

## City of Garden Grove

### INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery	
Dept:	City Manager	Dept:	Community Development	
Subject:	AN APPEAL OF CONDITIONAL USE PERMIT NO. CUP-252-08		Date:	March 24, 2009

#### OBJECTIVE

To transmit the Planning Commission staff report proposal regarding a request for Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The restaurant is located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street.

#### BACKGROUND

##### **Proposed Project CUP-252-08:**

The site is improved with an integrated multi-tenant retail shopping center called The Grove Pavilions. The specific tenant space under application is occupied by Four Seasons Hot Pot Chinese Restaurant, and is a 3,360 square foot space located at the southerly end of the shopping center. The restaurant has been in operation since May 18, 2008. The Grove Pavilions shopping center consists of a CVS pharmacy, a vacant Vons supermarket tenant space, Citi bank, a dental office and lab, other professional offices, restaurants, and several retail stores.

The interior of the existing restaurant consists of a dining area that contains seating for 108 persons, and an outdoor patio dining area that seats twelve (12) persons. The total seating arrangement accommodates 120 patrons in the existing restaurant. The interior also includes a men's restroom, a women's restroom, a kitchen area, a storage room, a walk-in cooler, and an employee's locker room.

The restaurant is located in a high-crime district and in an area with an undue-concentration of Alcoholic Beverage Control Licenses, and in reviewing the applicant's request, it was recommended that the applicant's request for the Type "41" ABC license be denied. It was felt that the addition of another on-sale licensed restaurant in this area has the potential to adversely affect the health, peace and comfort of people residing in the surrounding neighborhoods and of the people who work in the surrounding commercial businesses, by potentially increasing the crime rate of the area.

A finding for public convenience or necessity was required to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license located within a district with a high crime rate and/or in an area with undue concentration of ABC licenses.

Originally, a finding for public convenience or necessity was not made, given the crime statistics provided by the Police Department and the over-concentration of ABC licenses in the District.

### **History of the Project:**

November 20, 2008: At the Planning Commission meeting, persons from the audience spoke in favor of the project. The issues raised by the Planning Commission were related to the high crime rate of the subject area as well as the undue concentration of ABC licenses in the subject district. The Planning Commission considered the matter and voted five-to-zero to bring back a draft resolution of denial for CUP-252-08, and a draft resolution of approval that would address CEQA and include Conditions of Approval, for consideration at the following Planning Commission meeting. No one from the public spoke in opposition to the project.

January 15, 2009: At the Planning Commission meeting, again persons from the audience spoke in favor of the project, and no one from the public spoke in opposition to the project. The Planning Commission expressed concerns that there is a high concentration of existing on-sale ABC licenses in the subject district, and that an additional on-sale ABC license may further negatively impact the high crime rate, thereby posing a major drain on the Police Department. The Planning Commission voted four-to-two to deny Conditional Use Permit No. CUP-252-08 and adopted Resolution No. 5659 for denial.

### **DISCUSSION**

#### **Appeal of the Proposed Project:**

Mark One, 888 Brothers Inc., has appealed the Conditional Use Permit application for the City Council to consider the project. In Mark One's appeal, he expressed that this case should be decided by the City Council. Mark One is requesting that the City Council review the appeal and take the appropriate action.

As presented to the Planning Commission, the City Council has been afforded the same opportunity as the Planning Commission to consider the attached Resolutions either upholding the Planning Commission's decision to deny Conditional Use Permit No. CUP-252-08, and thereby deny the Appeal of the Conditional Use Permit, or approving the Appeal thereby approving CUP-252-08 with Findings of Public Convenience and Necessity, along with Conditions of Approval.

FISCAL IMPACT

Project approval may result in an unspecified negative fiscal impact on Police resources, although there appears to be no fiscal impact to the City regarding denial of this Conditional Use Permit.

COMMUNITY VISION IMPLEMENTATION

The Community Vision Statement seeks to foster small business development, retention and expansion. However, this proposed Conditional Use Permit will not help to facilitate this goal by potentially increasing the crime rate in the subject area as well as further negatively impacting the undue concentration in the district.

RECOMMENDATION

Staff recommends that the City Council:

- Consider all material and discussion presented before the City Council and take the appropriate action on the matter. Should the City Council grant the appeal and approve the request to allow the establishment to have an Alcoholic Beverage Control (ABC) license along with Conditions of Approval, a resolution is attached addressing the findings for public convenience or necessity along with findings for approval.



SUSAN EMERY  
Community Development Director



By: Chris Chung  
Assistant Planner

**Approved for Agenda Listing**



**Matthew Ferial**  
City Manager

- Attachment 1: Planning Commission Staff Report dated January 15, 2009  
Attachment 2: Planning Commission Resolution No. 5659  
Attachment 3: Planning Commission Minute Excerpt dated November 20, 2008  
Attachment 4: Planning Commission Minute Excerpt dated January 15, 2009  
Attachment 5: Draft City Council Resolution denying the Appeal of Conditional Use Permit No. CUP-252-08  
Attachment 6: Draft City Council Resolution approving the Appeal of Conditional Use Permit No. CUP-252-08, with Conditions of Approval

# COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

<b>AGENDA ITEM NO.:</b> C.3.	<b>SITE LOCATION:</b> West side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street
<b>HEARING DATE:</b> January 15, 2009	<b>GENERAL PLAN:</b> Commercial
<b>CASE NO.:</b> Conditional Use Permit No. CUP-252-08	<b>ZONE:</b> BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial)
<b>APPLICANT:</b> 888 Brothers, Inc.	<b>CEQA DETERMINATION:</b> Exempt
<b>PROPERTY OWNER:</b> C.C. Technology, L.P., A CA Corp.	<b>APN:</b> 133-111-06

## **REQUEST:**

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

## **BACKGROUND:**

The site is improved with an integrated multi-tenant retail shopping center called The Grove Pavilions. The specific tenant space under application is occupied by Four Seasons Hot Pot Chinese Restaurant, and is a 3,360 square foot space located at the southerly end of the shopping center. The restaurant has been in operation since May 18, 2008. The subject tenant space was previously occupied by Mong Co Restaurant. The property is located in the BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial) zone and has a land use designation of Commercial. The Grove Pavilions shopping center consists of a CVS pharmacy, a vacant Vons supermarket tenant space, a Citi bank, a dental office and lab, other professional offices, restaurants, and several retail stores. The shopping center is adjacent to BCSP-BCC zoned properties to the north, west, south and across Brookhurst Street to the east. There are residential properties in close proximity to the southwest of the subject site.

