
TACOS Y MARISCOS EL PICANTE
2223 WEST 5TH STREET, SUITES F, G & H

PLANNING AND BUILDING AGENCY

LAND USE MAP
EXHIBIT 2
Operational standards for on-sale establishments. The following operational standards shall be included in the conditions of approval for the conditional use permit required pursuant to Section 41-196

1. The premises shall at all times be maintained as a bona-fide eating establishment as defined in Section 23038 of the California Business and Professions code and shall provide a menu containing an assortment of foods normally offered. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day. Full and complete meals must be served whenever the privileges of the on-sale license are being exercised.

2. There shall be no fixed bar or lounge area upon the premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons. A fixed bar or lounge may be permitted if patrons may order food being offered to the general patrons of the eating establishment.

3. The sales, service, and consumption of alcoholic beverages shall be permitted only between the hours of 8:00 a.m. and 12:00 a.m. unless otherwise amended by the granting of a conditional use permit for after-hours operations pursuant to Santa Ana Municipal Code Chapter 41.

4. It shall be the applicant’s responsibility to ensure that no alcoholic beverages are consumed on any property adjacent to the licensed premises under the control of the applicant, with the exception of any enclosed patio areas.

5. The applicant or an employee of the licensee must be present to monitor all areas of the establishment, including outdoor patios, during all times that alcoholic beverages are being served or consumed.

6. All employees serving alcoholic beverages must complete Responsible Beverage Service Training, or an equivalent approved by the State Department of Alcoholic Beverage Control, prior to being able to serve alcoholic beverages to patrons. Evidence of the completion of such training must be maintained on the premises and available for inspection upon request by the City.

7. During those times when patrons are restricted to 21 years of age or older, the applicant shall at all times utilize an age verification means or device for all purchases of alcoholic beverages. Such verification of age is not intended to discriminate against patrons based on race, ethnicity or legal status, but only to comply with state law restricting the sale of alcohol to those 21 and older.

8. Queuing lines shall be managed in an orderly manner and all disruptive and/or intoxicated patrons shall be denied entry. The business owner, or his designee, shall be responsible for monitoring the queuing lines at all times.

EXHIBIT 6
1 of 4
9. The outdoor queuing line shall not block public walkways or obstruct the entry or exit doors of adjacent businesses. Stanchions or barriers must be used to maintain order at all times the queue exceeds 25 patrons. All stanchions or barriers located on public property must be approved by the Public Works Agency.

10. Employees and contract security personnel shall not consume any alcoholic beverages during their work shift, except for product sampling for purposes of employee education about new products. Under no circumstances may contract security personnel consume alcoholic beverages during their work shift.

11. There shall be no exterior advertising of any kind or type, including window signs or other signs visible from outside, that promote or indicate the availability of alcoholic beverages on the premises. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition. Permissible window displays must be kept to a minimum for maximum visibility and shall not exceed 25 percent of window coverage. Floor displays shall not exceed three feet in height.

12. There shall be no promotions encouraging intoxication or drinking contests or advertisements indicating “buy one drink, get one free”, “two for the price of one”, or “all you can drink for...” or similar language.

13. Any pool tables, amusement machines or video games maintained on the premises at any time must be reviewed and approved in a security plan submitted to the Chief of Police.

14. Live Entertainment, including but not limited to, amplified music, karaoke, performers and dancing, shall be subject to the issuance of an entertainment permit pursuant to Santa Ana Municipal Code (“SAMC”) Chapter 11 – Entertainment, 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.

15. Neither the applicant, nor any person or entity operating the premises with the permission of the applicant, shall violate the City’s adult entertainment ordinance contained in SAMC Section 12-1 and 12-2.

16. The premises shall not be operated as an adult entertainment business as such term is defined in SAMC Section 41-1701.6.

17. The applicant(s) shall be responsible for maintaining free of litter the area adjacent to the premises under the control of the licensee.

18. There shall be no public telephones located on the exterior of the premises. All interior pay phones must be designed to allow outgoing calls only.
19. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted within 24 hours of being applied.

20. Existing bona fide eating establishment and required parking must conform to the provisions of Chapter 8, Article II, Division 3 of the Santa Ana Municipal Code (Building Security Ordinance). These code conditions will require that the existing project lighting, door/window locking devices and addressing be upgraded to current code standards. Lighting standards cannot be located in required landscape planters. Prior to issuance of Letter of Approval to the Alcohol Beverage Control Board, this condition must be complied with.

