



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

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

Meeting Date: 7/18/2023

Agenda Item: 7D

Department: Community Development
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

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, 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 to be heard as a de novo public hearing. This appeal was publicly noticed for the December 20, 2022 City Council meeting, and continued to the February 7, 2023 meeting. At the February 7th meeting, the City Council discussed the application, including parking challenges in the vicinity. A motion to approve the permit failed to pass. Council members encouraged the applicant to work further with staff and the resident who expressed parking concerns. (See Attachment 7 for minutes of the February 7, 2023 City Council meeting.)

The applicant subsequently submitted a letter to Public Works requesting modifications to the curb areas on South El Camino Real and Avenida San Luis near the business to provide additional short- and long-term parking and improve the safety and efficiency of the traffic flow. Public Works staff presented the requested parking modifications to the Planning Commission on June 7, 2023. The Planning Commission recommended that the City Council approve the proposed parking modifications, and on June 20, 2023, City Council adopted Resolution 23-61, approving the recommendations made for parking modifications on South El Camino Real and Avenida San Luis Rey. With those alterations approved, the appeal is presented for Council's final consideration. Depending on the Council's findings, it may approve or deny MCUP 22-197.

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, so 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 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 working to provide information to the complainant regarding the issues raised and find resolution to the complaints that were in relation to the existing grocery/food store, and not the application for beer and wine sales for off-site consumption. Therefore, this information 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.

The MCUP was appealed by the City Council, and the item was heard at a de novo public hearing on February 7, 2023. A motion to approve the permit failed to pass. Since that time, the applicant has worked with the City's Engineering division, and modifications to parking and signage in the vicinity of Avenida San Luis Rey and South El Camino Real were supported by both the Planning Commission and the City Council. See Attachment 8 for the agenda report presented to the Council at the June 20, 2023 meeting.

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.

Since the February 7, 2023 City Council meeting, Sam Assi, the owner of Primo Foods, has worked diligently to respond to concerns related to parking through signage alerting customers that parking is prohibited in the alley to the rear of the market and instructions to delivery trucks to not to park in the alley or on El Camino Real in front of the market. Representatives of Primo Foods have met several times with City staff to discuss ways of curbing illegal parking in the area as well as enhance curbside parking opportunities close to the market. A Primo representative has met on site with Mr. Gutierrez to further discuss ideas for preventing illegal parking.

In response to these concerns, Primo Foods (the grocery/food store at 2801 South El Camino Real) wrote a letter requesting Public Works review modifications to parking restrictions to accommodate its customers. Residents had also requested some changes to improve traffic flow and pedestrian safety. The applicant submitted a letter to the Public Works Director with suggestions to address some of the issues. The proposed parking modifications were reviewed by the Planning Commission on June 7, 2023. The item was unanimously recommended by the Planning Commission for City Council approval.

On June 5, 2023, Beaches Parks and Recreation received a complaint regarding overflowing trash receptacles at San Luis Rey Park after the weekend. The complaint centered on the need for more trash receptacles and maintenance of picnic tables at the park. Primo Foods responded by clearing any food debris left outside the trash containers at the neighboring park. Primo Foods' regularly checks the area around the park for food debris and dispose of anything left out of the on-site trash receptacles.

On June 6, 2023, an email was received in praise of Public Work's proposed parking modifications for the area, and listing other areas of concern on the turn on San Luis Rey towards the golf course for possible modification's as well.

On June 20, 2023, the City Council adopted the recommended parking modifications on South El Camino Real and Avenida San Luis Rey. These parking modifications included a reduction of the red curb on South El Camino Real between Avenida San Luis Rey and Avenida Santa Inez to 50 linear feet; an installation of 60 linear feet of green curb for 20 minute limited term parking on South El Camino Real, installation of 40 linear feet of red curb at the northeast corner of Calle Del Comercio and Avenida San Luis Rey, and installation of 80 linear feet of green curb for 20-minutes limited term parking on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and reducing the limited term parking from 24 minutes to 20 minutes for the 80 linear feet of curb on the

south side of Avenida San Luis Rey between South El Camino Real and the alley.

In addition to the parking modifications that required City Council approval, City Public Works staff issued work orders for the following measures to be implemented. These measures did not require formal authorization by City Council such as repainting the existing 6-foot red curb which had faded on the south side of Avenida San Luis Rey from the end of curb return to east; placing two (2) "SAN LUIS REY PARK-PUBLIC PARKING" signs on Avenida San Luis Rey to provide wayfinding to the nearby public park and parking lot (consistent with other City directional wayfinding signage); and posting one (1) "NO PARKING IN ALLEY" sign on the alley behind Primo to avoid traffic obstruction.

