

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION
TO DENY CONDITIONAL USE PERMIT NO. CUP-120-2018

WHEREAS, the case was initiated by Quan Hoa An LLC c/o Kimberly B. Le ("Applicant"), owner/operator of Pho Hoa An Restaurant, an existing restaurant located on the west side of Euclid Street, south of Forbes Avenue, at 14291 Euclid St. #D101, Garden Grove, Assessor's Parcel No. 099-183-03 (the "Property"), and currently operating with an existing State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License approved under Conditional Use Permit No. CUP-102-03;

WHEREAS, the Conditions of Approval to Conditional Use Permit No. CUP-102-03 permit the restaurant to operate with, but not limited to: live entertainment limited to a solo paid professional performer; no audience participation; no amplified sound system; no dancing, karaoke or disc-jockey entertainment or sport bar activity; no noise generated from the establishment to be audible outside the establishment; no stage area or dance floor allowed;

WHEREAS, 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;

WHEREAS, 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, Garden Grove, which is currently operating under Conditional Use Permit No. CUP-102-03;

WHEREAS, pursuant to Resolution No. 5907-18, the Planning Commission, following a Public Hearing held on April 19, 2018, denied Conditional Use Permit No. CUP-120-2018;

WHEREAS, the applicant has appealed the Planning Commission's denial of Conditional Use Permit No. CUP-120-2018 to the City Council;

WHEREAS, the City of Garden Grove has determined that because the application is denied, the project is exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines 15270(a);

WHEREAS, pursuant to legal notice, a Public Hearing was held by the City Council on July 10, 2018, and on July 24, 2018, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of July 10, 2018 and its meeting of July 24, 2018.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY RESOLVES, DETERMINES, AND FINDS AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. 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 City Council concurs with the decision of the Planning Commission and finds that not all of the required findings set forth in Section 9.32.030(D)(4) can be made consistent with the facts, findings, and reasons set forth in Planning Commission Resolution No. 5907-18 for the following reasons:

- A. In order to approve the requested Conditional Use Permit, the City Council 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 and City Council 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 individuals possessing weapons. Police officers have also observed and issued citations for patrons illegally smoking inside the establishment in violation of State law. 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 City Council 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 City Council 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 in violation of State law. 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 City Council 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 City Council 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 City Council 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.

Section 3. Based upon the foregoing findings, and the upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5907-18 (which are on file in the office of the City Clerk, concurrently submitted in the agenda materials for Conditional Use Permit No. CUP-120-2018, and incorporated herein by reference with the same force and effect as set forth in full), the Applicant's appeal is hereby denied, the Planning Commission's decision is upheld, and Conditional Use Permit No. CUP-120-2018 is hereby denied.