21. A timed-access cash controller or drop safe must be installed.

22. Install a silent armed robbery alarm.

23. The owner or manager of the licensed premises shall maintain on the premises a written security policy and procedures manual that has been approved by the Police Department, addressing at a minimum the following items:
   
a. Procedures for handling obviously intoxicated persons.

b. The method for establishing a reasonable ratio of employees to patrons, based upon activity level, in order to ensure adequate staffing levels to monitor beverage sales and patron behavior.

c. Procedures for handling patrons involved in fighting, arguing or loitering about the building, and/or in the immediate adjacent area that is owned, leased, rented or used under agreement by the Licensee(s).

d. Procedures for verifying the age of patrons for purposes of alcohol sales.

e. Procedures for ensuring that servers monitor patrons to ensure that their drinking limit/potential intoxication is not exceeded. This procedure should include a description of the procedure the server would use to warn, or refuse to serve, the patron.

f. Procedures for calling the police regarding observed or reported criminal activity.

g. Procedures for management of queuing lines.

h. The location and description of any video games proposed to be on the premises.
24. The operator shall be responsible for submitting a detailed outdoor fencing and dining plan where outdoor dining is proposed as part of the business operation. If the proposed dining area or fencing is in the public right of way, the applicant must obtain all required permits and approvals from the Public Works Agency.

25. Combined alcohol storage and display areas shall not exceed five percent (5%) of the gross floor area of the licensed establishment.
RESOLUTION NO. 2015-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2013-27 TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE AT TACOS Y MARISCOS EL PICANTE RESTAURANT LOCATED AT 2223 WEST FIFTH STREET, UNITS F, G AND H

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. Applicant is requesting approval of Conditional Use Permit No. 2013-27 to allow a Type 41 Alcoholic Beverage Control (ABC) license for the property located at 2223 West Fifth Street, Units F, G and H.

B. Santa Ana Municipal Code Section 41-196 requires a conditional use permit for the sale of alcoholic beverages for on-site consumption of beer and wine service that is ancillary to the primary restaurant use.

C. On August 10, 2015, the Planning Commission held a duly noticed public hearing on Conditional Use Permit No. 2013-27.

D. The Planning Commission determines that the following findings, which must be established in order to grant this Conditional Use Permit pursuant to Santa Ana Municipal Code (SAMC) Section 41-638, have been established for Conditional Use Permit No. 2013-27 to allow for a Type 41 ABC license:

1. Will the proposed use provide a service or facility which will contribute to the general well being of the neighborhood or the community?

   The proposed Type 41 ABC license will provide an ancillary service to the restaurant customers by allowing them the ability to purchase beer and wine with their food throughout the establishment. This will thereby benefit the community by providing a restaurant with an additional and complementary food-related amenity. Standards are applicable to the alcoholic beverage control license which will mitigate any potential impacts created by the use and
ensure that the use will not negatively affect the surrounding community.

2. Will the proposed use 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 Type 41 ABC license for the on-sale consumption of beer and wine at this location will not be detrimental to persons residing or working in the vicinity because operational standards to the alcoholic beverage control license will mitigate any potential negative or adverse impacts created by the use. In addition, the use will occur within the interior of the commercial tenant space, mitigating any potential impacts to the surrounding neighborhood. In addition, the sale of beer and wine in the restaurant is intended to be incidental to the primary use as an eating establishment.

3. Will the proposed use 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 economically compete with other nearby restaurants that also offer alcoholic beverages for sale to their guests and other visitors. Moreover, the offering of alcoholic beverages allows Tacos Y Mariscos El Picante Restaurant to remain economically viable and contributes to the overall success and economic stability of the area.

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

   The proposed project will be in compliance with all applicable regulations and standards imposed on a restaurant selling beer and wine pursuant to Chapter 41 of the SAMC. The facility will be maintained as a bona-fide eating establishment, having the suitable kitchen facilities and supplying an assortment of foods commonly ordered at various hours of the day. Additionally, the restaurant will utilize less than five (5%) percent of the gross floor area for the display and storage of alcoholic beverages, which is below the maximum threshold established by the SAMC.

