

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Luke Watson, Deputy City Manager

DATE: August 27, 2024

SUBJECT: Consider Appeal of Planning Commission's Denial of Planning Application Number PA18-1390, Modification to Existing Conditional Use Permit to Allow Existing Restaurant (Old Town Pub & Grub) to Revise Previously Approved Operating Hours and Entertainment Hours

PREPARED BY: Eric Jones, Associate Planner

RECOMMENDATION: That the City Council conduct a public hearing and upon conclusion of the public hearing adopt a resolution entitled:

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA DENYING THE APPEAL AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION OF THE CITY OF TEMECULA TO DENY PLANNING APPLICATION NO. PA18-1390, A MODIFICATION TO AN EXISTING CONDITIONAL USE PERMIT TO ALLOW AN EXISTING RESTAURANT (OLD TOWN PUB & GRUB) TO REVISE THE PREVIOUSLY APPROVED OVERALL OPERATING HOURS AND ENTERTAINMENT HOURS. PROPOSED OPERATING HOURS ARE MONDAY THROUGH SUNDAY 9:00 A.M. TO 1:30 A.M. PROPOSED ENTERTAINMENT HOURS ARE MONDAY / TUESDAY / THURSDAY / SUNDAY 7:30 P.M. - 12:30 A.M., WEDNESDAY 8:00 P.M. - 12:30 A.M., AND FRIDAY / SATURDAY 6:00 P.M. - 1:30 A.M. THE PROJECT IS LOCATED AT 28677 OLD TOWN FRONT STREET (APN 922-045-033)

BACKGROUND: On October 5, 2018, Edward Ryder submitted Planning Application No. PA18-1390, a Modification Application to revise the overall operating hours and entertainment hours offered for the Old Town Pub and Grub. The project was unanimously denied by the Planning Commission after hearing public testimony on February 21, 2024. At the Planning Commission hearing, the applicant, Erin Ryder on behalf of Old Town Pub and Grub, spoke in support of the project.

APPEAL: On March 4, 2024, Erin Ryder (appellant), on behalf of Old Town Pub and Grub, filed an appeal of the Planning Commission’s decision to deny Planning Application No. PA18-1390.

Attached to this report is the Agenda Report for the Planning Commission hearing regarding this project. The Planning Commission report provides a detailed explanation of the Project and the analysis of the issues which focused on public safety. A copy of the staff report is included as Attachment 2 and is incorporated herein by this reference. This report to the City Council focuses on the contentions raised in Ms. Ryder’s appeal and Staff’s response to them.

Closing Hours of Other Businesses

Appellant’s Contention. Appellant states that there are multiple businesses open until 2:00 a.m. in Old Town and staff had no concerns. Per the appellant, multiple “bad actors” opened after the COVID-19 pandemic and have attempted to “skirt the rules”.

Staff Response

City staff actively worked with the Planning Commission and City Council because of concerns related to alcohol issues specifically in Old Town. Joint meetings between the Planning Commission and City Council were held on September 28, 2023 and February 6, 2024. These efforts culminated in the City Council voting on June 9, 2024 to prohibit future alcohol sales past midnight (11:59 p.m.). There are currently businesses in Old Town with approval to operate until 2:00 a.m. However, the City’s Code Enforcement Division is aware that there were businesses serving distilled spirits and offering entertainment outside of approved hours. A majority of these issues have been resolved. Code continues to pursue establishments that are noncompliant in an attempt to gain compliance. Citations are issued when needed. The City Council also revoked the Conditional Use Permit (CUP) of an establishment due to non-compliance after going through the administrative hearing process.

Not Told to Stop Operating Outside of Approved Hours

Appellant’s Contention. Appellant states that while receiving citations for operating past 12:00 a.m., no one actually came to tell them they needed to stop.

Staff Response.

Between June 2018 and June 2023, the establishment operated outside of the currently approved operational and entertainment hours listed in the approved Conditions of Approval at least 388 times. This required the City’s Code Enforcement Division to issue an excessive number of citations. The first of these citations was issued on August 11, 2018 (attached). This citation explicitly states in the “Correction Required” section to “Discontinue operating after midnight in violation of conditions of approval to avoid additional cite/fine/legal action”. Furthermore, the citation states in the “Correct Violations By” section that the violation must be corrected immediately. Similar language to this was included in subsequent citations.