Council Options:

- Adopt Resolution No. 23-03 approving Minor Conditional Use Permit 22-197, a request to sell beer and wine, for off-site consumption only, at Primo Foods, located at 2801 S. El Camino Real.
- Modify and adopt Resolution No. 23-03 approving Minor Conditional Use Permit 22-197.
- Adopt Resolution No. 23-73 denying Minor Conditional Use Permit 22-197.
- Continue the appeal hearing to a date certain with direction for staff to provide additional information.

Plan and Policy Consistency:

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

Fiscal Impact:

None.

Environmental Review/Analysis:

The project was previously determined to be 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.

Recommended Actions:

Staff Recommendation

STAFF RECOMMENDS the City Council affirm the Zoning Administrator's approval of Minor Conditional Use Permit 22-197, and approve Resolution No. 23-03 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

Attachments:

1. Draft Resolution No. 23-03 of Approval

- Exhibit A: Conditions of Approval
- 2. Draft Resolution No. 23-73 of Denial
- 3. Staff Report- November 3, 2022 Zoning Administrator Meeting
- 4. Project Plans and Narrative
- 5. Zoning Administrator resolution, ZA 22-020-Nov. 3, 2022
- 6. Minutes- November 3, 2022 Zoning Administrator Meeting
- 7. Minutes- February 7, 2023 City Council Meeting
- 8. Staff Report- June 20,2023 City Council Meeting
- 9. Applicant Letter of Support for Minor Conditional Use Permit 22-197

Notification:

Prior to the July 18, 2023 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 the Zoning Administrator determined that the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities) 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; and

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; and

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 and the motion to approve failed to pass; and

WHEREAS, on June 20, 2023, the City Council adopted Resolution No. _____, approving parking modifications on South El Camino Real and Avenida San Luis Rey.

These parking modifications included a reduction of the red curb on South El Camino Real between Avenida San Luis Rey and Avenida Santa Inez to 50 linear feet; an installation of 60 linear feet of green curb for 20 minute limited term parking on South El Camino Real, installation of 40 linear feet of red curb at the northeast corner of Calle Del Comercio and Avenida San Luis Rey, and installation of 80 linear feet of green curb for 20-minutes limited term parking on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and reducing the limited term parking from 24 minutes to 20 minutes for the 80 linear feet of curb on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and

WHEREAS, in addition to the parking modifications that required City Council approval, City Public Works staff issued work orders for the following measures to be implemented: repainting the existing 6-foot red curb which had faded on the south side of Avenida San Luis Rey from the end of curb return to east; placing two (2) "SAN LUIS REY PARK-PUBLIC PARKING" signs on Avenida San Luis Rey to provide wayfinding to the nearby public park and its parking lot (which signs are consistent with other City directional wayfinding signage); and posting one (1) "NO PARKING IN ALLEY" sign on the alley behind Primo to avoid traffic obstruction; and

WHEREAS, on July 18, 2023, the City Council 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, City staff, and other interested parties.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, resolve and determine 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 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 affirms the Zoning Administrator's action and 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. 23-03 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]

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|------|---|--------------------------------|
| 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. <i>[Citation - Section 8.48.070(P) of the SCMC]</i> | 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

RESOLUTION NO. 23-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING 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 the Zoning Administrator determined that the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities) 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; and

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; and

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 and the motion to approve failed to pass; and

WHEREAS, on June 20, 2023, the City Council adopted Resolution No. 23-61, approving parking modifications on South El Camino Real and Avenida San Luis Rey.

These parking modifications included a reduction of the red curb on South El Camino Real between Avenida San Luis Rey and Avenida Santa Inez to 50 linear feet; an installation of 60 linear feet of green curb for 20 minute limited term parking on South El Camino Real, installation of 40 linear feet of red curb at the northeast corner of Calle Del Comercio and Avenida San Luis Rey, and installation of 80 linear feet of green curb for 20-minutes limited term parking on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and reducing the limited term parking from 24 minutes to 20 minutes for the 80 linear feet of curb on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and

WHEREAS, in addition to the parking modifications that required City Council approval, City Public Works staff issued work orders for the following measures to be implemented: repainting the existing 6-foot red curb which had faded on the south side of Avenida San Luis Rey from the end of curb return to east; placing two (2) "SAN LUIS REY PARK-PUBLIC PARKING" signs on Avenida San Luis Rey to provide wayfinding to the nearby public park and its parking lot (which signs are consistent with other City directional wayfinding signage); and posting one (1) "NO PARKING IN ALLEY" sign on the alley behind Primo to avoid traffic obstruction; and

WHEREAS, on July 18, 2023, the City Council 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, City staff, and other interested parties.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, resolve and determine 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. California Environmental Quality Act (CEQA) Findings.

