



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 2/7/2023

Agenda Item: 7A

Department: Planning Division

Prepared By Laura Coury, Assistant Planner

Subject:

APPEAL OF MINOR CONDITIONAL USE PERMIT 22-197, PRIMO FOODS BEER AND WINE, 2801 S. EL CAMINO REAL

Fiscal Impact:

None.

Summary:

On November 3, 2022, the Zoning Administrator held a duly-noticed public hearing and approved Minor Conditional Use Permit (MCUP) 22-197, a request for a permit to sell beer and wine, for off-site consumption only, at Primo Foods Beer and Wine, located at 2801 S. El Camino Real. At its regular meeting of November 15, 2022, the City Council reviewed the Zoning Administrator meeting minutes of November 3, 2022, and appealed the Zoning Administrator's approval of Minor Conditional Use Permit 22-197.

Chapter 17.12.140 of the San Clemente Municipal Code authorizes the City Council to appeal any decision of the Zoning Administrator by calling up the decision for consideration at a future meeting. This appeal was publically noticed for the December 20, 2022 City Council meeting. However, the appeal was continued by the City Council at that meeting to accommodate the applicant's request for a continuation to the February 7, 2023 City Council Meeting.

Background:

The project site is located within the Mixed-Use 5.0 (MU5) Zone and the Affordable Housing Overlay. The existing grocery/food store, Primo Foods, occupies a single tenant building. The site is on the corner of South El Camino Real and Avenida San Luis Rey. The site's frontage is on South El Camino Real and the rear of the property abuts an alley. The project site is directly adjacent to a single-family detached dwelling with an accessory dwelling unit to the south and multi-family dwellings to the north and east.

On August 24, 2022 Primo Foods applied for a business license for a retail grocery business at 2801 S. El Camino Real. The project site is located within the MU 5 Zone where grocery/food stores are permitted by right. The previous use at the site was the San Clemente Cyclery, permitted as a retail bicycle/repair shop. Upon the Planning Division's review of the business license application, the request was approved as a retail-to-retail change of use that did not require an increase in required on-site parking. The applicant also obtained a building permit for tenant improvements to the site. There is no onsite parking for the business. At the rear of the building there is space where vehicles for the business can load and unload items, but it is not a parking space. Due to the existing site limitations, the dimensions required for an ADA-parking space could not be met, and thus it was not

required by the Building Division.

On June 14, 2022, the applicant applied for a request to allow beer and wine sales for off-site consumption at the existing grocery/food store. The grocery/food store's hours of operations are 8:00 AM to 8:00 PM daily. During the noticing period for the project, the Planning Division did not receive public comment regarding the application for beer and wine sales for off-site consumption for the existing grocery/food store. Complaints were submitted to the Beaches, Parks, and Recreation Department and the Human Resources Division for existing conditions, such as lack of onsite ADA parking, lack of street parking in the vicinity, and over-flowing trash receptacles at the adjacent San Luis Rey Park. Staff was separately preparing information to respond to the complainant to ancillary matters relating to the existing grocery/food store rather than application for beer and wine sales for off-site consumption. Therefore, this information related to ancillary (and pre-beer and wine sales) was not presented to the Zoning Administrator for consideration as part of the request for off-site sales of beer and wine.

On November 3, 2022, the Zoning Administrator held a public hearing and approved the Minor Conditional Use Permit. The staff report and resolution presented for the Zoning Administrator's consideration are provided for reference as Attachments 3 and 4.

Discussion:

The Zoning Administrator reviewed and approved the project and affirmed the findings for the Minor Conditional Use Permit in the staff report presented on November 3, 2022. The proposed sale of beer and wine for off-site consumption is ancillary to the grocery/food store and is permitted in the MU5 Zone, subject to a minor conditional use permit. The project site is suitable for the type and intensity of the proposed use in that the sale of beer and wine is contained entirely within the building and the proposed business operating hours cease no later than 8:00 PM on any given day of the week. No additional parking is required pursuant to the San Clemente Municipal Code (SCMC), as the proposed project does not modify or expand the stores footprint, nor does it change the underlying retail use of the business.

Additionally, the Development Management Team (DMT), the City's Code Compliance Division, the Orange County Sheriff's Department and the California Department of Alcoholic Beverage Control (ABC), do not have concerns with beer and wine sales for off-site consumption. The proposed use will not be detrimental to the public health, safety or welfare or materially injurious to properties and improvements in the vicinity because the proposed use must comply with conditions of approval and requirements of the SCMC, including limits on hours of operation and a requirement that employees receive alcohol service training. The project is also required to comply with the California Fire Code, California Building Code, and ABC licensing requirements.

In January of 2023, City staff met with the applicant and their attorney on two occasions to discuss the complaints and identify additional measures the applicant could take that may help alleviate the parking issues raised. These measures, which the City Council may consider incorporating into the proposed resolution for approval of the subject request, included installation of a security camera to assist OCSD enforcement of illegal parking, installation of a bicycle rack at the front of the market, and installation of additional directional signage at the entrance to the rear alley to caution motorists against parking in that area. The applicant has submitted a letter in support of this request, which is provided as Attachment 7.

Plan and Policy Consistency:

The action is consistent with the General Plan goals and policies found in the proposed resolution, provided as Attachment 1.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)

The project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities) because the proposed project involves the permitting, operation, and minor alteration of existing structures and facilities involving negligible expansion of the use

Recommended Actions:

Staff Recommendation

STAFF RECOMMENDS THAT the City Council affirm the Zoning Administrator's approval of Minor Conditional Use Permit 22-197, and approve a resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING, MINOR CONDITIONAL USE PERMIT 22-197, PRIMO FOOD BEER AND WINE, A REQUEST TO ALLOW BEER AND WINE SALES FOR OFF-SITE CONSUMPTION LOCATED AT 2801 EL CAMINO REAL

Attachment:

1. Proposed Resolution
Exhibit A: Conditions of Approval
2. Project Details
3. Staff Report-November 3, 2022 Zoning Administrator Meeting
4. Zoning Administrator Resolution, ZA 22-020-Nov. 3, 2022
5. Minutes-November 3, 2022 Zoning Administrator Meeting
6. Minutes-November 15, 2022 City Council Meeting
7. Applicant Letter of Support for Minor Conditional Use Permit 22-197

