



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: AUGUST 12, 2024

ITEM NUMBER: PH-1

**SUBJECT: MINOR CONDITIONAL USE PERMIT (ZA-22-35) TO CONSIDER MODIFICATION OF CONDITIONS FOR “ARENA OC” AND TO MAKE A FINDING OF PUBLIC CONVENIENCE OR NECESSITY FOR A NEW TYPE 90 “MUSIC VENUE” ABC LICENSE AT 2968 RANDOLPH AVENUE**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/  
PLANNING DIVISION**

**PRESENTATION BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER**

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## **RECOMMENDATION:**

Staff recommends that the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities;
2. Approve Minor Conditional Use Permit (ZA-22-35) based on findings of fact and subject to conditions of approval; and
3. Make a determination in support of a Finding of Public Convenience or Necessity for a New Type 90 “Music Venue” ABC License.

## **APPLICANT OR AUTHORIZED AGENT:**

The authorized agent is F. Michael Ayaz, representing the property owner Jerry Palanjian.

## PLANNING APPLICATION SUMMARY

Location:	2968 Randolph Avenue	Application Number(s):	ZA-22-35
Request:	Minor Conditional Use Permit to consider modifying entitlements for Arena OC (formerly "Commissary Lounge") including allowing dancing for an existing business that is permitted for live entertainment and allows for the sale and on-site consumption of alcoholic beverages after 11:00 p.m., to consider modifying the business's hours/days of operation, and to consider a Finding of Public Convenience or Necessity pursuant to City Council Policy 500-8 for the conversion of an existing Type 48 "On-Sale General – Public Premises" Alcoholic Beverage Control ("ABC") license to a Type 90 "Music Venue" ABC license.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	MG (General Industrial)*	North:	C1 (Local Business)
General Plan:	Light Industrial	South:	MG (General Industrial)
Lot Dimensions:	140 FT x 224.34 FT	East:	C1 (Local Business)
Lot Area:	0.72 acres	West:	MG (General Industrial)
Existing Development:	Existing one-story 16,000-square-foot industrial building with 30 on-site surface parking spaces and 24 off-site spaces pursuant to a recorded parking agreement.		
*Property is located within the SoBeca Urban Plan area, the provisions of the urban plan do not have any applicability as there is no mixed-use development onsite.			

## DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed MG Dev. Standard	Proposed/Provided
Building Height	2 Stories / 30 ft	1 Story / 15 ft. 2 in.(no change)
Setbacks:		
Front	10 ft.	19 ft. 6 in.
Side (left/ right)	0 ft. / 0 ft.	0 ft. / 40 ft.
Rear	0 ft.	46 ft.
Parking	0 spaces*	29 on-site parking spaces 24 off-site parking spaces
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission**	
* Assembly Bill 2097 (AB2097) limits cities from imposing minimum parking requirements to development projects located within ½ mile of a major transit stop. This project site meets location criteria to benefit from AB 2097. ** The Zoning Administrator has forwarded this application to the Planning Commission pursuant to CMMC Section 13-11(b).		

### **EXECUTIVE SUMMARY:**

The applicant (Arena OC) is requesting Planning Commission approval to modify entitlements for an existing bar/lounge approved with entertainment located on Randolph Avenue, which was formerly known as "The Commissary". Specifically, this application seeks to modify conditions to allow dancing, expand the operating hours to open an hour earlier, and to operate on Sundays and major holidays. In addition, a "Finding of Public Convenience or Necessity" is requested for the issuance of a Department of Alcoholic Beverage Control (ABC) Type 90 License.

The project has been noticed as required by the Costa Mesa Municipal Code (CMMC) and staff has received response letters from nearby property owners and residents voicing concerns regarding parking, noise, and land use compatibility. In addition, the Costa Mesa's Police Department have also indicated project concerns (further described below in this report). In light of these concerns, staff has included specific operational conditions for the Planning Commission consideration.

Based on review of the application, as conditioned and as further detailed in the below report, staff finds that the application is in compliance with applicable requirements of the City's General Plan, Zoning Ordinance, and provisions of State law. Staff is recommending that the Planning Commission find the project exempt from the California Environmental Quality Act (CEQA) and approve the application based on findings of fact and subject to conditions of approval contained in the attached resolution.

**SETTING:**

Arena OC is located at 2968 Randolph Avenue (see the below Exhibit 1) and is currently operating under previously approved City land use entitlements. It is situated on the east side of the street between Baker Street and Bristol Street in the same tenant space formerly occupied by "The Commissary". The applicant is the same business operator as "The Commissary".