In addition, City representatives met with the appellant to discuss the project and its related issues a total of five times. Below is a summary of those meetings:

1. **Fall 2018:** Appellant met with Code Enforcement staff. Code Enforcement staff reiterated that the establishment needed to comply with the approved Conditions of Approval.
2. **12/18/2018:** Appellant met with Planning staff to determine possible next steps. The appellant was advised to speak with Riverside County Sheriff's Office (RSO).
3. **3/20/2019:** Appellant met with Planning staff and RSO. The appellant explained the security steps that had been taken. RSO explained they wanted to review the request again in six months to allow the appellant time to show compliance, RSO responded to a call for service at the establishment (PC647F Drunk in Public) three days later at 1:18 a.m.
4. **12/14/2021:** Appellant met with staff. Staff again discussed that the project cannot be supported due to excessive calls for service.
5. **7/7/2023:** Appellant met with City Attorney. City Attorney reiterated that the establishment must comply with the approved Conditional Use Permit.

A Cease and Desist letter from the City Attorney dated June 5, 2023 (attached as part of the February 21, 2024 Planning Commission hearing packet) was also provided to the appellant. The Cease and Desist letter stated that the City would move to revoke the CUP if the business did not begin to comply with the conditions of their CUP immediately. The business began to comply with their hours of operation on June 9, 2023 upon receiving the Cease and Desist letter. The establishment had been operating out of compliance with their CUP since the first Code Enforcement citation was issued on August 11, 2018.

No Help from City Officials

Appellant's Contention: There has not been any help or assistance with the modification process from City officials.

Staff Response

On November 8, 2018, a comment letter was sent to the applicant indicating, among other things, that staff made attempts to contact the appellant but had received no response. The letter requested the appellant to contact staff to schedule a meeting. The appellant did respond to this letter and a meeting was held with Planning staff on December 18, 2018.

As previously mentioned, City officials met with representatives from the establishment five times between 2018 and 2023. As such, representatives from the establishment had the opportunity to speak with members of the Community Development Department, City Attorney's Office, and RSO to discuss their application. The main objective of these meetings was to assist the appellant in coming into compliance with their existing Conditional Use Permit. Despite meeting with the appellant on multiple occasions and issuing an excessive number of citations, it was not until the City Attorney issued a Cease and Desist letter that the establishment came into compliance.

Staff also informed the appellant about the entertainment license and recommended applying for it. If approved, this license could have allowed the establishment the opportunity to have entertainment until 11:59 p.m. The appellant declined to apply and chose to rely on their existing CUP.

Comparison to Other Businesses

Appellant's Contention: We do not know what metric is used to determine excessive calls for service. What is our comparison to other locations in Old Town?

Staff Response:

The metric used to determine excessive calls for service is the actual number of calls for service. The following two tables highlight RSO calls for service for Old Town Pub and Grub in relation to calls for the rest of the Downtown Core District. The first table provides the RSO calls for service in the Old Town Downtown Core between January 1, 2018 – April 5, 2024, for a variety of more serious call types at all hours. Beneath the table is information related to the number and percentage of calls specific to Old Town Pub and Grub. The data shows that Old Town Pub and Grub was responsible for 16% of calls occurring at all hours. Responsibility percentages based on call type are also provided. Resisting arrest (66%), assault with a deadly weapon (51%), robbery (20%), and battery (21%) calls have the highest percentages.

Overall Calls for Service 2018 - 2024 (All Hours)

Year	Battery (242)	DUI (23152)	Drunk in Public (647F)	Assault with a Deadly Weapon (245)	Domestic Violence (415DV)	Loud Noise (415N)	Robbery (211)	Resisting Arrest (148)	Overall Calls for Service
2018	55	38	71	3	21	14	2	1	205
2019	55	35	61	7	17	19	1	0	195
2020	64	28	51	3	16	15	2	1	180
2021	51	36	77	8	21	23	2	1	219
2022	52	26	64	5	15	9	3	1	175
2023	35	25	48	3	13	6	0	2	132
2024	6	6	10	0	5	3	0	0	30
TOTALS	318	194	382	29	108	89	10	6	1136
Total Attributed to Old Town Pub and Grub	67	8	80	15	6	2	2	4	184
Percentage Attributed to Old Town Pub and Grub	21%	4%	20%	51%	5%	2%	20%	66%	16%

The second table provides RSO calls for service in the Old Town Downtown Core for the same time period for calls between the hours of 12:00 a.m. and 2:00 a.m. Beneath the table is again information related to the number and percentage of calls for service specific to Old Town Pub and Grub. The data shows that Old Town Pub and Grub was responsible for 29% of calls for service between the hours of 12:00 a.m. and 2:00 a.m. Responsibility percentages based on call type is also provided. Robbery (100%), assault with a deadly weapon (75%), battery (32%), and drunk in public (47%) have the highest percentages.

Overall Calls for Service 2018 - 2024 (Between 12 a.m. and 2 a.m.)