Notification:

Prior to the December 20, 2022 City Council meeting, three notices of public hearing were posted on the site, all property owners within 300 feet of the project site were notified, and public notice was published in the San Clemente Times

RESOLUTION NO. 23-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING, MINOR CONDITIONAL USE PERMIT 22-197, PRIMO FOOD BEER AND WINE, A REQUEST TO ALLOW BEER AND WINE SALES FOR OFF-SITE CONSUMPTION LOCATED AT 2801 EL CAMINO REAL

WHEREAS, on June 14, 2022, an application was submitted, and completed on September 27, 2022, by Sam Assi, 2801 South El Camino Real, San Clemente, CA, 92672; for Minor Conditional Use Permit (MCUP) 22-197, a request to allow beer and wine sales for off-site consumption at a grocery/food store. The site is located in the Mixed-Use 5.0 Zone within the Affordable Housing Overlay at 2801 South El Camino Real. The site's legal description is Lot 1 of Block 1 of Tract 900 and Assessor's Parcel Number 060-071-10; 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 Zoning Administrator determine the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). This is recommended because the project consists of permitting and licensing alcohol sales at an existing grocery/food store involving negligible or no expansion of the use; and

WHEREAS, the Development Management Team (DMT) reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes; and

WHEREAS, on November 3, 2022, the Zoning Administrator of the City of San Clemente held a duly-noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties, and approved Minor Conditional Use Permit 22-197, subject to Conditions of Approval; and

WHEREAS, on November 22, 2022, the City Council of the City of San Clemente held a duly-noticed public hearing and subsequently appealed the November 3, 2022 decision of the Zoning Administrator of the City of San Clemente, requesting that the Minor Conditional Use Permit 22-197 be considered by the City Council.

WHEREAS, on December 20, 2022 the City Council of San Clemente held a duly-noticed public hearing on the subject application and appeal. At that meeting, the appeal was continued by the City Council to accommodate the applicant's request for a continuation to the February 7, 2023 City Council meeting.

WHEREAS, on February 07, 2023 the City Council of San Clemente held a duly-noticed public hearing on the subject application and appeal, considered written and oral comments, and facts and evidence presented by the applicant, appellants, City staff, and other interested parties

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The City Council hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the City Council as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, and the facts outlined below, the Zoning Administrator 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, permitting, licensing, or minor alteration of existing facilities with negligible or no expansions of the existing use. Since the project consists only of the permitting and licensing of the existing approved business for beer and wine sales, the project qualifies for the Class 1 exemption.

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 is not in a scenic corridor, will not alter or impact historic resources, and does not include any hazardous waste sites. The project consists of no physical modifications to the structure or the environment and involves only modifying the types of alcohol permitted to be served. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Minor Conditional Use Permit Findings

With respect to Minor Conditional Use Permit (MCUP) 22-197 for the proposed sale of beer and wine at a grocery/food store for off-site consumption, the City Council finds as follows:

- A. The proposed use is permitted within the subject zone pursuant to the approval of a Minor Conditional Use Permit and complies with all the applicable provisions of the Zoning Ordinance, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed, in that:
 1. Beer and wine sale at a grocery/food store is a conditionally permitted use in the Mixed-Use 5.0 Zone; and
 2. The proposed alcohol sale (for off-site consumption) is ancillary to the permitted grocery/food store use; and

3. The purpose and intent of the Mixed-Use 5.0 Zone is to accommodate a mix of neighborhood- and community-serving commercial uses. Grocery/food stores are a typical use in this zone and are a type of general commercial use; and
 4. The provisions of the Affordable Housing Overlay District do not apply to the project because there is no proposed residential development to the site; and
 5. The General Plan Land Use Element establishes the following goal for the Commercial Land Uses in the City: *“Achieve and maintain a healthy employment base with diverse retail, office, and service uses that: 1) meet citizens’ needs; 2) help generate municipal revenues that improve quality of life; 3) are compatible with adjacent residential neighborhoods; and 4) support the goals and policies of the Economic Development Element of the General Plan.”* The project is consistent with this goal in that it allows for sale of beer and wine at a grocery/food store which meet the needs of residents and visitors to have a variety of commercial retail options.
- B. The site is suitable for the type and intensity of use that is proposed, in that:
1. The proposed beer and wine sale (for off-site consumption) is ancillary to a permitted grocery/food store use;
 2. No modifications are proposed to the tenant space or the existing commercial retail operations other than to allow sales of beer and wine to be consumed off-site; and
 3. The City’s Code Compliance Division and the Orange County Sheriff’s Department reviewed the proposed alcohol service and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations.
- 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, in that:
1. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code. This includes, but is not limited to, requiring employees to receive alcohol-service training to avoid the sale of alcoholic beverages to minors, limits on hours of operation, and requirements that limit amplified sound;
 2. Should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require noise abating measures if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area; and

3. Code Compliance Staff and the Orange County Sheriff's Department reviewed the proposed alcohol sales and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations.
- D. The proposed use will not negatively impact surrounding land uses, in that:
1. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code. This includes, but is not limited to, requiring employees to receive alcohol-service training to avoid the sale of alcoholic beverages to minors, limits on hours of operation, and requirements that limit amplified sound;
 2. Should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require noise abating measures, if changes are necessary to ensure compliance with the City's noise regulations and maintain the public health, safety, and welfare of the area;
 3. Code Compliance Staff and the Orange County Sheriff's Department reviewed the proposed alcohol service and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations; and

Section 4. City Council Approval.

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente City Council approves Minor Conditional Use Permit (MCUP) 22-197, Primo Food Beer and Wine, subject to the Conditions of Approval set forth in Exhibit A.

Section 5. Certification.