**EXHIBIT 1: LOCATION MAP**



The project site is designated Light Industrial by the City's Land Use Element of the General Plan and is zoned MG (General Industrial). The Light Industrial designation is intended for less intense small manufacturing and service industries, as well as larger industrial operations that can limit disruptions to surrounding uses. The MG zone allows for a variety of land uses including a wide range of light and general industrial activities and other conditionally permitted uses such as establishments selling alcohol with live entertainment.

The property is located within the SoBeca Urban Plan area, which is a local planning area characterized by a variety of unique uses that include retail, food establishments, offices, automobile services, and industrial uses. Allowed uses include a mix of housing and retail/service commercial businesses, light industrial uses, creative studios, retail campuses, and entertainment and restaurant uses that attract local residents and visitors. The SoBeca Urban Plan is an overlay zone that seeks to improve the area by encouraging the development of live/work units or residential development. The overlay zone supersedes the underlying zoning provisions; however, only if activated through the approval of a residential master plan application. At this time, because there is no residential/live/work uses proposed, the provisions of the SoBeca Urban Plan do not apply to the project site.

The project site is located adjacent to other industrially zoned properties to the south and west and commercially zoned properties to the north (along Baker Street) and east (along Bristol Street). Pentridge Cove, a residential condominium community, is located approximately 350 feet away on the north side of Baker Street. Additionally, the subject property is located within a major commercial area of the City, with destinations such as "The LAB" and "The Camp" located in close proximity. Other similar businesses near the project site include several breweries and nightclub/bars such as "Gunwhale Ales", "Green Cheek Beer", "Salty Bear Brewing", "The Huddle" and "Mesa". The remainder of the nearby area consists of other light industrial and commercial land uses including offices, retail stores, and automotive repair shops.

## **BACKGROUND:**

### **Site and Improvements**

The subject property is comprised of Lots 9 and 10 of Tract 3631, which were legally created on March 17, 1960. Each lot is rectangular in shape and measures 70 feet wide by 224.30 feet deep, and have an area of 15,701 square feet.

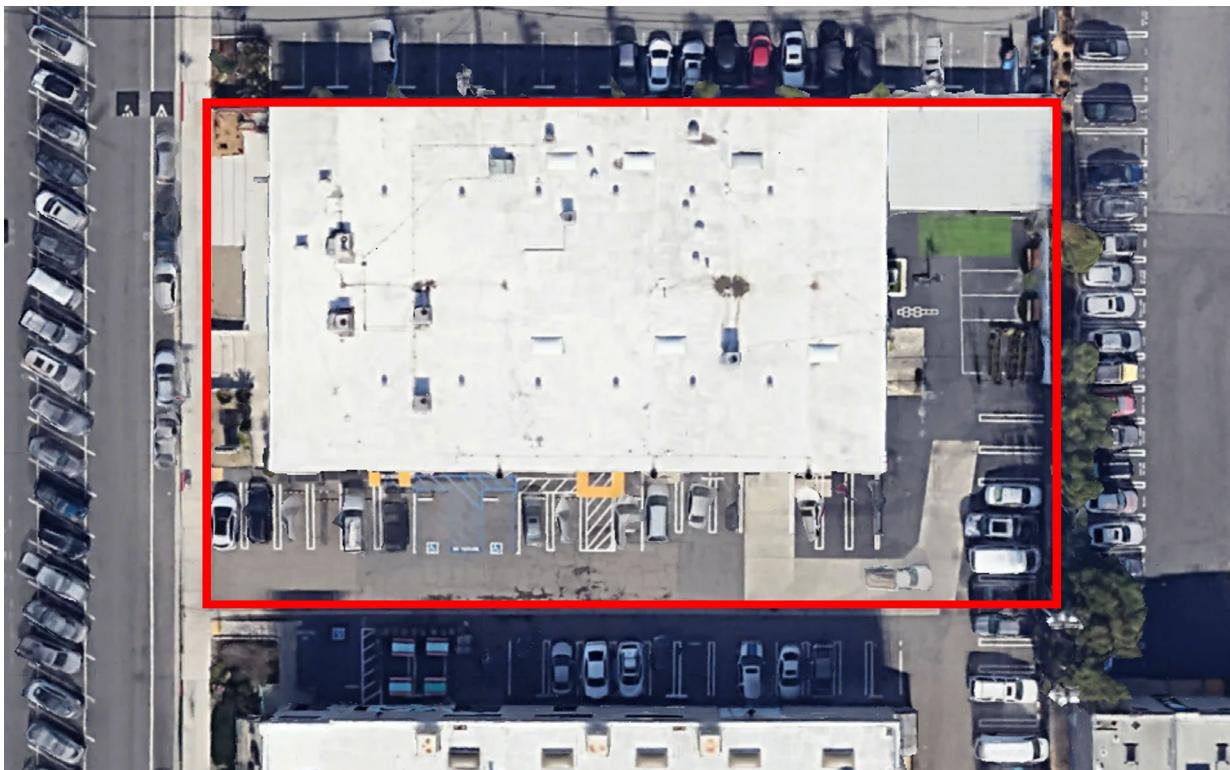
On April 8, 1960, the Building Department issued Permit No. 11277 to construct a 16,000 square-foot, one-story (15-foot tall) light industrial building. At 100 feet wide, this building extended across the existing lot line and necessitated that Lots 9 and 10 be combined for the purpose of complying with applicable codes. Other on-site improvements included a 19' – 6" landscaped front setback, and an on-site surface parking lot located adjacent to the building and along the rear property line. Access to the site is provided from a driveway shared with Lot 8 (2960 Randolph Avenue). City records show that an easement was

