

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-309-10 REGARDING THE HOURS OF OPERATION FOR THE ICE KISS #2 RESTAURANT (8516 GARDEN GROVE BOULEVARD)		
		Date:	February 8, 2011

OBJECTIVE

To consider the appeal of one (1) specific condition of approval approved under Conditional Use Permit No. CUP-309-10. Conditional Use Permit No. CUP-309-10 was approved to allow the operation of a new 2,600 square foot restaurant, Ice Kiss Restaurant, with a new original State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The subject establishment is located on the northeast corner of Garden Grove Boulevard and Wilson Street, at 8516 Garden Grove Boulevard.

BACKGROUND

Proposed Project CUP-309-10:

The subject site is approximately 14,850 square feet and is improved with a multi-tenant commercial building located on the northeast corner of Garden Grove Boulevard and Wilson Street. The specific tenant space under application is a 2,600 square foot space. The property is located in the C-1 (T) (Neighborhood Commercial) zone and has a Land Use Designation of Medium Density Residential.

The applicant requested approval of Conditional Use Permit No. CUP-309-10 to allow the operation of a new 2,600 square foot restaurant, Ice Kiss Restaurant with a new original State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. Additionally, the applicant requested hours of operation to be from 10:00 a.m. to 1:00 a.m., seven days a week.

History of the Project:

December 16, 2010: The Planning Commission considered Conditional Use Permit No. CUP-309-10. Staff recommended denial of the application based on the

request for proposed hours of operation to close the establishment at 1:00 a.m., seven days a week. Those proposed hours are inconsistent with the City's standard permitted closing times of 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday (for establishments that operate with an ABC Type "41" license). Staff presented to the Planning Commission two (2) resolutions: one resolution to deny the project as proposed and another resolution to approve the project with the City's standard permitted closing times. The Planning Commission voted 4-0 to adopt the alternate resolution of approval, Resolution No. 5730-10, to approve Conditional Use Permit No. CUP-309-10 with standard hours of operation to be from 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:00 p.m., Friday and Saturday. No one from the public came forward to speak in favor of or in opposition to the project.

DISCUSSION

Appeal of the Proposed Project:

Song Won Yi, the applicant, has appealed one (1) specific condition of approval under Conditional Use Permit No. CUP-309-10. The appellant stated in her appeal that the 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday, closing times would be "detrimental" to her business. In Ms. Yi's appeal, she has requested that Condition No. 8 be modified to allow a closing time of 12:00 a.m., seven days a week.

The following is the specific condition of approval Ms. Yi is appealing to the City Council:

Condition No. 8: Hours of operation shall be permitted only between the hours of 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:00 p.m., Friday and Saturday.

For establishments that operate with an ABC Type "41" license, the aforementioned hours are the City's standard permitted closing times. The Community Development Department and the Police Department believe it is important to maintain consistency, especially in regard to permitted hours of operation for eating establishments throughout the city that operate with an ABC license. Additionally, Staff finds that the subject use, with a closing time of 12:00 a.m., seven days a week, will adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The residences to the south, which directly abut the subject property, may be affected by the late night business activity due to its close proximity and the lack of buffering between uses (see attached photos). It is of note that late night establishments in the past have caused an increase in Police Department calls for service or complaints in regards to noise, car noise/alarms, and business related noise (i.e. dumping of trash). Staff finds that a closing time of 12:00 a.m., seven days a week, will put further strain on Police

Department resources and increase the calls for service for an area that is already deemed a high-crime area being 206% over the citywide average. (See CLEW Associates Study that has previously been provided to the City Council and available for review in the City Clerk's Office.)

The current condition, regarding permitted hours of operation, is in place in order to maintain consistency for establishments that operate with an ABC Type "41" license, to ensure that the subject use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, and to avoid a potential increase in crime count for the subject district.

FISCAL IMPACT

There is no fiscal impact to the City regarding denial or approval of this appeal.

RECOMMENDATION

It is recommended that the City Council:

- Adopt the attached Resolution upholding the Planning Commission decision approving Conditional Use Permit No. CUP-309-10 in full and thereby deny the Appeal of the one (1) specific condition of approval under Conditional Use Permit No. CUP-309-10.