CEQA does not apply to the project, pursuant to CEQA Guidelines Section 15270, because the project is being denied.

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 site is not suitable for the type and intensity of use that is proposed, in that:
 1. The site is currently legal non-conforming in regards to parking requirements, as there is no on-site parking for the business. The zoning ordinance currently requires 1 parking space, per 300 square foot of tenant space. The current square footage of the site is 1, 980 square feet, and would require 6 parking spaces. Although the proposed beer and wine sale (for off-site consumption) is ancillary to a permitted grocery/food store use;

the current site is deficient in parking, even with the recent parking modifications.

- 2. Due to the non-conforming parking conditions, the site is not suitable for the proposed use as the additional sale and service of beer and wine at the market may result in further increase in demand for parking or result in illegal parking near the site despite recent parking modifications.
- 3. The property is directly adjacent to single family detached dwellings with accessory dwelling units to the south, and multifamily dwellings to the north and east. Access to the subject property is challenging due to the non-conforming parking conditions and the lack of available street parking due to shared use with surrounding multi-family residential developments. Due to these site access issues, the site is not suitable for the intensification of this ancillary use.

Section 4. City Council Denial.

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 overturns the Zoning Administrator’s action and denies Minor Conditional Use Permit (MCUP) 22-197, Primo Food Beer and Wine.

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. 23-73 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:

 Elizabeth A. Mitchell, City Attorney



AGENDA ITEM: 4-A

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.

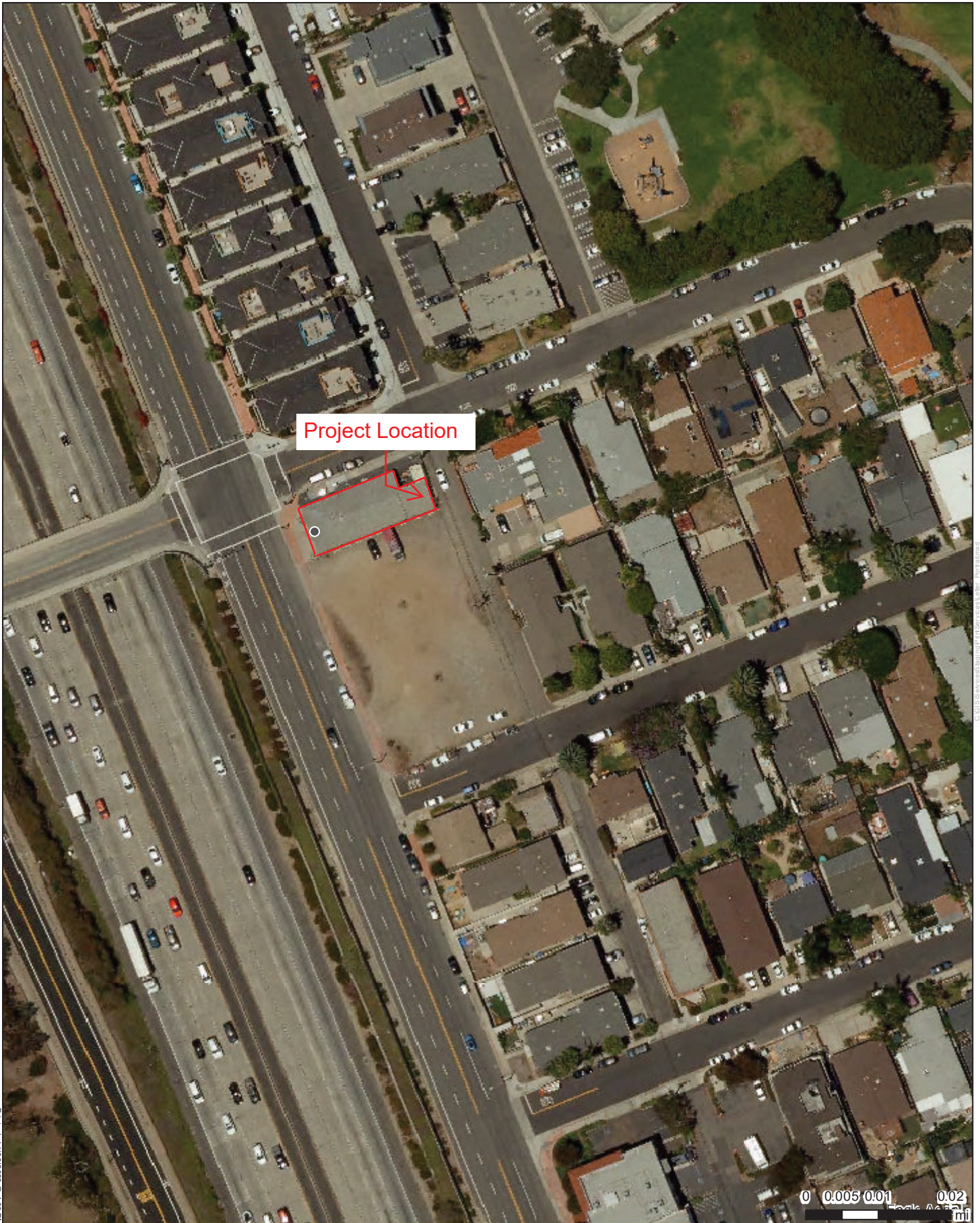
Attachments:

