



STAFF REPORT

SAN CLEMENTE PLANNING COMMISSION

Date: January 18, 2017

PLANNER: Arlen Beck, Planning Intern *AB*

SUBJECT: Conditional Use Permit 16-398 - Nomad's Canteen Full Alcohol, a request to consider the sale of a full range of alcohol for indoor and outdoor on-site consumption at a restaurant located at 102 Avenida Cabrillo, within the Mixed-Use (MU 3.1 -A) Zoning District and the Architectural Overlay.

REQUIRED FINDINGS

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of the project's compliance with these findings.

Conditional Use Permit, Section 17.16.060

- a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed.
- b. The site is suitable for the type and intensity of use that is proposed.
- c. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed use will not negatively impact surrounding land uses.

BACKGROUND

Nomad's Cantina is a casual dining restaurant that began operating in July 2012. The project site consists of two lots which equal 8,000 square feet. The northern parcel has a 7,200 square foot, two story commercial building that was built in 1955. Nomad's Cantina operates on the upper floor accessed from Avenida Cabrillo. Nomad's Hotel operates on the lower floor accessed from Avenida Serra. The southern parcel contains the Nomad's outdoor dining deck and the parking lot that serves the building.

On May 16, 2012, a Minor Conditional Use Permit (MCUP) was approved to allow the sale of beer and wine for indoor and outdoor on-site consumption at the restaurant. The applicant is now requesting a Conditional Use Permit (CUP) for the sale of a full range of alcoholic beverages for indoor and outdoor on-site consumption.

Development Management Team Meeting

The City's Development Management Team (DMT) reviewed the project and supports the request, subject to the proposed conditions of approval.

Staff contacted the Orange County Sheriff Department (OCSD) and Code Enforcement Division to discuss the application. Both the OCSD and Code Enforcement Divisions have stated they have no concerns related to the proposed project, subject to the proposed conditions of approval.

Noticing

Public notification was completed in accordance with State Law and Municipal Code regulations.

PROJECT DESCRIPTION

Nomad's Cantina proposes the indoor and outdoor service of a full range of alcoholic beverages. The hours of operation are proposed to remain the same; Monday through Saturday 11:30 am to 12:00 am, and Sunday 11:30 am to 10:00 pm. Outdoor consumption of alcohol on the deck shall remain to Monday through Sunday 11:30 am to 10:00 pm. The seating will remain at 45 indoor seats and up to 16 outdoor seats. The applicant is not requesting amplified sound or live entertainment.

PROJECT ANALYSIS

Conditional Use Permit

The primary concern in the consideration of a Conditional Use Permit with the sale of a full range of alcohol for on-site consumption is compatibility with surrounding land uses. The addition of a full range of alcohol is not anticipated to generate greater noise impacts to the neighborhood as alcohol (beer and wine) is currently permitted to be served both indoors and outdoors at the site. Furthermore, the hours of operation will not change as part of the request. There are no modifications being proposed to the total number of seats of the existing restaurant or the occupancy and therefore, the number of persons to be offered an alcoholic beverage will not increase. The hours of operation/service of alcohol are similar to other restaurants in the Downtown Mixed Use Zones. Table 1, on the next page, shows similar restaurants that have indoor and outdoor service of alcohol in the area.

The restaurant meets all parking requirements, and no modifications are proposed. The proposed use will not be detrimental to the public health, safety or welfare, in that the use is ancillary to the primary restaurant establishment, and is required to remain a Bona Fide Eating Place per ABC license type 47. The project has been conditioned to ensure that the project complies with all applicable codes, and incorporates best management practices (See conditions of approval numbers 9, 10, and 11).

Table 1 – Similar Uses in the Downtown

| Address | Restaurant | Type of Use | Indoor hours | Outdoor Hours |
|------------------------------|-----------------------|--|--|-------------------------------|
| 102 Avenida Cabrillo | Nomad's Cantina | Currently Beer and Wine, Requesting Full Alcohol | Mon - Sat 11:30 AM - 12:00 PM; Sun 11:30 AM - 10:00 PM | Mon - Sun 11:30 AM - 10:00 PM |
| 201 Avenida Del Mar | H. H. Cotton's | Full Alcohol | Sun - Thurs 8:00 AM - 11:00 PM; Fri - Sat 8:00 AM - 12:00 AM | Mon-Sun 8 AM - 10 PM |
| 204 Avenida Del Mar | Beach Fire Restaurant | Full Alcohol | Mon - Sun 11 AM - 10 PM | Mon - Sun 11 AM - 10 PM |
| 156 Avenida Del Mar | The Cellar | Beer and Wine | Sun - Thurs 12:00 PM to 11:00 PM; Fri - Sat 12:00 PM - 1:00 AM | Mon - Sun 12 PM - 10 PM |
| 108-110 South El Camino Real | Tamarindo | Beer and Wine | Mon - Sun 7:00 AM - 12:00 AM | Mon - Sun 7 AM - 10 PM |

As seen in Table 1 above, the hours of operation of the proposed use are similar to existing uses in the Downtown.