SUSAN EMERY
Community Development Director



By: Chris Chung
Assistant Planner

- Attachment 1: Planning Commission Staff Report dated December 16, 2010
Attachment 2: Planning Commission Resolution No. 5730-10 with Conditions of Approval
Attachment 3: Planning Commission Minute Excerpt of December 16, 2010.
Attachment 4: Applicant's Appeal Letter dated December 23, 2010.
Attachment 5: Draft City Council Resolution denying the Appeal of Conditional Use Permit No. CUP-309-10.

Approved for Agenda Listing



Matthew Feral
City Manager

Photo #1: Front view of Ice Kiss Restaurant

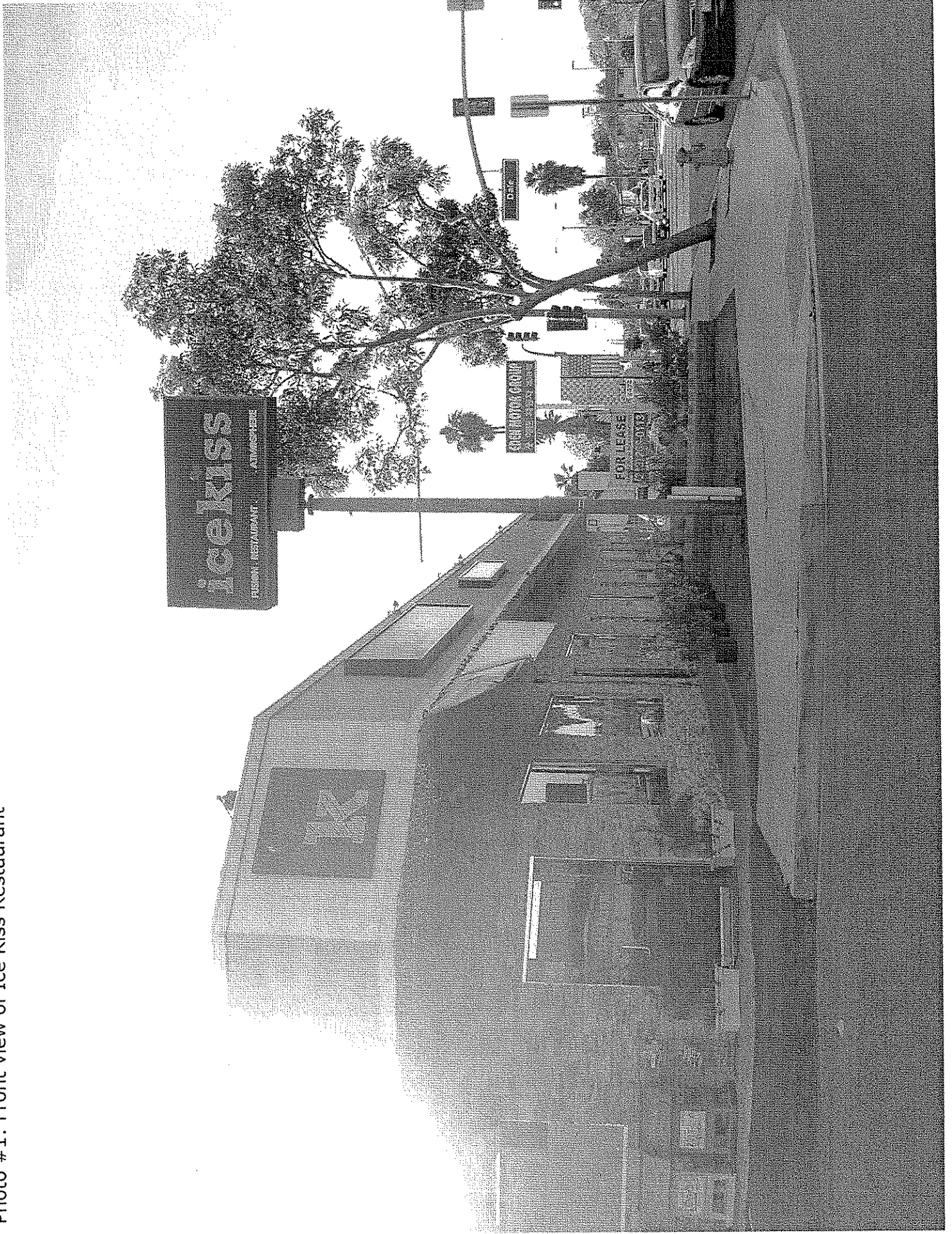


Photo #2: Near front of Ice Kiss Restaurant

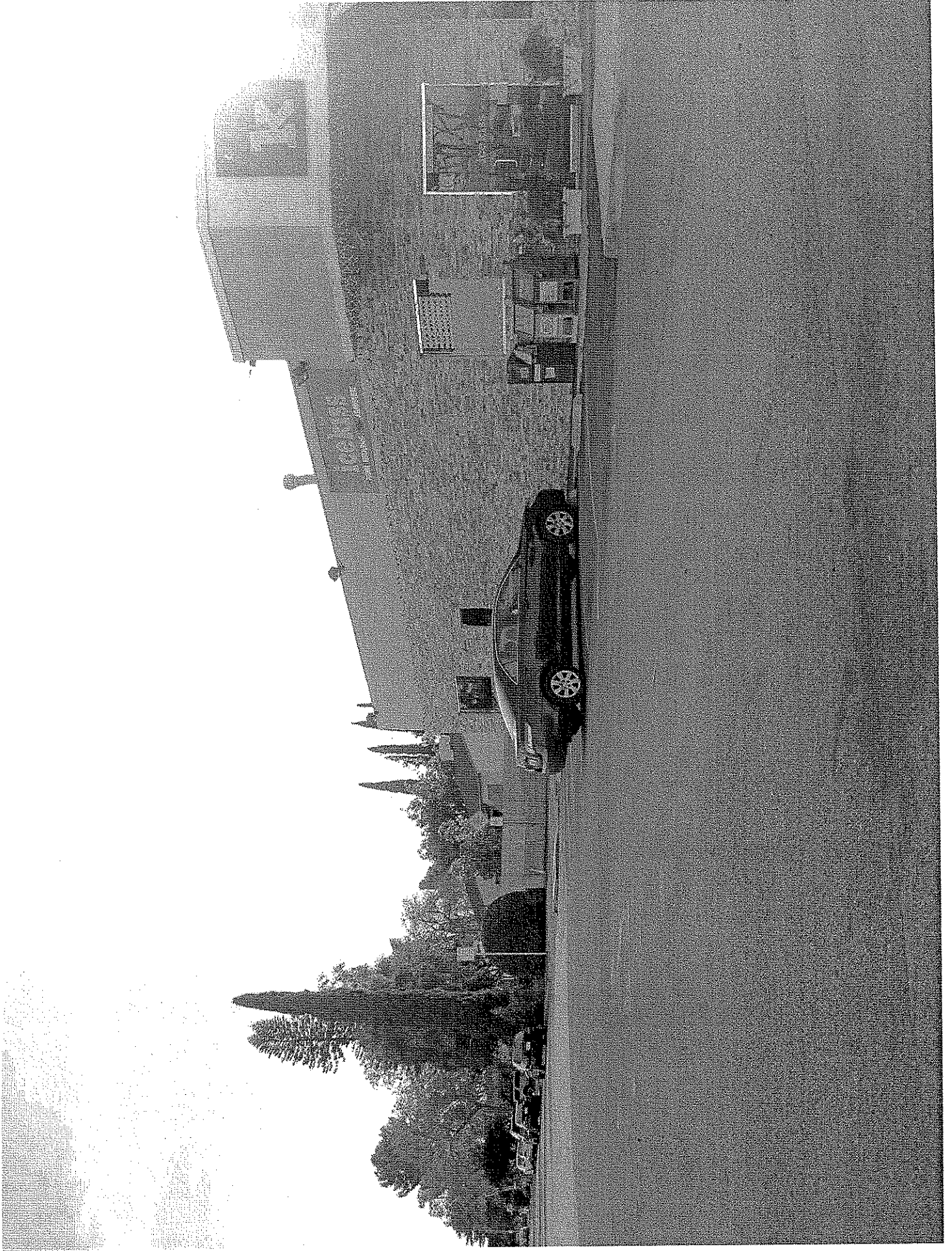


Photo #3: Looking down Wilson Street to residential properties. (Ice Kiss Restaurant on the right side)