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, Laura Campagnolo, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

EXHIBIT A

CONDITIONS OF APPROVAL MCUP 22-197, PRIMO FOOD BEER AND WINE

1.0 GENERAL CONDITIONS OF APPROVAL

- | | | |
|-----|---|--------------------|
| 1.1 | Within 30 days of approval of this application, the applicant shall submit to the City Planner a signed acknowledgement concurring with all conditions of approval on a form to be provided by the City. Failure to submit this acknowledgement may be grounds to revoke this approval. | Planning |
| 1.2 | The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs, The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. | Planning |
| 1.3 | Use and development of this property shall be in substantial conformance with the approved plans, material boards and other applicable information submitted with this application, and with these conditions of approval. | Planning |
| 1.4 | The applicant shall comply with all applicable current and future provisions of the San Clemente Municipal Code, adopted ordinances, and state laws. | All |
| 1.5 | Use of the subject property shall conform to all occupancy requirements, including posting of signs related to the maximum occupancy limitations. | Code
Comp |
| 1.6 | No signage is approved through this permit. All signs, including permanent, window, and temporary signage shall comply with Zoning Ordinance, including issuance of any applicable required permits. | Code
Comp
** |

7.0 OPERATIONAL CONDITIONS OF APPROVAL

- | | | |
|------|---|----------------------|
| 7.3 | The sale of alcoholic beverages (beer and wine only) is for off-site consumption only, and shall be limited to the hours of 8:00 AM to 8:00 PM daily. No on-site consumption shall be allowed. | Planning |
| 7.4 | All employees shall 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. Training shall be provided as soon as practical following the hire date of each employee. Evidence of such training shall be maintained on-site during business hours, and made available for inspection by any city official upon request. (SCMC Section 17.16.070) | Code
Comp |
| 7.5 | A manager shall be on the premises at all times, and available to respond to issues raised by representative from the Orange County Sheriff's Department, Orange County Fire Authority, or City of San Clemente Code Compliance, during the hours of operation when alcohol sales are occurring. | Code
Comp |
| 7.7 | These conditions of approval shall be posted in a conspicuous location clearly visible to employees to ensure they are informed of and adhere to requirements and policies for all operations of the business, including but not limited to alcohol sales. | Code
Comp |
| 7.8 | The use of amplified sound (including the electronically amplified sound of live music, human voice, or other sound within a business, restaurant, bar, or other commercial establishment) shall not be permitted. This prohibition does not include the indoor use of televisions, radios, or reasonable background or ambient music. | Code
Comp* |
| 7.17 | The Applicant shall post a sign or notice at the premises that states, "WARNING: DRINKING WINE, BEER AND OTHER ALCOHOLIC BEVERAGES DURING PREGNANCY CAN CAUSE BIRTH DEFECTS. FOR INFORMATION AND MATERIALS RELATING TO FETAL ALCOHOL SYNDROME, CONTACT YOUR LOCAL MARCH OF DIMES." The notice or sign shall be posted or displayed at the premises in the manner provided for in San Clemente Municipal Code, Title 8 – Health and Safety. [Citation - Section 8.08.010 of the SCMC] | Code
Comp** |
| 7.18 | Discharge of wash water and other pollutants is prohibited from entering the storm drain system. Applicant must prevent pollutants (e.g. sediment, trash, food waste etc.) and any wash water used during cleanup from entering the storm drain system. | Code
Comp
WQ** |
| 7.19 | The Applicant shall use her/his best judgment and best management practices to ensure commercial activities on the premises will be conducted in a manner that will not be disruptive to neighbors. The business owner/property owner shall be responsible for ensuring compliance with the San Clemente Municipal Code (SCMC), and all conditions of approval contained herein. The Applicant (including any property owners and managers, and their designees) hereby understands that noncompliance with regulations and conditions of | Code
Comp** |

approval, shall be immediate grounds for citation pursuant to SCMC Section 8.52.030(Y), which states, "It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises in such manner that ... A structure, improvement, property, and/or land use is not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval," and any subsequent revision of this section of the code. [Citation - Section 8.52.030(Y) of the SCMC]

- 7.20 The Applicant shall use his/her 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 and result in police services, which cost the City of San Clemente expense.

Code
Comp
OCSD**
- 7.21 The Applicant (including any property owners and managers, and their designees) shall be responsible for ensuring that no noise-generating activities on the subject property are conducted between the hours of ten (10:00) p.m. and seven (7:00) a.m. Such prohibited activities include, but are not limited to, dumping trash into outside trash bins, the use of parking lot sweepers, the use of high-pressure washers, or other maintenance or delivery activities which generate noise having the potential of disturbing neighboring properties. *[Citation - Section 8.48.070(P) of the SCMC]*

Code
Comp**
- 7.22 The Applicant understands and acknowledges sound amplification devices located outside any business's primary building are not permitted, unless specifically identified and approved in this permit or subsequent permits approved by the City. [Citation - Section 8.48.080 of the SCMC]

Code
Comp**
- 7.23 The Applicant (including any property owners and managers, and their designees) shall abide by all applicable laws, including Orange County Health Department and the California Department of Alcoholic Beverage Control (ABC) laws.

Code
Comp
OCHCA
ABC**
- 7.24 The Applicant shall rectify any outstanding violations related to signage or exterior improvements within two weeks of the approval of this permit.