GENERAL PLAN CONSISTENCY

Table 2 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

Table 2 - General Plan Consistency

| Goals and Policies | Consistency Finding |
|--|---|
| <i>LU Goal 8.</i> Provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use. | Consistent. The project provides a full service dining experience that complements surrounding land uses. |

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

In accordance with the California Environmental Quality Act (CEQA) it was determined that the project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301, because the project consists of licensing associated with an existing facility.

CALIFORNIA COASTAL COMMISSION REVIEW

The project is not located in the Coastal Zone, and therefore it is exempt from California Coastal Commission review.

PUBLIC COMMENT

To date, staff has not received public comments on this application.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and approve CUP 16-398.

This action would result in allowing the applicant to expand the sale of a full range of alcohol for an already existing restaurant.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

This action would result in any modifications being incorporated accordingly, an example of this could include hours of operation.

3. The Planning Commission can deny CUP 16-398.

This action would result in the applicant being denied to sell a full range of alcohol, but would be able to sell beer and wine on-site. The applicant may appeal the decision to the City Council.

RECOMMENDATION

Based on the information in the staff report and subject to the required findings and conditions of approval, staff recommends that the Planning Commission:

1. Determine the project is Categorical Exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301, Class No. 1(e) (Existing Facilities); and direct staff to file a Notice of Exemption.
2. Approve CUP 16-398, Nomad's Cantina Full Alcohol, subject of the attached Resolution and Conditions of Approval.

Attachments:

1. Resolution No. PC 17-002
Exhibit 1 - Conditions of Approval
2. Location Map
3. Plans

ATTACHMENT 1

RESOLUTION NO. PC 17-002

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 16-398, NOMAD'S CANTEEN FULL ALCOHOL, TO ALLOW THE SALE OF A FULL RANGE OF ALCOHOL FOR INDOOR AND OUTDOOR ON-SITE CONSUMPTION AT AN EXISTING RESTAURANT LOCATED AT 102 AVENIDA CABRILLO

WHEREAS, on November 3, 2016, a complete application was submitted by Jeffrey Gourley, 102 Avenida Cabrillo, San Clemente, CA 92672, for a Conditional Use Permit to allow for the on-site sale and indoor and outdoor consumption of a full range of alcoholic beverages at a bona fide restaurant located at 102 Avenida Cabrillo, the legal description being Lots 25 and 6, of Block 4, of Tract 779; APN 058-073-25 and 058-073-19; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that the Planning Commission determine this project is a Class 1 categorical exemption pursuant to CEQA Guidelines Section 15301 because the project involves licensing associated with an existing facility; and

WHEREAS, on November 17, 2016 the City's Development Management Team reviewed the proposal to sell alcoholic beverages for on-site consumption for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, on January 18, 2016 the Planning Commission held a duly noticed public hearing on the subject application and considered evidence presented by the City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: CEQA Exemption. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that the proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15301 (Class 1: Existing Facilities).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This exemption covers negligible expansions beyond the previous restaurant use. Here, the proposed project is a request for the use of alcohol, which is accessory to an existing restaurant use. No seating increase is proposed.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project is not adjacent to a historic structure. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 2: The proposed on-site sale and indoor and outdoor consumption of a full range of alcoholic beverages at a restaurant is permitted within Mixed Use 3.1 (MU-3.1-A) zoning district pursuant to the approval of a Conditional Use Permit (CUP). This request complies with all the applicable provisions of the Municipal Code, the San Clemente General Plan and the purpose and intent of the zone.

1. The request to allow a full range of alcoholic beverages will bring more business to Nomad's Canteen, per Policy ED-2.03. Existing Businesses: *"We give high priority to initiatives, investments, and the allocation of municipal resources that help businesses remain and prosper in San Clemente."*
2. Section 17.56.030 (C)(1) states, "examples of pedestrian-oriented uses include restaurants." This business is located in the Downtown Focus Area and will maintain the restaurant use while providing more beverage options to patrons which will add to the pedestrian-oriented use of the zone. The goal for the Downtown Focus Area is: *"Preserve and where appropriate, improve the Del Mar/T-Zone so that it serves as the symbolic, functional, historic and physical center of the City; emphasizing its use as a pedestrian-oriented commercial and residential "village" providing for the needs of residents and visitors."*
3. This request is to include a full range of alcoholic beverages to be served outdoors, per Policy LU-11.04, Outdoor Dining. *We encourage the development of outdoor dining and other similar uses which do not impede pedestrian use of the sidewalks.*

Section 3: The site is suitable for the type and intensity of the on-site sale of a full range of alcoholic beverages, in that the alcoholic beverage will be purchased and consumed on-site in conjunction with the restaurant in areas contained entirely within the building and the fenced outdoor dining area. The site is suitable in that the restaurant meets the requirements of the Zoning Ordinance. No existing problems were identified with the established operations by the Alcoholic Beverage Control Board, City Code Enforcement division, and the Orange County Sheriff's Department.