Photo #4: Rear view of building

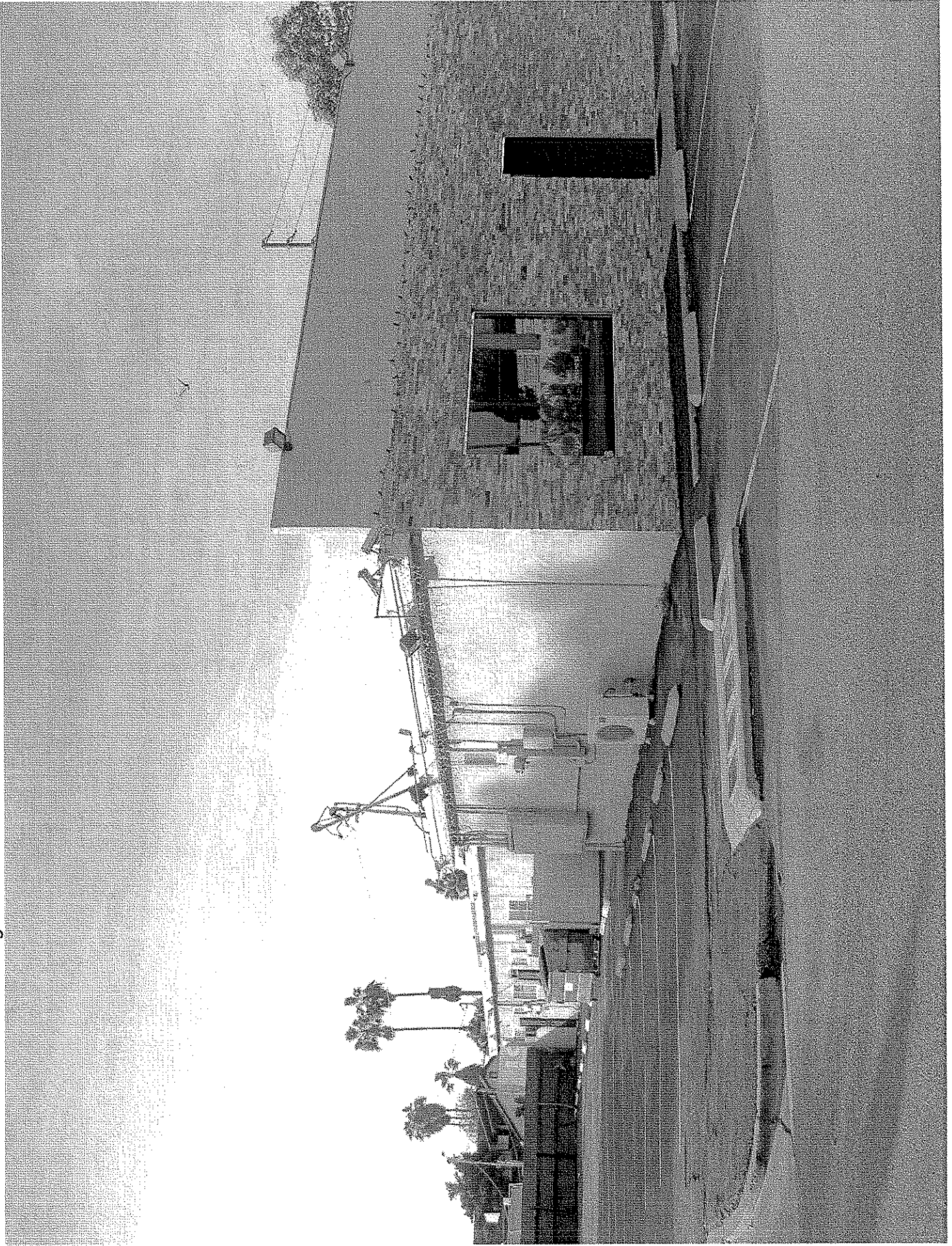