Planning**

* Denotes a modified Standard Condition of Approval

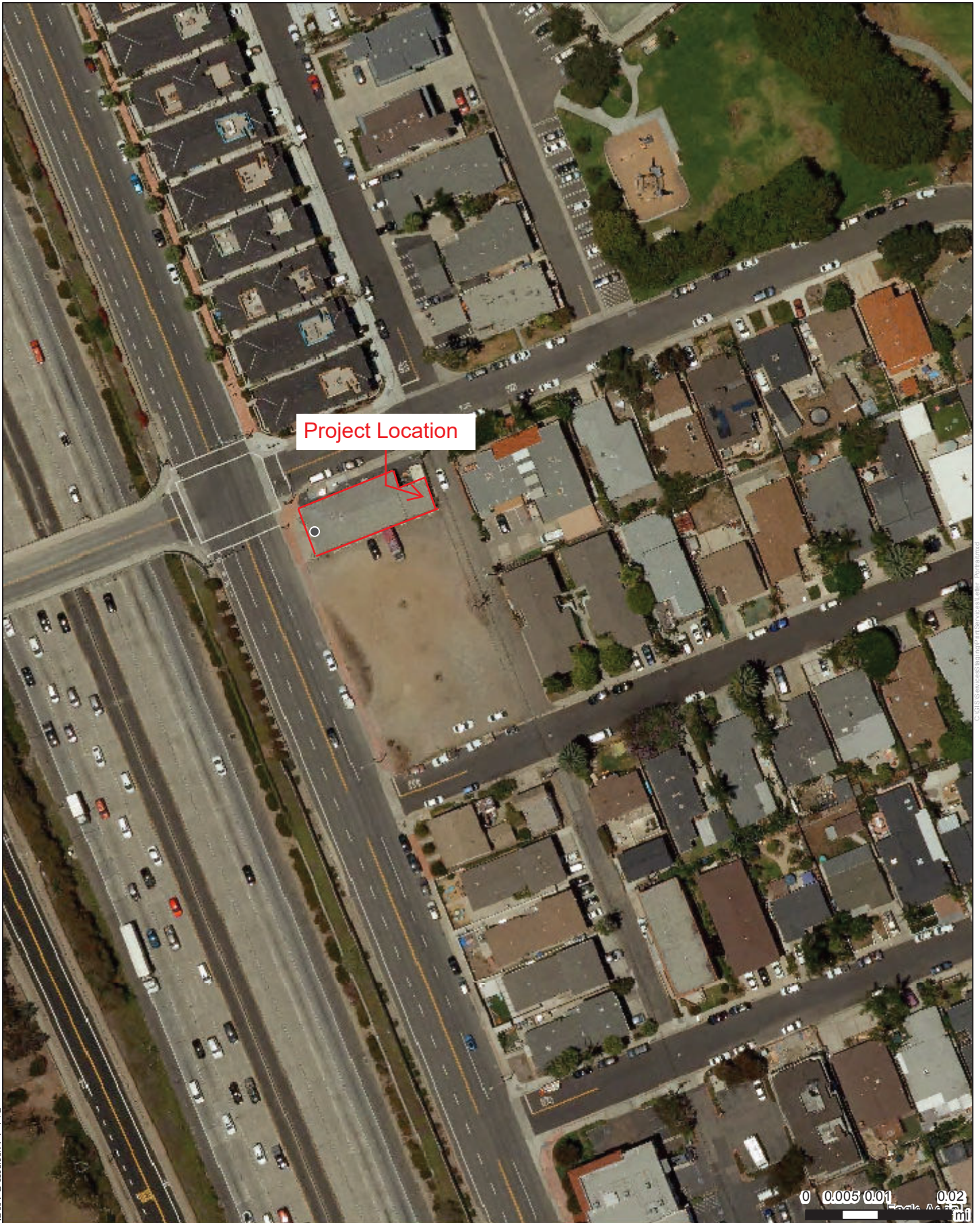
** Denotes a project specific Condition of Approval

Primo foods San Clemente

2801 S. El Camino Real 92672 storage square footage is 2250 ft.² we are applying for a minor conditional use permit for a off sale beer and wine license our hours of operation are Monday through Sunday 8 AM to 8 PM project number MCUP 22-197

Application for a minor conditional use permit

to whom it may concern we are asking for a minor conditional use permit for application of off sale beer and wine license our store is 2250 ft is located at 2801 S. El Camino Real there will be no consumption of alcohol on site Primo food is a neighborhood Deli/Butcher shop with truly some of the best meat you could find we offer certified Angus beef which we have been certified to sell for many years and other variety of homemade food that we make in house and our fresh local produce and our homemade Guacamole salsas dips salads tamales and lots of other authentic Mexican and traditional American food we've been around since 1996 and we take a lots of pride in what we do San Clemente location would be our first owned location this location will have a meats deli and hot food counter beer and Wine some grocery items fresh local Produce and fresh cut f lowers most of our food and product is to go we look forward to making a beautiful impression on a our new community and we look forward to comply and do anything you ask of us to make this happen I truly thank you for all your help in advance we are a local small business really small and time does affect us during these hard times We truly need your help in this matter to expedite The process thank you again
Sincerely Sam Assi



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Vicinity Map



STAFF REPORT SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: November 3, 2022

- PLANNER:** Laura Coury, Assistant Planner
- SUBJECT:** **Minor Conditional Use Permit (MCUP) 22-197, Primo Food Beer and Wine**, a request to allow beer and wine sales for off-site consumption only at an existing grocery/food store.
- LOCATION:** 2801 S. El Camino Real
- ZONING/GENERAL PLAN:** Mixed-Use (MU 5.0), Affordable Housing Overlay District (AH)

PROJECT SUMMARY

- **Site Information:** The project site is located within the Mixed-Use 5.0 Zone and the Affordable Housing Overlay. The existing grocery/food store, Primo Foods, occupies a single tenant building. The site is on the corner of South El Camino Real and Avenida San Luis Rey. The site’s frontage is on South El Camino Real, and the rear of the property abuts an alley with multi-family residential directly across. The project site abuts a single family detached dwelling with an accessory dwelling unit to the south, and on the north and northeast side multi-family homes. **Figure 1** below shows an aerial view of the site. To the

Figure 1 – Aerial View



- **Proposed Project:** The applicant, Sam Assi, requests approval of a Minor Conditional Use Permit (MCUP) to sell beer and wine for off-site consumption in conjunction with the existing grocery/food store operations. No sale for on-site consumption is

requested. The grocery/food store current hours of operations occur between 8:00 AM and 8:00 PM daily (**Attachment 2**). The grocery/food store has an approved business license for retail grocery sales, which is reflected on the floor plan (**Attachment 3**). No additional parking is required.

- Approval Authority: Zoning Administrator approval is required for MCUPs (Zoning Ordinance Section 17.16.070).
- Project Findings: Staff supports the proposed use, subject to recommended conditions of approval, because it meets the required findings in the attached Resolution (**Attachment 1**) for MCUP approval for the following reasons:
 - Beer and wine service at a grocery/food store is a conditionally permitted use in the Mixed-Use 5.0 Zone and is consistent with the General Plan; and
 - The project maintains the primary use of the site as a grocery/food store; and
 - The project site is suitable for the type and intensity of the proposed use in that the sale of beer and wine is contained entirely within the building and the proposed business operating hours cease no later than 8:00 PM on any given day of the week; and
 - No additional parking is required, as the proposed project does not modify or expand the stores footprint; and does not change the use of the business to include on-site consumption with seating restaurant style; and
 - The Development Management Team (DMT), including the Orange County Sheriff's Department (OCSD) and the City's Code Compliance Division, reviewed the project and do not have concerns with the request; and
 - 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 proposed use must comply with conditions of approval and code requirements, such as Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code, including limits on hours of operation, amplified sound, and a requirement that employees receive alcohol service training.
- CEQA: The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities) because the proposed project involves the permitting, operation, and minor alteration of existing structures and facilities involving negligible expansion of the use.
- Public Comment: The project was publicly noticed in accordance with the San Clemente Zoning Ordinance and, as of the date this report was submitted for publishing, Staff has received no public comment on this item.

