

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2012-12

HEARING DATE: July 16, 2012

DECISION DATE: August 13, 2012

FILE NO.: PCUP12-009

SUBJECT: A Conditional Use Permit to upgrade an existing ABC license from a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) to a Type 47 license (On-Sale General for Bona Fide Public Eating Place) for an existing restaurant (Bombay Restaurant) totaling 2,000 square feet, and allow live entertainment within an 8-foot by 8-foot area to include a live band, DJ or belly dancing, located at 405 North Vineyard Avenue, Suite A, within the C4 (Airport Service Commercial District) zoning district.

STAFF

RECOMMENDATION: Approval Approval, subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

DHT ENTERPRISES, INC., herein after referred to as "the applicant," has filed an application requesting Conditional Use Permit approval, described as follows:

- (a) Project Description: A Conditional Use Permit to upgrade an existing ABC license from a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) to a Type 47 license (On-Sale General for Bona Fide Public Eating Place) for an existing restaurant (Bombay Restaurant) totaling 2,000 square feet, and allow live entertainment within an 8-foot by 8-foot area to include a live band, DJ or belly dancing, located at 405 North Vineyard Avenue, Suite A, within the C4 (Airport Service Commercial District) zoning district.
- (b) TOP Policy Plan Land Use Map Designation: Hospitality
- (c) Zoning Designation: C4 (Airport Service Commercial)

ZONING ADMINISTRATOR DECISION

FILE NO.: PCUP12-009

(d) Surrounding Zoning and Land Uses:

	<u>Zoning</u>	<u>Existing Land Use</u>
North:	C4	Office/commercial multi-tenant
South:	C4	Office/commercial multi-tenant
East:	C4	Office/commercial multi-tenant
West:	C4	Office/commercial multi-tenant

(e) Site Area: 1.3 acres

(f) Assessor's Parcel No(s): 0110-261-16

(g) Project Analysis:

- Operations: The Bombay Restaurant located at 405 North Vineyard (Suite A) currently offers food, and beer and wine sales. The restaurant established alcohol sales at this location prior to enactment of the City's requirement for Conditional Use Permit (CUP) approval for alcohol sales. The applicant is now requesting CUP approval to upgrade their existing beer and wine license to include distilled spirits (Type 47 ABC license). As part of the upgrade, the applicant is requesting to change the floor plan to include a 6.5-foot long bar and an 8 foot by 8 foot entertainment area for live entertainment. Live entertainment would be limited to a 3-piece band, or a DJ or belly dancer. The entertainment would be limited to the 8-foot by 8-foot area indicated on the floor plan (see Exhibit C attached). The restaurant will continue to be open for lunch and dinner from 11:00 am to 10:00 pm, seven days a week.
- Land Use Compatibility: Conditional Use Permit reviews are required to ensure the compatibility between adjacent uses, and limit exposure of nearby businesses and property owners to potential nuisance activities. The zoning for the subject property is C4 (Airport Service Commercial). A restaurant with alcohol sales for on-site consumption is conditionally permitted in the C4 zone. The restaurant is located within Census Tract 15.04, which currently has 6 active off-sale alcohol licenses, including the one for the existing Bombay Restaurant. The change of license type from beer and wine (Type 41) to beer, wine and distilled spirits (Type 47) will not affect the concentration of licenses within the census tract. The restaurant is located within a fully developed commercial center, which includes other restaurants, a convenience market, a navy recruiting office and a Banquet hall run by the owner of the Bombay Restaurant (but which has a separate CUP (File No. PCUP03-043)). The center is surrounded by multi-tenant office and commercial development within the C4 zone. The impacts of full alcohol sales at this location, in conjunction with the existing restaurant, on the surrounding neighborhood, are not anticipated to be different from the impacts of the existing restaurant, or other existing uses within the commercial center or the C4 zone.
- Airport Land Use Compatibility Plan (ALUCP) Consistency: The proposed project is located within the Airport Influence Area of Ontario International

Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

- Department Review: The Conditional Use Permit request for the proposed general alcohol sales in conjunction with a bona fide restaurant (Type 47 ABC license) was forwarded to the various City departments for comment. The Planning, Police, and Housing Departments/Divisions have requested the placement of conditions of approval on the use, which are designed to mitigate anticipated impacts.

(h) Public Notification: The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

(i) Correspondence: As of the preparation of this Decision, Planning Department staff has not received any written or verbal communications from the owners of properties surrounding the project site or from the public in general, regarding the subject application.

PART B: RECITALS

WHEREAS, the City of Ontario has received a request for Conditional Use Permit approval as described in Part A, above; and

WHEREAS, Ontario Municipal Code § 9-1.0405(f) provides that the Zoning Administrator has the responsibility and authority to review and act upon Conditional Use Permits for existing structures; and

WHEREAS, all members of the Development Advisory Board of the City of Ontario were provided the opportunity to review and comment on the requested Conditional Use Permit, and no comments were received opposing the proposed use; and

WHEREAS, On the 16th day of July, 2012, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

- (a) Clarice Burden, Associate Planner, presented the staff report on the proposed use, indicating the staff recommendation of approval subject to conditions.
- (b) Jerry Blum, Zoning Administrator, referred to the existing banquet facility and questioned the type of license it has. Ms. Burden stated it has a type 47 but the banquet facility is used on a periodic basis.
- (c) Mr. Blum asked if the type 47 license with the Conditional Use Permit include live entertainment for the banquet facility. Ms. Burden stated she does not believe so but believes they are allowed to have recorded music in the banquet hall.

(d) Mr. Blum asked if there were any issues in the past with the Police Department and or Alcoholic Beverage Control. Ms. Burden answered not that she is aware of. She also stated the Police Department has reviewed the application and have conditioned the alcohol use and live entertainment.

(e) Following staff's presentation, the Zoning Administrator opened the public hearing.

(f) Dick Evitt, representing the applicant, explained the business operation and spoke in favor of the application. Mr. Evitt asked the Zoning Administrator if the applicant would be able to sell specialty Indian beer for off-site consumption which could be allowed by ABC. Ms. Burden stated she became aware of this request today so it was not reviewed in conjunction with the Conditional Use Permit. Mr. Blum stated although the Alcoholic Beverage Control license does allow for on-sale/off-sale of alcohol the Ontario Police Department separates those issues out when it comes to a Conditional Use Permit. There is an issue of drinking alcohol in the parking lot which can become a security issue. The Zoning Administrator directed Mr. Evitt and staff to confer on this matter and tabled the hearing to give a chance for the discussion.

(g) The Zoning Administrator re-opened the public hearing and asked staff to discuss their conversation with the Applicant. Mrs. Burden stated that the Police department had addressed the issue of an off-sale operation at the site but included a condition of approval preventing the sale of alcoholic beverages for off-sale consumption because the Census Tract was already over concentrated with such licenses.

(h) Mr. Evitt re-approached the podium and indicated that he understood that no sales for off-site consumption would be allowed and indicated that he had read all of the conditions and was in agreement with all of the conditions. He asked if it is necessary for their establishment to purchase "card readers." Corporal Alvarez stated there is a possibility for the establishment to purchase an adapter to download the software on their current device for card-reading purposes.

(i) There being no one else to offer testimony regarding the application, the Zoning Administrator closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Decision have occurred.

PART C: THE DECISION

NOW, THEREFORE, it is hereby found, determined and resolved by the Zoning Administrator of the City of Ontario as follows:

(a) All facts set forth in this Zoning Administrator Report and Decision are true and correct.

(b) Based upon the evidence presented to the Zoning Administrator during the above-referenced public hearing, the Zoning Administrator hereby concludes as follows:

(1) The proposed location of the Conditional Use Permit and the proposed conditions under which it will be operated or maintained will be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. The restaurant lies within the C4 (Airport Service Commercial) land use designation.

(2) Alcohol sales for on-site consumption in conjunction with a restaurant is allowed upon approval of a Conditional Use Permit. The project has been conditioned so that the facility and use are operated in a manner that will not be detrimental to the health and safety of the surrounding community.

(3) The proposed location of the Conditional Use Permit is in accord with the objectives and purposes of the Ontario Development Code and zoning designation within which the site is located.

(4) Traffic generated by the proposed Conditional Use Permit will not overload the capacity of the surrounding street system and will not create a hazard to public safety.