recorded for access purposes as well as to share parking between the two sites. With the addition of the parking spaces at 2960 Randolph Avenue (Lot 8), the total available shared parking for the project is approved with 48 spaces.

The project site was initially occupied as an industrial warehouse used for manufacturing purposes. In 1984, the building was internally divided to accommodate multiple tenants. As of today, the building is divided into four tenant spaces that are occupied by the following uses: Process Creative Production Company (office use), Pacific Point Church (religious use), Mellowist (retail use), and Arena OC (formerly Commissary (bar/lounge use)).

It should be noted that an unpermitted approximate 1,250 square-foot structure has been constructed at the rear of the property. This structure appears to be used for storage purposes and serves the Pacific Point Church. While the structure conforms to setback requirements, it exceeds the properties floor area ratio (FAR).

## **EXHIBIT 2: SITE AERIAL**



As a result of unpermitted structure, the subject property on-site parking has been reduced by approximately five spaces. Additionally, Lot 8 is improved with a one-story, 7,500-square-foot light industrial building that is occupied by an auto wholesaler/machine shop and a microbrewery known as Gunwhale Ales. Gunwhale Ales has installed four picnic benches in two of the parking spaces beside their tenant space. Staff does not have record of issuing Gunwhale Ales a temporary use permit for the tables in the parking lot; however, Gunwhale Ales has expressed interest in permitting this seating area.

Separately, staff will be working with the brewery to determine if this outdoor area can be permitted subject to applicable City codes, or require the benches to be removed. However, as a result of the unpermitted picnic benches encumbering two parking spaces, and the unpermitted storage building encumbering approximately five parking spaces, the actual available parking for the use is less than approved.

### **EXHIBIT 3: ON-SITE GROUND LEVEL VIEW**



### **Prior Entitlements**

On January 14, 2013, the Planning Commission approved Conditional Use Permit PA-12-26 by a vote of 5-0. This approval allowed a bar/lounge (i.e., “Commissary Lounge<sup>1</sup>”) to operate Thursday through Saturday from 9:00 p.m. to 2:00 a.m., and included a finding of public convenience or necessity in support of a Department of Alcoholic Beverage Control (ABC) Type 48 (On-Sale General - Public Premise) license.

The Type 48 license is most often issued to bars and allows for the sale of beer, wine and distilled spirits for consumption on the premises. Minors are not allowed to enter the premises and food service is not required. In addition to being able to sell a full complement of beer, wine, and distilled spirits, the City’s approval also allowed for live entertainment in the form of a disc jockey only. The Planning Commission’s approval

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<sup>1</sup> The Commissary Lounge was initially approved through PA-07-36 in 2008 and operated at The LAB at 2960 Bristol Street, Suite A101 as a wine bar/art gallery that conducted shows and music-related events with live entertainment in the form of a disc jockey (live music and dancing were prohibited).

included a number of operational conditions of approval. A link to the January 14, 2019, Planning Commission Minutes is provided below:

<https://www.costamesaca.gov/home/showpublisheddocument/9719/63649056386667000>  
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The 5,403 square-foot “Commissary” tenant space included a 4,256 square-foot lounge area, a 314-square-foot bar area, an 85-square-foot entry, a 389 square-foot restroom area, and a 359 square-foot storage area.

On February 21, 2019, the Zoning Administrator approved Minor Conditional Use Permit ZA-18-51. This approval modified the 2013 conditional use permit by allowing additional forms of live entertainment such as live bands, comedians, poetry readings, and karaoke. The Zoning Administrator approval also allowed electronic game machines in an area not exceeding 570 square feet of the existing floor area. A link to the Minor Conditional Use Permit (ZA-18-51) is provided below:

<https://www.costamesaca.gov/home/showpublisheddocument/36569/6368636044249300>  
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### **Public Safety and Calls for Service**

Since July 2021, the Costa Mesa Police Department has received 39 calls for service associated with the address of 2968 Randolph Avenue (subject property). A copy of the police log is provided as an attachment to the staff report.