5. Will the proposed use adversely affect the General Plan or any specific plan of the City?

   The proposed use will not adversely affect the City’s General Plan. The granting of this conditional use permit supports
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. A restaurant that feature alcoholic beverages on its menu offers additional dining options for Santa Ana residents and visitors and strengthens the economic vitality of the non-conforming commercial uses along Fifth Street. Further, 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 Type 41 ABC license will maintain a safe and attractive environment. Finally, Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses.

E. In accordance with the California Environmental Quality Act the recommended action is exempt for further review per Section 15301. The Class 1 exemption allows the operation, repair, maintenance, permitting, or leasing of existing structures involving negligible or no expansion of the existing use. The proposed application is to approve a conditional use permit to allow the sale of beer and wine within an existing commercial building that is already served by municipal services, such as roadways, utilities, and parking. Categorical Exemption Environmental Review No. 2013-61 will be filed for this project.

Section 2. The applicant agrees to indemnify, hold harmless, and defend the City of Santa Ana, its officials, officers, agents, and employees, from any and all liability, claims, actions or proceedings that may be brought arising out of its approval of this project, and any approvals associated with the project, including, without limitation, any environmental review or approval, except to the extent caused by the negligence of the City of Santa Ana.

Section 3. The Planning Commission of the City of Santa Ana after conducting the public hearing hereby approves Conditional Use Permit No. 2013-27. This decision is based upon the evidence submitted at the abovesaid hearing, which includes, but is not limited to: the Request for Planning Commission Action dated August 10, 2015, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.
ADOPTED this 10th day of August 2015 by the following vote:

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

______________________________
James Gartner
Chairman

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

By: __________________________
Lisa Storck
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, KAREEN GERARDO, Planning Commission Secretary, do hereby attest to and certify the attached Resolution No. 2015- xx to be the original resolution adopted by the Planning Commission of the City of Santa Ana on August 10, 2015.

Date: __________________________
Planning Commission Secretary
City of Santa Ana
REQUEST FOR  
Planning Commission Action

PLANNING COMMISSION MEETING DATE:  
AUGUST 10, 2015

TITLE:  
PUBLIC HEARING – FILED BY VICTOR BURROLA FOR CONDITIONAL USE PERMIT NO. 2015-13 TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR EL NUEVO ENSENADA RESTAURANT LOCATED AT 3622 WEST FIFTH STREET {STRATEGIC PLAN NO. 3, 2}  
Prepared by  Ricardo Soto

RECOMMENDED ACTION  
Adopt a resolution approving Conditional Use Permit No. 2015-13.

Request of Applicant

Victor Burrola, representing El Nuevo Ensenada restaurant, is requesting approval of a conditional use permit for a Type 41 Alcoholic Beverage Control (ABC) license for the on-premise sale and consumption of beer and wine at an existing eating establishment located at 3622 West Fifth Street. Establishments that sell alcoholic beverages require a conditional use permit (CUP) pursuant to Section 41-196 of the Santa Ana Municipal Code (SAMC).

Project Location and Site Description

El Nuevo Ensenada restaurant is currently occupying an existing free standing commercial building located on the southwest corner of Fifth and Bewley Streets. A total of 18 on-site parking spaces are provided for the eating establishment. The site is surrounded by residential uses to the south and west, commercial uses to the north, and a religious institution use to the east (Exhibits 1, 2 and 3).

Project Description

El Nuevo Ensenada restaurant is requesting approval of a Type 41 ABC license to allow the on-premise sale and consumption of beer and wine as part of the eating establishment’s operations. The restaurant is maintained as a full-service, sit-down eating establishment with seating for 80 patrons. The eating establishment has all necessary kitchen equipment to be considered for a Type 41 ABC license.

The on-premise sale of alcoholic beverages to customers is intended to provide a service that is ancillary to the primary restaurant use. The hours of operation for the restaurant are from 10:00 a.m. to 10:00 p.m. Monday through Friday and from 8:00 a.m. to 10:00 p.m. Saturday and Sunday.
The storage area for alcoholic beverages will be located in the administrative office space of the restaurant and will be displayed in a refrigerator located in the dining area. The alcohol storage area will total 39 square feet in size, which is less than two percent of the gross floor area of the restaurant. This percentage of alcohol storage is below the Santa Ana Municipal Code’s maximum for eating establishments serving alcoholic beverages of five percent of the gross floor area (Exhibits 4 and 5).