(5) The proposed Conditional Use Permit will comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes.

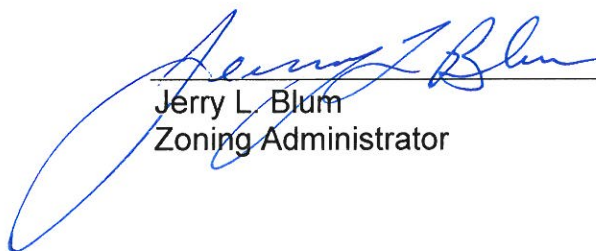
(6) The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

(c) The Zoning Administrator hereby finds and determines that the project identified in this Decision is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to § 15301 (Existing Facilities) of the State CEQA Guidelines.

(d) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby approves File No. PCUP12-009, subject to the conditions of approval attached hereto and incorporated herein by this reference.



APPROVED by the Zoning Administrator of the City of Ontario on this 13th day of August, 2012.



Jerry L. Blum
Zoning Administrator

Exhibit A
Aerial



Exhibit B
Site Plan

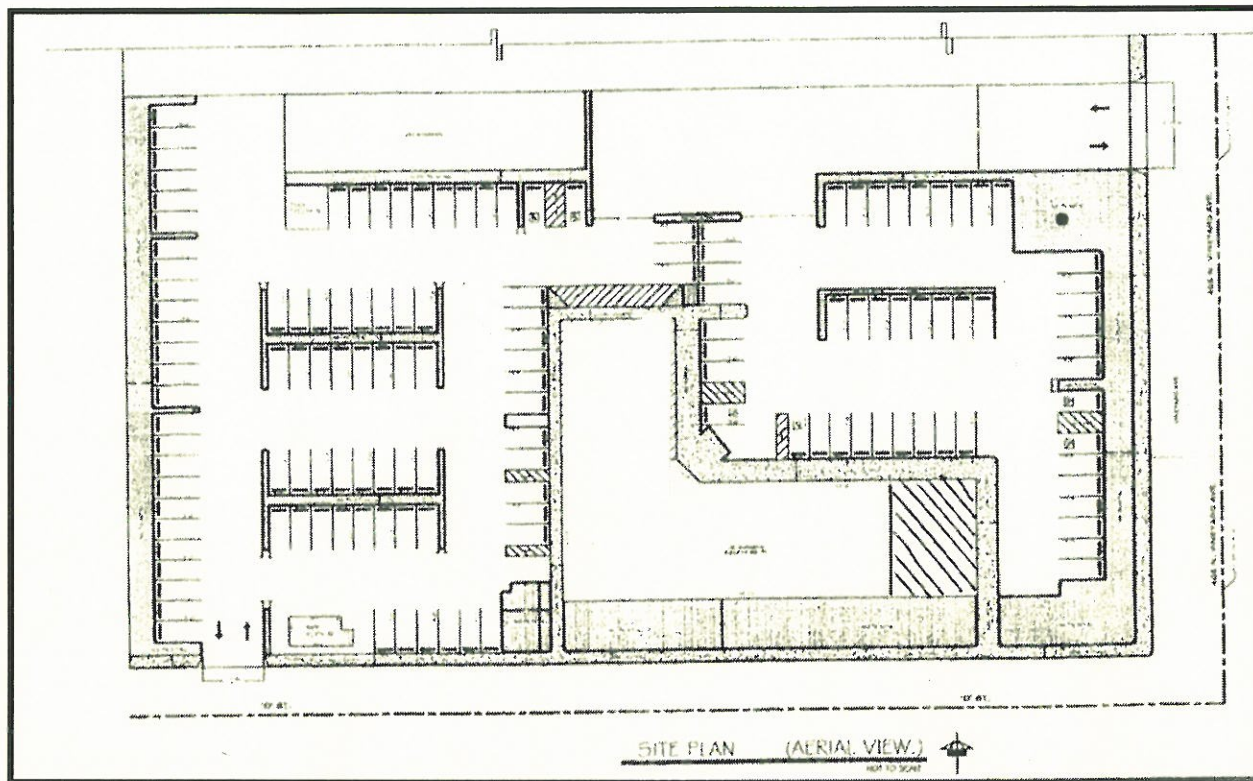


Exhibit C
Floor Plan

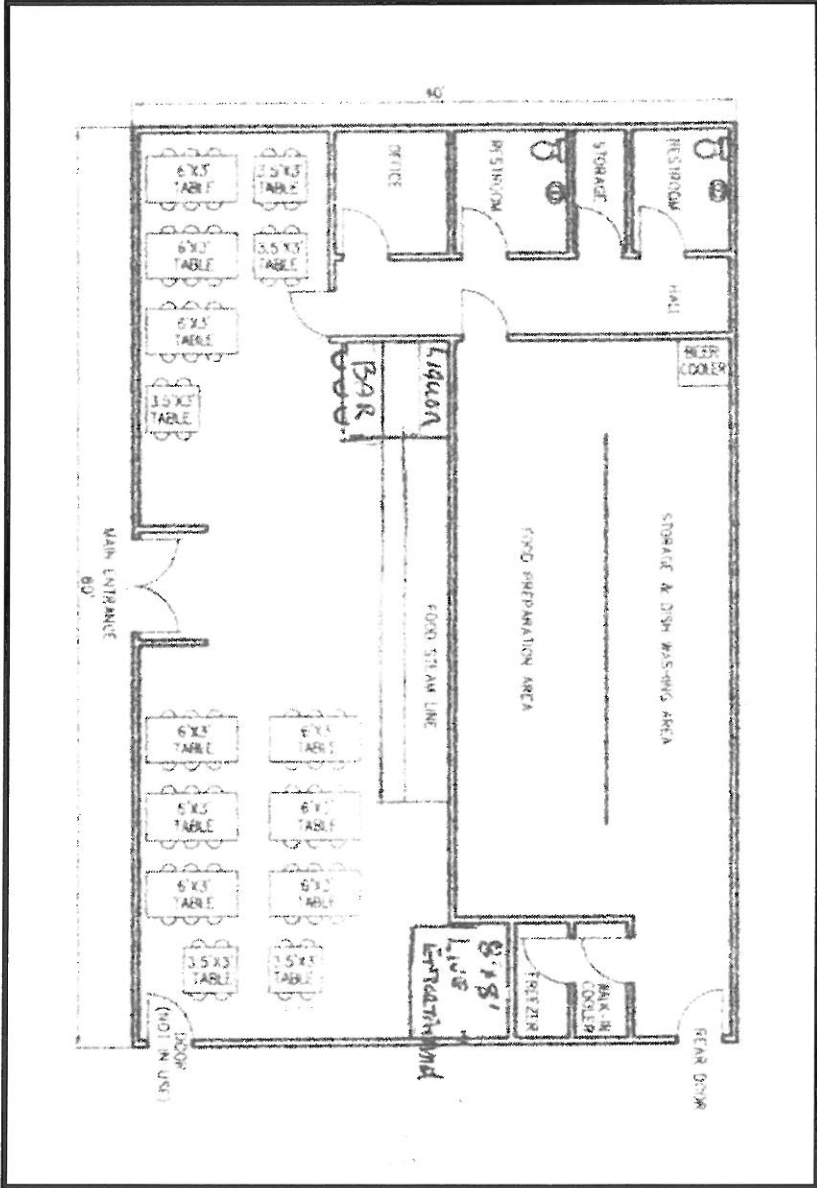


Exhibit D
Site Photo



ZONING ADMINISTRATOR DECISION
 FILE NO.: PCUP12-009

Exhibit F
 ABC Licenses

California ABC - License Query System - Data Portal

Page 1 of 1



California Department of Alcoholic Beverage
 Control
 For the County of **SAN BERNARDINO** - (On-Sale
 Licenses)
 and Census Tract = 15.04