The Police Department has also reviewed the application, visited the site and has provided a Memorandum regarding the proposed modifications to the approved operations (the Police Memorandum is provided as an attachment to this report). The Police Memorandum indicates that the current use averages approximately 12 police calls for service a year, which is not considered excessive based on other similar bars and night clubs operating in the City. However, the Police indicate that previous 18 and over clubs that have operated in the City have created “an unsafe environment and undue burden upon the community resulting in increased calls for service”. The Police Memorandum specifically indicates that previous types of calls for service include fights and physical altercations, intoxicated persons causing disturbances, drinking in public, noise disturbances and littering in surrounding businesses and residential neighborhoods. Lastly, the Police Memorandum indicates that “the changes being requested would allow for a licensing change and the addition of 18–20-year-olds into an environment that sells alcohol and is primarily an adult entertainment environment, which creates an inherent concern of underage drinking and ultimately has the potential to become a detriment to the community”.

## **Type 90 On-Sale General Music Venue Alcohol License**

Senate Bill (SB) 793 became effective on January 1, 2023, and resulted in the State of California's newest Alcoholic Beverage Control license: Type 90 On-Sale General Music Venue. The California Department of Alcoholic Beverage Control (ABC) website describes this license type as authorizing the sale of beer, wine, and distilled spirits for consumption on the premises in a music entertainment facility as defined in Business and Professions Code Section 23550. Sale, service, and consumption of alcoholic beverages are limited to the time period from two hours before a live performance until one hour after the live performance. Minors are allowed on the premises under a Type 90 License. This license type is subject to Responsible Beverage Service (RBS) requirements and requires alcohol servers and managers of alcohol servers to be RBS certified. One of the provisions of the Type 90 License that differentiates it from the existing issued Type 48 license is that this ABC license does not limit occupants to over 21 years of age.

SB 793 defines a music entertainment facility as a publicly or privately owned live performance venue, concert hall, auditorium, or an enclosed arena where music or entertainment events are presented for a price of admission. The facility does not have to be used exclusively for music or entertainment events. SB 793 further stipulates that a music entertainment facility must satisfy all of the following criteria:

- The facility has defined performances and audience spaces;
- The facility includes mixing equipment, a public address system, and a lighting rig;
- The facility employs one or more individuals to serve a number of specified roles, including a sound manager, promoter, stage manager and a box office manager;
- There is a paid ticket or cover charge to attend performances and artists are paid or do not play for free or solely for tips, except for fundraisers or similar charitable events; and,
- Performances at the facility are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.

According to the author of the Senate Bill, "SB 793 will provide much needed relief for California's independent venues to ensure they are able to recover economically after the COVID-19 pandemic by creating a new license category for music entertainment venues. The pandemic has had a devastating impact on California's live entertainment venues, which were among the first businesses required to close in March 2020, and will likely be among the last to reopen. California State law does not offer a type of liquor license tailored to the unique needs of the State's live entertainment venues. As a result, venue operators face challenges in accessing liquor licenses and complying with their operating requirements".

### **REQUEST:**

Consistent with the requirements of the Type 90 ABC license, Arena OC seeks to establish itself as a focused live entertainment venue. In conjunction with the ABC License change, the applicant is also requesting approval to modify prior entitlements, including:



- 1) To allow dancing;
- 2) To open at 8:00 p.m. (currently permitted to open at 9:00 p.m.), and
- 3) To open on Sundays and major holidays (currently permitted to operate Thursday through Saturday)

In addition, pursuant to State Department of ABC regulations, the applicant is asking the City to make a finding of public convenience or necessity for their requested Type 90 license. The State has informed the City that a determination of public convenience or necessity (i.e., PCN) is required because the census tract that Arena OC is located in is entitled to seven licenses and 57 exist (including their current Type 48 license). Therefore, there is an overconcentration of alcohol licenses in this Census Tract. However, and it is important to note that the requested change in ABC license would not result in a net increase in ABC licenses in the Census Tract. In addition, the City's 2013 and 2019 approvals already establish the underlying land use approvals necessary for a live entertainment venue, and the City previously made a finding of public convenience or necessity in support of the existing Type 48 ABC license for this location. Though the applicant is seeking to convert their Type 48 license into a Type 90 license with the Department of ABC, there is no difference in the types of alcohol that can be served and consumed on the site.

