

RESOLUTION NO. 5907-18

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING CONDITIONAL USE PERMIT NO. CUP-120-2018.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby deny the request for approval of Conditional Use Permit No. CUP-120-2018 for a property located at the west side of Euclid Street, south of Forbes Avenue, at 14291 Euclid St. #D101, Assessor's Parcel No. 099-183-03 (the "Property"), and hereby determines that public convenience and necessity would not be served by the issuance of a new Alcoholic Beverage Control License Type "47" (On-Sale, General, Public Eating Place) License for the existing establishment.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-120-2018, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Quan Hoa An LLC c/o Kimberly B. Le ("Applicant").
2. The Applicant is requesting Conditional Use Permit (CUP) approval to upgrade an existing State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License to a new ABC Type "47" (On-Sale, General, Public Eating Place) License, and to allow live entertainment, in the form of karaoke, along with associated components (i.e., amplified sound, stage, and karaoke equipment), for an existing 1,885 square foot restaurant, Pho Hoa An Restaurant, located at 14291 Euclid Street #D101, which is currently operating under Conditional Use Permit No. CUP-102-03.
3. Because the application is denied, the project is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15270(a).
4. The property has a General Plan Land Use designation of Industrial/Commercial Mixed Use, and is zoned PUD-104-81/86 REV. 90 (Planned Unit Development).
5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.
6. Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on April 19, 2018, and all interested persons were given an opportunity to be heard.
8. The Planning Commission gave due and careful consideration to the matter during its meeting of April 19, 2018 and considered all information presented; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030, are as follows:

FACTS:

The site is improved with a multi-tenant retail shopping center called the Euclid Retail Center. The center includes retail stores, restaurants, medical, and office professional uses. The specific 1,885 square foot tenant space under application is located near the center of the development. The subject tenant space has been in operation as a restaurant since 1992, changing ownership several times during subsequent years. According to business license records, the current business owner, the applicant, Kimberly B. Le, been operating the current restaurant, Pho Hoa An Restaurant, since 2014.

The property is located in the PUD-104-81/86 REV. 90 (Planned Unit Development) zone and has a General Plan Land Use Designation of Industrial/Commercial Mixed Use. The shopping center is adjacent to PUD-104-81/86 REV. 90 zoned properties to the north, west, south, and single-family residentially developed properties located in the City of Santa Ana, across Euclid Street, to the east.

In June of 1999, the City of Garden Grove approved Conditional Use Permit No. CUP-455-99, which allowed the existing restaurant to operate with a new State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Premises) License.

In March of 2003, the City of Garden Grove approved Conditional Use Permit No. CUP-102-03, which allowed the existing restaurant, currently operating with a State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Premises) License, to have live entertainment in the form a solo performer, but with no audience participation, amplified sound system, stage, or dance floor allowed. At the time of the approval of CUP-102-03, the restaurant had existing illegal improvements that included items such as a stage, music instruments and an amplified sound system. A condition of approval required that all said improvements were to be removed within thirty (30) days from the date of the approval of CUP-102-03.

According to the Garden Grove Police Department, there is a history of Municipal Code violations and noncompliance with CUP conditions of approval by the operator(s) of the subject restaurant, and a relatively high volume of calls for service have been generated by or associated with the subject restaurant since 2015. For example, in 2015, the Garden Grove Police Department responded to calls for service associated with the subject restaurant related to a fight, a suspect reported to be armed and dangerous, and an assault with a deadly weapon. From 2016 to present, the Garden Grove Police Department has responded to calls for services associated with the subject restaurant related to, but not limited to, noise, disturbing the peace, and an assault.

In April 2016, the Police Department issued an administrative citation to the business operator for failing to comply with the conditions of approval for CUP-102-03. Issues noted with respect to this incident included smoking on the premises, a karaoke performer on an unpermitted stage, and use of an amplified sound system.

In June 2016, officers from the Garden Grove Police Department performed a business check on the subject establishment, noted patrons illegally smoking on the premises, and cited them.

In late 2016, a Garden Grove Police Department officer met with the applicant, pointed out the past problems and violations that had occurred at the business, and requested that the applicant operate the business in compliance with the conditions of approval for the existing CUP.

Subsequent to the 2016 meeting, Garden Grove Police Department officers continued to observe CUP violations at the subject restaurant. For example, during a business check on December 23, 2017, police officers observed CUP violations in the subject restaurant related to loud audible music from outside the restaurant, customers smoking within the establishment, karaoke live entertainment, amplified music, and an amplified sound system with associated equipment.

According to the Police Department, the applicant has not been operating in compliance with its current Conditional Use Permit (CUP-102-03), which includes, but is not limited to, the following conditions of approval:

- P. Live entertainment shall be limited to a solo paid professional performer. No audience participation and amplified sound system allowed.*
- Q. There shall be no dancing, karaoke or disc-jockey entertainment or sport bar permitted at any time.*
- R. Noise generated from the establishment shall not be audible outside the establishment.*
- S. There shall be no stage area or dance floor allowed at any time.*
- T. The existing stage with music instruments and amplified sound system and a big-screened television shall be removed within thirty (30) days from the date of Conditional Use Permit approval.*

In February 2018, the Police Department issued another administrative citation to the business operator after observing music from the establishment that was audible outside.