RECOMMENDATION

Staff recommends that the Zoning Administrator:

1. Determine the project is Categorical Exempt from the requirements of the CEQA pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities); and
2. Adopt Resolution ZA 22-020, approving Minor Conditional Use Permit 22-197, Primo Foods, subject to Conditions of Approval.

Attachments:

1. ~~Resolution ZA 22-020~~
Exhibit A – Conditions of Approval
2. ~~Project Narrative~~
3. ~~Floor Plan~~

RESOLUTION NO. ZA 22-020

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING, MINOR CONDITIONAL USE PERMIT 22-197, PRIMO FOOD BEER AND WINE, A REQUEST TO ALLOW BEER AND WINE SALES FOR OFF-SITE CONSUMPTION OFF-SITE CONSUMPTION LOCATED AT 2801 EL CAMINO REAL

WHEREAS, on June 14, 2022, an application was submitted, and completed on September 27, 2022, by Sam Assi, 2801 South El Camino Real, San Clemente, CA, 92672; for Minor Conditional Use Permit (MCUP) 22-197, a request to allow beer and wine sales for off-site consumption at a grocery/food store. The site is located in the Mixed-Use 5.0 Zone within the Affordable Housing Overlay at 2801 South El Camino Real. The site's legal description is Lot 1 of Block 1 of Tract 900 and Assessor's Parcel Number 060-071-10; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that the Zoning Administrator determine the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). This is recommended because the project consists of permitting and licensing alcohol sales at an existing grocery/food store involving no expansion of the use; and

WHEREAS, the Development Management Team (DMT) reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes; and

WHEREAS, the City Planner advertised and noticed the Zoning Administrator public hearing for this item at least ten days in advance of the hearing by both publication in a newspaper of general circulation in the City of San Clemente and by mailing a notice of the time, place, and purpose of such hearing to required recipients, including property owners within 300 feet of the subject parcel; and

WHEREAS, on November 3, 2022, the Zoning Administrator of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Zoning Administrator of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Zoning Administrator hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Zoning Administrator as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, and the facts outlined below, the Zoning Administrator 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, permitting, licensing, or minor alteration of existing facilities with negligible or no expansions of the existing use. Since the project consists only of the permitting and licensing of the existing approved business for beer and wine sales, the project qualifies for the Class 1 exemption.

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 is not in a scenic corridor, will not alter or impact historic resources, and does not include any hazardous waste sites. The project consists of no physical modifications to the structure or the environment and involves only modifying the types of alcohol permitted to be served. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Minor Conditional Use Permit Findings

With respect to Minor Conditional Use Permit (MCUP) 22-197 for the proposed sale of beer and wine at a grocery/food store for off-site consumption, the Zoning Administrator finds as follows:

- A. The proposed use is permitted within the subject zone pursuant to the approval of a Minor Conditional Use Permit and complies with all the applicable provisions of the Zoning Ordinance, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed, in that:
 1. Beer and wine sale at a grocery/food store is a conditionally permitted use in the Mixed-Use 5.0 Zone; and
 2. The proposed alcohol sale (for off-site consumption) is ancillary to the permitted grocery/food store use; and
 3. The purpose and intent of the Mixed-Use 5.0 Zone is to accommodate a mix of neighborhood serving commercial and community serving commercial uses. Grocery/food stores are a typical use in this zone and are a type of general commercial use; and
 4. The provisions of the Affordable Housing Overlay District do not apply to the project because there is no proposed residential development to the site; and

5. The General Plan Land Use Element establishes the following goal for the Commercial Land Uses in the City: *"Achieve and maintain a healthy employment base with diverse retail, office, and service uses that: 1) meet citizens' needs; 2) help generate municipal revenues that improve quality of life; 3) are compatible with adjacent residential neighborhoods; and 4) support the goals and policies of the Economic Development Element of the General Plan."* The project is consistent with this goal in that it allows for sale of beer and wine at a grocery/food store which could meet the needs of citizens to have a variety of commercial retail.

B. The site is suitable for the type and intensity of use that is proposed, in that:

1. The proposed beer and wine sale (for off-site consumption) is ancillary to a permitted grocery/food store use;
2. No modifications are proposed to the tenant space or the existing commercial retail operations other than to allow sales of beer and wine to be consumed off-site; and
3. The City's Code Compliance Division and the Orange County Sheriff's Department reviewed the proposed alcohol service and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations.

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, in that:

1. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code. This includes but is not limited to requiring employees to receive alcohol service training to avoid the sale of alcoholic beverages to minors for consumption, limits on hours of operation, and requirements that limit amplified sound;
2. Should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require noise abating measures if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area; and
3. Code Compliance Staff and the Orange County Sheriff's Department reviewed the proposed alcohol sales and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations.

D. The proposed use will not negatively impact surrounding land uses, in that:

1. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code. This includes but is not limited to requiring employees to receive alcohol service training to avoid the sale of alcoholic beverages to minors for consumption, limits on hours of operation, and requirements that limit amplified sound;
2. Should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require noise abating measures, if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area;
3. Code Compliance Staff and the Orange County Sheriff's Department reviewed the proposed alcohol service and concluded alcohol can be sold and consumed off-site without compatibility issues, provided that operations comply with licensing requirements, conditions of approval, and with other applicable regulations; and
4. The City has no record of code compliance complaints related to noise issues or other impacts from the business's regular operations due to the proximity to residences in the area.

Section 4. Zoning Administrator Approval.

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente Zoning Administrator approves Minor Conditional Use Permit (MCUP) 22-197, Primo Food Beer and Wine, subject to the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Zoning Administrator on November 3, 2022.