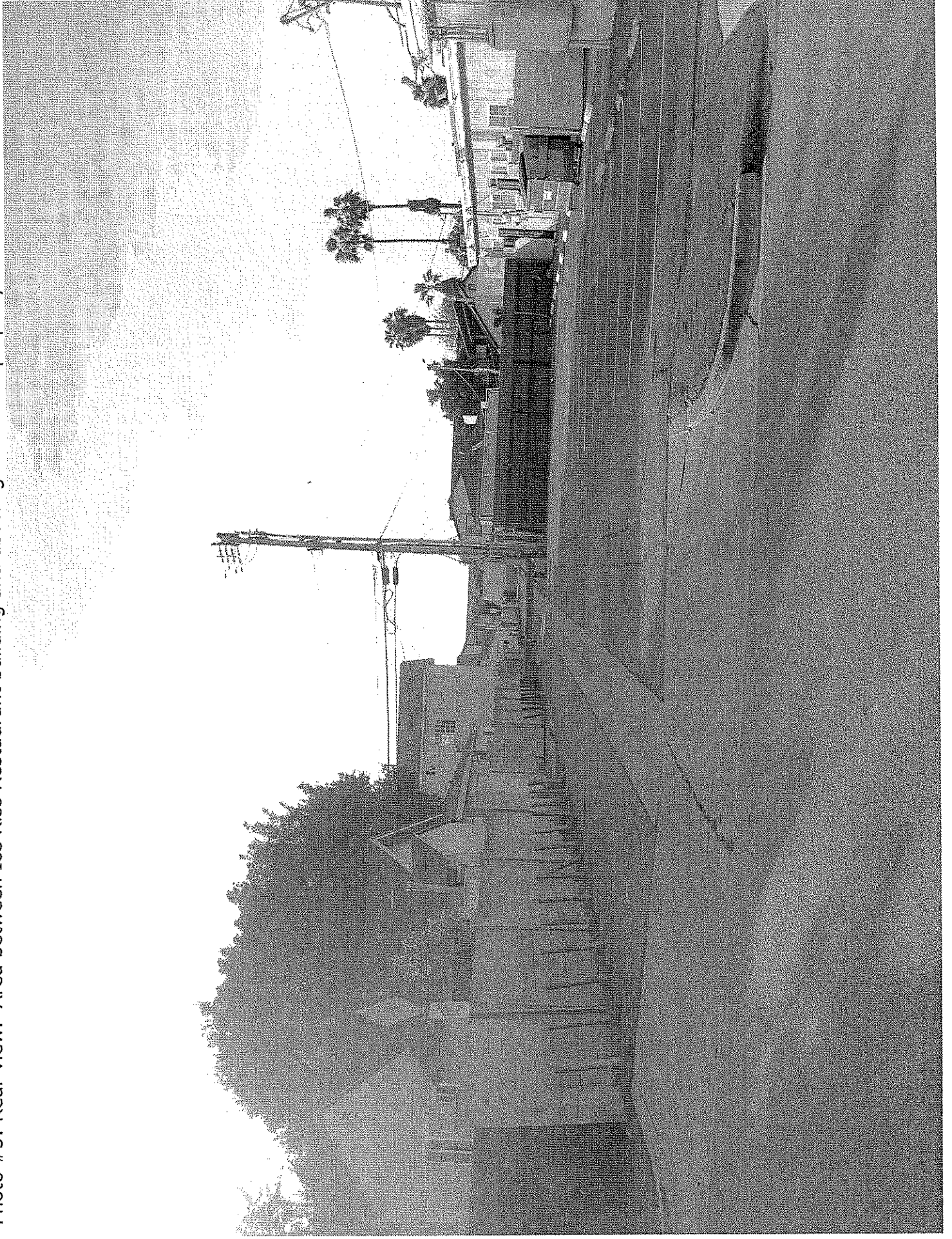