The applicant is requesting Conditional Use Permit approval to operate the existing restaurant with a new State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License in order to sell beer and wine. Municipal Code, Title 9, Section 9.08.080.B.1, requires a Conditional Use Permit when there is an application for a new original ABC License.

## **DISCUSSION:**

Four Seasons Hot Pot currently operates as a Chinese restaurant. The interior of the existing restaurant consists of a dining area that contains ten (10) tables along

with forty (40) seats, seventeen booth style tables, which seat a total of sixty-eight (68) persons, and an outdoor patio dining area with six (6) booth style tables that seat twelve (12) persons. The total seating arrangement accommodates 120 patrons in the existing restaurant.

The interior also includes a men's restroom, a women's restroom, a kitchen area, a storage room, a walk-in cooler, and an employee's locker room. The applicant does not propose to modify the existing floor plan.

The restaurant currently operates from 9:00 a.m. to 11:00 p.m., seven days a week. The applicant does not propose to change the existing hours of operation. The restaurant is required to serve meals during all hours of operation.

The restaurant is located in a high-crime district, and in an area with an undue-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 93.
- The crime count for the District is 145.
- Average crime count per district in the City is 106.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 36% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 882.03.
- ABC Census Reporting District No. 882.03 allows for five (5) on-sale licenses within the District. Currently, there are ten (10) on-sale licenses in the District. Therefore, the approval of this Conditional Use Permit would increase the number of ABC Licenses in this District by one (1), thereby increasing the total number of on-sale licenses in the District to eleven (11).

As noted above, the subject site is located in an area with an undue concentration of on-sale ABC licenses. Five (5) licenses are allowed in ABC Census Reporting District No. 882.03, and there are currently ten (10) on-sale ABC licenses in this district. Furthermore, the crime count is 36% above the citywide average thus making this a high-crime area.

Additionally, according to the Police Department, the crime district just north of this district is 54% above the citywide average thus making it a high crime census tract. Furthermore, the census tract No. 882.01, located north of census tract 882.03, is a high-crime district with an undue concentration of ABC on-sale licenses; Four (4) licenses are allowed, and there are currently six (6) on-sale licenses in the census tract. There are five (5) businesses located directly across the street of the subject site with on-sale ABC licenses as part of Census Tract No. 882.03 and one (1) within the Grove Pavilions shopping center. The Police Department currently has Conditional Use Permit violations at four (4) of these businesses.

In reviewing the applicant's request, the Community Development Department and the Police Department are recommending that the applicant's request for the Type

"41" ABC license be denied. The addition of another on-sale licensed restaurant in this area has the potential to adversely affect the health, peace and comfort of people residing in the surrounding neighborhoods and of the people who work in the surrounding commercial businesses, by potentially increasing the crime rate of the area.

Finally, a finding for public convenience or necessity would have to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license that is located within a district with a high crime rate and/or in an area with undue concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the ABC Board from issuing new alcoholic licenses in areas of over-concentration. Business and Professions Code Section 23958 states:

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

Business and Professions Code Section 23958.4 provides the following exception:

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

Staff is unable to support a finding for public convenience or necessity given the crime statistics provided by the Police Department and the over-concentration of ABC licenses in the District.

The potential community benefit of the subject proposal to add beer and wine to the subject restaurant is not sufficiently substantial to outweigh the potential negative impacts of the use. The addition of beer and wine to the subject restaurant use will not be compatible with the intended character of the area because the subject property is in proximity to residential neighborhoods to the southwest of the site and the establishment is in a high crime area. Approval of the application may detract from the peaceful environment of these properties, especially the potential negative impacts that may occur, from this establishment serving alcoholic beverages.

**RECOMMENDATION:**

Staff recommends that the Planning Commission take the following action:

