



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JUNE 25, 2019

FROM: COMMUNITY & ECONOMIC DEVELOPMENT WARD: 1
DEPARTMENT

SUBJECT: PUBLIC HEARING – P18-0572 MODIFICATION TO MINOR CONDITIONAL USE PERMIT– BY CRAIG JOHNSTON ON BEHALF OF HIDEAWAY CAFÉ/MISSION GALLERIA FOR A MODIFICATION OF AN EXISTING MINOR CONDITIONAL USE PERMIT (PLANNING CASE P15-0255 AS MODIFIED BY P16-0251) – LOCATED AT 3700 MAIN STREET, SITUATED ON THE SOUTHEAST CORNER OF MAIN STREET AND MISSION INN AVENUE – APPEAL AND CONSIDERATION OF PROJECT APPROVAL

ISSUE:

Deny the appeal and deny the Modification to Minor Conditional Use Permit to allow a modification to the Hideaway Café's Alcohol Beverage Control License to upgrade from a Type 41 (On-Sale Beer and Wine License) to a Type 47 (On-Sale General Eating Place) that allows the sale of spirits in addition to beer and wine at 3700 Main Street, situated on the southeast corner of Main Street and Mission Inn Avenue.

RECOMMENDATIONS:

That the City Council:

1. Deny the Applicant's Appeal of the Planning Commission action denying the request for a modification to the Minor Conditional Use Permit; and
2. Deny Planning Case P18-0572 Modification to Minor Conditional Use Permit, based on and subject to the Planning Commission findings found in the attached staff report.

PLANNING COMMISSION RECOMMENDATION:

On April 18, 2019, the City Planning Commission considered Planning Case P18-0572 – Modification of Conditional Use Permit P16-0251 (Modification of P15-0255, Minor Conditional Use Permit) for the Hideaway Café's Alcohol Beverage Control License. Following discussion, the Planning Commission denied the applicant's request for a modification to a Minor Conditional Use Permit by a vote of 8 ayes, 0 noes, and 1 abstention, based on 1) the inability of staff to make the findings required by the Zoning Code; 2) a consistent pattern of ignoring and violating the Minor Conditional Use Permit (MCUP); 3) the ongoing extraordinary calls for service; and 4) the ongoing Stayed Revocation status imposed by the California Alcohol Beverage Control for the sale of narcotics by employees in 2016. The staff report and minutes from the Planning

Commission meeting are included as Attachments 1 and 2, respectively.

BACKGROUND:

The Hideaway Cafe is one of four tenants located in the building at 3700 Main Street. The 0.34 acre site is currently developed with a three-story multi-tenant commercial building. Surrounding uses include the Mission Inn Hotel and Spa to the north, Mario's Place to the east, Riverside Art on Main to the south, and Coffee, Bean and Tea Leaf to the west.

The Hideaway Café opened in 2013 and took over the existing Type 41 (On-Sale Beer and Wine – Eating Place) Alcohol Beverage Control (ABC) license from the previous tenant. In 2015, following numerous Code Enforcement complaints regarding entertainment without permits, the Hideaway Café was granted a Minor Conditional Use Permit (MCUP P15-0255) to allow entertainment in conjunction with the restaurant. In 2016, staff considered a revocation of P15-0255 due to Municipal Code Violations, extraordinary calls for service, and suspected illegal activities. Staff worked with the business owner to discuss modifying the existing MCUP to allow the business to continue to operate, while providing clear operational, management, and security safeguards in the Conditions of Approval. The Planning Commission approved P16-0251 (Modification to the Minor Conditional Use Permit) subject to those recommended conditions of approval.

DISCUSSION:

Project Description and Required Entitlements

The applicant/appellant is requesting a modification to the Hideaway Café's Alcohol Beverage Control License to upgrade from a Type 41 (On-Sale Beer and Wine License) to a Type 47 (On-Sale General Eating Place) to allow the sale of spirits in addition to beer and wine. No physical improvements are proposed in conjunction with this request. The proposed project requires a modification to the existing Minor Conditional Use Permit.

