

RESOLUTION NO. 2021-19

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2021-14 AS CONDITIONED TO ALLOW THE ON-PREMISES SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT THE KICKIN' CRAB LOCATED AT 518 NORTH BROADWAY.

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. Khoa Pham ("Applicant"), representing The Kickin' Crab, on behalf of KC of Broadway, LLC (Property Owner), is requesting approval of Conditional Use Permit (CUP) No. 2021-14 to allow on-premises consumption of alcoholic beverages at a new eating establishment located at 518 North Broadway.
- B. Santa Ana Municipal Code ("SAMC") Section 41-196 requires approval of a CUP for establishments wishing to sell alcoholic beverages for on-premises consumption.
- C. On September 27, 2021 the Planning Commission held a duly noticed public hearing on CUP No. 2021-14.
- D. The Planning Commission determines that the following findings, which must be established in order to grant a CUP pursuant to SAMC Section 41-638, have been established for CUP No. 2021-14 to allow the sale of alcoholic beverages for on-premises consumption at 518 North Broadway.
 1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The proposed sale of alcoholic beverages for on-premises consumption at this location will provide an ancillary service to the eating establishment's customers by allowing them the ability to purchase alcoholic beverages with their meal. This will thereby benefit the community by providing an eating establishment with an additional and complementary food related amenity. Operational standards applicable to the alcoholic beverage control ("ABC") license and conditions of approval will mitigate any potential impacts created by the use and will ensure that the use will not negatively affect the surrounding community.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed sale of alcoholic beverages for on-premises consumption at this location will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity because the operational standards applicable to the alcoholic beverage control license and conditions of approval will address any potential negative or adverse impacts created by the use. In addition, the subject site is not located within immediate proximity to parks, playgrounds, schools, or religious institutions. In addition, the building is located approximately 880 feet away from the nearest multi-family residences and approximately 0.28 miles (1,490 feet) from the nearest single-family residences. The Kickin' Crab is intended to be a bona-fide restaurant and the addition of alcohol will be ancillary to the main use. All of the operational standards identified in SAMC Sec. 41-196 will apply to this establishment. Therefore, the granting of the CUP will not negatively impact any sensitive land uses that may be nearby.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The proposed use will not adversely affect the economic stability of the area, but will instead allow the eating establishment to compete with other nearby eating establishments that offer a full selection of alcoholic beverages for sale to their customers. Moreover, the offering of alcoholic beverages will allow the eating establishment to be economically viable and compete with nearby full-service eating establishments in Santa Ana and in the downtown, and will contribute to the overall success of the City.

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

The proposed conditional use permit will be in compliance with all applicable regulations and operational standards imposed on an eating establishment selling alcoholic beverages for on-premises consumption pursuant to Chapter 41 of the SAMC. The facility will be maintained as a full-service, bona-fide eating establishment, having suitable kitchen facilities and supplying an assortment of foods. Additionally, the eating establishment will utilize less than five

(5%) percent of the gross floor area for display and storage of alcoholic beverages, which is the maximum threshold established by the SAMC. In addition, operational standards will ensure the project remains in compliance with all applicable codes and regulations related to alcohol sales to ensure that the use does not impact neighboring properties or create an attractive nuisance.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed sale of alcoholic beverages for on-premises consumption at this location will not adversely affect the General Plan or any specific plan. The granting of this CUP supports several 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 full-service restaurants that provide alcoholic beverages as part of their menu offers additional dining options for Santa Ana residents and visitors. Furthermore, 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 ABC license will maintain a safe and attractive environment in the neighborhood. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. The Kickin' Crab will be located within Downtown and its operation is compatible with the surrounding commercial businesses.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The project proposes to allow the operation of an alcoholic beverage control license to sell alcoholic beverages at a bona-fide eating establishment. Based on this analysis, a Notice of Exemption, Environmental Review No. 2021-92, will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments,

agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2021-14, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 518 North Broadway. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated September 27, 2021, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 27th day of September, 2021 by the following vote.

AYES: Commissioners: ALDERETE, CALDERON, MCLOUGHLIN,
MORRISSEY, PHAM, RAMOS, WOO (7)
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:



Thomas Morrissey
Chairperson

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

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

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2021-19 to be the original resolution adopted by the Planning Commission of the City of Santa Ana on September 27, 2021.

Date: 9/27/2021

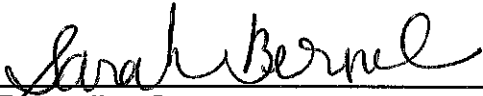

Recording Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2021-14

Conditional Use Permit No. 2021-14 for on-premises consumption of alcoholic beverages is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Building Standards Code, and all other applicable regulations:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. The sale, service, and consumption of alcoholic beverages shall be permitted in accordance with the operational standards for on-sale establishments pursuant to Section 41-196(g) of the SAMC, in accordance with the provisions of an on-premises alcohol license by the California Department of Alcoholic Beverage Control (ABC), and in accordance with the site and floor plans attached to the staff report documenting the approved scope of the project.
2. The sale, service, and consumption of alcoholic beverages shall be limited from 8:00 a.m. to 12:00 a.m. (midnight) Monday through Sunday, unless modified through a subsequent and separate conditional use permit application for after-hours operations pursuant to SAMC Section 41-196(g)(3).
3. Prior to final Certificate of Occupancy, the property shall be brought into full maintenance compliance with all applicable SAMC standards. Maintenance shall include, but is not limited to: the repair and upkeep of the property; cleanup of trash and debris; repair and upkeep of any damaged and/or weathered components of the historic building (e.g., siding, windows, historic features); repair and upkeep of exterior paint; parking striping, lighting and irrigation fixtures; landscaping and related landscape, furnishing, and hardscape improvements. Any exterior work shall be subject to and comply with Chapter 30 (Places of Historical and Architectural Significance) of the SAMC. ***(Added by the Planning Commission on 9/27/2021)***
4. Prior to final Certificate of Occupancy, the property owner shall work with Planning Division staff to create and implement a maintenance and parking security plan to avoid unauthorized access, loitering, or illicit activities on the site. The maintenance and parking security plan shall include, but not be limited to: parking signs (e.g., "parking only for authorized person" or "overnight parking"); security gates/fencing to secure the parking area during off hours; security/patrol; and video surveillance of the site. ***(Added by the Planning Commission on 9/27/2021)***
5. Prior to final Certificate of Occupancy, the property owner will work with the Public Works Agency (PWA) to ensure that all trash and trash enclosure requirements

pursuant to the SAMC are met for the proposed eating establishment. This shall include, but not be limited to: providing the appropriate size refuse containers; the appropriate trash and recycling containers; and provide the required roof covering for securing the trash enclosure. ***(Added by the Planning Commission on 9/27/2021)***

6. Within 90 days of adoption of this resolution, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
 - b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
 - c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
 - d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris on or about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
 - e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for

compliance with its terms;

- f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of the ABC license.