#### **STANDARD OF REVIEW:**

All planning applications should demonstrate compatibility to applicable goals, objectives, and policies of the City's adopted General Plan. When evaluating the applicant's request to modify prior conditional use permit and minor conditional use permit approvals, staff also considers whether or not the modification aligns with the findings required to be made pursuant to Costa Mesa Municipal Code Section 13-29(g)(2)(a-c). Those findings generally require the use to:

- Be compatible with and not be materially detrimental to nearby properties;
- Not be materially detrimental to the health, safety and general welfare or injurious to nearby properties; and
- Not allow a use, density or intensity not in accord with the general plan designation and applicable specific plan.

When considering the applicant's requested finding of public convenience or necessity, the standard is whether or not the City believes that public convenience or necessity is served by the issuance of the additional license. This requirement comes from State law as this process does not exist within the Costa Mesa Municipal Code; however, City Council Policy 500-8 authorizes the Planning Commission to be the decision-making body for this type of request. Section 23958.4 of the California Business & Professions Code uses a ratio of alcohol licenses (either on-sale or off-sale) to population within a census tract compared to the ratio of those alcohol licenses to population in the county as-a-whole. When the census tract ratio exceeds the countywide ratio, an "overconcentration" or "undue concentration" is deemed to exist. When an over or undue concentration exists,

ABC will not approve a new alcohol license unless the City makes a finding that public convenience or necessity would be served by the issuance of the license.

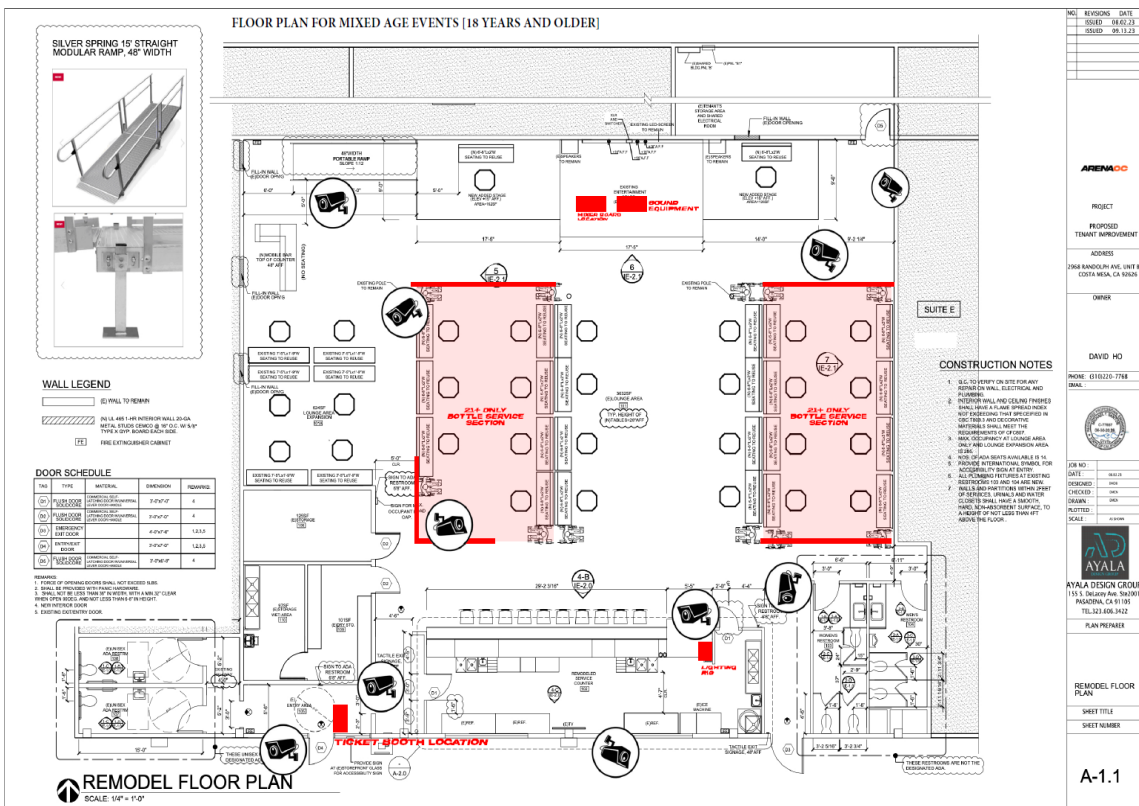
The City's review is limited to only the applicant's current specific requests as the City's approvals of the original conditional use permit in 2013 and its modification in 2019 already establish the land use right to sell beer, wine, and distilled spirits Thursday through Saturday from 9:00 p.m. to 2:00 a.m. with live entertainment.