Section 4: The proposed use will not be detrimental to the public health, safety or welfare or materially injurious to properties and improvements in the vicinity, in that the restaurant must comply with all code requirements including but not limited to Fire Code, California Building Code, Alcoholic Beverage Control (ABC), and the San Clemente Municipal Code, including requirements for employees to receive service training to avoid the sale of alcoholic beverages to minors for consumption. Additionally, the proposed use is ancillary to the primary restaurant establishment, and the project has been conditioned to ensure that the project complies incorporates best management practices.

Section 5: The proposed use will not negatively impact surrounding land uses in that the on-site sale and indoor and outdoor consumption of a full range of alcoholic beverages shall be limited to the hours of Monday through Saturday 11:30 am to 12:00 am, and Sunday 11:30 am to 10:00 pm. Outdoor consumption of alcohol shall be limited to Monday through Sunday 11:30 am to 10:00 pm to maintain compatibility with the surrounding properties and must comply with the City's Noise Ordinance. Any proposed change in the hours of operation shall require an amendment to this Conditional Use Permit.

Section 6: The Planning Commission of the City of San Clemente hereby approves Conditional Use Permit 16-398, Nomad's Canteen Full Alcohol, to allow the sale of a full range of alcoholic beverages for indoor and outdoor on-site consumption at an existing restaurant, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on January 18, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on January 18, 2017, and carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Secretary of the Planning Commission

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT 16-398
NOMAD'S CANTINA FULL ALCOHOL**

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive]* (PIng.)_____

2. Thirty days after project approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City. *[Citation – City Attorney Legal Directive]* (PIng.)_____

3. The hours of sale and consumption shall be limited to Monday through Saturday 11:30 am to 12:00 am, and Sunday 11:30 am to 10:00 pm. Outdoor consumption of alcohol on the deck shall be limited to Monday through Sunday 11:30 am to 10:00 pm. Any proposed change in the hours of operation shall require an amendment to Conditional Use Permit (CUP) 16-398. *[Citation – Division 9 (Alcoholic Beverages), Section 25631 to 25633 of Business & Professions Code, State of California]* (PIng.)_____
4. The owner or designee shall obey all rules, regulations and conditions imposed upon the project through, but not limited to, the California Department of Alcoholic Beverage Control (ABC) and relevant State laws. Revocation of, or sale of said ABC license to another person at another location, shall render any City approved CUP for alcohol service at the subject property null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (PIng.)_____
5. The owner or designee shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Orange County Health Care Agency and Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]* (PIng.)_____
6. CUP 16-398 shall become null and void if the use is not commenced within one (1) year from the date of the approval thereof. Since the use does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date the use becomes operational. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)_____
7. The owner or designee shall have the right to request an extension of CUP 16-398 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in compliance with section 17.12.160 of the Zoning Ordinance. *[Citation - Section 17.12.160 of the SCMC]* (PIng.)_____
8. Pursuant to Section 17.12.150(C) of the Zoning Ordinance, the on-site sale and indoor and outdoor consumption of alcoholic beverages use shall be deemed to have lapsed, and CUP 16-398 shall be deemed to have expired, ninety (90) days after the date the on-site sale and indoor and outdoor consumption of alcoholic beverages ceases operation and/or the business closes at such location. *[Citation - Section 17.12.150(C) of the SCMC]* (PIng.)_____

- 9. In the event that noise impacts neighboring properties, the tenant must soundproof the facility, or use other best management practices as determined by the City Planner, to eliminate the problem and comply with the City's noise ordinances. ■■ (PIng.) _____
- 10. The business owner shall use her/his best judgment and best management practices to ensure activities on the premises will be conducted in a manner that will not be disruptive to other commercial or residential neighbors. The property owner, applicant, or designee shall be responsible for immediately resolving any problems associated with the activity and/or issues of concern raised by neighbors. ■■ (PIng.) _____
- 11. If it is found that the permitted hours of operation are not appropriate to mitigate impacts on neighboring properties, at the discretion of the Police Department or Code Compliance Division, the permitted hours of operation may be revised. ■■ (PIng.) _____
- 12. A separate Building Permit is required for any proposed tenant improvements. Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process. *[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]* (Bldg.)_____
- 13. Total seating capacity shall remain limited to the number of seats shown on approved plans per MCUP 12-170, which is 45 indoor seats and 16 outdoor seats. ■■ (PIng.) _____

* All Conditions of Approval are standard, unless indicated as follows:
■ Denotes modified standard Condition of Approval
■■ Denotes project specific Condition of Approval



ATTACHMENT 2

LOCATION MAP

Conditional Use Permit 16-398, Nomad's Canteen Full Alcohol
102 Avenida Cabrillo