Report as of 7/10/2012

License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1) 13653	ACTIVE	47	3/1/1988	3/31/2013	F G H L PSHIP 425 N VINEYARD AVE ONTARIO, CA 91764 Census Tract: 0015.04	ROSAS RESTAURANT	PO BOX 908 SAN JUAN CAPISTRANO, CA 92693	3607
2) 29468	ACTIVE	52	3/16/1973	8/31/2012	VFW OLD BALDY POST 2085 1341 E D ST ONTARIO, CA 91764 Census Tract: 0015.04	VFW OLD BALDY POST 2085	PO BOX 4165 ONTARIO, CA 91761	3607
3) 33971	ACTIVE	41	2/13/1998	1/31/2013	MULTANI, KULWANT KAUR 405 N VINEYARD AVE, STE D ONTARIO, CA 91764-5499 Census Tract: 0015.04	BOMBAY RESTAURANT		3607
4) 65347	ACTIVE	47	7/25/2010 3:59:42 PM	6/30/2012	BARRIOS, PEDRO 201 N VINEYARD AVE ONTARIO, CA 91764-4427 Census Tract: 0015.04	GARDEN SQUARE RESTAURANT		3607
5) 69945	ACTIVE	47	6/28/2011 11:39:25 AM	5/31/2013	AUTTUN GROUP LLC 429 N VINEYARD AVE ONTARIO, CA 91764-4431 Census Tract: 0015.04		109 OAK GROVE MONROVIA, CA 91016-1659	3607
6) 81344	ACTIVE	41	10/31/2011 2:52:10 PM	9/30/2012	KOYLA MANAGEMENT INC 1845 E HOLT BLVD, STE C ONTARIO, CA 91761-2150 Census Tract: 0015.04	KOYLA		3607

... End of Report ...

For a definition of codes, view our [glossary](#).

**DEPARTMENT ADVISORY BOARD
COMMENTS, CONDITIONS AND RECOMMENDATIONS**

DATE: July 16, 2012

FILE NO.: PCUP12-009

SUBJECT: A Conditional Use Permit to upgrade an existing ABC license from a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) to a Type 47 license (On-Sale General for Bona Fide Public Eating Place) for an existing restaurant (Bombay Restaurant) totaling 2,000 square feet, and allow live entertainment within an 8 foot by 8 foot area to include a live band, DJ or belly dancing; located at 405 North Vineyard Avenue, Suite A, within the C4 (Airport Service Commercial District) zoning district.

The subject application has been reviewed by each agency/department listed below. A copy of each agency/department recommendation and comments are available for review in the Planning Department project file. Conditions of approval have been recommended by those agencies/departments marked below and are attached.

- | | |
|--|--|
| <input checked="" type="checkbox"/> PLANNING | <input checked="" type="checkbox"/> POLICE |
| <input type="checkbox"/> ENGINEERING | <input type="checkbox"/> FIRE |
| <input type="checkbox"/> UTILITIES/SOLID WASTE | <input type="checkbox"/> REDEVELOPMENT AGENCY |
| <input type="checkbox"/> PUBLIC FACILITIES | <input checked="" type="checkbox"/> HOUSING & NEIGHBORHOOD
REVITALIZATION |
| <input type="checkbox"/> BUILDING | <input type="checkbox"/> OTHER: _____ |



CONDITIONS OF APPROVAL

DATE: July 16, 2012

FILE NO.: PCUP12-009

SUBJECT: A Conditional Use Permit to upgrade an existing ABC license from a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) to a Type 47 license (On-Sale General for Bona Fide Public Eating Place) for an existing restaurant (Bombay Restaurant) totaling 2,000 square feet, and allow live entertainment within an 8 foot by 8 foot area to include a live band, DJ or belly dancing; located at 405 North Vineyard Avenue, Suite A, within the C4 (Airport Service Commercial District) zoning district.

1.0 TIME LIMIT

1.1 Conditional Use Permit approval shall become null and void one year following the effective date of application approval, unless the approved use has commenced. This Permit does not supersede any individual time limits specified herein for performance of specific conditions or improvements.

2.0 GENERAL REQUIREMENTS

2.1 Failure to maintain compliance with the herein-listed conditions of approval shall be deemed just cause for revocation of conditional use permit approval.

2.2 The use shall be operated in full conformance with the description and requirements of the Conditional Use Permit on file with the City. Any variations from, or changes in, the approved use (i.e., increase in hours/days of operation, expansion or intensification of use, etc.), must first be reviewed and approved by the Zoning Administrator prior to commencement of the change.

2.3 The approved use is subject to all conditions, requirements and recommendations from all other affected departments/agencies, provided on the attached reports/memorandums.

2.4 A copy of the herein-listed conditions of approval shall be maintained on the subject premises at all times.

2.5 The Planning Department may, from time to time, conduct a review of the approved use to ascertain compliance with the herein-stated conditions of

approval. Any noncompliance with the conditions of approval shall be immediately referred to the Zoning Administrator for possible action.

3.0 PARKING AND CIRCULATION

3.1 The project shall provide off-street parking spaces pursuant to the requirements of Ontario Municipal Code § 9-1.3010.

4.0 GRAFFITI REMOVAL

4.1 Use of anti-graffiti material. Anti-graffiti material of a type and nature that is acceptable to the Director of Public Works, shall be applied to each of the publicly viewable surfaces on the improvements to be constructed on the site, which are deemed by the Director of Public Works to be likely to attract graffiti ("graffiti attracting surfaces").

4.2 Right of access to remove graffiti. The City shall be granted the right of entry over and access to parcels, upon 48-hours of posting of notice by authorized City employees or agents, for the purpose of removing or "painting over" graffiti from graffiti attracting surfaces previously designated by the Director of Public Works, and the right to remove such graffiti.

4.3 Supply City with graffiti removal material. The City shall be provided sufficient matching paint and/or anti-graffiti material on demand, for a period of 2 years after imposing this condition, for use in the painting over or removal of designated graffiti attracting surfaces.

5.0 SITE LIGHTING

5.1 Site lighting shall be reviewed and approved by the Planning Department and Police Department prior to the issuance of building/electrical permits.

5.2 Exterior lighting shall be arranged or shielded in such a manner as to contain direct illumination on the parking area and avoid glare on any adjoining site.

6.0 ALCOHOLIC BEVERAGE SALES

6.1 The business shall be operated in strict compliance with the rules, regulations and orders of the State of California Department of Alcoholic Beverage Control. Failure to comply with this requirement shall be deemed just cause for revocation of conditional use permit approval.

6.2 One (1) year following commencement of the approved use, the Planning Department shall conduct a review of the approved use and shall prepare for Zoning Administrator consideration, a status report identifying impacts

associated with the use and any non-compliance with the conditions of approval. In addition, such status report shall contain a police report regarding calls for service to the subject premises during the prior one year period. Nothing herein shall modify or limit the City's ability to regulate the business or modify or revoke the permit upon the City's determination that the business is being operated in a manner adverse to the public health, safety and welfare.

- 6.3 Signs shall comply with all City of Ontario sign regulations. No more than 25 percent of the total window area shall bear advertising or signs of any sort. Window signs shall be placed and maintained in a manner so that there is clear and unobstructed view of the interior of the premises from the building exterior.
- 6.4 The rear doors shall be kept closed at all times during the operation of the premises, except in case of emergency or to permit deliveries.
- 6.5 In the event that security problems occur as a result of the approved subject use and at the request of the Police Department, the permittee, at his/her own expense, shall provide a California licensed, uniformed security guard(s) on the subject premises, during such hours and in such number as requested by the Police Department.
- 6.6 The licensee shall attend a LEAD (Licensee Education on Alcohol and Drugs) training secession sponsored by the State of California Department of Alcoholic Beverage Control, within 6 months of commencement of the approved use.
- 6.7 A clearly legible copy of the herein-listed conditions of approval shall be posted at all times at a prominent place in the interior of the premises.

Restaurants

- 6.8 The establishment shall be operated as a "bona fide public eating place" as defined by Business and Professions Code § 23038. The restaurant shall contain full kitchen facilities for the cooking of an assortment of foods required for ordinary meals. The kitchen shall be open for the serving of meals to guests during all hours the establishment is open. The establishment shall provide an assortment of foods commonly ordered at various hours of the day. The service of sandwiches or salads shall not be deemed in compliance with this requirement.
- 6.9 The sale of alcoholic beverages shall be incidental to the sale of food. The quarterly gross sales of alcoholic beverages shall be less than 50 percent of the restaurants total sales, which includes all food, and alcoholic and non-alcoholic beverages. The owner of the establishment, upon request, shall provide the City of Ontario with an audited report of the sales ratio of food and non-alcoholic beverages to alcoholic beverages.