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

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



Project Location

Printed 1/13/2022 @ 4:06 PM



Vicinity Map

© 2015 San Clemente Mapping by PFD Services & Staff. Photo authorized.

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 SCMC]
- Code
Comp**
- 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 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, February 7, 2023 5:00 PM
 City Council
 Regular Meeting Minutes



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

5:00 p.m. - Closed Session
 6:00 p.m. - Business Meeting

Mayor Duncan
 Mayor Pro Tem Knoblock
 Councilmember Cabral
 Councilmember Enmeier
 Councilmember James

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 Meeting of the San Clemente City Council was called to order by Mayor Duncan on February 7, 2023 at 5:00 p.m. in the San Clemente City Council Chambers, located at 910 Calle Negocio, 2nd Floor, San Clemente.

PRESENT: Cabral, Enmeier, James, Knoblock and Mayor Duncan

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

CLOSED SESSION

Concerned Resident, San Clemente, narrated a Powerpoint presentation concerning City Attorney Smith. A hard copy of the presentation is on file with the City Clerk.

AQ expressed concern regarding City Attorney Smith and legal interpretations.

City Attorney Smith announced that he will recuse himself on Closed Session Item B due to a financial interest.

Motion by Councilmember James, second by Councilmember Cabral, CARRIED 5-0, to recess at 5:08 p.m. to Closed Session to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Existing litigation pursuant to Government Code section 54956.9 (d)(1)

Number of Cases: 1

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency, et. al.

Riverside Superior Court Consolidated Case No.: RIC 1800232

CA Court of Appeal Case No.: E078045 (Fourth Appellate District, Division 2)

B. PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957

Title: City Attorney

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

6C(2) APPROVE WARRANT NOS.
585878 THROUGH 586000, PAID ON
1-20-23, IN THE AMOUNT OF \$746,838.48

AQ expressed concern on warrant item 585916 related to Mayor Duncan's travel expenses regarding his trip to Washington D.C. to attend the Mayor's Conference.

Motion by Mayor Pro Tem Knoblock, second by Councilmember Cabral, CARRIED 5-0, to approve:

Warrant Nos. 585878 through
586000, paid on 1-20-23,
in the amount of \$746,838.48

AYE: Cabral, Enmeier, James, Knoblock and Mayor Duncan

NOE: None

7. Public Hearings

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

Continued Public Hearing to consider a City Council initiated appeal of the Zoning Administrator's approval of Minor Conditional Use Permit 22-197, Primo Foods Beer and Wine, 2801 S. El Camino Real, which approved beer and wine sales at Primo Foods Market and Deli for off-site consumption, with hours of operation from 8:00 a.m. - 8:00 p.m. daily. The project does not propose changes to the existing market.

Councilmember Cabral disclosed prior to the Council initiated review of the Minor Conditional Use Permti 22-197 that he had shopped at Primo Foods Beer and Wine on two occasions.

Councilmember James disclosed that he has been to Primo Foods Beer and Wine; discussed parking concerns with the developer of the adjacent town homes, David Gutierrez; had a meeting with the applicant, applicants counsel and City staff.

Mayor Duncan disclosed that he has not been to the establishment but has driven past Primo Foods Beer and Wine.

Mayor Pro Tem Knoblock disclosed he has not been to Primo Foods Beer and Wine but has driven past the establishment; had a brief conversation with the

adjacent town home developer, David Gutierrez, regarding parking concerns.