Appeal Letter

Subsequent to the April 18, 2019 Planning Commission meeting, an appeal letter was received from the Law Offices of Raychele B. Sterling, on behalf of Kenneth Craig Johnston (Attachment 3). The following identifies the concerns listed in the appeal letter and staff's response:

1. **Concern:** Potential bias of members of the Planning Commission against the Applicant.

Response: Staff has no comment on the bias of the Planning Commission as it is not a technical issue. The April 18, 2019 Planning Commission hearing was recorded and is available for viewing on the City's website (http://riversideca.granicus.com/player/clip/3412?view_id=2).

2. **Concern:** Inability of Police personnel to answer questions directly related to calls for service, which provide basis for staff determination.

Response: The Applicant/Appellant asserts that the Police Department representative did not adequately respond to Commissioner Roberts' inquiry about how many out of the 95 extraordinary calls for service led to prosecution. Sergeant Collopy responded that he could

not immediately respond to how many calls led to prosecution or convictions but did state that the staff report indicated which calls led to arrests.

The Findings of denial made by the Planning Commission are partially based on the extraordinary calls for service, along with other egregious violations related to the operation, management, and security of the business. Information related to prosecutions and convictions was not taken into consideration to make the necessary findings of denial.

3. **Concern:** Inability of Planning staff to answer questions directly related to ABC violations which provide the basis for its determination.

Response: Commissioner Parker asked clarifying questions about the California Alcohol Beverage Control's Stayed Revocation status and related regulations. Staff responded that they are not intimately familiar with the State regulations and would need to do further research into the matter for clarification. Staff cannot access details of enforcement activities, negotiations, and settlements between the State and the licensees. The online query system provides limited information about alcohol license status and enforcement standing.

As stated in the Planning Commission staff report, the Hideaway Café served a 20-day suspension beginning on August 23, 2018 and ending on September 11, 2018 during which period no alcohol could be served. The Hideaway then commenced a 12-month period of Stayed Revocation which is scheduled to terminate on September 11, 2019.

Per the California Department of Alcohol Beverage Control website, Stayed Revocation "means that ABC revoked the license, but withheld imposing the revocation for a period of time (usually 1-3 years). During the stayed period, the licensee was required to meet certain conditions (for example, serve a license suspension and not commit further violations). If, during the 1-3 year stayed period, a licensee fails to meet the conditions of his probation, ABC may permanently revoke the license." (https://www.abc.ca.gov/datport/LQS_glossary.html)

4. **Concern:** Violation of the Ralph M. Brown Act for failure to make documents distributed to the Planning Commission available to the public upon request.

Response: Planning Commission agendas, staff reports, and attachments are publicly available online 12 days prior to the hearing date. In addition, on the day of the hearing, published materials were available in the City Council Chambers. The Applicant's representative submitted additional materials the day prior to the Planning Commission hearing. Hard copies of these materials were provided to the Planning Commissioners at the hearing and were available for review upon request in the City Council Chambers.

5. **Concern:** Failure to afford the Applicant a reasonable opportunity to be heard in violation of due process of the law in the presentation of his case.

Response: The Applicant's representative requested additional time above the 15 minutes allotted to applicants per the City Planning Commission Rules for the Transaction of Business and the Conduct of Hearings. Following a vote of 8 ayes and 1 no, the Planning Commission denied the representative's request for additional time, consistent with their authority.

The appeal letter also asserts there are inaccuracies and misrepresentations within the

staff report that were not addressed during the hearing. Staff responses to these comments are as follows:

- 5a. **Concern:** The use of the term “imposed” in reference to the Stayed Revocation status within the Recommendation.

Response: The referenced language in the staff report pointed out the Hideaway Café’s current 12-month Stayed Revocation as a result of an enforcement or corrective action.

- 5b. **Concern:** Misrepresentation of operation, management and security changes within the Site Background.

Response: Staff concurs with the Applicant/Appellant that the operational improvements were put into place prior to the October 2, 2016 Planning Commission approval of modification to the Minor Conditional Use Permit. This statement is not related to the current request and recommendation for denial of the modification to the Minor Conditional Use Permit.