- 6.10 No alcoholic beverage shall be consumed outside of the enclosed building. No outdoor seating areas are proposed.
- 6.11 Amplified music may be permitted; however, the sound emitted from the premises shall not be audible outside the walls of the business establishment.

7.0 ENVIRONMENTAL REVIEW

- 7.1 The proposed project is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to § 15301 (Existing Facilities) of the State CEQA Guidelines.
- 7.2 The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

8.0 ADDITIONAL REQUIREMENTS

- 8.1 Live entertainment shall be limited to the 8-foot by 8-foot area indicated on the floor plan and shall be limited to a maximum 3-piece live band or a DJ or a belly dancer at any one time.
- 8.2 All illegal signage shall be removed from the premises and the center. Banners in the landscaped areas shall be removed. All proposed signs shall require sign permits prior to installation.
- 8.3 The applicant shall revise their business license as necessary to reflect the change in their business.



CITY OF ONTARIO
MEMORANDUM
“Excellence Through Teamwork”



TO: Clarice Ramey, Associate Planner

FROM: Fred Alvarez, ABC Grant Officer

DATE: May 31, 2012

SUBJECT: FILE NO. PCUP12-009– BOMBAY RESTAURANT
405 N. VINEYARD AVENUE, Suite A

The Police Department is placing the following conditions:

RESTAURANT/ BAR CONDITIONS

1. Hours of alcohol service will be 7:00 A.M. to 2:00 A.M. daily. Last call for alcohol will be made at 1:15 A.M.
2. No sales or service of alcoholic beverages to minors.
3. No sales or service to obviously intoxicated patrons.
4. No alcoholic beverages are to be sold or removed from the establishment for outside consumption.
5. No smoking inside of establishment is permitted.
6. There will be no narcotic sales or usage on the premises at any time.
7. All restaurant employees **servng alcohol** must be **21** years or older.
8. No more than four (4) stools will be allowed at the bar fixture in the bar lounge.
9. The business is required to have and use driver license and/or ID card reading devices.
10. Lighting within the establishment must be kept at a reasonable level as determined by city officials.

11. Food sales and service must be available for sale at all times.
12. Back door must be alarmed and closed at all times.
13. Address to establishment must be illuminated for easy identification of safety personnel.
14. Roof top numbers shall be installed on the commercial building. They shall be a minimum of 3 feet in length and 1 foot in width. Numbers shall be painted in reflective white paint on a flat black background away from roof obstacles. Roof top numbers must be maintained every 3 years.
15. The parking lot will need adequate lighting (minimum 1 foot candle) from dusk to dawn.
16. Restrooms must be kept free of graffiti.
17. No arcade video game machines will be allowed in the premises.
18. All hallways must be kept clear from merchandise, storage, and patrons blocking pathway.
19. The applicant will be responsible for maintaining premises free of graffiti and litter over which the applicant has control and shall be responsible for its removal within 72 hours of its appearance or upon notice of its appearance to the applicant.
20. No loitering shall be permitted on any property adjacent to the licensed premise, which is under the control of the applicant, signs must be posted reference same
21. Applicant, security and all employees serving alcohol must attend an Alcohol Beverage Control (ABC) L.E.A.D. training class or a certified responsible beverage service class, which has been approved by ABC and Ontario Police Department, within three months of this dated conditional use permit. Proof of re-certification is required every 3 years.
22. A no trespass letter will be on file with the Police Department.

ENTERTAINMENT CONDITIONS

1. During entertainment hours of 10:00 PM to 2:00 AM, the location shall not exceed a noise level of 65dBA per section 9-1.3305 of the Ontario Development Code.
2. An entertainment area must be designated on a plan check and that area will only be allowed for entertainment purposes. (Live Entertainment)
3. Karaoke will be permitted the same hours of the restaurant, 7 days a week in an area designated on a plan check.

4. During restaurant hours a 3-piece band will be permitted daily.
5. Tables shall not be removed or rearranged to increase occupancy, which has been approved on plans submitted with this conditional use permit.
6. Live entertainment involving a combination of DJ/Live Entertainment and Dancing is prohibited in the restaurant and lounge area.

SECURITY CONDITIONS

1. A Code of Conduct will be required and posted at all public entrances of the bar lounge.
2. Ontario Police Officers have the right to limit or reduce the occupancy inside the establishment, if situations arise that may compromise the safety of patrons and the officer. Any additional police resources requested to bring peace in the establishment may be charged to the business owner.
3. Any security personnel hired will be required to follow Ontario Municipal Code Article 6, Title 3, Section 3-1.601-621 (security regulations).

Any special event outside the scope of the Conditional Use Permit will require a TUP (Temporary Use Permit) which will be processed by the Planning Department and conditioned by the Ontario Police Department. (For example a radio station promotion held at the restaurant, or an outdoor event with alcoholic beverages would be a special event requiring Police or security personnel, but a community service organization breakfast meeting would not be considered a special event and therefore would not require additional security.)

If alcohol related crimes at this location are higher than other similar establishments in the overall City during any quarter, the CUP will automatically be referred to the Zoning Administrator for review and re-conditioning or revocation of the permit. The Police Department may, at their sole discretion, request a revocation hearing if they determine that the establishment is being operated in violation of this CUP or has violated the laws of the State or City are the intent of this action.

A copy of the listed conditions of approval must be posted with your ABC license at all times in a prominent place in the interior of the premises.

The Ontario Police Department and the Ontario Planning Department will conduct an inspection before the opening of the restaurant with the conditional use permit.

The Police Department will conduct a review in six months to determine whether additional conditions will be needed.

If you have any questions please call Fred Alvarez at (909) 395-2845.

**CITY OF ONTARIO
MEMORANDUM**

TO: Clarice Burden, Associate Planner

FROM: Brent Schultz, Housing and Neighborhood Revitalization Director

DATE: May 10, 2012

SUBJECT: FILE NO. PCUP12-009

The Housing Department has the following conditions and comments on the above mentioned project:

- The applicant is required to remove all banner signs from parkway and business frontage.

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2012-13

HEARING DATE: July 16, 2012-

DECISION DATE: August 13, 2012

FILE NO.: PCUP12-013

SUBJECT: A Conditional Use Permit to establish alcoholic beverage sales (Type 41 ABC License, On-Sale Beer & Wine) in conjunction with the existing El Chilito Mexican Restaurant, located at the northeast corner of Riverside Drive and Euclid Avenue, at 2905-A South Euclid Avenue, within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts.

STAFF

RECOMMENDATION: Approval Approval, subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

EL CHILITO MEXICAN RESTAURANT, herein after referred to as “the applicant,” has filed an application requesting Conditional Use Permit approval, described as follows:

- (a) Project Description: A Conditional Use Permit (File No. PCUP12-013) to establish alcoholic beverage sales (Type 41 ABC License, On-Sale Beer & Wine) in conjunction with a bona-fide restaurant (El Chilito Mexican Restaurant), located at the northeast corner of Riverside Drive and Euclid Avenue, at 2905-A South Euclid Avenue, within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts.
- (b) TOP Policy Plan Land Use Map Designation: Neighborhood Commercial
- (c) Zoning Designations: C1 (Shopping Center Commercial) & EA (Euclid Avenue Overlay)
- (d) Surrounding Zoning and Land Uses:

	<u>Zoning</u>	<u>Existing Land Use</u>
North:	R1 (Single-Family Residential)	Single-Family Dwelling Units
South:	SP(AG)	Vacant Land
East:	R2 (Multi-Family Residential)	Multi-Family Dwelling Units
West:	Specific Plan (Borba Village)	Home Depot

- (e) Site Area: 0.637-acre portion of a larger commercial retail shopping center.
- (f) Assessor's Parcel No.: 1051-611-08
- (g) Project Analysis:

(1) Location & Operations: El Chilito Mexican Restaurant is located at the northeast corner of Riverside Drive and Euclid Avenue, at 2905-A South Euclid Avenue. The restaurant is located within an existing multi-tenant commercial shopping center, which includes a dry cleaner, donut shop, bakery, and a Dollar Tree. El Chilito Mexican Restaurant is a traditional Mexican style restaurant, which features burritos and tacos, with a variety of seasoned meats. The restaurant was established in 2000, and is 970 square feet in floor area. The restaurant employs two-three persons per shift and can accommodate approximately 25 patrons at a time for dining. The restaurant's current operating hours are Monday to Saturday, from 6:00am to 9:00pm, and Sunday, from 6:00am to 6:00pm.