1. Deny Conditional Use Permit No. CUP-252-08.

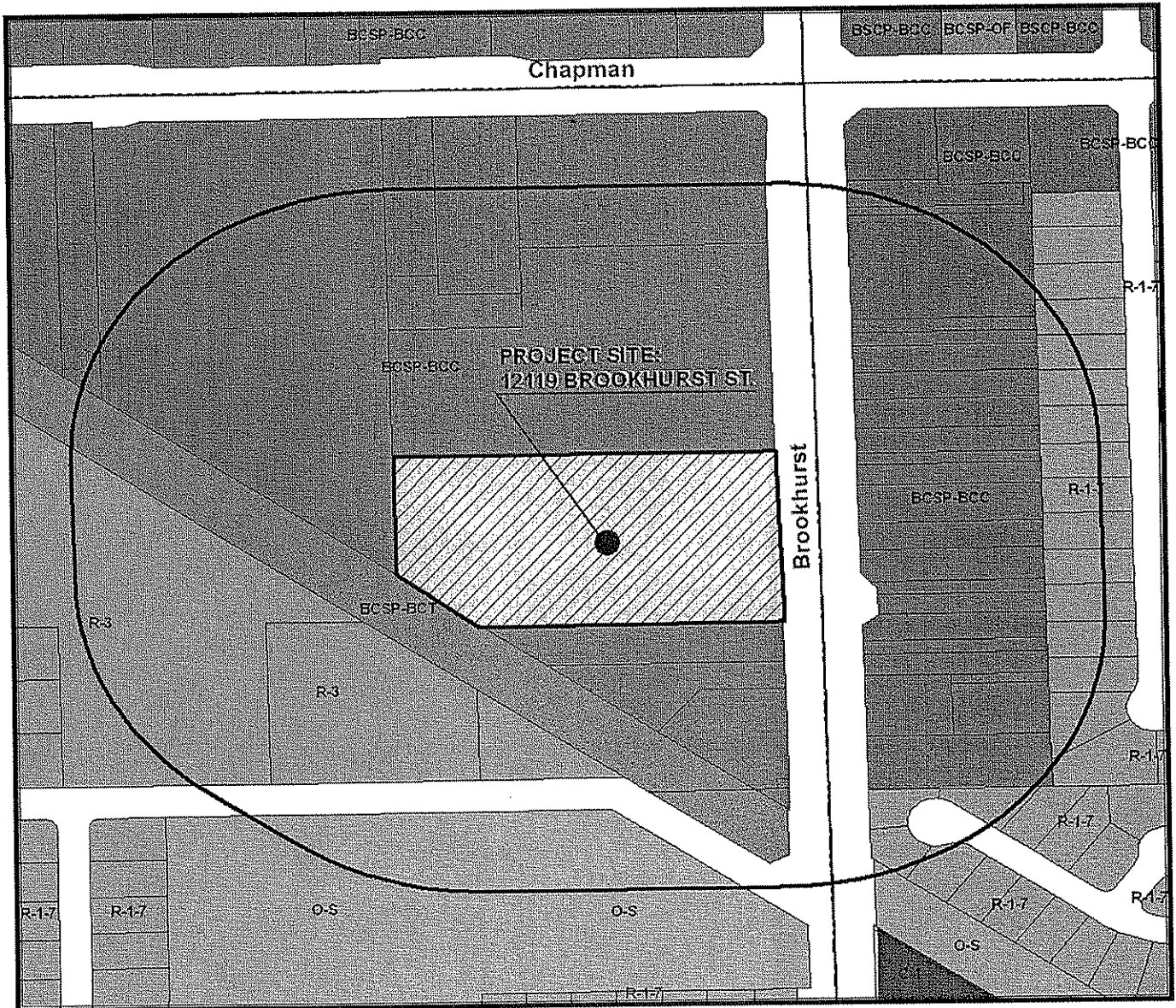
Karl Hill  
Planning Services Manager

By: Chris Chung  
Assistant Planner





GARDEN GROVE

# CONDITIONAL USE PERMIT NO. CUP-252-08



## LEGEND

-  PROJECT SITE - 12119 BROOKHURST ST.  
(FOUR SEASONS HOT POT CHINESE RESTAURANT)
-  500 FEET RADIUS

## NOTES

1. GENERAL PLAN: COMMERCIAL
2. ZONE: BCSP-BCC (BROOKHURST CHAPMAN SPECIFIC  
PLAN-BROOKHURST CHAPMAN COMMERCIAL)



0 125 250 500 750 Feet

CITY OF GARDEN GROVE  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
GIS SYSTEM  
NOVEMBER 2008





WALL LEGEND:  
ALL ARE EXISTING WALL, NO QUARE

SCALE: 1/4"=0'



FOUR SEASONS  
HOT POT  
CHINESE CUISINE  
12119 BROOKHURST ST  
GARDEN GROVE 92840  
FLOOR PLAN  
3000 sq. ft.