Councilmember Enmeier reported that he has not been to Primo Foods Beer and Wine since it has been open.

Assistant Planner Coury narrated a Powerpoint presentation entitled "Primo Foods Beer & Wine MCUP 22-197" and responded to Council inquiries. A hard copy of the presentation is on file with the City Clerk.

Mayor Duncan opened the Public Hearing.

Joseph Stine, counsel for the applicant, and Sam Assj, owner of Primo Foods Beer and Wine, presented on business operations, sales of beer and wine and concerns relating to parking and responded to Council inquiries.

David Gutierrez, San Clemente, expressed concerns regarding parking, distributed photographs to the Council and responded to Council inquiries. A hard copy of the photographs are on file with the City Clerk.

Karen Conley spoke in support of the Minor Conditional Use Permit for Primo Foods Beer and Wine.

Thor Johnson, San Clemente, spoke in support of Primo Foods Beer and Wine.

There being no others desiring to speak, Mayor Duncan closed the Public Hearing.

Following discussion, motion by Mayor Duncan, second by Councilmember Enmeier, FAILED 2-3, to affirm the Zoning Administrator's approval of Minor Conditional Use Permit 22-197, and adopt Resolution No. 23-03 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.

AYE: Enmeier and Mayor Duncan

NOE: Cabral, James and Knoblock



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

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

Meeting Date: 6/20/2023

Agenda Item: 10H

Department: Public Works
Prepared By Ryan Kim, Senior Civil Engineer - Traffic

Subject:

CONSIDERATION OF PARKING MODIFICATIONS ON SOUTH EL CAMINO REAL AND AVENIDA SAN LUIS REY, AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES

Summary:

The purpose of this report is to present the findings and recommendations regarding proposed changes to the parking restrictions on South El Camino Real and Avenida San Luis Rey. The proposed changes aim to improve the safety and efficiency of the traffic flow in the area, as well as accommodate the needs of the residents and businesses. Staff hand delivered notices to the residents within 300 feet of the subject area to inform them that the City Council would consider the subject matter at this meeting.

Background:

Per the City's adopted Traffic Code, no parking is allowed along the entire curb frontage of South El Camino Real between Avenida Santa Inez to Avenida San Luis Rey. Currently, only portions of South El Camino Real along this block are marked as red curb, and vehicles have been utilizing the street parking for several years. On Avenida San Luis Rey, there is also a red curb on the south side from the end of curb return to 6 feet east. In addition, there is a 24-minute parking zone from 9 AM to 7 PM daily for 80 feet on Avenida San Luis Rey between South El Camino Real and the alley behind the commercial market Primo Foods. The alley has NO PARKING signs on both sides. San Luis Rey Park, on Avenida San Luis Rey 300 feet east of South El Camino Real, has public parking spaces available from 6 AM to 10 PM daily. (See Attachment 1.)

The parking situation on South El Camino Real and Avenida San Luis Rey, has been a concern for both residents and businesses. Primo Foods, a grocery store at 2801 South El Camino Real, has requested Public Works review modifications to the parking restrictions to accommodate its customers. A resident has also requested some changes to improve traffic flow and pedestrian safety.

Discussion:

Staff recommends the following parking modifications in the area:

1. Reduction of the red curb on South El Camino Real between Avenida San Luis Rey and Avenida Santa Inez to 50 linear feet;
2. Installation of 60 linear feet of green curb for 20-minute limited term parking on South El Camino Real;
3. Installation of 40 linear feet of red curb at the northeast corner of Calle Del Comercio and Avenida San Luis Rey;
4. Installation of 80 linear feet of green curb for 20-minute limited term parking on the south side of Avenida San Luis Rey between South El Camino Real and the alley; and

Reduce the limited term parking from 24 minutes to 20 minutes for the 80 linear feet of curb on the south side of Avenida San Luis Rey between South El Camino Real and the alley.

In addition to the proposed parking modifications that require City Council approval, staff has issued work orders for the following measures to be implemented. (See Attachment 3.) These measures do not require formal authorization by City Council:

1. Repaint the existing 6-foot red curb, which has faded over time on the south side of Avenida San Luis Rey from the end of curb return to east;
2. Place two (2) SAN LUIS REY PARK - PUBLIC PARKING signs on Avenida San Luis Rey to provide wayfinding to the nearby public park and its parking lot. The signs are consistent with other City directional wayfinding signage; and
3. Post one (1) NO PARKING IN ALLEY sign on the alley behind Primo to avoid traffic obstruction.