Cecilia Gallardo-Daly, Zoning Administrator

**CONDITIONS OF APPROVAL
MCUP 22-197, PRIMO FOOD BEER AND WINE**

1.0 GENERAL CONDITIONS OF APPROVAL

- | | | |
|-----|---|--------------------|
| 1.1 | Within 30 days of approval of this application, the applicant shall submit to the City Planner a signed acknowledgement concurring with all conditions of approval on a form to be provided by the City. Failure to submit this acknowledgement may be grounds to revoke this approval. | Planning |
| 1.2 | The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs, The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. | Planning |
| 1.3 | Use and development of this property shall be in substantial conformance with the approved plans, material boards and other applicable information submitted with this application, and with these conditions of approval. | Planning |
| 1.4 | The applicant shall comply with all applicable current and future provisions of the San Clemente Municipal Code, adopted ordinances, and state laws. | All |
| 1.5 | Use of the subject property shall conform to all occupancy requirements, including posting of signs related to the maximum occupancy limitations. | Code
Comp |
| 1.6 | No signage is approved through this permit. All signs, including permanent, window, and temporary signage shall comply with Zoning Ordinance, including issuance of any applicable required permits. | Code
Comp
** |

7.0 OPERATIONAL CONDITIONS OF APPROVAL

- | | | |
|-----|--|----------|
| 7.3 | The sale of alcoholic beverages (beer and wine only) is for off-site consumption only, and shall be limited to the hours of 8:00 AM to 8:00 PM daily. No on-site consumption shall be allowed. | Planning |
|-----|--|----------|

- 7.4 All employees shall 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. Training shall be provided as soon as practical following the hire date of each employee. Evidence of such training shall be maintained on-site during business hours, and made available for inspection by any city official upon request. (SCMC Section 17.16.070) Code Comp
- 7.5 A manager shall be on the premises at all times, and available to respond to issues raised by representative from the Orange County Sheriff's Department, Orange County Fire Authority, or City of San Clemente Code Compliance, during the hours of operation when alcohol sales are occurring. Code Comp
- 7.7 These conditions of approval shall be posted in a conspicuous location clearly visible to employees to ensure they are informed of and adhere to requirements and policies for all operations of the business, including but not limited to alcohol sales. Code Comp
- 7.8 The use of amplified sound (including the electronically amplified sound of live music, human voice, or other sound within a business, restaurant, bar, or other commercial establishment) shall not be permitted. This prohibition does not include the indoor use of televisions, radios, or reasonable background or ambient music. Code Comp*
- 7.17 The Applicant shall post a sign or notice at the premises that states, "WARNING: DRINKING WINE, BEER AND OTHER ALCOHOLIC BEVERAGES DURING PREGNANCY CAN CAUSE BIRTH DEFECTS. FOR INFORMATION AND MATERIALS RELATING TO FETAL ALCOHOL SYNDROME, CONTACT YOUR LOCAL MARCH OF DIMES." The notice or sign shall be posted or displayed at the premises in the manner provided for in San Clemente Municipal Code, Title 8 – Health and Safety. [Citation - Section 8.08.010 of the SCMC] Code Comp**
- 7.18 Discharge of wash water and other pollutants is prohibited from entering the storm drain system. Applicant must prevent pollutants (e.g. sediment, trash, food waste etc.) and any wash water used during cleanup from entering the storm drain system. Code Comp WQ**
- 7.19 The Applicant shall use her/his best judgment and best management practices to ensure commercial activities on the premises will be conducted in a manner that will not be disruptive to neighbors. The business owner/property owner shall be responsible for ensuring compliance with the San Clemente Municipal Code (SCMC), and all conditions of approval contained herein. The Applicant (including any property owners and managers, and their designees) hereby understands that noncompliance with regulations and conditions of approval, shall be immediate grounds for citation pursuant to SCMC Section 8.52.030(Y), which states, "It is declared a public nuisance for

any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises in such manner that ... A structure, improvement, property, and/or land use is not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval," and any subsequent revision of this section of the code. [Citation - Section 8.52.030(Y) of the SMC]

- 7.20 The Applicant shall use his/her 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 and result in police services, which cost the City of San Clemente expense. Code
Comp
OCSD**
- 7.21 The Applicant (including any property owners and managers, and their designees) shall be responsible for ensuring that no noise-generating activities on the subject property are conducted between the hours of ten (10:00) p.m. and seven (7:00) a.m. Such prohibited activities include, but are not limited to, dumping trash into outside trash bins, the use of parking lot sweepers, the use of high-pressure washers, or other maintenance or delivery activities which generate noise having the potential of disturbing neighboring properties. *[Citation - Section 8.48.070(P) of the SMC]* Code
Comp**
- 7.22 The Applicant understands and acknowledges sound amplification devices located outside any business's primary building are not permitted, unless specifically identified and approved in this permit or subsequent permits approved by the City. [Citation - Section 8.48.080 of the SMC] Code
Comp**
- 7.23 The Applicant (including any property owners and managers, and their designees) shall abide by all applicable laws, including Orange County Health Department and the California Department of Alcoholic Beverage Control (ABC) laws. Code
Comp
OCHCA
ABC**
- 7.24 The Applicant shall rectify any outstanding violations within two weeks of the approval of this permit. Planning**

* Denotes a modified Standard Condition of Approval

** Denotes a project specific Condition of Approval

These minutes will be approved by the Zoning Administrator on 12/22/2022

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR MEETING
OF THE ZONING ADMINISTRATOR
NOVEMBER 3, 2022**

**San Clemente City Hall
First Floor Community Room
910 Calle Negocio
San Clemente, California 92673**

1. CALL TO ORDER

Zoning Administrator Gallardo-Daly called the Regular Meeting of the City of San Clemente Zoning Administrator to order on November 3, 2022 at 3:00 p.m. The meeting was held in the First Floor Community Room of City Hall, 910 Calle Negocio, and San Clemente, California.

Staff Present: Cecilia Gallardo-Daly, Zoning Administrator
Sara Toma, Senior Planner
Christopher Johnson, Senior Planner
Laura Coury, Assistant Planner
Tamara Tatich, Office Specialist

2. MINUTES

- A. Receive and file Minutes from the October 6, 2022 Zoning Administrator Meeting.
- B. Receive and file Minutes from the October 20, 2022 Zoning Administrator Meeting.

3. ORAL AND WRITTEN COMMUNICATION

None

4. PUBLIC HEARING

- A. **MCUP 22-197, PRIMO FOODS BEER AND WINE, 2801 S. EL CAMINO REAL**
(Coury)

A request to consider beer and wine sales at Primo Foods, Grocery/Food Store for off-site consumption, with hours of operation from 8am-8pm daily. The project does not propose changes to the existing market.