BY: JOHN PETSAS  
1501 E. CHAPMAN AVE  
ORANGE, CA 92866  
714-473-0981 - cell  
714 363-8444 FAX  
AP# 133-111-06





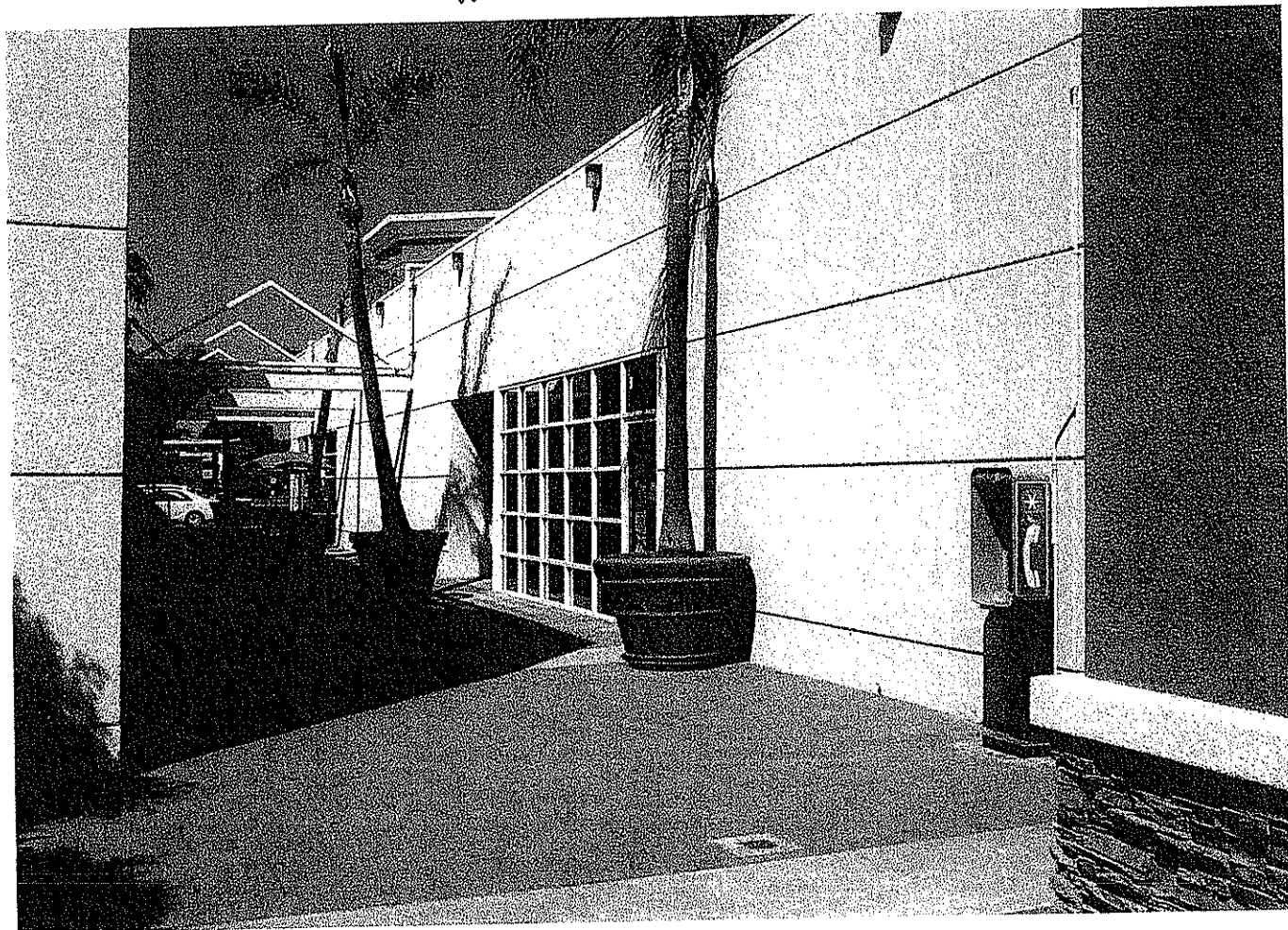
NORTH



EAST



WEST



SOUTH



RESOLUTION NO. 5659

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE  
DENYING CONDITIONAL USE PERMIT NO. CUP-252-08.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby deny Conditional Use Permit No. CUP-252-08 for a property located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street, Assessor's Parcel No. 133-111-06.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-252-08, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by 888 Brothers, Inc.
2. The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.
3. The City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act.
4. The property has a General Plan Land Use designation of Commercial, and is zoned BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial).
5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.
6. Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was originally held on November 20, 2008, and was continued to January 15, 2009, and all interested persons were given an opportunity to be heard.
8. The Planning Commission gave due and careful consideration to the matter during its meetings of November 20, 2008 and January 15, 2009; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.24.030 (Conditional Use Permits), are as follows:

FACTS:

The site is located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street, in the BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial) zone and is developed with a multi-tenant shopping center that includes the subject 3,360 square foot Chinese restaurant, Four Seasons Hot Pot.

The property has a General Plan Land Use designation of Commercial.

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

The restaurant is located in a high-crime district, and in an area with an undue-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 93.
- The crime count for the District is 145.
- Average crime count per district in the City is 106.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 36% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 882.03.
- ABC Census Reporting District No. 882.03 allows for five (5) on-sale licenses within the District. Currently, there are ten (10) on-sale licenses in the District. Therefore, the approval of this Conditional Use Permit would increase the number of ABC Licenses in this District by one (1), thereby increasing the total number of on-sale licenses in the District to eleven (11).

FINDINGS AND REASONS:

1. The subject site has a General Plan Land Use Designation of Commercial and is zoned BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial). Eating establishments with alcohol sales are conditionally permitted in this zone. The proposal for an ABC license in an area of high crime & over concentration of licenses, is not in keeping in the spirit and intent of the General Plan and Municipal Code. This will create further issues and problems within the area potentially related to crime and other undesired effects on the surrounding area. Therefore, the finding for consistency and conformity with the General Plan and Municipal Code, Title 9, cannot be made.

2. The existing restaurant is located in a high-crime area. The crime count for this district is 36% above the City-wide average. The addition of another on-sale ABC licensed restaurant at this location has the potential to adversely affect the health, peace, comfort, or welfare of persons residing or working in the immediate area by potentially increasing calls for service by the Police Department for crimes. In reviewing the applicant's request, the Community Development Department and the Police Department are recommending that the applicant's request for the Type "41" ABC license be denied. The addition of another on-sale licensed restaurant in this area has the potential to adversely affect the health, peace and comfort of people residing in the surrounding neighborhoods and of the people who work in the surrounding commercial businesses, by potentially increasing the crime rate of the area.
3. The approval to allow the existing restaurant, Four Seasons Hot Pot, to operate with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, may unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located within the vicinity of the site. Therefore, the approval of the subject application would be considered contrary to the goals and policies of the General Plan.
4. The addition of another on-sale ABC license in the subject area may potentially jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. The potential community benefit of the subject proposal to add beer and wine to the subject restaurant is not sufficiently substantial to outweigh the potential negative impacts of the use. The intensification of the subject restaurant use, with an ABC license to sell alcoholic beverages, will not be compatible with the intended character of the area since the subject property is in proximity to residential neighborhoods to the southwest of the subject site. Approval of the application may detract from the peaceful environment of these properties, especially considering the potential negative impacts, which may include loitering and other types of crimes, resulting in higher calls for police services in the immediate vicinity.

#### INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The Conditional Use Permit does not possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.24.030 (Conditional Use Permits). Therefore, the request is hereby denied.



ADOPTED this 15th day of January, 2009

/s/ RON PIERCE  
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on January 15, 2009, by the following votes:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN

/s/ JUDITH MOORE  
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is February 5, 2009.

## MINUTE EXCERPT

## GARDEN GROVE PLANNING COMMISSION

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PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-252-08  
APPLICANT: 888 BROTHERS, INC.  
LOCATION: WEST SIDE OF BROOKHURST STREET, SOUTH OF CHAPMAN AVENUE AT 12119  
BROOKHURST STREET  
DATE: NOVEMBER 20, 2008

REQUEST: To operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The site is in the BCSP-BCC (Brookhurst Chapman Specific Plan-Brookhurst Chapman Commercial) zone.

Staff report was read and recommended denial.

Commissioner Beard asked staff if the four violations from other businesses in the vicinity would jeopardize this license request.

Staff replied yes; that there are several businesses in the area with Type "41" licenses (beer and wine), and three out of the ten have Type "47" licenses (distilled spirits, and beer and wine); and that the area has ten 'on-sale' licenses in the census tract and the State says only five are allowed.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Mark One, a corporate officer in the restaurant, approached the Commission and stated that the license is essential to his type of upscale, casual dining restaurant; that beer and wine would compliment the meals; and that since the restaurant opened in April 2008, about half of the customers have been lost due to the lack of beer and wine.

Mr. John Petsas, the applicant's agent, approached the Commission and stated that contrary to the staff report, the restaurant is open at 11:00 a.m. not 9:00 a.m., and that District 93 has 145 crimes. He also asked staff to clarify if the boundaries are the same for the census tract and the crime districts.