The proposed parking modifications were reviewed by the Planning Commission on June 7, 2023. The item was unanimously recommended by the Planning Commission for City Council approval with discussion that staff should continue to monitor the area parking and implement additional solutions if other measures could be determined. The Planning Commission also discussed having staff monitor the area and inform Police Services if issues of noncompliance are an on-going issue.

Council Options:

- Adopt Resolution No. 23-61, approving the parking modification as shown on Attachment 2 and finding the project categorically exempt from CEQA.
- Adopt Resolution No. 23-61 with modifications.
- Continue the item and direct staff to provide additional information.
- Do not adopt Resolution No. 23-61 and deny the request for parking modifications.

Fiscal Impact:

Yes. The minor cost for painting the curbs and installing new signage (approximately \$1000) is available in the City Maintenance Department's Street Sign Replacement Program, Project No. 21306.

Environmental Review/Analysis:

The Planning Commission and staff recommend that the City Council determine this action to be categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines.

Recommended Actions:

Staff Recommendation

Planning Commission and Staff recommend that the City Council approve Resolution No. 23-61, which would take the following actions:

1. Find the project categorically exempt from CEQA under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines;
2. Approve the parking modifications as illustrated in Attachment 2 of the Administrative dated June 6, 2023;
3. Appropriate the required funds (approximately \$1,000) from the Street Sign Replacement Project No. 21306; and
4. Request Police Services to consider increasing parking enforcement near the intersection of South El Camino Real and Avenida San Luis Rey.

Attachment:

1. Location Map
2. Proposed Measures
3. Work Order Improvements
4. Resolution No. 23-61

Notification:

Staff hand delivered notices to the residents within 300 feet of the subject area to inform them that the City Council would discuss the subject matter at this meeting.

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July 5, 2023

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

Re: Primo Foods: Application for Minor Conditional Use Permit

Dear Mayor Duncan and City Councilmembers:

As you know, 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 from a Zoning Administrator decision approving the MCUP.

Background

On November 15, 2022, on a motion by former Mayor Gene James, the City Council called the Zoning Administrator’s decision on the MCUP for appeal.

On February 7, 2023, at the appeal hearing, the City Council was given and heard **substantial evidence in support of the application**. This evidence consisted of the following: a staff report and presentation, my January 30 letter to the Council (included in the staff report), an email from OC Sheriff’s Officer Jared Streeter, as well as oral statements from me, Primo Foods owner Sam Assi, and two residents.

In opposition, the City Council heard from David Gutierrez and received written report from him. He argued that Primo Foods operates illegally as a “take-out fast-food restaurant” and that parking problems attributable to it create a “public nuisance”. He was the only person speaking in opposition to the MCUP.

In response to the evidence presented, a motion to approve the MCUP was made, seconded, but failed on a 2-3 vote.

On March 20, I met for over an hour with Mr. Gutierrez on-site in a good faith effort to address his concerns. The meeting was cordial and productive.

At the suggestion of city planning staff, I wrote to Kiel Koger, City Public Works Director, to urge his department to seek City Council authorization to make changes on the streets in the vicinity of Primo Foods to give motorists enhanced parking options and discourage illegal parking in the alley behind the market. A copy of this letter is attached as Exhibit "A".

On June 7, 2023, the Planning Commission recommended approval of the staff-proposed curb and signage changes in the area around Primo Foods.

On June 20, 2023, the City Council unanimously approved the Planning Commission's recommendation to initiate these curb and signage changes.

The appeal comes before the Council for a final decision in the wake of substantial actions taken by Primo Foods and city staff to address Mr. Gutierrez's concerns about parking in and around the market.

Response to MCUP Opposition

a) Primo Foods is not a fast-food restaurant.

Primo Foods is a neighborhood market, **not** a fast-food restaurant. It offers meat, fish, produce, beverages, and other food items for purchase and take-home consumption. Like many markets, it also has a kitchen area where customers order sandwiches, burritos, tacos, and other made-to-order foods. There are no dining tables found in fast-food restaurants. There are no public restrooms for customers. Food is offered for purchase and off-site consumption.

San Clemente Municipal Code §17.88.030 defines a restaurant as "an establishment which prepares and sells foods and/or beverages for immediate consumption..." (emphasis added)

Subsection 3 of Section 17.88.030 further defines a fast-food restaurant as "an establishment that offers quick food service, which is accomplished through a limited menu of items already prepared..." (emphasis added)

Primo Foods has no resemblance to a Taco Bell, Burger King, Jack-In-The-Box, or other fast-food restaurant. None of them offer meats, fish, produce, or the non-food items of a market. All of them have public restrooms. Customers are invited to sit down and eat at casual dining tables provided on-site. (Some of them also have children's play areas encouraging customers to take their time eating at the restaurant.)