**Project Background**

El Nuevo Ensenada restaurant is a full-service, family oriented restaurant that offers traditional Mexican and specialty seafood dishes. El Nuevo Ensenada restaurant is occupying an existing 2,260 square foot commercial building that was previously occupied by Mariscos Ensenada. A conditional use permit was previously approved for a prior tenant of the commercial tenant space which allowed for the on-site sale and consumption of beer and wine at the site. However, the conditional use permit was declared void after the use ceased to exist on the site for a period of one year or more. Approval of a new conditional use permit for a Type 41 ABC license is required.

**General Plan and Zoning Consistency**

The General Plan land use designation for the site is Urban Neighborhood (UN). Urban Neighborhood land-use districts allow for a mix of residential uses and the opportunity for important neighborhood serving retail and service uses, such as this restaurant. The project site is consistent with the Urban Neighborhood land use designation.

The site is located within the Harbor Mixed Use Transit Corridor Specific Plan (SP-2) zoning district and is in the Neighborhood Transitional (NT) district of the plan. The NT district of the SP-2 allows for eating establishments, making the proposed use consistent with the zoning designation.

**Project Analysis**

Conditional use permit requests are governed by Section 41-638 of the SAMC and may be granted when it can be shown that the following can be established:

- That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

- 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.

- That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.
That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

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.

If these findings can be made, then it is appropriate to grant the conditional use permit. Conversely, the inability to make these findings would result in a denial. Using this information staff has prepared the following analysis, which, in turn forms the basis for the recommendation contained in this report. In analyzing the conditional use permit request, staff believes that the following findings of fact warrant approval of the conditional use permit.

- The proposed Type 41 ABC license will provide an ancillary service to the restaurant’s customers by allowing them the ability to purchase beer and wine with their food. This will thereby benefit the community by providing a restaurant with an additional and complementary food-related amenity. Standards are applicable to the alcoholic beverage control license which will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.

- The proposed Type 41 ABC license for the on-sale consumption of beer and wine at this location will not be detrimental to persons residing or working in the vicinity because operational standards to the alcoholic beverage control license will mitigate any potential negative or adverse impacts created by the use. In addition, the use will occur within the interior of the commercial tenant space, mitigating any potential impacts to the surrounding neighborhood. Finally, the sale of beer and wine in the restaurant is intended to be incidental to the primary use as an eating establishment.

- 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 also offer alcoholic beverages for sale to their guests and other visitors. Moreover, the offering of alcoholic beverages allows El Nuevo Ensenada restaurant to remain economically viable and contributes to the overall success and economic stability of the area.

- The proposed project will be in compliance with all applicable regulations and standards imposed on a restaurant selling beer and wine pursuant to Chapter 41 of the SAMC. The facility will be maintained as a bona-fide eating establishment, having the suitable kitchen facilities and supplying an assortment of foods commonly ordered at various hours of the day. Additionally, the restaurant will utilize less than two percent of the gross floor area for the display and storage of alcoholic beverages, which is below the maximum threshold established by the SAMC.
The proposed use will not adversely affect the City's General Plan. The granting of this conditional use permit supports 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 restaurants that feature alcoholic beverages on their menus offers additional dining options for Santa Ana residents and visitors. Further, 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 Type 41 ABC license will maintain a safe and attractive environment. Finally, Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. El Nuevo Ensenada restaurant is occupying an existing commercial building and is compatible with and supporting of surrounding commercial and residential uses.

El Nuevo Ensenada restaurant is requesting a conditional use permit for a Type 41 ABC license. The site will be in compliance with all standards of SAMC Section 41-196(g) for the on-premise sale of alcoholic beverages (Exhibit 6). These 25 operational standards will mitigate potential impacts on the adjacent uses and ensure that the use does not become an attractive nuisance to the community.

**Police Department Analysis**

The Police Department reviews conditional use permit applications for the sale and service of alcoholic beverages in order to ensure that the potential crime and nuisance behaviors associated with alcohol consumption are mitigated to the greatest extent possible. For on-sale licenses the Police Department analyzes the crime rate in the area using the standards and definitions contained in the Business and Professions Code Section 23948.4(c)(2), which also are utilized by the State Department of Alcoholic Beverage Control (ABC). This section defines "reported crimes" as criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

The Police Department then compares the number of such crimes in the reporting district as compared to the number of crimes in other reporting districts. In keeping with the standard used by State ABC and Business and Professions Code, should the Police Department determine that the reporting district has a 20 percent greater number of reported crimes than the average number found in all reporting districts, the Police Department will consider this information in making its recommendation.