Staff responded that the census tract has two different crime districts; that the crime count for the district in question is 93; that not all crimes occur in that census tract; that all of the crimes occur in that crime district where the restaurant business is located.

Mr. Petsas commented that, with regard to license transfers, Alcoholic Beverage Control investigators for other cities typically say that there is an over-saturation of licenses.

Chair Pierce added that there are still districts in Garden Grove that have licenses available; and that the districts are divided as to the number of licenses allowed.

Mr. Petsas asked staff when the regulations were implemented to divide the licenses in the districts.

Staff responded that the regulations are set by the State.

Mr. Petsas stated that the crime district north of the project was a 54 percent higher crime district and that there are four 'on-sale' licenses instead of six. He also asked if the four violations in that census tract were alcohol related.

Chair Pierce stated that a certain number of alcohol licenses are allowed in areas based on crime counts; that the crime in the area has doubled; and that there is one other license in the center.

Mr. Petsas also commented that a license is essential to the newly remodeled center as there are vacancies and the lack of a license is prohibiting other restaurants from coming into the center.

Mr. Ross Melodia, the landlord's representative, approached the Commission and stated that his firm has experience in dealing with troubled properties; that the four corners of the intersection have issues, not just the Von's Pavilion center; that the property was purchased in 2005 and continues to be remodeled; that the center is blighted and the vacancy rates need to be changed as they are currently at 45 percent and not improving due to the economic conditions; that the major issue in the center with regard to crime, is that the kids hang out in the back areas and create property damage; that service contractors have been brought in such as a security company providing guards seven days a week and armed security patrols going through at least two times per night; that it is not in his or the City's interest to let the center deteriorate to its previous condition; that Mr. One and his partners know how to operate restaurants as they have four others and are successful; that it is not unreasonable to want to serve beer and wine with a meal at a restaurant; that the interest is to see parts of the City redeveloped; that his company is opening an office in the center; that the license would help the tenant succeed; that the parking lot lighting is new and the parking lot will be resurfaced and re-striped; that the buildings are updated; that bringing in more tenants is key to this project and would bring more business to the intersection and benefit more than the landlord; that letting vacancies rise encourages gang activity; and that he supports the project.

Chair Pierce commented that the staff report did not indicate where the other ABC licenses were located; and that most were probably across the street from the project.

Mr. Melodia added that the center across the street has multiple owners who now have a forced association to maintain the common areas; and that his center does not have that situation.

Chair Pierce asked staff if the Chinese restaurant near the Citibank has a license. Staff replied that the restaurant has a Type "47" license; that CVS has a license to sell alcohol; and that these licenses are in the license count.

There being no further comments, the public portion of the hearing was closed.

Commissioner Brietigam commented that Garden Grove already has districts that are overloaded with ABC licenses; that to vote approval, the Commissioners must provide 'findings' for public necessity; that there is an ABC license next door to the

project; that a beer and wine license does not necessarily improve the issue; that he wishes the restaurant the best, however, he could not support the license.

Commissioner Beard commented that each license is reviewed on a case by case basis and that is probably why there are ten licenses in the area; that the testimony convinced him that there is a necessity to keep the center successful; that the restaurant is a fine dining establishment; that he is strongly sympathetic; that a license in that setting seems appropriate; and that he understands the Police concerns.

Commissioner Nguyen agreed and stated that he did not see young people lingering on the site during a visit.

Chair Pierce commented that perhaps the case could be continued so that the applicant could work with staff for better recommendations to approve the project.

Commissioner Kirkham asked staff if the applicant originally asked for an ABC license and how long was the lease on the property. Staff replied no, and that the lease was for ten years.

Chair Pierce reopened the public portion of the hearing.

Mr. Melodia approached the Commission and stated that the applicant took over the lease as an assignment that includes the rights and privileges of the previous operator; that their intention was to get a beer and wine license; and that many transactions happen this way.

Mr. One approached the Commission and stated that they had always thought they would pursue a license; that not having a license was the cause of the previous owner's failure; and that he did not come to the City to ask for a license until now.

There being no further comments, the public portion of the hearing was closed.

Staff commented that if the Planning Commission's intention was to approve the project, the case would need to be continued and staff would be directed to bring back a resolution of approval with the findings for public necessity in place. Also, the California Environmental Quality Act (CEQA) would need to be addressed for compliance.

Commissioner Kirkham asked staff if the CLEW Study included this project area. Staff replied that they were not sure if the area was designated as a problem area.

Commissioner Brietigam reiterated that with the exceptions there would be too many licenses in one area and that he could not support the project.

Commissioner Beard added that a continuance would be good as two Commissioners were absent. Chair Pierce agreed.

Staff added that if the case was continued to a date certain, the case would not have to be readvertised; however, staff would need direction as to whether the request would be for an approval or denial.

Chair Pierce reopened the public portion of the hearing.

Mr. Melodia approached the Commission and stated that he would be happy to meet with staff to answer questions with regard to the case; that he could discuss concerns and options; and that there are remedies that could be put into the lease.

There being no further comments, the public portion of the hearing was closed.

Commissioner Brietigam moved to continue the case to the January 15, 2009 Planning Commission meeting, with the direction for staff to bring back the resolution for denial for Conditional Use Permit No. CUP-252-08, and a resolution of approval that would address CEQA and include conditions of approval. The motion was seconded by Commissioner Kirkham and received the following vote:

AYES:	COMMISSIONERS:	BEARD, BRIETIGAM, KIRKHAM, NGUYEN, PIERCE
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	BANKSON, PAK

## MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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## CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-252-08  
APPLICANT: 888 BROTHERS, INC.  
LOCATION: WEST SIDE OF BROOKHURST STREET, SOUTH OF CHAPMAN AVENUE AT 12119  
BROOKHURST STREET  
DATE: JANUARY 15, 2009

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The site is in the BCSP-BCC (Brookhurst Chapman Specific Plan-Brookhurst Chapman Commercial) zone.