Staff recommends that the project be found Categorical Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

Associate Planner Laura Coury summarized the staff report.

Staff confirmed with ZA Gallardo-Daly that there were no communications received regarding the Minor Conditional Use Permit.

ZA Gallardo-Daly gave applicants Ruth Flores and Sam Assi an opportunity to address the Zoning Administrator. Ms. Flores gave a brief history of Primo Foods, which was founded twenty years ago in San Diego. This is their first venture in Orange County and they are excited to be in the community.

ZA Gallardo-Daly reviewed the staff reports and is familiar with the location and the neighboring new residential community. ZA Gallardo-Daly was able to make the findings for the Minor Conditional Use Permit. The proposed beer and wine sales is a conditionally permitted use in the Mixed Use 5.1 Zone. The project maintains the primary use of the site as a grocery/food store and the proposed offsite beer and wine sales is ancillary, doesn't intensify the use, no additional parking is required, the store is closes at 8:00 p.m., and the project is conditioned to comply with all the requirements of the fire code, building code and Alcohol Beverage Control.

Based on the information in the staff report and subject to the required Findings and Conditions of Approval, ZA Gallardo-Daly determined the project Categorical Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

Action: The Zoning Administrator adopted Resolution ZA22-020, and approved Minor Conditional Use Permit 22-197, Primo Foods Beer and Wine, subject to the Conditions of Approval.

5. **NEW BUSINESS**

None

6. **OLD BUSINESS**

None

7. **ADJOURNMENT**

The meeting adjourned at 3:10 p.m. to the Regular Meeting of the Zoning Administrator, which will be held Thursday, November 17, 2022 at 3:00 p.m. at

Community Development Department, City Hall, First Floor Community Room,
located at 910 Calle Negocio, San Clemente, California.

Respectfully submitted,

SAN CLEMENTE ZONING ADMINISTRATOR



Cecilia Gallardo-Daly, Zoning Administrator

CITY OF SAN CLEMENTE
 Tuesday, November 15, 2022 5:00 PM
 City Council
 Regular and Special Meeting Minutes



910 Calle Negocio
 2nd Floor
 San Clemente, California
www.san-clemente.org
 Council Chambers

5:00 p.m. - Business Meeting

Mayor James
 Mayor Pro Tem Duncan
 Councilmember Ferguson
 Councilmember Knoblock
 Councilmember Ward

These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.

A Regular and Special Meeting of the San Clemente City Council was called to order by Mayor James November 15, 2022 at 5:01 p.m. in the San Clemente City Council Chambers, located at 910 Calle Negocio, 2nd Floor, San Clemente.

PRESENT: *Duncan, Ferguson, Mayor James, Knoblock, and Ward

*Mayor Pro Tem Duncan participated via teleconference

STAFF PRESENT: Sean Joyce, Interim City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Legislative Administrator; Megan Jimenez, Deputy City Clerk

BUSINESS MEETING

INVOCATION

Katie Nichol, Stake Communication Director, Church of Jesus Christ of Latter-Day Saints gave the invocation.

PLEDGE OF ALLEGIANCE

Victor Cabral led the Pledge of Allegiance.

REORGANIZATION OF AGENDA

Motion by Mayor James, second by Councilmember Ward, CARRIED 3-2, to consider Item 4D - Ordinance No. 1737(Second Reading) 654 Camino de los Mares - Senior Housing and Medical Office after 7:00 p.m. (after Special Presentations).

AYE: Duncan, Mayor James, and Ward

NOE: Ferguson, and Knoblock

Payroll Register

Motion by Mayor James, second by Councilmember Knoblock, CARRIED 5-0, to:

**APPROVE WARRANT NO. 888 AND
AUTOMATIC DEPOSIT ADVISES 81916
THROUGH 82190, FOR THE PERIOD
10-17-22 THROUGH 10-30-22, PAID ON
11-4-22, IN THE AMOUNT OF**

\$424,772.45

TOTAL PAYROLL REGISTER.....\$ 424,772.45

AYE: Duncan, Ferguson, Mayor James, Knoblock, and Ward

NOE: None

F. CONTRACT AWARD - WATER RECLAMATION PLANT (WRP) SLUICE GATES REPLACEMENT (PHASE 2)

Motion by Mayor James, second by Councilmember Knoblock, CARRIED 5-0, to:

1. Approve the plans and specifications for the WRP Gates Replacement (Project No. 2), CIP Project No. 26212.

2. Approve, and authorize the Public Works Director/City Engineer to execute, Contract No. C22-68, by and between the City of San Clemente and Jennette Company, Inc., providing for WRP Sluice Gate Replacement (Project No. 2), in the amount of \$193,000.

AYE: Duncan, Ferguson, Mayor James, Knoblock, and Ward

NOE: None

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

4B(3) ZONING ADMINISTRATOR REGULAR MEETING MINUTES OF NOVEMBER 3, 2022.

Council appealed Minor Conditional Use Permit 22-197, Primo Foods Beer and Wine, 2801 S. El. Camino Real (an item that was heard at the November 3, 2022 Zoning Administrator Meeting) and requested the item be brought to Council for consideration at a Public Hearing to be held at the December 6, 2022 City Council Meeting. (Due to noticing requirements this item will be considered at a Public Hearing at the City Council Meeting on December 20, 2022.)

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Jan. 30, 2023

Honorable Mayor and City Councilmembers
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Re: Feb. 7, 2023, Appeal Hearing
Primo Foods: Application for Minor Conditional Use Permit

Dear Mayor Duncan and City Councilmembers:

I represent Primo Foods San Clemente (“Primo Foods”) in connection with its application for a minor conditional use permit (MCUP) to sell beer and wine for off-site consumption. This application comes to the City Council on an appeal initiated by 2022 mayor and now City Councilman Gene James.

This letter is offered in support of this MCUP application and I will be appearing with Mr. Assi at the City Council appeal hearing.