(2) ABC License Concentrations: The California Department of Alcoholic Beverage Control (ABC) is the controlling State entity which grants, renews, and revokes all ABC licenses. ABC determines how many On-Sale and Off-Sale alcoholic beverage license types should be issued per Census Tract, based upon their populations. El Chilito Mexican Restaurant is located within Census Tract 18.04, which is generally bordered by the CA-60 Freeway on the north, Bon View Avenue on the east, Riverside Drive on the south, and Euclid Avenue on the west. ABC is in the process of revising the census tract information pursuant to the 2010 census tract subdivision and realignment. As a result, the maximum allowable number of On-Sale license types for Census Tract 18.04 was not available at the time of staff report preparation; however, ABC allows one On-Sale license type per 2,000 residents and one Off-Sale license type per 2,500 residents within each Census tract. The 2010 census data shows the population of Census Tract 18.04 as having 5,145 residents, which would result in allowing two On-Sale types and two Off-Sale types within the census tract. As of June, 2012, the latest ABC report shows Census Tract 18.04 as having a total number of one active existing On-Sale license. An additional On-Sale license would be allowed pursuant to ABC's ratio.

(3) Land Use Compatibility: The intent of a CUP application and review is to ensure that the proposed use will be operated in a manner consistent with all local regulations, and to ensure that the use will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity. The City of Ontario's Development Code describes a CUP as the following: § Sec. 9-1.0900: *Purposes and Authorization* – Conditional Use Permits are required for land use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area. Approval of a CUP first requires making certain findings, which show that the proposed use is consistent with all City of Ontario development codes, land uses, and other

applicable requirements. Additionally, the use must be compatible with the other surrounding uses; therefore, approving a CUP is discretionary in nature.

The project site is located within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts. Within these districts, alcoholic beverage sales is a conditionally permitted use. It is staff's belief that the recommended conditions of approval will sufficiently mitigate potential impacts associated with the proposed use. Additionally, businesses within the surrounding area will not be exposed to any impacts resulting from alcoholic beverage sales, beyond those that would normally be associated with any other use similarly allowed within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts.

(h) Public Notification: The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

(i) Department Review: Each City department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval. The Planning Department supports the proposed use and requests the Zoning Administrator impose each Department's recommended conditions of approval, which are designed to mitigate anticipated impacts related the project

(j) Correspondence: As of the preparation of this Decision, Planning Department staff has not received any written or verbal communications from the owners of properties surrounding the project site or from the public in general, regarding the subject application.

PART B: RECITALS

WHEREAS, the City of Ontario has received a request for Conditional Use Permit approval as described in Part A, above; and

WHEREAS, Ontario Municipal Code § 9-1.0405(f) provides that the Zoning Administrator has the responsibility and authority to review and act upon Conditional Use Permits for existing structures; and

WHEREAS, all members of the Development Advisory Board of the City of Ontario were provided the opportunity to review and comment on the requested Conditional Use Permit, and no comments were received opposing the proposed use; and

WHEREAS, On the 16th day of July, 2012, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

- (a) John Earle Hildebrand III, *Associate Planner*, presented the staff report on the proposed use, indicating the staff recommendation of approval, subject to the attached conditions. Following staff's presentation, the Zoning Administrator opened the public hearing.
- (b) Ralph Villalobos, the commercial center owner, supports the restaurant and spoke in favor of the application for alcoholic beverage sales.
- (c) Yuritza Rodriguez, the restaurant owner, spoke in favor of the application and clarified the operating hours, stating that the restaurant is currently open Monday to Saturday, from 6:00am to 9:00pm, and Sunday, from 6:00am to 6:00pm. The Zoning Administrator asked if the operating hours would be expanded as a result of alcoholic beverage sales. Yuritza Rodriguez stated that the hours may expand in the future, but not immediately. The attached Conditions of Approval provided by the Police Department allow for alcoholic beverage sales from 6:00am to 11:00pm daily. The Zoning Administrator, stated that it would be acceptable for the general restaurant operating hours to align with the conditioned alcoholic beverage sales hours. He further stated that alcoholic beverage sales in the evening hours will need to be closely monitored so that potential issues such as noise, don't impact the adjacent residential area to the north.
- (d) There being no one else to offer testimony regarding the application, the Zoning Administrator closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Decision have occurred.

PART C: THE DECISION

NOW, THEREFORE, it is hereby found, determined and resolved by the Zoning Administrator of the City of Ontario as follows:

- (a) All facts set forth in this Zoning Administrator Report and Decision are true and correct.
- (b) Based upon the evidence presented to the Zoning Administrator during the above-referenced public hearing, the Zoning Administrator hereby concludes as follows:

(1) The proposed location of the Conditional Use Permit and the proposed conditions under which it will be operated or maintained will be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. The location of the proposed alcoholic beverage sales and the existing El Chilito Restaurant lies within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts land use districts.

(2) Alcoholic beverage sales is allowed upon approval of a Conditional Use Permit. The project has been conditioned so that the facility and use are operated in a manner that will not be detrimental to the health and safety of the surrounding community.

(3) The proposed location of the Conditional Use Permit is in accord with the objectives and purposes of the Ontario Development Code and zoning designation within which the site is located. The location of El Chilito Mexican Restaurant and associated alcoholic beverage sales meets the objectives of the Ontario Development Code, Article 1: *Purposes and Objectives*, Article 16: *Commercial and Professional Districts (AP, NC, C1, C2, C3, & C4)*, and Article 23: *Euclid Avenue Corridor Overlay District (EA)*.

(4) Traffic generated by the proposed Conditional Use Permit will not overload the capacity of the surrounding street system and will not create a hazard to public safety. The addition of an alcoholic beverage control license in conjunction with the existing El Chilito Mexican Restaurant will not create a significant amount new traffic. As a result, the use will not create a public safety hazard nor impact the surrounding circulation system.

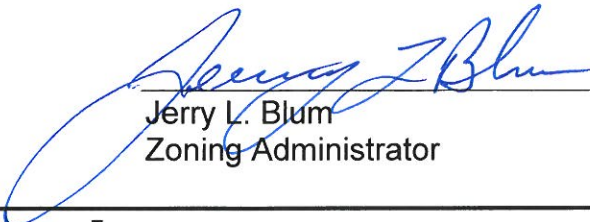
(5) The proposed Conditional Use Permit will comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes. The ancillary use of alcoholic beverage sales, in conjunction with the existing El Chilito Mexican Restaurant, will comply with each of the provisions in the Ontario Development Code, including Article 1: *Purposes and Objectives*, Article 16: *Commercial and Professional Districts (AP, NC, C1, C2, C3, & C4)*, and Article 23: *Euclid Avenue Corridor Overlay District (EA)*.

(c) The Zoning Administrator hereby finds and determines that the project identified in this Decision is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section § 15301 (Existing Facilities) of the State CEQA Guidelines.

(d) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby approves File No. PCUP12-013, subject to the conditions of approval attached hereto and incorporated herein by this reference.



APPROVED by the Zoning Administrator of the City of Ontario on this 13th day of August, 2012.