Staff report was read and recommended that the Planning Commissioners consider all matters pertaining to CUP-252-08, regarding both a Resolution of Approval and a Resolution of Denial, and take the appropriate action.

Commissioner Brietigam asked Staff for the number of ABC licenses in the area. Staff replied that there are currently ten licenses and only five are allowed; and that the CUP runs with the land.

Commissioner Bankson asked Staff if there are any under saturated areas in Garden Grove with regard to ABC licenses. Staff replied yes, for both on-sale and off-sale licenses; and that people that want ABC licenses are encouraged to call the Police Department for an opinion.

Vice Chair Pak asked Staff to clarify if any of the under saturated areas are in prominent business districts.

Staff replied that the west end of Garden Grove, specifically the Valley View/Lampson and Valley View/Chapman area are possibly not over the limit, however, the central part of the City is over concentrated; that we want to be business friendly, however, this location has a serious problem with alcohol licenses; that the Police Department tries to work with the business owners but there is a responsibility to the outside community.

Commissioner Brietigam asked Staff if there is a correlation with crime and alcohol in the central part of the City.

Staff replied that alcohol does create more crime; that suffering businesses turn to alcohol to keep afloat; that it takes 1 to 2 officers thirty minutes to an hour to address issues; that for this project the hours of operation close at 11:00 p.m.; and that if the owner follows the CUP, there should be no violations.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Mark One, the applicant's representative, approached the Commission and handed out a pamphlet describing 'hot pot' cooking and stated that the setting is

casual but elegant feast for family and friends to enjoy; that the hours of operation are 11:30 a.m. to 9:30 p.m.; that and ABC license for beer and wine is important to the cuisine; that other restaurants failed because of lack of beer and wine; that there is a concern with the CUP that the next owner may not be responsible; that Mr. Lee has operated a restaurant in Bakersfield for over 20 years; that Mr. Chau, the restaurant manager, was the manager of the Empress Pavilion in Chinatown; that money has been lost on this project for the last ten months; and that he has five other Chinese restaurants located in Westminster, Huntington Beach, Riverside, Redlands, and Anaheim.

Commissioner Beard asked Mr. One if he knew the area was already over concentrated with licenses.

Mr. One replied no; that the previous owner did not apply for a license; and that he does not have alcohol in his other five restaurants as they are fast food.

Chair Pierce asked Mr. One if he had read and agreed with the Conditions of Approval. Mr. One replied yes.

Mr. John Petsas approached the Commission and stated that he is now aware of the over concentration in the area; that there is only one ABC violation in the census tract since 1994; that the restaurant is family style, being well lit in a nice center, and the public can feel safe and patronize other shops; that there are vacancies, however, the restaurant may attract new businesses; and that the 'hot pot' cooking style has been around a long time.

Mr. Ross Melodia, of the management company, approached the Commission and stated that he has offices in the center; that a lot of money was spent refurbishing the center to be a family center; that he supports the tenant and agrees with the Conditions of Approval; that vacancies cause the problems; that the owners have brought in their own security company; that graffiti is nearly non-existent; that it is in the best interest of the City for the project to succeed; and that the Conditions of Approval could be added as an addendum to the lease for eviction purposes.

Staff commented that this project was originally presented on November 20<sup>th</sup>, 2008 and Staff was instructed to bring back a Resolution of Approval; that if approved, Staff recommends the restaurant close at 9:30 p.m.; and that the incorporation of the Resolution of Denial needs to be stricken from the staff report.

Commissioner Kirkham asked Staff if alcohol would be allowed on the patio?

Staff replied that a Condition could be added that alcohol must be served indoors only and not on the patio.

Commissioner Kirkham asked if there is an entrance to the patio from the parking lot.

Mr. One replied yes, however, that could be changed.

There being no further comments, the public portion of the hearing was closed.

Vice Chair Pak asked Staff to clarify the difference between approving Chili's ABC license and recommending denial of this project's license.

Staff replied that there are currently three licenses to the north, when there were only two in the south end of the parking lot; that Chili's is in a separate census tract; that the licenses were over the limit, however, Planning Commission approved the Chili's based on public necessity.

Commissioner Brietigam commented that he commended the property management company as the location is very much improved; that Asian restaurants can be successful without alcohol; that removing licenses is time consuming and an expensive proposition; that this management company could move on; and that the Planning Commission needs to be responsible to the community.

Vice Chair Pak also commended the property manager and stated that vacancies are worse than the problems because of derelicts and graffiti; that investing in Garden Grove would improve the area; that there is enough security; and that ABC licenses should be granted on a case by case basis.

Chair Pierce asked Staff if all ABC license go through the Planning Commission?

Staff replied no, that the application could go through the Zoning Administrator, and both could be appealed to City Council.

Commissioner Bankson commented that the restaurant would probably be a good family venue, however, the City needs to look out for its citizens; and that he could not approve it especially because of over saturation.

Commissioner Beard commented that there is a reason there are license limits as CUP's run with the land; that he agrees the Planning Commission has an obligation to follow the Staff and Police Department's recommendation; and that he could not support the project.

Commissioner Brietigam moved to approve the Resolution of Denial for Conditional Use Permit No. CUP-252-08, seconded by Commissioner Kirkham, pursuant to the facts and reasons contained in Resolution No. 5659. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN





RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION  
TO DENY CONDITIONAL USE PERMIT NO. CUP-252-08

WHEREAS, the case, initiated by 888 Brothers Inc., requested Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, for property located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street, Assessor's Parcel No. 133-111-06; and

WHEREAS, the City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act; and

WHEREAS, pursuant to Resolution No. 5659, the Planning Commission, at a public hearing on January 15, 2009, denied Conditional Use Permit No. CUP-252-08; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on March 24, 2009, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of March 24, 2009.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council denies the appeal and upholds the Planning Commission's decision to deny Conditional Use Permit No. CUP-252-08, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5659.

A copy of Planning Commission Resolution No. 5659 is on file in the office of the City Clerk and incorporated herein by reference with the same force and effect as set forth in full.



RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
GRANTING THE APPEAL AND APPROVING CONDITIONAL USE PERMIT  
NO. CUP-252-08

WHEREAS, the case, initiated by 888 Brothers Inc., requested Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, for property located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street, Assessor's Parcel No. 133-111-06; and

WHEREAS, the City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on March 24, 2009, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of March 24, 2009.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the City Council, as required under Municipal Code Section 9.24.030, are as follows:

FACTS:

The site is located on the west side of Brookhurst Street, south of Chapman Avenue, at 12119 Brookhurst Street, in the BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial) zone and is developed with a multi-tenant shopping center that includes the subject 3,360 square foot Chinese restaurant, Four Seasons Hot Pot.

The property has a General Plan Land Use designation of Commercial.

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

The subject application was originally considered on November 20, 2008, and was continued to the January 15, 2009 Planning Commission meeting. At the initial meeting, the Planning Commission directed Staff to bring back a draft resolution of denial for CUP-252-08, and a draft resolution of approval that would address CEQA

and include Conditions of Approval, for consideration at the following Planning Commission meeting.

On January 15, 2009, the Planning Commission denied the request for a Conditional Use Permit and adopted Resolution No. 5659 for denial to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

The restaurant is located in a high-crime district, and in an area with an undue-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 93.
- The crime count for the District is 145.
- Average crime count per district in the City is 106.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 36% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 882.03.
- ABC Census Reporting District No. 882.03 allows for five (5) on-sale licenses within the District. Currently, there are ten (10) on-sale licenses in the District. Therefore, the approval of this Conditional Use Permit would increase the number of ABC Licenses in this District by one (1), thereby increasing the total number of on-sale licenses in the District to eleven (11).

#### FINDING OF PUBLIC CONVENIENCE OR NECESSITY

A finding for public convenience or necessity would have to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license that is located within a district with a high crime rate and/or in an area with an over-concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the ABC from issuing new alcoholic licenses in areas of over-concentration. Business and Professions Code Section 23958 states:

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

Business and Professions Code Section 23958.4 provides, in part, the following exception:

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance.

Although the ABC Census Reporting District No. 882.03 shows there to be more on-sale licenses than is typically allowed, the City Council is supportive of the request for an additional beer and wine ABC license for the subject restaurant. ABC Census Reporting District No. 882.03 allows for five (5) on-sale licenses within the District, and currently, there are ten (10) on-sale licenses in the District. The City Council is able to support a finding for public convenience or necessity given the potential community benefit through the addition of a beer and wine license, which would provide an additional amenity that would enhance the dining experience at Four Seasons Hot Pot Chinese Restaurant. The City Council has determined that the use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

Furthermore, the existing establishment shall continue to provide an assortment of foods normally offered in restaurants, and the kitchen shall be open, and preparing food, during all hours that the establishment is open. At all times the establishment is open, the sale of alcohol shall be incidental to the sale of food; and the quarterly gross sales of alcoholic beverages shall not exceed 35% of the total gross sale of food during the same period. Lastly, no live entertainment, (karaoke, one-man band, solo performer, live music, etc.) including amplified music, shall be permitted on the premises.

The City Council has reviewed the request and is supporting the proposal. All standard conditions of approval for a Type "41" License will apply.

#### FINDINGS AND REASONS:

1. The subject site has a General Plan Land Use Designation of Commercial and is zoned BCSP-BCC (Brookhurst Chapman Specific Plan – Brookhurst Chapman Commercial). Eating establishments with alcohol sales are conditionally permitted in this zone. This approval will allow the restaurant to sell beer and wine. Provided that the conditions of approval are complied with, the use will be consistent with the General Plan.
2. The use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. The restaurant will now operate with a Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. This approval will allow the restaurant to sell beer and wine.

Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

3. The use will not unreasonably interfere with the use, enjoyment or valuation of the property of other persons located within the vicinity of the site, provided the conditions of approval are adhered to for the life of the project. By operating as a bona-fide public eating-place with ancillary beer and wine sales for on-site consumption, the use will be compatible with the surrounding uses.
4. The use will not jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. The conditions of approval will ensure the public health, safety, and welfare.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council grants the appeal and approves Conditional Use Permit No. CUP-252-08.
2. In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the following Conditions of Approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-252-08.
3. The City Council finds and determines that the public convenience or necessity will be served by issuance of a Type "41" (On-Sale, Beer and Wine, Public Eating Place) License for the Four Seasons Hot Pot Chinese Restaurant.

**EXHIBIT "A"**  
**Conditional Use Permit No. CUP-252-08**

12119 Brookhurst Street

**CONDITIONS OF APPROVAL**

**General Conditions**

1. The applicant shall record a "Notice of Agreement with Conditions of Approval and Discretionary Permit Approval," as prepared by the City Attorney's Office, on the property. Proof of such recordation is required prior to issuance of an ABC license. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Hearing Body.
2. Approval of this Conditional Use Permit shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Modifications which do not change the intent of the project may be approved by the Community Development Director.
3. If major modifications are made to the approved floor plan, site plan, or other related changes, that result in the intensification of the project or create impacts that have been previously addressed, the proper entitlements shall be obtained reflecting such changes.

**Public Works Water Services Division**

4. In the event that a Reduced Pressure Principle Device (RPPD) backflow prevention device does not already exist, a RPPD device shall be installed for meter protection. The landscape system shall also have a RPPD device. Any carbonation dispensing equipment shall have RPPD device. Installation shall be per City Standards and shall be tested by a certified backflow device tester immediately after installation. Cross connection inspector shall be notified for inspection after the installation is completed. Owner shall have RPPD device tested once a year thereafter by a certified backflow device tester and the test results to be submitted to Public Works, Water Services Division. Property owner must open a water account upon installation of RPPD device.
5. Commercial food use of any type requires the installation of an approved grease interceptor, according to Garden Grove Sanitary District's Ordinance No. 6 (Fats, Oil and Grease Control Regulations Applicable to Food Service Establishments). In the event that an approved grease interceptor is not already installed, a properly sized grease interceptor shall be installed on the



sewer lateral and be maintained by the property owner. There shall be a separate sanitary waste line that will connect to the sewer lateral downstream of the grease interceptor. All other waste lines shall be drained through the grease interceptor. Grease interceptor shall be located outside of the building and accessible for routine maintenance. Owner shall maintain comprehensive grease interceptor maintenance records and shall make them available to the City of Garden Grove upon demand.