**DESCRIPTION:**

**Floor Plan**

Arena OC occupies a 5,403 square foot tenant space in a 16,000 square foot multi-tenant building (see the below Exhibit 4). Entry to the tenant space is obtained from the on-site parking lot. Upon entering the facility, patrons must pass through the box office. As proposed, all events are ticketed and advertised online through the business's website and social media platforms as required under the Type 90 ABC license.

**EXHIBIT 4: PROPOSED FLOOR PLAN**



The proposed floor plan includes a large open area and a bar located along the back wall. An elevated stage is located opposite the bar at the front of the venue. Several rows of seating are arranged perpendicularly to both the stage and a smaller bar located across

the main entertainment area. The area intended for dancing is located between the third and fourth rows of seats in an open area. A lighting rig is built into the ceiling and lighting can be directed to highlight both the dance floor and the performance stage.

The seating areas located left and right of the dance floor will be roped-off and can be purchased as reserved seating. Security guards will be stationed at each roped-off entry to the reserved seating areas. All other patrons will purchase general admission tickets to the venue and will be allowed to observe performances from other than the reserved seating areas. The venue has two sets of restrooms.

## **Security Plan**

Arena OC has prepared a Security Policy & Procedure Manual (Manual) and is included as an attachment to this report. The Manual is intended to provide employee procedures to reduce and eliminate potential problems that may arise during the course of business, and prevent neighborhood disturbances. The security procedures include both the use of electronic video surveillance and security guards. Specifically, the applicant proposes ten security cameras to be installed (two exterior cameras and eight interior cameras), and seven security guards (two guards will be stationed at the facility's exterior doors and the other five will monitor the interior spaces). The manual also includes provisions for employee training – including for alcohol beverage servers and managers.

The Manual includes direction for employee screening of all customers to ensure that that occupants are 18 years of age or older, and that they are issued a brightly-colored, large, tamper-proof wristband that properly identifies the guest by their age cohort (i.e., under 21 years and over 21 years of age). The Manual also identifies what types of identification are acceptable to verify a person's age. The Manual requires that ID be checked not only upon entry but also before serving alcoholic beverages.

Other topics covered by the Manual include guidelines for handling intoxicated persons, dealing with unacceptable guest behavior, and a conflict resolution process up to and including guest removal. Because Arena OC proposes to allow customers aged 18 and above, the Manual stipulates that only persons 21 and over are allowed within the bottle service area and that an entire group must be present before being escorted by an employee to their table in this age-restricted area. In addition, the Manual requires that prior to the service of alcohol in this area, Arena OC employees are directed to re-check the age identification for all guests being served. The bottle service area will be monitored by security personnel to ensure that alcoholic drinks are not provided to underage persons.

## **Parking**

Arena OC currently operates within a 5,403-square-foot portion of a larger 16,000-square-foot building that is occupied by other businesses including offices, a retail shop, and a church. Each of these businesses is not in operation when Arena OC proposes to operate, which is Thursday through Sunday from 8:00 p.m. to 2 a.m. Per a recorded reciprocal

parking and shared access agreement, the subject property also shares parking spaces with a brewery and automotive shop at 2960 Randolph Avenue. The neighboring brewery use (Gunwhale Ales) was approved through a CUP (PA-15-50) and was conditioned to operate Thursday through Saturday from 12 p.m. to 8:30 p.m. to accommodate the parking demands for the existing bar/lounge.

Current entitlements require 48 parking spaces for Arena OC (formerly The Commissary). This parking ratio is compliant with the Costa Mesa Municipal Code's standard for food and beverage establishments. As mentioned earlier, there is a recorded reciprocal parking agreement with the adjacent property that provides a total of 48 parking spaces; however, due to unpermitted site plan changes made to both the subject and shared parking site, less parking spaces are currently available than previously approved.

In September 2022, Assembly Bill 2097 (AB 2097) was signed into law by Governor Newsom and became effective on January 1, 2023. The primary objective of this legislation is to limit local governments from imposing minimum parking regulations on commercial and residential projects that are located within 0.5 miles of a major transit stop. AB 2097 defines "major transit stop" as an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

Staff has reviewed the nearby public transit facilities and determined that the subject property is located within 0.5 miles of a major transit stop (the intersection of Bristol Street and Baker Street). Therefore, and notwithstanding the above parking assessment, pursuant to AB 2097 the City of Costa Mesa cannot impose a minimum parking requirement on this land use entitlement.

## **ANALYSIS:**

### **Modifications to Existing Conditions of Approval**

Staff supports the applicant's request to permit dancing in that the provision of dancing is a complimentary use to the permitted music venue, which would also be substantially compatible with many of the other customer serving uses (including bars, restaurants and breweries) that operate in the SoBECA area.