Jerry L. Blum
Zoning Administrator

EXHIBITS

Exhibit A: Aerial Map

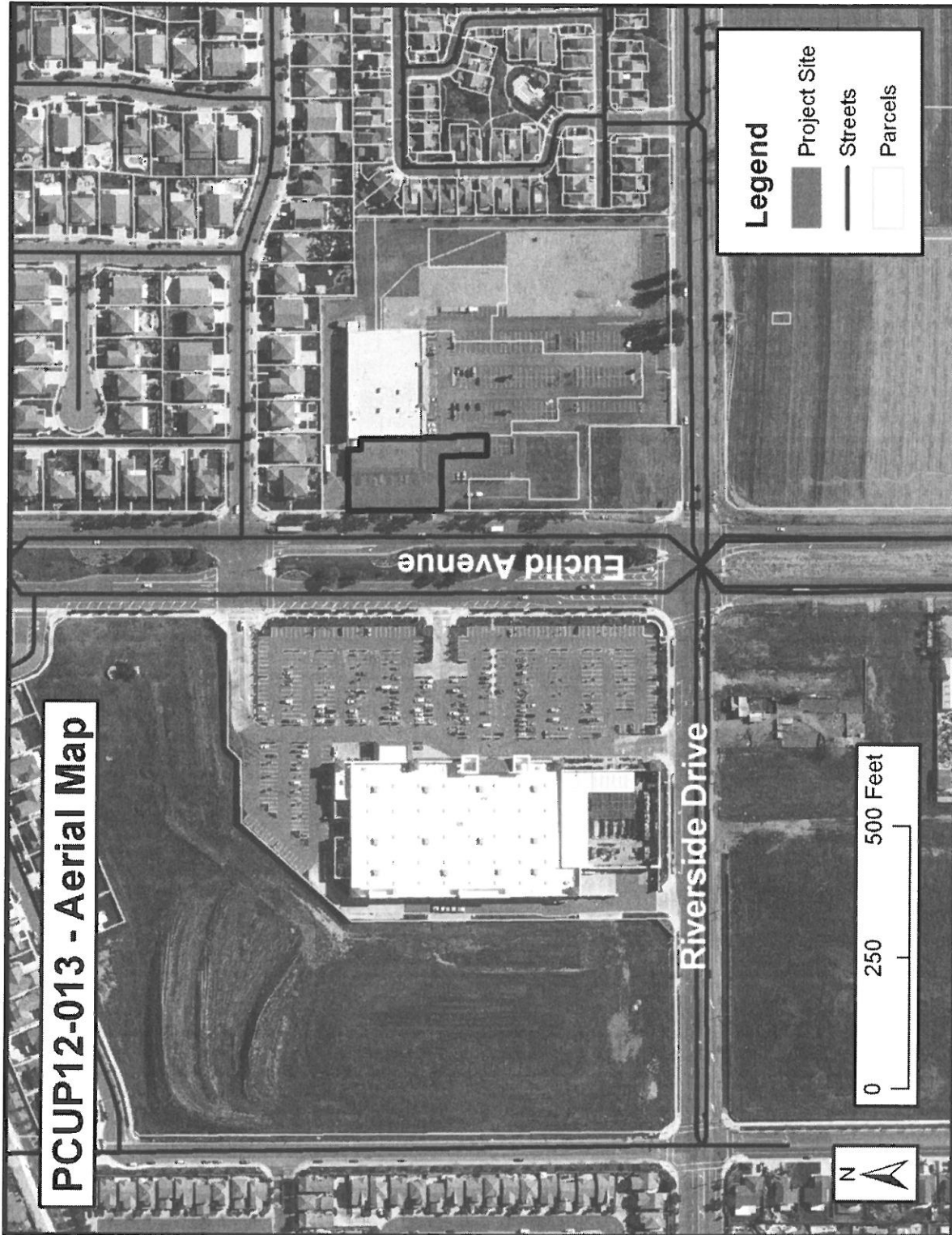
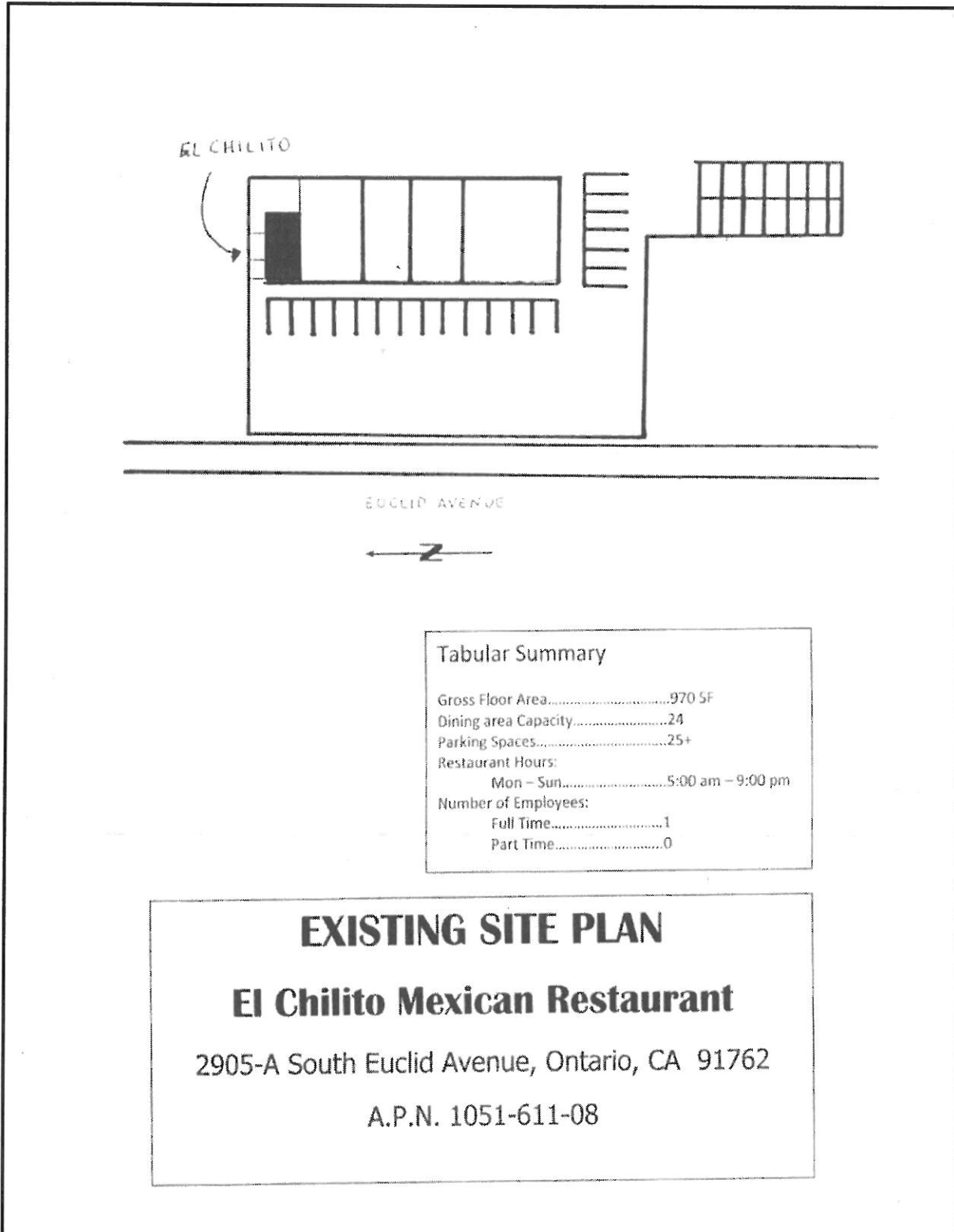


Exhibit B: Site Plan



Tabular Summary	
Gross Floor Area.....	970 SF
Dining area Capacity.....	24
Parking Spaces.....	25+
Restaurant Hours:	
Mon - Sun.....	5:00 am - 9:00 pm
Number of Employees:	
Full Time.....	1
Part Time.....	0