Primo Foods is a market offering specially prepared items (e.g., ceviche, guacamole), made to order items (e.g., tacos, sandwiches), and standardized pre-packaged foods (e.g., potato chips in bags, honey in jars). Unlike a restaurant, there is no place to sit down and consume any food purchase. Customers are encouraged to consume their purchases at home or other off-site location.

Moreover, separate from its MCUP application, Primo Foods has been lawfully operating as a food market since late 2022. City staff has properly designated its operations as a “grocery/food store” permitted to operate at 2801 South El Camino Real under the City’s zoning ordinance.

Accordingly, any suggestion that Primo Foods is a fast food operating illegally at its present location has no basis in fact or law.¹

b) A Council-initiated appeal of Zoning Administrator decision approving a minor conditional use permit is not a public nuisance hearing.

Opposition at the prior hearing suggested that the City Council deny Mr. Assi’s MCUP application on the theory that illegal parking in the immediate vicinity of the Primo Foods constitutes a “public nuisance”.

This argument flies in the face of relevant law. Nuisance law is designed to stop a **lawful use** from operating in such a way that it unreasonably interferes with ability of neighbors to comfortably enjoy their lives and properties. (See generally Civ. Code §3479)²

A nuisance action is brought by persons adversely impacted by a lawful use of property or by a governmental entity on their behalf if the annoyance or damage is to a community, neighborhood, or large number of people. (See Civ. Code §3480) The plaintiffs have the burden of proof that a nuisance, public or private, exists.

In the City of San Clemente, local ordinance includes as a “public nuisance” a “land use not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval.” (Mun. Code §8.52.030(Y)) City staff is authorized to commence a civil abatement proceeding to stop a public nuisance.

¹ Any challenge to Primo Foods right to continue its market operations at its current location would require a hearing separate from the City Council’s consideration of appeal of its application to add beer and wine sales for off-site consumption through a MCUP.

² A classic example of a public nuisance is an airport which, though properly permitted for aircraft landings and take-offs, does so in a manner such that noise and fumes generated by lawful operations, unreasonably compromise the health and well-being of those living in its immediate vicinity.

The City has not commenced a public nuisance abatement against Primo Foods and there is no evidence which would support conducting such a proceeding.

Since February 7, Mr. Assi has demonstrated a serious commitment to resolve parking concerns at and around Primo Foods.

To date, he has done the following:

- 1) Had me meet with David Gutierrez to discuss approaches to resolving parking-related issues raised by him at the February 7 City Council hearing.
- 2) Installed signage in and around the market advising customers not to park in the alley behind the market;
- 3) Installed a video camera to monitor illegal parking in the rear alley;
- 4) Sent letters to market suppliers advising that their delivery trucks should not illegally park on El Camino Real or the rear alley;
- 5) Reached out to the owner of property across the alley from the market suggesting the erection of additional “no parking” signage in the alley; and
- 6) Cleaned up accumulations of trash overflowing trash receptacles at San Luis Rey Park after being alerted of this problem by city staff.³
- 7) Urged City Public Works staff to make curb and signage changes to improve vehicle flow and deter illegal parking next to the market.

Although parking issues in and around Primo Foods should not be a litmus test in this MCUP appeal, Mr. Assi has acted responsibly to address all concerns about illegal parking in the immediate vicinity of the market and will continue to monitor these issues in the future.

c) This appeal is hearing is about whether Primo Foods, like other city markets, should be permitted to sell beer and wine for offsite consumption.

Mr. Assi has the right to operate as a food store at Primo’s current location. That right is not at issue in this appeal.

Rather, the Council has before it the narrower issue of the impact, if any, of permitting Primo Foods to add beer and wine sales for off-site consumption to its food and beverage offerings.

Primo Foods submits that the sale of limited beer/wine offerings will not have a negative impact on people living around the market.

³ Primo staff reports that most of this trash picked up at park was not from purchases at Primo Foods.

Customers come 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. The addition of alcoholic beverage sales is not intended to draw new customers to the market; rather, customers arriving to buy tacos, sandwiches, and other foods would be able to buy beer and wine without driving to another store.