In addition, staff supports the applicant's request to open at 8:00 p.m. instead of 9:00 p.m. Prior conditions limiting business hours were based on the availability of shared parking; however, with the State's enactment of AB 2097, the City is barred from imposing a minimum parking requirement on uses in this area and therefore parking availability is no longer a project limitation. Also, similar live music venues such as "The Observatory", "Constellation Room", "La Santa", "The Yost" in Santa Ana and "The Coach House in San Juan Capistrano" open as early as 7:00 p.m. and therefore the proposed hours of operation are consistent with similar venues in the local area and region.

Staff also supports the applicant’s request to open on Sundays and major holidays. The surrounding area consists of a varied mix of land uses that generally do not operate on Sundays, and therefore potential impacts of traffic and parking are lessened. In addition, Arena OC does not operate Sunday through Wednesday and therefore permitting an additional day of operation will allow the business to be more market competitive and therefore also consistent with General Plan Land Use Element Policy 6.7 which “encourages new and retain existing business that provide local shopping and services”. Approving an additional day of operation is also consistent with General Plan Land Use Element Objective LU-6C which states to “retain and expand the City’s diverse employment base, including office, retail/service, restaurants, high-tech, action sports, boutique and prototype manufacturing, and industrial businesses”, in that the additional day of operation would add additional employment opportunities in the City. Lastly, other nearby operating similar uses such as “The Huddle” and “Mesa” operate on Sundays.

**Type 90 ABC License**

Pursuant to Section 23552 of the California Business and Professions Code, an on-sale general public premises licensee may exchange that license for a music venue license, subject to the qualifications of the premises as specified by the requirements listed in Table 1 below. The applicant has submitted a floor plan and operational plan that demonstrates how their venue complies with the requirements of the Type 90 ABC license, which is more specifically detailed below in Table 1.

**Table 1: Type 90 ABC License Compliance**

Requirement	Proposed
Defined performance and audience spaces	An approximately 450 SF existing stage area will be used as performance space. The audience space is comprised of approximately 4,256 square feet of floor area and includes seating and standing, room only areas.
Mixing equipment, a public address system, and a lighting rig.	lighting and sound equipment. The venue would include large digital screens large located behind the stage and dynamic lighting installed on the ceiling along with sound equipment for disc jockeys.
One or more individuals to serve not less than two of the following roles: a) A sound engineer b) A booker c) A promoter d) A stage manager e) Security personnel	The Arena OC will include employees that serve as stage manager, sound and lighting engineer, booker/promoter, box office manager and security personnel.

f) A box office manager	
There is a paid ticket or cover charge to attend performances at the facility and artists are paid and do not play for free or solely for tips, except for fundraisers or similar charitable events.	Tickets will be available for purchase online or at the door.
Performances at the facility are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.	Performances at the facility will be advertised through their website and on social media.

**Public Convenience or Necessity (PCN) Finding**

Based on the Countywide ratio, the State requirements limit the applicable census tract 639.08 to seven on-sale licenses. Pursuant to State records, 57 on-sale licenses already exist within this census tract. If the applicant’s request is approved, the number of on-sale licenses within the census tract would remain at 57 licenses. A PCN finding can be made for the requested upgrade in ABC license as there will be no increase in the number of ABC licenses in the census tract. This request would not be considered a premise-to-premise transfer as the business is already located at the subject property and has operated there under an on-sale license type. The request would convert the Type 48 license to a Type 90, which both allow for similar onsite consumption and similar alcohol types. If approved, the Type 48 license would become inactive and could not be used at this location anymore. The applicant has the ability to sell the Type 48 license to another location as a premise-to-premise transfer.

As confirmed in an email exchange between City staff and ABC staff, if the Type 90 license is approved, the existing Type 48 license will be surrendered by the applicant upon issuance of a Type 90 license. Type 48 licenses are in high demand and, as such, are a commodity that can be sold. Since ABC only allows one alcohol license to be in use by a business at a time, the Type 48 license will remain unused in the Census Tract until it is sold. If/when sold, there is no ABC requirement that the Type 48 license remain in this census tract or even the City of Costa Mesa.

**GENERAL PLAN CONFORMANCE:**

The following analysis further evaluates the proposed project’s consistency with specific policies and objectives of the 2015-2035 General Plan.

1. **Policy LU-1.1:** Provide for the development of a mix and balance of housing opportunities, commercial goods and services, and employment opportunities in consideration of the needs of the business and residential segments of the community.

