

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA DENYING CONDITIONAL USE PERMIT NO. 2023-09 AS CONDITIONED TO ALLOW SALE OF DISTILLED SPIRITS IN ADDITION TO EXISTING BEER AND WINE SALES FOR ON-PREMISES CONSUMPTION AT MARISCOS HECTOR SPORTS GRILL LOCATED AT 1208 EAST MCFADDEN AVENUE

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

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

- A. Maria Sebold with Mariscos Hector Sports Grill (“Applicant”) and representing McFadden Shopping Center, LLC. (“Property Owner”), is requesting approval of Conditional Use Permit (CUP) No. 2023-09 to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at an existing restaurant located at 1208 East McFadden Avenue.
- 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. On November 8, 1971, the Planning Commission approved CUP No. 1971-34 allowing the sale of beer and wine for on-premises consumption, through a Type 41 license from the State Department of Alcoholic Beverage Control (“ABC”), at the subject site.
- D. On February 24, 2023, the applicant submitted a CUP application to the Planning Division to upgrade its existing ABC license from a Type 41 to a Type 47 license to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at the existing restaurant.
- E. On April 24, 2023, the Planning Commission held a duly noticed public hearing for Conditional Use Permit No. 2023-09. At the conclusion of this hearing, the Commission approved Conditional Use Permit No. 2023-09 subject to modified conditions of approval.
- F. On April 25, 2023, the Planning Division provided a summary of the Planning Commission’s action to the City Council, after which a member of the City Council requested that the item be discussed during the May 2, 2023, City Council meeting.

- G. On May 2, 2023, the City Council discussed Conditional Use Permit No. 2023-09 and voted 7:0 to have the item presented to the City Council for a de novo public hearing, pursuant to Section 41-642 of the SAMC.
- H. On June 6, 2023, the City Council held a duly noticed public hearing for Conditional Use Permit No. 2023-09. During this meeting, members of the City Council listened to the neighborhood concerns and discussed crime statistics.
- I. The City Council determines that the following finding, which must be established in order to grant a CUP pursuant to Section 41-638 of the SAMC, cannot be established for CUP No. 2023-09 to allow the sale of distilled spirits in addition to beer and wine for on-premises consumption at an existing eating establishment located at 1208 East McFadden Avenue. Specifically, Conditional Use Permit Finding 1 of Section 41-638, as it relates to the proposed use providing a service which would contribute to the general wellbeing of the neighborhood or the community, is not met. Therefore, the finding for denial of CUP 2023-09 is adopted as follows:
 - 1. That the proposed use will be detrimental to and will not provide a service or facility which will contribute to the general wellbeing of the neighborhood or community.

Under CUP No. 1971-34, patrons who visit the restaurant currently have the opportunity to purchase beer and wine with their meals. The request to intensify the use and allow the sale of distilled spirits for on-premises consumption is not a service that is needed at this time. Moreover, the intensification of the use will not provide a service that contributes to the general wellbeing of the neighborhood or community. Instead, the use would be detrimental due to over concentration of alcohol licenses and neighborhood nuisance concerns.

Pursuant to data provided by the Department of Alcoholic Beverage Control (ABC), there is currently an over concentration of ABC licenses for on-premises consumption within the census tract (744.03) for the subject property. Census tract authorization records indicate that there are only seven licenses authorized within the subject census tract. However, there are currently nine existing licenses established.

Moreover, the intensification of the use will be detrimental, as it would exacerbate existing neighborhood and community concerns related to noise and other nuisance related complaints. Police Department data from January 2020 through December 2022 indicates that there have been 38 calls to service for the subject property related, but not limited to, burglary, trespassing, narcotic activities, noise disturbance, assault, battery, gang activity, and stolen vehicles.

Seventeen of those calls to service were specific to the subject restaurant. The subject site is immediately adjacent to residential uses, neighborhoods, and open space areas. Therefore, the sale of distilled spirits would result in an increase of neighborhood and community disturbances, compromising the general wellbeing of Santa Ana residents and workers.

Additionally, the existing restaurant operations related to on-site entertainment, in combination with the proposed sale of distilled spirits, would result in an unacceptable noise levels and in an increase of trash and other nuisance standards for the nearby residential properties. Subsequently, it would result in an increase in Police- and Code Enforcement-related calls for service, a further detriment to the general wellbeing of the surrounding residents.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, this project is exempt from further review under Section 15061(b)(4) of the CEQA Guidelines, as the City Council has denied Conditional Use Permit No. 2023-09.

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 City Council of the City of Santa Ana, after conducting the public hearing, hereby denies Conditional Use Permit No. 2023-09 for the sale of distilled spirits in addition to beer and wine for on-premises consumption at Mariscos Hector Sports Grill located at 1208 East McFadden Avenue. The denial shall prohibit the sale of distilled spirits at the subject location but leaves in effect the permitted sale of beer and wine, approved under Conditional Use Permit No. 1971-32, subject to all applicable standards and

regulations set forth in Chapter 41 of the Santa Ana Municipal Code. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for City Council Action dated July 18, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 18th day of July 2023 by the following vote.

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT
PRESENT: Councilmembers: _____

Valerie Amezcua
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

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

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Jennifer Hall, City Clerk, do hereby attest to and certify the attached Resolution No. 2023-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on July 18, 2023.

Date: _____

City Clerk
City of Santa Ana