The project at 3622 West Fifth Street is located in Reporting District No. 65. Reporting District No. 65 ranks 27th out of 102 reporting districts in the number of police related calls for service. This reporting district is below the 20 percent threshold established by the State for high crime. The Police Department contends that the operational standards applicable to an on-sale ABC license will mitigate any potential negative impacts to the surrounding community.
Conditional Use Permit No. 2015-13  
August 10, 2015  
Page 5

**Public Notification**

The project site is located within the boundaries of the Santa Anita Neighborhood Association and is near the Riverview West Neighborhood Association. Staff contacted the presidents of both associations, who identified no concerns with the project. The project site was also posted with a notice advertising this public hearing, a notice was published in the Orange County Reporter, and mailed notices were sent to all property owners and tenants within 500 feet of the project site. At the time of printing of this report, no areas of concern were raised, nor had any correspondence, either written or electronic, been received from any members of the public.

**CEQA Compliance**

In accordance with the California Environmental Quality Act, the recommended action is exempt for further review per Section 15301. The Class 1 exemption allows the operating, permitting and licensing of existing private structures with negligible or no expansion of the existing use. The proposed application is to approve a conditional use permit to allow the sale of beer and wine within an existing structure that is already served by municipal services, such as roadways, utilities, and parking. Categorical Exemption Environmental Review No. 2015-59 will be filed for this project.

**Strategic Plan Alignment**

Approval of this item supports the City's efforts to meet Goal No. 3 Economic Development, Objective No. 2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies).

**Conclusion**

Based on the analysis provided within this report, staff recommends that the Planning Commission approve Conditional Use Permit No. 2015-13.

Ricardo Soto  
Assistant Planner I

RS:jm  
rs/reports/CUP 2015-13/CUP 2015-13 El Nuevo Ensenada Type 41 ABC.pdf

Attachments:  
Exhibit 1 – Vicinity Map  
Exhibit 2 – Location Map  
Exhibit 3 – Existing Conditions Photo  
Exhibit 4 – Site Plan  
Exhibit 5 – Floor Plan  
Exhibit 6 – Operational Standards for On-Sale Establishments
CUP 2015-13
EL NUEVO ENSENADA TYPE 41 ABC
3622 WEST FIFTH STREET

SITE PHOTO
EXHIBIT 3
Sec. 41-196. Establishments selling alcoholic beverages.

Operational standards for *on-sale* establishments. The following operational standards shall be included in the conditions of approval for the conditional use permit required pursuant to Section 41-196.

1. The premises shall at all times be maintained as a bona-fide eating establishment as defined in Section 23038 of the California Business and Professions code and shall provide a menu containing an assortment of foods normally offered. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day. Full and complete meals must be served whenever the privileges of the on-sale license are being exercised.

2. There shall be no fixed bar or lounge area upon the premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons. A fixed bar or lounge may be permitted if patrons may order food being offered to the general patrons of the eating establishment.

3. The sales, service, and consumption of alcoholic beverages shall be permitted only between the hours of 8:00 a.m. and 12:00 a.m. unless otherwise amended by the granting of a conditional use permit for after-hours operations pursuant to Santa Ana Municipal Code Chapter 41.

4. It shall be the applicant’s responsibility to ensure that no alcoholic beverages are consumed on any property adjacent to the licensed premises under the control of the applicant, with the exception of any enclosed patio areas.

5. The applicant or an employee of the licensee must be present to monitor all areas of the establishment, including outdoor patios, during all times that alcoholic beverages are being served or consumed.

6. All employees serving alcoholic beverages must complete Responsible Beverage Service Training, or an equivalent approved by the State Department of Alcoholic Beverage Control, prior to being able to serve alcoholic beverages to patrons. Evidence of the completion of such training must be maintained on the premises and available for inspection upon request by the City.