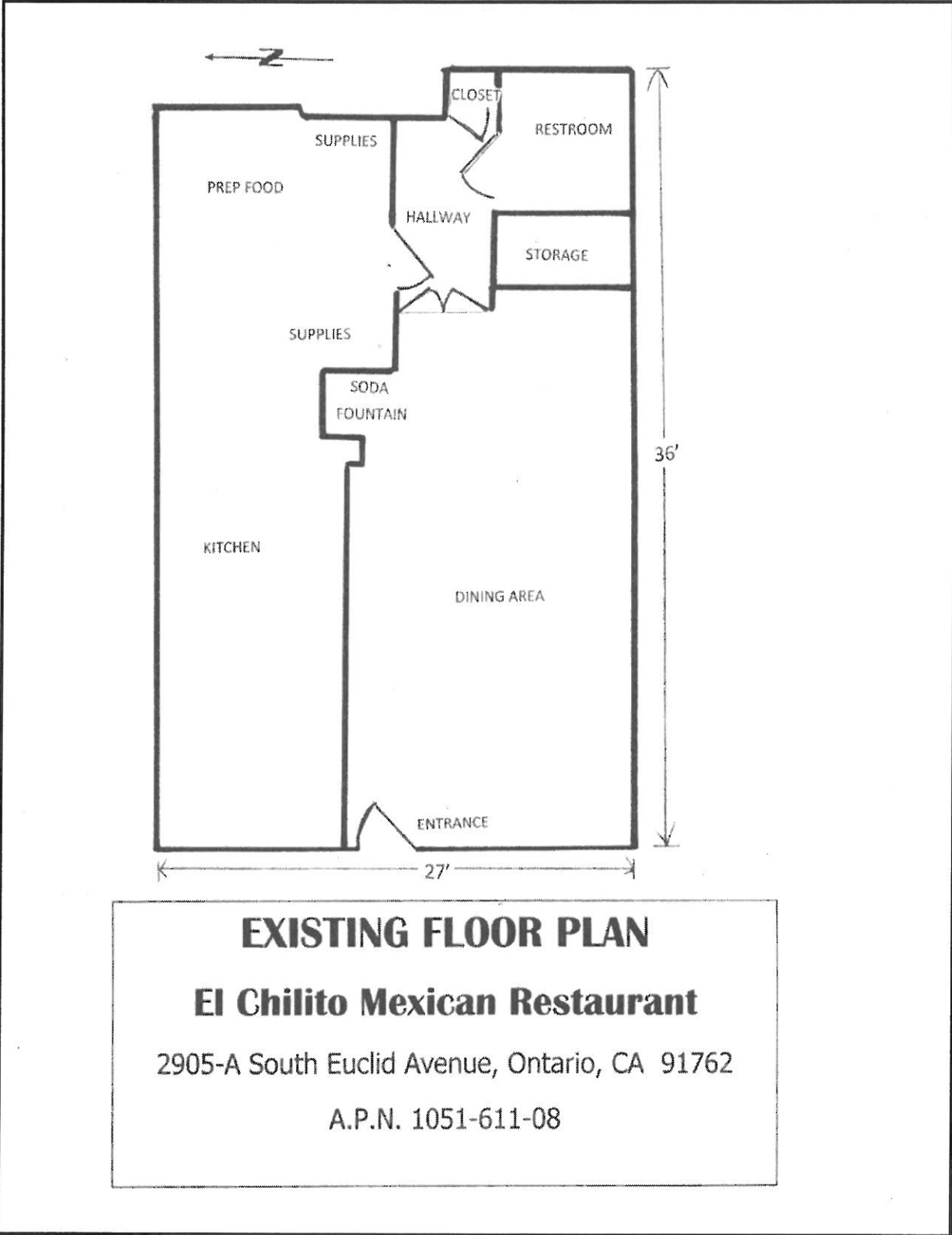
EXISTING SITE PLAN

El Chilito Mexican Restaurant

2905-A South Euclid Avenue, Ontario, CA 91762

A.P.N. 1051-611-08

Exhibit C: Floor Plan



EXISTING FLOOR PLAN
El Chilito Mexican Restaurant
2905-A South Euclid Avenue, Ontario, CA 91762
A.P.N. 1051-611-08

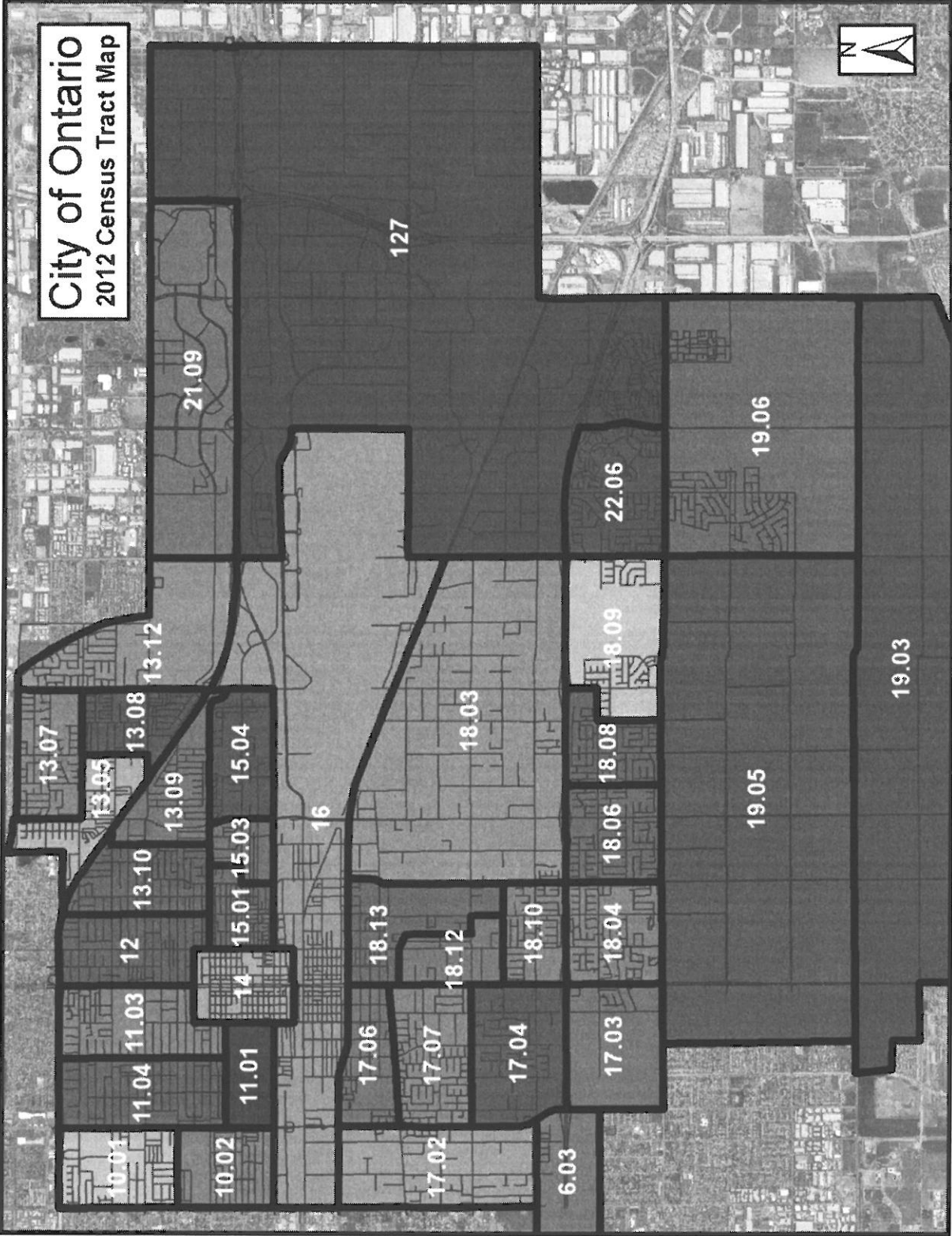
Exhibit D: Site Photos (Outside)



Exhibit E: Site Photos (Inside)



Exhibit F: Census Tract Map



**DEPARTMENT ADVISORY BOARD
COMMENTS, CONDITIONS AND RECOMMENDATIONS**

DATE: July 16, 2012

FILE NO.: PCUP12-013

SUBJECT: A Conditional Use Permit to establish alcoholic beverage sales (Type 41 ABC License, On-Sale Beer & Wine) in conjunction with the existing El Chilito Mexican Restaurant, located at the northeast corner of Riverside Drive and Euclid Avenue, at 2905-A South Euclid Avenue, within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts.

The subject application has been reviewed by each agency/department listed below. A copy of each agency/department recommendation and comments are available for review in the Planning Department project file. Conditions of approval have been recommended by those agencies/departments marked below and are attached.