6. Food grinders (garbage disposal devices) are prohibited per Ordinance 6 of the Garden Grove Sanitary District Code of Regulations. Any existing units are to be removed.

**Fire Department**

7. The restaurant shall not exceed the posted occupancy load, as determined by the Fire Department.
8. The applicant shall comply with the 2007 California Fire Code for all Life Safety Issues.

**Police Department**

9. There shall be no gaming tables or gaming machines, as outlined in City Code Sections 8.20.010 and 8.20.050, on the premises at any time.
10. Hours of operation shall be permitted only between the hours of 9:00 a.m. to 11:00 p.m., seven days a week.
11. There shall be no customers or patrons in or about the premises when the establishment is closed.
12. In the event security problems occur, and at the request of the Police Department, the permittee, at his own expense, shall provide a California licensed, uniformed security guard(s) on the premises during such hours as requested by the Police Department.
13. All pay phones located on the property, adjacent to the premises, shall be limited to out-going calls only. This condition shall be complied with within 30 days following approval of this application.

14. The sale of alcoholic beverages for consumption off the premises is prohibited. No consumption of alcoholic beverages shall occur outside the establishment at any time.
15. Outside patio dining area must have clear barriers to prevent alcohol from being passed outside the patio. The clear barriers must be 5'-0" in height from the ground. Final placement and design of the clear barriers shall be reviewed and approved by the Planning Division.
16. There shall be no enclosed booths on the premises at any time. Walls and/or partitions exceeding thirty-six (36) inches in height, which partially enclose or separate booths, shall be of a clear and transparent material. No item shall be placed in the area of the booths that would limit or decrease the visibility of the interior of the business from any location within the business.
17. The business, prior to operating with an ABC Type "41" License, shall show proof to the Police Department that all members of the business staff have completed the LEAD training (Licensee Education on Alcohol and Drugs) through the Alcohol Beverage Control Department.

**Community Development Department**

18. Approval of this Conditional Use Permit will allow the establishment to operate with a Type "41" ABC License. There shall be no additional changes in the design of the floor plan without the approval of the Community Development Department, Planning Division. Any additional changes in the approved floor plan, which has the effect of expanding or intensifying the present use, shall require a new Conditional Use Permit.
19. The establishment shall be operated as a "Bona Fide Public Eating Place" as defined by ABC. The restaurant shall contain sufficient space and equipment to accommodate a full restaurant kitchen, and the kitchen shall be open and preparing food during all hours the establishment is open. The establishment shall provide an assortment of foods normally offered in restaurants.
20. In the event that an Alcoholic Beverage Control (ABC) License is suspended for any period of time and/or fined for any ABC violation as a result of disciplinary action, the Conditional Use Permit shall be presented to the Planning Commission for review or further consideration.
21. At all times when the establishment is open for business, the sale of alcoholic beverages shall be incidental to the sale of food.

22. Alcohol sales shall not exceed 35% of the business gross sales. The owner of the establishment shall, upon request, provide the City of Garden Grove with an audited report of sales ratio of food to alcoholic beverages.
23. No outside storage or displays shall be permitted at any time.
24. A prominent, permanent sign stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The sign lettering shall be four (4) to six (6) inches high with black letters on a white background. The sign shall be displayed near or at the restaurant's entrance, and shall also be visible to the public.
25. No live entertainment, i.e., dancing, karaoke, solo performer, live music, sport bar or disc-jockey entertainment, etc., including amplified music, shall be permitted on the premises.
26. There shall be no raised platform, stage or dance floor allowed on the premises at any time.
27. There shall be no chairs or stools at any counter area.
28. There shall be no uses or activities permitted of an adult-oriented nature as outlined in City Code Section 9.08.070.
29. There shall be no separate bar or lounge area to provide direct service of alcoholic beverages to customers.
30. There shall be no deliveries to or from the premises before 8:00 a.m. and after 9:00 p.m., seven days a week.
31. All rear doors shall be kept closed at all times, except to permit employee ingress and egress, and in emergencies.
32. Litter shall be removed daily from the premises, including adjacent public sidewalks, and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
33. All trash bins shall be kept inside the trash enclosure, and gates closed at all times, except during disposal and pick-up. Trash pick-up shall be based on the existing schedule provided by the commercial center.

34. Graffiti shall be removed from the premises, and all parking lots under the control of the licensee and/or the property owner, within 120 hours upon notification/application.
35. The applicant is advised that the establishment is subject to the provisions of State Labor Code Section 6404.5 (ref: State Law AB 13), which prohibits smoking inside the establishment as of January 1, 1995.
36. No roof-mounted mechanical equipment shall be permitted unless a method of screening complementary to the architecture of the building is approved by the Community Development Department, Planning Division. Said screening shall block visibility of any roof-mounted mechanical equipment from view of public streets and surrounding properties.
37. No satellite dish antennas shall be installed on said premises unless, and until, plans have been submitted to and approved by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
38. Permits from the City of Garden Grove shall be obtained prior to displaying any temporary advertising (i.e., banners).
39. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. No signs advertising alcoholic beverages shall be placed on the windows.
40. Any modifications to existing signs or the installation of new signs shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.
41. Any Conditional Use Permit previously governing this tenant space shall become null and void, and superseded in its entirety, by approval of CUP-252-08.
42. A copy of the decision and the conditions of approval for Conditional Use Permit No. CUP-252-08 shall be kept on the premises at all times.
43. The permittee shall submit a signed letter acknowledging receipt of the decision approving Conditional Use Permit No. CUP-252-08, and his/her agreement with all conditions of the approval.

Conditional Use Permit No. CUP-252-08  
Conditions of Approval

44. The Conditional Use Permit shall be reviewed within one year from the date of this approval, and every three (3) years thereafter, in order to determine if the business is operating in compliance.
45. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Conditional Use Permit No. CUP-252-08. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City including but not limited to any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.