7. During those times when patrons are restricted to 21 years of age or older, the applicant shall at all times utilize an age verification means or device for all purchases of alcoholic beverages. Such verification of age is not intended to discriminate against patrons based on race, ethnicity or legal status, but only to comply with state law restricting the sale of alcohol to those 21 and older.

8. Queuing lines shall be managed in an orderly manner and all disruptive and/or intoxicated patrons shall be denied entry. The business owner, or his designee, shall be responsible for monitoring the queuing lines at all times.

EXHIBIT 6
1 of 4
9. The outdoor queuing line shall not block public walkways or obstruct the entry or exit doors of adjacent businesses. Stanchions or barriers must be used to maintain order at all times the queue exceeds 25 patrons. All stanchions or barriers located on public property must be approved by the Public Works Agency.

10. Employees and contract security personnel shall not consume any alcoholic beverages during their work shift, except for product sampling for purposes of employee education about new products. Under no circumstances may contract security personnel consume alcoholic beverages during their work shift.

11. There shall be no exterior advertising of any kind or type, including window signs or other signs visible from outside, that promote or indicate the availability of alcoholic beverages on the premises. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition. Permissible window displays must be kept to a minimum for maximum visibility and shall not exceed 25 percent of window coverage. Floor displays shall not exceed three feet in height.

12. There shall be no promotions encouraging intoxication or drinking contests or advertisements indicating “buy one drink, get one free”, “two for the price of one”, or “all you can drink for…” or similar language.

13. Any pool tables, amusement machines or video games maintained on the premises at any time must be reviewed and approved in a security plan submitted to the Chief of Police.

14. Live Entertainment, including but not limited to, amplified music, karaoke, performers and dancing, shall be subject to the issuance of an entertainment permit pursuant to Santa Ana Municipal Code ("SAMC") Chapter 11 – Entertainment, 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.

15. Neither the applicant, nor any person or entity operating the premises with the permission of the applicant, shall violate the City’s adult entertainment ordinance contained in SAMC Section 12-1 and 12-2.

16. The premises shall not be operated as an adult entertainment business as such term is defined in SAMC Section 41-1701.6.

17. The applicant(s) shall be responsible for maintaining free of litter the area adjacent to the premises under the control of the licensee.

18. There shall be no public telephones located on the exterior of the premises. All interior pay phones must be designed to allow outgoing calls only.
19. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted within 24 hours of being applied.

20. Existing bona fide eating establishment and required parking must conform to the provisions of Chapter 8, Article II, Division 3 of the Santa Ana Municipal Code (Building Security Ordinance). These code conditions will require that the existing project lighting, door/window locking devices and addressing be upgraded to current code standards. Lighting standards cannot be located in required landscape planters. Prior to issuance of Letter of Approval to the Alcohol Beverage Control Board, this condition must be complied with.

21. A timed-access cash controller or drop safe must be installed.

22. Install a silent armed robbery alarm.

23. The owner or manager of the licensed premises shall maintain on the premises a written security policy and procedures manual that has been approved by the Police Department, addressing at a minimum the following items:

a. Procedures for handling obviously intoxicated persons.

b. The method for establishing a reasonable ratio of employees to patrons, based upon activity level, in order to ensure adequate staffing levels to monitor beverage sales and patron behavior.

c. Procedures for handling patrons involved in fighting, arguing or loitering about the building, and/or in the immediate adjacent area that is owned, leased, rented or used under agreement by the Licensee(s).

d. Procedures for verifying the age of patrons for purposes of alcohol sales.

e. Procedures for ensuring that servers monitor patrons to ensure that their drinking limit/potential intoxication is not exceeded. This procedure should include a description of the procedure the server would use to warn, or refuse to serve, the patron.

f. Procedures for calling the police regarding observed or reported criminal activity.

g. Procedures for management of queuing lines.

h. The location and description of any video games proposed to be on the premises.
24. The operator shall be responsible for submitting a detailed outdoor fencing and dining plan where outdoor dining is proposed as part of the business operation. If the proposed dining area or fencing is in the public right of way, the applicant must obtain all required permits and approvals from the Public Works Agency.

25. Combined alcohol storage and display areas shall not exceed five percent (5%) of the gross floor area of the licensed establishment.
RESOLUTION NO. 2015-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2015-13 TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE AT EL NUEVO ENSENADA RESTAURANT LOCATED AT 3622 WEST FIFTH 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. Applicant is requesting approval of Conditional Use Permit No. 2015-13 to allow a Type 41 Alcoholic Beverage Control (ABC) license for the property located at 3622 West Fifth Street.