- 5c. **Concern:** Claims that the statement about the Hideaway Café’s operations within the Project Analysis is false and misleading.

Response: The staff report is based on the documented history of calls for service and violations of the approved Minor Conditional Use Permit. The request to modify the Minor Conditional Use Permit is discretionary. Staff evaluated the operational history of the Hideaway Café and was unable to make the findings to support a modification to the Minor Conditional Use Permit.

- 5d. **Concern:** Disagreement with staff report discussion of Extraordinary Calls for Service and lack of discussion about other establishments.

Response: Staff and the Riverside Police Department made a determination based on an analysis of the calls to the Hideaway Café with consideration of the public health, safety, convenience, and general welfare being protected.

- 5e. **Concern:** Significant Incidents presented within the staff report are misleading and indicative of harassment and retaliation on behalf of City.

Response: Incidents highlighted were from a larger list of 95 calls for police service due to their type, severity, and significance that places a burden on Police resources. These incidents are indicative of operational and management issues and inadequacies.

- 5f. **Concern:** The language used in describing Alcohol Beverage Control actions is misleading.

Response: The referenced language in the staff report pointed out the Hideaway Café’s 20-day probation was served and the current 12-month Stayed Revocation as a result of an enforcement or corrective action.

- 5g. **Concern:** Incident reported by Streetplus is misleading.

Response: Although not identified as a significant incident, the theft of a cell phone at the premises led to an arrest.

5h. **Concern:** Violations of Conditions of Approval are disputed.

Response: The summary presented in the Planning Commission staff report and accompanying Exhibits, including the Riverside Police Department Memorandums (Exhibits 6, 7, and 8 of the Planning Commission staff report), illustrate violations of Conditions of Approval.

6. **Concern:** The requested Modification to the Minor Conditional Use Permit requires no changes in the Applicant's operations or security protocol and statutory authority does not differentiate between the sale of beer and wine as opposed to mixed drinks for enforcement purposes. Denial not supported by a government interest.

Response: A modification to the existing Minor Conditional Use Permit is required for any changes in operations, site, or security and is discretionary to allow the City to impose conditions based on the specific operations and use characteristics to protect the general health safety and welfare of the City and its residents. Per Section 19.730.010-B of the Riverside Municipal Code, the intent of a Minor Conditional Use Permit is as follows:

19.730.010-B: In granting a minor conditional use permit, certain conditions may be required to protect the public health, safety, convenience, and general welfare and to assure that the purposes of the Zoning Code shall be maintained with respect to the location, use, building, traffic and other impacts of the proposed use and its relationship with other existing and proposed uses in the surrounding area. The conditions may relate to use, height, area, yards, open spaces, setbacks, parking, loading, signs, improvements, general character, appearance, time limits, revocation dates, and other conditions necessary to comply with the findings listed in Chapter 19.730.040 (Required Findings) and all applicable site location, operation and development standards.

In considering the Hideaway Café's modification of the Minor Conditional Use Permit to allow spirits, combined with the documented violations of the existing Conditions of Approval, the City could require changes to the operational, site, and security conditions before any approval could be issued. As the Planning Commission denied the request, no changes are permitted.

Conclusion

Staff recommends upholding the Planning Commission's denial of the modification to the Minor Conditional Permit to allow a modification to the Hideaway Café's Alcohol Beverage Control License to upgrade from a Type 41 to a Type 47 at 3700 Main Street.

FISCAL IMPACT:

There is no fiscal impact resulting from this action, since all Project costs are borne by the Applicant.

Prepared by: David Welch, Community & Economic Development Director

Certified as to

availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer

Approved by: Rafael Guzman, Assistant City Manager

Approved as to form: Gary G. Geuss, City Attorney

Attachments:

1. City Planning Commission Minutes – April 18, 2019
2. City Planning Commission Report – April 18, 2019
3. Appeal Letter
4. Attachments to Appeal Letter
5. Presentation