- | | |
|--|---|
| <input checked="" type="checkbox"/> PLANNING | <input checked="" type="checkbox"/> POLICE |
| <input type="checkbox"/> ENGINEERING | <input type="checkbox"/> FIRE |
| <input type="checkbox"/> UTILITIES/SOLID WASTE | <input type="checkbox"/> REDEVELOPMENT AGENCY |
| <input type="checkbox"/> PUBLIC FACILITIES | <input type="checkbox"/> HOUSING & NEIGHBORHOOD
REVITALIZATION |
| <input type="checkbox"/> BUILDING | <input type="checkbox"/> OTHER: _____ |



CONDITIONS OF APPROVAL

DATE: July 16, 2012

FILE NO.: PCUP12-013

SUBJECT: A Conditional Use Permit to establish alcoholic beverage sales (Type 41 ABC License, On-Sale Beer & Wine) in conjunction with the existing El Chilito Mexican Restaurant, located at the northeast corner of Riverside Drive and Euclid Avenue, at 2905-A South Euclid Avenue, within the C1 (Shopping Center Commercial) and EA (Euclid Avenue Overlay) zoning districts.

1.0 GENERAL REQUIREMENTS

- 1.1 Failure to maintain compliance with the herein-listed conditions of approval shall be deemed just cause for revocation of conditional use permit approval.
- 1.2 The use shall be operated in full conformance with the description and requirements of the Conditional Use Permit on file with the City. Any variations from, or changes in, the approved use (i.e., increase in hours/days of operation, expansion or intensification of use, etc.), must first be reviewed and approved by the Zoning Administrator prior to commencement of the change.
- 1.3 The approved use is subject to all conditions, requirements and recommendations from all other affected departments/agencies, provided on the attached reports/memorandums.
- 1.4 A copy of the herein-listed conditions of approval shall be maintained on the subject premises at all times.
- 1.5 The Planning Department may, from time to time, conduct a review of the approved use to ascertain compliance with the herein-stated conditions of approval. Any noncompliance with the conditions of approval shall be immediately referred to the Zoning Administrator for possible action.

2.0 SITE LIGHTING

- 2.1 Site lighting shall be reviewed and approved by the Planning Department and Police Department prior to the issuance of building/electrical permits.

- 2.2 Exterior lighting shall be arranged or shielded in such a manner as to contain direct illumination on the parking area and avoid glare on any adjoining site.

3.0 ALCOHOLIC BEVERAGE SALES

- 3.1 The business shall be operated in strict compliance with the rules, regulations and orders of the State of California Department of Alcoholic Beverage Control. Failure to comply with this requirement shall be deemed just cause for revocation of conditional use permit approval.
- 3.2 Signs shall comply with all City of Ontario sign regulations. No more than 25% of the total window area shall bear advertising or signs of any sort. Window signs shall be placed and maintained in a manner so that there is clear and unobstructed view of the interior of the premises from the building exterior.
- 3.3 The rear doors shall be kept closed at all times during the operation of the premises, except in case of emergency or to permit deliveries.
- 3.4 In the event that security problems occur as a result of the approved subject use and at the request of the Police Department, the permittee, at his/her own expense, shall provide a California licensed, uniformed security guard(s) on the subject premises, during such hours and in such number as requested by the Police Department.
- 3.5 The licensee shall attend a LEAD (Licensee Education on Alcohol and Drugs) training secession sponsored by the State of California Department of Alcoholic Beverage Control, within six (6) months of commencement of the approved use.
- 3.6 A clearly legible copy of the herein-listed conditions of approval shall be posted at all times at a prominent place in the interior of the premises.
- 3.7 The establishment shall be operated as a "bona fide public eating place" as defined by Business and Professions Code § 23038. The restaurant shall contain full kitchen facilities for the cooking of an assortment of foods required for ordinary meals. The kitchen shall be open for the serving of meals to guests during all hours the establishment is open. The establishment shall provide an assortment of foods commonly ordered at various hours of the day. The service of sandwiches or salads shall not be deemed in compliance with this requirement.
- 3.8 The sale of alcoholic beverages shall be incidental to the sale of food. The quarterly gross sales of alcoholic beverages shall be less than 50% of the restaurants total sales, which includes all food, and alcoholic and non-alcoholic beverages. The owner of the establishment, upon request, shall

provide the City of Ontario with an audited report of the sales ratio of food and non-alcoholic beverages to alcoholic beverages.

- 3.9 No alcoholic beverage shall be consumed outside of the enclosed building, except within the approved outdoor eating area, which has been designed so as to be adequately separated from direct public access.
- 3.10 Amplified music may be permitted; however, the sound emitted from the premises shall not be audible outside the walls of the business establishment.
- 3.11 Live entertainment shall be prohibited. Any future request for live entertainment shall require conditional use permit approval by the Zoning Administrator.

4.0 ENVIRONMENTAL REVIEW

- 4.1 The proposed project is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant Section § 15301 (Existing Facilities) of the State CEQA Guidelines.
- 4.2 The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.



CITY OF ONTARIO
MEMORANDUM
“Excellence Through Teamwork”



TO: John Hildebrand, Associate Planner

FROM: Fred Alvarez, ABC Officer

DATE: May 24, 2012

SUBJECT: PCUP12-013 – EL CHILITO MEXICAN RESTAURANT
2905A - SOUTH EUCLID AVENUE

The Police Department will require the following conditions:

RESTAURANT CONDITIONS

1. Hours of alcohol sales and service will be 6:00 a.m. to 11:00 p.m. daily.
2. No sales or service of alcoholic beverages to minors.
3. No sales or service of alcoholic beverages to obviously intoxicated patrons.
4. No alcoholic beverages are to be sold or removed from the establishment for outside consumption.
5. No self serve alcohol displays allowed.
6. No distilled spirits are allowed to be sold or served from the establishment.
7. No Smoking inside of establishment is permitted.
8. There will be no narcotic sales or usage on the premises at any time.
9. No live entertainment is permitted.
10. No Juke Boxes will be allowed in the premises.
11. No pool tables or arcade video game machines will be allowed in the premises.
12. All restaurant employees serving alcohol must be 21 years or older.

13. Food sales and service must be available for sale at all times. A menu will be submitted for review.
14. Applicant and all employees must attend an Alcohol Beverage Control (ABC) L.E.A.D.'s training class or a certified responsible beverage service class, which has been approved by ABC and Ontario Police Department, within six months of this dated conditional use permit. Proof of re-certification is required every 3 years.
15. Back door must be alarmed and closed at all times except for deliveries.
16. Lighting within the establishment must be kept at a reasonable level as determined by city officials.
17. Address to establishment must be illuminated for easy identification of safety personnel.
18. Roof top numbers shall be installed on the commercial building. They shall be a minimum of 3 feet in length and 1 foot in width. Numbers shall be painted in reflective white paint on a flat black background away from roof obstacles. Roof top numbers must be maintained every 3 years.
19. The parking lot of the premises shall be equipped with a maintained lighting device capable of providing a minimum of one-foot candle of light at ground level from dusk to dawn.
20. Restrooms must be kept free of graffiti.
21. All hallways must be kept clear from merchandise, storage, and patrons blocking pathway.
22. The applicant will be responsible for maintaining premises free of graffiti and litter over which the applicant has control and shall be responsible for its removal within 72 hours of its appearance or upon notice of its appearance to the applicant.
23. No loitering shall be permitted on any property adjacent to the licensed premise, which is under the control of the applicant, signs must be posted reference it.
24. If criminal activity or high calls for service occur at the location and are higher than other similar bar establishments in the overall City during any quarter, the police department has the right to limit the amount of covering on all frontage windows.
25. A no trespass letter will be on file with the Police Department.

Any special event outside the scope of the Conditional Use Permit will require a TUP (Temporary Use Permit) which will be processed by the Planning Department and

conditioned by the Ontario Police Department. (For example a radio station promotion held at the restaurant, or an outdoor event with alcoholic beverages would be a special event requiring Police or security personnel.)

If alcohol related crimes at this location are higher than other similar establishments in the overall City during any quarter, the CUP will automatically be referred to the Zoning Administrator for review and re-conditioning or revocation of the permit. The Police Department may, at their sole discretion, request a revocation hearing if they determine that the establishment is being operated in violation of this CUP or has violated the laws of the State or City are the intent of this action.

A copy of the listed conditions of approval must be posted with your ABC license at all times in a prominent place in the interior of the premises.

The Ontario Police Department and the Ontario Planning Department will conduct an inspection before the restaurant will be allowed to sell alcoholic beverages with the conditional use permit.

The Police Department will conduct a review in six months to determine whether additional conditions will be needed.

If you have any questions please call Fred Alvarez at (909) 395-2845.