Year	Battery (242)	DUI (23152)	Drunk in Public (647F)	Assault with a Deadly Weapon (245)	Domestic Violence (415DV)	Loud Noise (415N)	Robbery (211)	Resisting Arrest (148)	Overall Calls for Service
2018	19	17	10	2	2	4	1	0	55
2019	21	8	11	1	6	6	0	0	53
2020	16	8	15	1	2	4	0	0	46
2021	11	7	20	3	3	9	0	0	54
2022	14	5	22	0	1	2	0	0	44
2023	8	3	9	1	3	1	0	1	26
2024	1	1	1	0	1	0	0	0	4
TOTALS	90	49	88	8	18	26	1	1	281
Total Attributed to Old Town Pub and Grub	29	2	42	6	3	0	1	0	83
Percentage Attributed to Old Town Pub and Grub	32%	4%	47%	75%	16%	0%	100%	0%	29%

Not all Calls for Service are Related to the Establishment

Appellant's Contention: The calls for service described at the Planning Commission hearing did not happen at the establishment. They were only attributed to the establishment due to proximity.

Staff Response:

Staff coordinated with RSO and Fire to ensure the calls for service data discussed at the Planning Commission hearing and presented in the staff report were truly related to the establishment. Instances where it was not clear that a call for service was directly related to the establishment were not included as part of the Planning Commission hearing packet, presentation, or discussion.

Planning Commission Hearing Discussion

The Planning Commission reviewed the appellant's Conditional Use Permit Modification application for an extension of operating and entertainment hours on February 21, 2004. Staff's recommendation to the Commission was denial of the application. There were no public speakers other than the appellant. The Planning Commission discussed concerns related to calls for service and their impact to public safety and ultimately decided to deny the application.

Old Town Local Advisory Committee

On April 25, 2024, the Old Town Local Advisory Committee (OTLAC) met for their monthly meeting. Topics related to alcohol were on the agenda for this meeting. More specifically, the committee discussed if the alcohol service cut-off time for Old Town should be 11:59 p.m. or 2:00 a.m. The majority of the committee voted for alcohol service to cease at 11:59 p.m. at the conclusion of their discussion.

Planning Commission

At a publicly noticed hearing on June 5, 2024, the City of Temecula's Planning Commission reviewed proposed revisions to Title 17 of the City's Municipal Code. One of these revisions included the creation of Chapter 17.09 (Alcohol). This chapter will contain standards, conditions, and operational requirements for establishments that sell or serve alcohol. The chapter will also include a regulation requiring that alcohol sales moving forward shall cease at midnight (11:59 p.m.) with last call thirty minutes prior to closing. The Commission unanimously recommended City Council approval of the Title 17 revisions.

City Council

As previously mentioned, at a publicly noticed hearing on July 9, 2024, the City of Temecula's City Council reviewed all proposed revisions to Title 17 of the City's Municipal Code including Chapter 17.09 (Alcohol). The City Council voted to approve the regulation requiring that alcohol sales moving forward shall cease at midnight (11:59 p.m.).

Appellant Desired Action to be Taken

The appellant included with their appeal application two choices they would like the City Council to consider. First, the appellant would like to offer entertainment every night of the week as originally proposed. The originally proposed hours and entertainment types are as follows:

- Entertainment Hours and Type:
 - Monday: 7:30 p.m. – 12:30 a.m. - Karaoke
 - Tuesday: 7:30 p.m. – 12:30 a.m. - Karaoke
 - Wednesday: 8:00 p.m. – 12:30 a.m. - Open Mic
 - Thursday: 7:30 p.m. – 12:30 a.m. - Karaoke
 - Friday: 6:00 p.m. – 1:30 a.m. - DJ
 - Saturday: 6:00 p.m. – 1:30 a.m. - DJ
 - Sunday: 7:30 p.m. – 12:30 a.m. - Karaoke

Second, the appellant states in the appeal application that if the first request is denied by the City Council, the appellant would like to offer entertainment every night until 12:00 a.m. as a second option for the Council. However, it must be noted that the City has an administrative process for reviewing entertainment via the Entertainment License.

The City recently adopted Chapter 9.10 of the Temecula Municipal Code. This chapter requires establishments seeking to provide entertainment must first obtain an Entertainment License. The review and approval process is completed administratively. As previously mentioned, staff reached out to the appellant and recommended pursuing an Entertainment License. The appellant declined and requested that their application be scheduled for a Planning Commission hearing as originally proposed.

FISCAL IMPACT: None

ATTACHMENTS:

1. Resolution
2. February 21, 2024, Planning Commission Staff Report
3. Code Enforcement Citation Dated August 11, 2018
4. Appeal Application and Corresponding Attachments
5. Planning Commission Resolution No. 2024-02
6. Notice of Public Hearing