Primo Foods is a small neighborhood market which focuses on the sale of meat, fish, and in-house prepared salads, tacos, burritos, ceviche, and other specialty food items. Its principal customer base in San Clemente is people living, working, or recreating in the vicinity of the market. As such, coming to the market on foot or by bicycle is primary and driving there in a motor vehicle is secondary. Few motorists will drive to Primo Foods for the limited purpose of purchasing beer or wine.

In this respect, Primo Foods San Clemente would be like Primo Vista and Primo Oceanside. Both northern San Diego County markets allow customers to make incidental purchases of beer and wine and then take them off-site. Neither market draws customers for its limited beer/wine selection. They are food markets and **not** liquor stores. People come for ceviche, not Coors!

Accordingly, permitting beer/wine sales at Primo Foods should NOT impact recent actions to improve parking surrounding the market. Out-of-neighborhood customers would have no reason to drive to Primo Foods to purchase name brand beer and wine because they could purchase these beverages much closer to where they live. Customers entering the market to purchase a specialty food item, however, could purchase a six pack of beer or bottle of wine in the same way that they now purchase a soft drink or iced tea.

As such, permitting beer and wine sales for off-site consumption should not impact the volume of motorists needing parking spaces close to Primo Foods.

Summary and Conclusion

Since the February 7 hearing, Primo Foods has taken new measures to address illegal customer and delivery truck parking around the market.

Primo Foods is not a fast-food restaurant and lawfully operates as a “grocery/food” store under the City’s zoning ordinance.

An appeal hearing is not a public nuisance proceeding to determine whether Primo Foods has caused or contributed to neighborhood parking problems.

There is no reason to believe that the addition of beer and wine sale for off-site consumption will create new parking problems in and around the market. The MCUP will permit Primo to better service customers in the neighborhood who largely access the market on foot or by bicycle.

The curb and signage changes recommended approved by the City Council last month should help traffic flow in and around Primo Foods as well as deter illegal parking in the alley behind the market.

For these reasons, Primo Foods requests that the City Council support City staff's recommendation to approve Minor Conditional Use Permit (MCUP) 22-197 to permit the sale of beer and wine sale for off-site consumption.

If these sales are permitted at Primo, Mr. Assi's staff will diligently monitor them to ensure that customers do not drink on-site or immediately adjacent to the market. Such efforts have been successful in preventing alcohol consumption at Primo markets in northern San Diego County.

Very truly yours,


Joseph L. Stine

Cc: Sam Assi

EXHIBIT A

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April 14, 2023

Kiel Koger
Public Works Director
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Re: South San Clemente Street and Alley Enhancements
In and Around Primo Foods San Clemente

Dear Mr. Koger:

I represent Primo Foods San Clemente (“Primo Foods”) and its owner Sam Assi. Primo Foods is a small neighborhood market which sells tasty, popular made-to-order foods. Streets around the market have limited and, in certain areas, time restricted curbside parking convenient to market customers.

Primo Foods has applied for a minor conditional use permit (MCUP) to sell beer and wine for off-site consumption. This application is before the City Council on appeal after an administrative decision approving the MCUP. It will return to Council for further deliberations in response to parking-related concerns raised by outspoken citizen David Gutierrez. Mr. Assi is working diligently to respond to these concerns through signage alerting customers that parking is prohibited in the alley to the rear of the market and instructions to delivery trucks not to park in the alley or on El Camino Real in front of the market,

I have met several times with City planning staff to discuss ways of curbing illegal parking in the area as well as enhancing curbside parking opportunities close the market.

In addition, I have met on-site with Mr. Gutierrez to brainstorm further ideas for preventing illegal parking burdensome to residents of the area.

In the wake of these meetings, I am writing to request that traffic engineers in your department study, evaluate, and recommend Council approval of the following changes at and in the vicinity of Primo Foods:

- 1) Provide additional curbside parking on El Camino Real by repainting green part of the red-painted curb in front and south of the market;
- 2) Paint green the curb on San Luis Rey adjacent to Primo Foods to alert drivers that curbside parking is time restricted; and
- 3) Paint a solid line on the east and west sides of the public alley to support the existing "no parking" signs alerting motorists not to park there.

Mr. Assi hopes that these recommended changes, along with operational changes he is making at the market, will substantially improve legal parking options for delivery truck drivers and customers of Primo Foods to dramatically reduce illegal parking burdensome to the neighborhood surrounding the market.

Please give this request your immediate attention and response.

Thank you.

Very truly yours,



Joseph L. Stine

Cc: Sam Assi
Laura Corey, Planning Dept.
David Gutierrez