Background

Mr. Assi lives in northern San Diego County where he operates Primo Foods markets in Vista and Oceanside respectively. They are community markets focusing on the sale of a variety of meats, fish, fresh produce, and specially prepared Mexican foods. Customers coming to these markets for food also can purchase beer and wine for off-sale consumption. **Market staff strictly prohibits the drinking of any alcoholic beverage on-site.**

In 2022, Mr. Assi expanded his business into southern Orange County. He purchased a retail zoned lot with small one-story building at corner of South El Camino Real and San Luis Rey. The building was previously a bicycle shop and needed substantial renovations to use it as a food market. There is no room for onsite parking. The lot is surrounded by tightly spaced condominium and apartment buildings. Street parking is limited in the immediate neighborhood.

In October, Primo Foods San Clemente opened its doors as a small neighborhood market easily accessible by foot or bicycle to people in the San Luis

Rey area. It sells fresh meats, fish, fruits, and vegetables. It also has a kitchen which prepares tacos, burritos, salads, and other site-prepared entries for off-site consumption. There are no tables for onsite eating and drinking.

Primo Foods is a quick “in and out” niche market which encourages customers to purchase a few select items and leave. Most customers walk or ride bicycles to the market. Those small numbers of customers arriving by motor vehicle have no reason to occupy curb-side parking spaces for more than 15 minutes. Signs on San Luis Rey along the curb next to Primo limit parking to 24 minutes.

Primo Foods San Clemente is a small walkable, bikeable neighborhood market offering customers a limited number of food, drink, and accessory items. From the outset, Mr. Assi has planned to offer his customers the convenience of making incidental purchases of beer and wine for off-site consumption in much the same way he offers these beverages in his stores in Vista and Oceanside.

Procedural History

The City’s zoning ordinance permits a retail establishment such as a small food market on Mr. Assi’s corner lot. Beer and wine sales for off-site consumption, however, require a minor conditional use permit (MCUP) issued through an administrative hearing process.

On June 14, 2022, before the market opened for business, Mr. Assi applied for a MCUP for beer and wine sales for off-site consumption. He would like to put a limited selection of beer in the same cooler that stocks soft drinks, iced tea, and fruit juices in order to give customers a variety of drink choices. He wants to offer customers a mixture of beverage options ancillary to the core food offerings which bring them to the market.

On November 3, 2022, a hearing was held before City Zoning Administrator Cecilia Gallardo-Daly on Primo Foods’ application. There was no opposition or objection to the application at the hearing.

After the hearing, the Zoning Administrator issued Resolution No. ZA 22-020 approving the MCUP for Primo Foods. She found as follows: 1) the proposed use complies with all applicable local land use laws; 2) the Primo Foods site “is suitable for the type and intensity of use that is proposed”; 3) beer and wine sale for off-site consumption at the site “will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity”; and 4) the use “will not negatively impact surrounding land uses”.

At the City Council meeting of Nov. 15, 2022, then-Mayor Gene James called Primo Foods' MCUP for appeal.

On December 20, 2022, the appeal on Primo Foods' MCUP was continued to Feb. 7, 2023, at Primo's request to allow time for further discussion between Mr. Assi and city staff on ways to address the issues which may have caused the appeal.

On Jan. 18, 2023, Mr. Assi and I met at City Hall with Councilman James, City Attorney Scott Smith, and members of City staff to discuss concerns raised by the proposed MCUP. At that meeting, Mr. Assi and I learned that the issue resulting in the Council appeal was the limited public parking around Primo Foods as well as illegal parking in the public alley at the rear of the Primo lot.

On January 24, 2023, I met at City Hall with city staff to discuss ways of addressing the City's parking concerns in the area around Primo Foods. Several ideas were discussed, including assisting law enforcement in preventing illegal alley parking, installing a bike rack in front of the market, erecting signage on the Primo lot directing motorists looking for parking away from the alley, and conducting an informal survey at the market to determine how customers get there.

In the wake of this city staff meeting, Mr. Assi has been looking into each of the ideas for addressing parking challenges around Primo Foods.

Argument Supporting the Primo Foods MCUP

Primo Foods San Clemente is a small neighborhood market which focuses on the sale of meat, fish, and in-house prepared salads, tacos, burritos, ceviche, and specialty food items. Its principal customer base is people living, working, or recreating in the immediate vicinity of the store. As such, travel to the market on foot or by bicycle is primary and driving there by motor vehicle is secondary.

Primo is NOT a liquor store and, with the approval of this minor conditional use permit, would NOT become a liquor store. Customers are drawn to Primo Foods for its unique offerings of fresh fruits, vegetables, meats, fish, and specially prepared foods. The reason that people shop there will NOT change if beer and wine are offered for sale ancillary to its food offerings.

Under a MCUP, customers entering the market to purchase tacos could also pick up a bottle of wine or a six pack of beer before leaving market. It would be a customer convenience removing the need to drive to a liquor, grocery, or

convenience store to purchase alcohol. A similar convenience is offered to customers of Primo Vista and Primo Oceanside in northern San Diego County.

As such, there is no reason to believe or suspect that ancillary beer and wine sales will have an adverse impact on the limited curbside parking on San Luis Rey near Primo Foods. Primo's business model is not based on attracting customers to purchase beer or wine. (Those customers are better served by area liquor, convenience, or grocery stores.) Most of its customers walk or bike to it from the neighborhood. Its appeals to customers as a "quick stop", "get-and-go" market; for motorists, there is curbside parking along San Luis Rey to allow them to briefly shop at the market, return to their vehicles, and drive away.

Accordingly, **permitting beer/wine sales at Primo Foods will NOT exacerbate parking challenges in the neighborhood**. Customers primarily walk or ride bicycles to the market. It is a neighborhood establishment. Few out-of-neighborhood customers will drive to Primo to purchase name brand beer and wine that could be purchased at stores closer to where they live. Put simply, there is no evidence to suggest that motorists will flock to Primo Foods to make purchases of their favorite beer or wine. It is not that kind of market!

Nevertheless, Primo Foods is **committed to taking reasonable steps to address long standing parking challenges in its immediate vicinity**. Mr. Assi has proactively met with city staff to discuss ways that his market can address parking challenges in the area and is in the process following through on their ideas for improving area parking. Primo is a neighborhood market and, as such, wants to be an asset to the neighborhood.

For these reasons, Mr. Assi requests that the City Council affirm the Zoning Administrator Resolution ZA 22-020 approving Minor Conditional Use Permit (MCUP) 22-197 to permit the sale of beer and wine for off-site consumption at Primo Foods San Clemente.

Very truly yours,



Joseph L. Stine