The restaurant is located in a crime district that is 7% above the Citywide average, and in an area with an over-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 117.
- The crime count for the District is 188.
- Average crime count per district in the City is 176.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 7% above the Citywide average; therefore it is not located within a high crime district.
- However, the subject Property is located in an area of over-concentration of Alcoholic Beverage Control Licenses. The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 889.03, which allows for ten (10) on-sale licenses within the District. Currently, there are fourteen (14) on-sale licenses in the district.

The City of Garden Grove Community and Economic Development Department and Police Department have reviewed the request and do not support the proposal.

#### NO FINDING OF PUBLIC CONVENIENCE OR NECESSITY

Because there is an over-concentration of on-sale licenses in ABC Census Reporting District No. 889.03, pursuant to Business and Provisions Code Sections 23958 and 23958.4, ABC may not issue a new Alcoholic Beverage Control license to the Applicant unless the Planning Commission determines that the public convenience or necessity would be served by issuance of the license. The Planning Commission cannot make a finding of public convenience or necessity. The Planning Commission finds that the proposal to intensify the existing restaurant use, by upgrading the ABC Type "41" (Beer and wine) License to an ABC Type "47" (Beer, wine, and hard liquor) License and to add karaoke live entertainment, at this time will potentially adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, as the applicant has not successfully demonstrated a continuous display of compliance with its current Conditional Use Permit.

Furthermore, Business and Professions Code Section 23958 states that an application for an ABC license shall be denied if issuance of the license would tend to create a law enforcement problem. The Planning Commission finds that approval of the applicant's request would intensify the business operations through the upgrade of the current ABC Type "41" License to an ABC Type "47" License, and the addition of karaoke live entertainment, stage, amplified sound, and associated karaoke equipment. Based on previous observations made by the Police Department, where the applicant had not shown the ability to operate in compliance with its current Conditional Use Permit, the Planning Commission further finds that the applicant's request will potentially put further strain on Police Department resources and increase the calls for service in an area that is above the average crime count for the district.

FINDINGS AND REASONS SUPPORTING DENIAL OF CUP REQUEST:

In order to approve Conditional Use Permit No. CUP-120-2018, all of the findings set forth in Garden Grove Municipal Code Section 9.32.030(D)(4) must be made. In this case, based on the totality of information provided, the Planning Commission finds that not all of the required findings set forth in Section 9.32.030(D)(4) can be made for the following reasons:

- A. In order to approve the requested Conditional Use Permit, the Planning Commission must find that the proposed use will be consistent with the City's adopted General Plan. General Plan Land Use Element Goal LU-4 provides that "The City seeks to develop uses that are compatible with one another." In addition, pursuant implementing Policy LU-IMP-4A of the General Plan Land Use Element, it is the City's policy to monitor existing and review all requests to expand intensive commercial uses. The existing restaurant, with alcohol sales and limited non-amplified live entertainment, is already an intensive commercial use, and the request to upgrade the alcohol license to allow liquor sales and to add live entertainment in the form of amplified karaoke would further significantly intensify the permitted restaurant use. The existing Conditional Use Permit governing the subject restaurant does not permit live entertainment involving audience participation, an amplified sound system, a stage, or a dance floor and provides that sound generated in the establishment should not be audible outside of the premises; however, the evidence presented to the Planning Commission shows that many provisions of the existing Conditional Use Permit have not been regularly complied with in the past. According to the Garden Grove Police Department, the prior and current owners and/or operators of the subject restaurant have a documented history of failing to comply with the existing Conditional Use Permit and applicable conditions of approval, and the Police Department has issued both verbal warnings and administrative citations to the current owner for CUP violations. In addition, the Police Department reports that, historically, there have been a relatively large volume of calls for service associated with the subject establishment, including, without limitation, calls for service involving noise complaints, disturbing the peace, fights, and individual possessing weapons. Police officers have also observed and issued citations for patrons illegally smoking inside the establishment. These documented violations negatively impact surrounding properties and businesses. Allowing the existing establishment to operate with hard liquor sales and/or amplified live entertainment in the form of karaoke will intensify the characteristics of the business associated with these negative impacts that affect surrounding properties and businesses. Further, the provisions of the PUD in which the subject restaurant is located permits all retail and restaurant uses within the shopping center in which the restaurant is located to be parked at a ratio of 1 space per 250 square feet, while restaurants of this size located in other parts of the City would generally be required to be parked at a ratio of 1 space per 100 square feet, with entertainment uses generally requiring even more parking. Approval of the proposed Conditional Use Permit would intensify the existing restaurant use further and likely generate additional parking demand,

which would negatively impact other businesses within the shopping center. For these reasons, the more intense uses proposed would be incompatible with surrounding uses, and approval of the requested Conditional Use Permit would not be consistent with Goal LU-4 of the General Plan's Land Use Element. Therefore, the Planning Commission is unable to find that the proposed uses are consistent with the City's General Plan.