**Consistency:** The project will allow for continuation of an existing land use that provides commercial services in the form of enhanced live entertainment. The proposal to amend an existing ABC license and allow

for the establishment of a new, and the first Type 90 ABC license, within the City would establish the subject property as a music venue for live entertainment and nightlife destination within the City. The use would not remove any commercial or residential land, thus maintaining the balance of housing opportunities, commercial goods and services, and employment opportunities.

2. **Policy LU-6.7:** Encourage new and retain existing businesses that provide local shopping and services.

**Consistency:** Arena OC (formerly known as “Commissary”) has existed at the subject property since the approval of conditional use permit PA-12-26 in 2013. The proposed amendment intends to allow the business greater flexibility in the type of events at the subject property including various types of musical acts and events that are intended for patrons 18 years and older.

3. **Objective LU-6C:** Retain and expand the City’s diverse employment base, including office, retail/service, restaurants, high-tech, action sports, boutique and prototype manufacturing, and industrial businesses.

**Consistency:** Permitting an additional day of operation (Sunday) will result in additional employment opportunities in the City.

## **FINDINGS:**

Pursuant to Title 13, Section 13-29(g), Findings, of the CMMC, in order to approve the project, the Planning Commission must find that the evidence presented in the administrative record substantially meets the following applicable required findings:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.*

The proposed amendment to the permitted use is substantially compatible with developments in the SoBECA area, including numerous restaurants, bars and breweries, and would not be materially detrimental to other properties within the area in that the business is existing and the proposed changes, including operating an hour earlier, opening on Sunday and permitting dancing are not anticipated to result in detrimental effects to properties within the area. Additionally, the project is conditioned to account for concerns regarding neighborhood compatibility, including a condition requiring a Planning Commission reevaluation of the approval six months and one-year from opening.

- *Granting the minor conditional use permit will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.*

The proposal will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood as the project is conditioned to address potential safety concerns. In addition, the applicant will operate consistent with a Security Policy and Procedure Manual that outlines training and protocols that staff will be instructed to follow, and includes information such as providing specific wristbands to distinguish patrons under 21 years of age from those that are older, providing numerous security guards in strategic areas and installing video surveillance.

- *Granting the minor conditional use permit will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.*

The proposal will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property. The subject property includes a land use designation of Light Industrial which allows for certain commercial recreational uses, provided that the commercial use is determined to be complementary to the industrial area. The business is already in existence and this proposal would generally maintain existing operations that include the service of on-site alcohol and to be closed at 2 a.m. The proposed modifications that include opening an hour earlier, operating on Sundays and permitting dancing is not inconsistent with the General Plan. The SoBECA Urban Plan is not applicable in that the project does not include a request for residential or live/work.

#### **ENVIRONMENTAL DETERMINATION:**

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities. This application is for the proposed amendment of prior entitlements associated with an existing beverage serving establishment to allow for a change in ABC license type and modification of previous operational conditions of approval. There will be no increase in floor area for the site, no significant exterior changes and the business operations will remain relatively similar to what currently exists onsite in relation to potential environmental impacts. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies in that the Project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location, and would not impact any historic resources.

#### **ALTERNATIVES:**

The Planning Commission can consider the following alternatives:



1. Approve the application with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
2. Continue the application to a date certain. The Planning Commission may need more information from staff or the applicant to inform their decision-making. In this case, it would be appropriate to continue the application to a date certain so the requested information can be gathered for presentation to the Planning Commission.
3. Deny the application. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project were denied, the applicant could not submit substantially the same type of application for six months.

#### **LEGAL REVIEW:**

The draft Resolution has been approved as to form by the City Attorney's Office.

#### **PUBLIC NOTICE:**

Pursuant to CMMC Section 13-29(d) three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site on July 25, 2024. The required notice radius is measured from the external boundaries of the property.
2. **On-site posting.** A public notice was posted on each street frontage of the project site on July 26, 2024.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper on July 27, 2024.

As of the date of distribution of this report, staff has received five written public comments. These comments are attached for the Planning Commission's reference and generally express concerns about parking availability, patrons illegally parking on neighboring properties, traffic congestion, noise levels, disturbing the peace in nearby residential areas, loitering, trash, and vandalism. Any public comments received after the agenda is posted (prior to the August 12, 2024, Planning Commission meeting) will be provided under separate cover.

**CONCLUSION:**

Planning staff has determined that the project, as conditioned, will be compatible with surrounding properties and will not impose any substantial health and safety risks and will not be materially detrimental to the general area. However, the Costa Mesa Police Department has expressed certain concerns about this type of land use and, specifically notes that there are a number of similar uses in this immediate area and the City that, collectively, have generated calls for service. The Planning Commission should consider the Police Department concerns and determine if the proposed operational conditions would eliminate the applicable Police concerns.