B. Santa Ana Municipal Code Section 41-196 requires a conditional use permit for the sale of alcoholic beverages for on-site consumption of beer and wine service that is ancillary to the primary restaurant use.

C. On August 10, 2015, the Planning Commission held a duly noticed public hearing on Conditional Use Permit No. 2015-13.

D. The Planning Commission determines that the following findings, which must be established in order to grant this Conditional Use Permit pursuant to Santa Ana Municipal Code (SAMC) Section 41-638, have been established for Conditional Use Permit No. 2015-13 to allow for a Type 41 ABC license:

1. Will the proposed use provide a service or facility which will contribute to the general well being of the neighborhood or the community?

   The proposed Type 41 ABC license will provide an ancillary service to the restaurant’s customers by allowing them the ability to purchase beer and wine with their food. This will thereby benefit the community by providing a restaurant with an additional and complementary food-related amenity. Standards are applicable to the alcoholic beverage control license which will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.
2. Will the proposed use 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 Type 41 ABC license for the on-sale consumption of beer and wine at this location will not be detrimental to persons residing or working in the vicinity because operational standards to the alcoholic beverage control license will mitigate any potential negative or adverse impacts created by the use. In addition, the use will occur within the interior of the commercial tenant space, mitigating any potential impacts to the surrounding neighborhood. Finally, the sale of beer and wine in the restaurant is intended to be incidental to the primary use as an eating establishment.

3. Will the proposed use 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 also offer alcoholic beverages for sale to their guests and other visitors. Moreover, the offering of alcoholic beverages allows El Nuevo Ensenada restaurant to remain economically viable and contributes to the overall success and economic stability of the area.

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

   The proposed project will be in compliance with all applicable regulations and standards imposed on a restaurant selling beer and wine pursuant to Chapter 41 of the SAMC. The facility will be maintained as a bona-fide eating establishment, having the suitable kitchen facilities and supplying an assortment of foods commonly ordered at various hours of the day. Additionally, the restaurant will utilize less than two (2%) percent of the gross floor area for the display and storage of alcoholic beverages, which is below the maximum threshold established by the SAMC.

5. Will the proposed use adversely affect the General Plan or any specific plan of the City?

   The proposed use will not adversely affect the City's General Plan. The granting of this conditional use permit supports 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 restaurants that feature alcoholic beverages on their menus offers additional dining options for Santa Ana residents and visitors. Further, 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 Type 41 ABC license will maintain a safe and attractive environment. Finally, Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. El Nuevo Ensenada restaurant is occupying an existing commercial building and is compatible with and supporting of surrounding commercial and residential uses.

E. In accordance with the California Environmental Quality Act the recommended action is exempt for further review per Section 15301. The Class 1 exemption allows the operation, repair, maintenance, permitting, or leasing of existing structures involving negligible or no expansion of the existing use. The proposed application is to approve a conditional use permit to allow the sale of beer and wine within an existing structure that is already served by municipal services, such as roadways, utilities, and parking. Categorical Exemption Environmental Review No. 2015-59 will be filed for this project.

Section 2. The applicant agrees to indemnify, hold harmless, and defend the City of Santa Ana, its officials, officers, agents, and employees, from any and all liability, claims, actions or proceedings that may be brought arising out of its approval of this project, and any approvals associated with the project, including, without limitation, any environmental review or approval, except to the extent caused by the negligence of the City of Santa Ana.

Section 3. The Planning Commission of the City of Santa Ana after conducting the public hearing hereby approves Conditional Use Permit No. 2015-13. This decision is based upon the evidence submitted at the above-said hearing, which includes, but is not limited to: the Request for Planning Commission Action dated August 10, 2015, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.
ADOPTED this 10th day of August 2015 by the following vote:

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

_______________________
James Gartner
Chairman

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

By:________________________
Lisa Storck
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, KAREN GERARDO, Planning Commission Secretary, do hereby attest to and certify the attached Resolution No. 2015-xx to be the original resolution adopted by the Planning Commission of the City of Santa Ana on August 10, 2015.

Date: ________________  Planning Commission Secretary
Planning Commission Secretary
City of Santa Ana