- B. In order to approve the requested Conditional Use Permit, the Planning Commission must find that the requested use at the location proposed will not: adversely affect the health, peace, comfort, or welfare of the persons residing or working in the surrounding area, or unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site, or jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. Subsection 9.16.020.080.C.1 of the Garden Grove Municipal Code provides that in considering requests for conditional use permits for alcoholic beverage sales, "of particular concern will be . . . the compatibility of the proposed use with neighboring uses, and that no adverse effect on public health, safety or welfare will be created." Subsection 9.16.020.080.C.3 further provides, "The proposed use shall not be incompatible with the adjoining uses as it relates to noise, debris, traffic, storage, design and hours of operation, nor shall it create any adverse effect on public health, safety or welfare." The applicant proposes to upgrade the existing ABC Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, under which the restaurant operates, to a new ABC Type "47" (On-Sale, General, Public Eating Place) License, and to add karaoke live entertainment, a stage, and amplified music/entertainment. This proposed intensification of use has the potential to adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, may potentially interfere with the use, enjoying or valuation of the property of other persons located within the vicinity of the site, and may potentially jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. From 2015 to present, the Police Department has responded to a relatively large volume of calls for service generated from or associated with the existing restaurant, has observed multiple instances of noncompliance with the existing conditions of approval governing the establishment and issued at least two administrative citations to the restaurant's operator for such violations, and has observed and cited patrons of the restaurant for smoking inside the restaurant. Despite being put on notice of these issues, the applicant has not demonstrated a consistent ability to comply with the conditions of approval and other laws governing its business. It can be anticipated that allowing the sale of hard liquor and/or allowing expanded, amplified entertainment at the restaurant will compound the problems previously observed and result in even more calls for service by the Police Department for crimes and incidents. Thus, approval of the applicant's request would potentially put further strain on Police Department resources and increase the calls for service in an area that is already above the average crime count for the district. Further, the provisions of the PUD in which the subject restaurant is located permits all retail and restaurant uses within the shopping

center in which the restaurant is located to be parked at a ratio of 1 space per 250 square feet, while restaurants of this size located in other parts of the City would generally be required to be parked at a ratio of 1 space per 100 square feet, with entertainment uses generally requiring even more parking. Approval of the proposed Conditional Use Permit would intensify the existing restaurant use further and likely generate additional parking demand, which would negatively impact other businesses within the shopping center. As a result, the Planning Commission is unable to make the required finding that the proposed use at the location proposed will not: adversely affect the health, peace, comfort, or welfare of the persons residing or working in the surrounding area, or unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site, or jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare.

- C. In order to approve the requested Conditional Use Permit, the Planning Commission must find that the proposed site is adequate in size and shape to accommodate the parking facilities prescribed in the Land Use Code or as is otherwise required in order to integrate such use with the uses in the surrounding area. The provisions of the PUD in which the subject restaurant is located permits all retail and restaurant uses within the shopping center in which the restaurant is located to be parked at a ratio of 1 space per 250 square feet, while restaurants of this size located in other parts of the City would generally be required to be parked at a ratio of 1 space per 100 square feet, with entertainment uses generally requiring even more parking. Approval of the proposed Conditional Use Permit would intensify the existing restaurant use further and likely generate additional parking demand, which would negatively impact other businesses within the shopping center. Therefore, the Planning Commission is unable to make the required finding that the size and shape of the site for the proposed more intense uses is adequate to accommodate the parking demand that would be generated or to integrate the proposed uses with the uses in the surrounding area.

#### RELIANCE ON THE RECORD

Unless otherwise provided, each and every one of the findings and conclusions in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Conditional Use Permit. The findings and conclusions constitute the independent findings and conclusions of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole. Unless otherwise provided, all summaries of information in this Resolution are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The requested Conditional Use Permit does not possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030 (Conditional Use Permits).
2. The applicant’s request for Conditional Use Permit No. CUP-120-2018 is denied in its entirety.

Adopted this 19th day of April 2018

ATTEST: /s/ GEORGE BRIETIGAM  
CHAIR

/s/ JUDITH MOORE  
RECORDING SECRETARY

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) SS:  
CITY OF GARDEN GROVE )

I, JUDITH MOORE, Secretary of the City of Garden Grove Planning Commission, do hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Garden Grove, California, at a meeting held on April 19, 2018, by the following vote:

AYES:	COMMISSIONERS:	(5)	BRIETIGAM, LAZENBY, NGUYEN, TRUONG, SALAZAR
NOES:	COMMISSIONERS:	(0)	NONE
ABSENT:	COMMISSIONERS:	(2)	KANZLER, LEHMAN

/s/ JUDITH MOORE  
RECORDING SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is May 10, 2018.