Photo #5: Rear view. Area between Ice Kiss Restaurant building and abutting residential property.



COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.2.	SITE LOCATION: 8516 Garden Grove Boulevard, northeast corner of Garden Grove Boulevard and Wilson Street
HEARING DATE: November 18, 2010	GENERAL PLAN: Medium Density Residential
CASE NO.: Conditional Use Permit No. CUP-309-10	ZONE: C-1 (T) (Neighborhood Commercial)
APPLICANT: Song Won Yi	CEQA DETERMINATION: Exempt
PROPERTY OWNER: 8516 Garden Grove LLC	APN: 097-212-17

REQUEST:

The applicant is requesting Conditional Use Permit approval in order to operate a new restaurant, Ice Kiss Restaurant, with a new original State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The applicant is requesting hours of operation to be from 10:00 a.m. to 1:00 a.m., seven days a week.

BACKGROUND:

The subject site is approximately 14,850 square feet and is improved with a multi-tenant commercial building located on the northeast corner of Garden Grove Boulevard and Wilson Street. The specific tenant space under application is a 2,600 square foot space. The property is located in the C-1 (T) (Neighborhood Commercial) zone and has a Land Use Designation of Medium Density Residential. The property is adjacent to C-1 (T) zoned properties to the west and across Garden Grove Boulevard to the north, a C-1 (Neighborhood Commercial) zoned property across Wilson Street to the east, and a R-3 (T) (Multiple-Family Residential) zoned property to the south. The previous business at this location was a restaurant named Tofu Village, which closed in 2008. The subject tenant space has been in operation as a restaurant since 1994.

The applicant is requesting Conditional Use Permit approval to operate a new restaurant with a new original State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License in order to sell beer and wine for on-site consumption. 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:

The interior of the restaurant will consist of a dining area with 34 booth-style tables, to allow the seating of approximately 110 persons. Additionally, the interior will consist of a hostess counter, a cashier's counter, a kitchen, a storage room, a men's restroom, and a women's restroom.

The applicant is requesting hours of operation to be from 10:00 a.m. to 1:00 a.m., seven days a week. These proposed hours are not consistent with the City's standard permitted closing times of 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday (for establishments that operate with an ABC Type "41" license).

There is significant concern that allowing hours of operation that cease at 1:00 a.m., seven days a week, could potentially increase the Police Department's calls for service, thereby putting additional strain on Police Department resources. This is substantiated in the Three Year (2005, 2006, 2007) Comparison of Data for Retail Alcohol Outlets Study that was prepared for the City of Garden Grove by CLEW Associates. The research data shows that crime, connected with establishments that operate with an ABC license, increases in later hours.

The Community Development Department and the Police Department believe it is important to maintain consistency, especially in regard to permitted hours of operation for eating establishments that operate with an ABC license.

Over the past several years, the City has seen a significant increase in the number of restaurants applying for Conditional Use Permits to operate with ABC Type "41" licenses. In an effort to establish consistency among all of those and future applications, the City established a number of standard conditions of approval, included in every Conditional Use Permit, some of which include the following:

- 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.
- 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.
- The business, prior to opening, 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 or an ABC approved "Responsible Beverage Service (RBS) Training" program.

- Any violations or noncompliance with the conditions of approval may result in the issuance of an Administrative Citation up to \$1,000 pursuant to GGMC 1.22.010 (a).
- The City of Garden Grove reserves the right to reduce hours of operation, by order of the Chief of the Police Department, in the event problems arise concerning the operation of this business.

In addition to the standard conditions of approval, Staff has consistently implemented standard permitted closing times of 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday, for establishments that operate with ABC Type "41" licenses.

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

- The subject site is located in Crime Reporting District No. 65.
- The crime count for the District is 288.
- Average crime count per district in the City is 94.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 206% 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. 888.02.

ABC Census Reporting District No. 888.02 allows for six (6) on-sale licenses within the District. Currently, there are three (3) on-sale licenses in the District. The approval of this CUP would increase the number of ABC Licenses in this District by one (1), bringing the total to four (4).

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 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 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.

Although the ABC Census Reporting District No. 888.02 shows the subject site to be located in a high-crime area, Staff would be supportive of the request for an additional beer & wine ABC license for the subject restaurant with standard closing times (10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday). ABC Census Reporting District No. 888.02 allows for six (6) on-sale licenses within the District, and currently, there are three (3) on-sale licenses in the District. Staff is able to support a finding for public convenience or necessity given the statistics, of an under-concentration of ABC on-sale licenses, provided by the Police Department along with 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 Ice Kiss Restaurant.

However, Staff finds that the use, with the proposed closing times of 1:00 a.m., seven days a week, will adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The residences to the south, which abut the subject property, may be affected by the late night business activity due to its close proximity. It is of note that late night establishments in the past have caused an increase in Police Department calls for service or complaints in regards to noise, car noise/alarms, and business related noise (i.e. dumping of trash).

Furthermore, Business and Professions Code Section 23958 states that an application for an ABC license shall be denied if issuance of the license would tend to create a law enforcement problem. Staff finds that the proposed 1:00 a.m. closing time will put further strain on Police Department resources and increase the calls for service for an area that is already deemed a high-crime area being 206% over the Citywide average. Staff would be supportive of the application if the proposed hours were in compliance with the standard permitted closing times of 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday.

The Community Development Department and the Police Department have reviewed the request and are not supporting the proposal.

RECOMMENDATION:

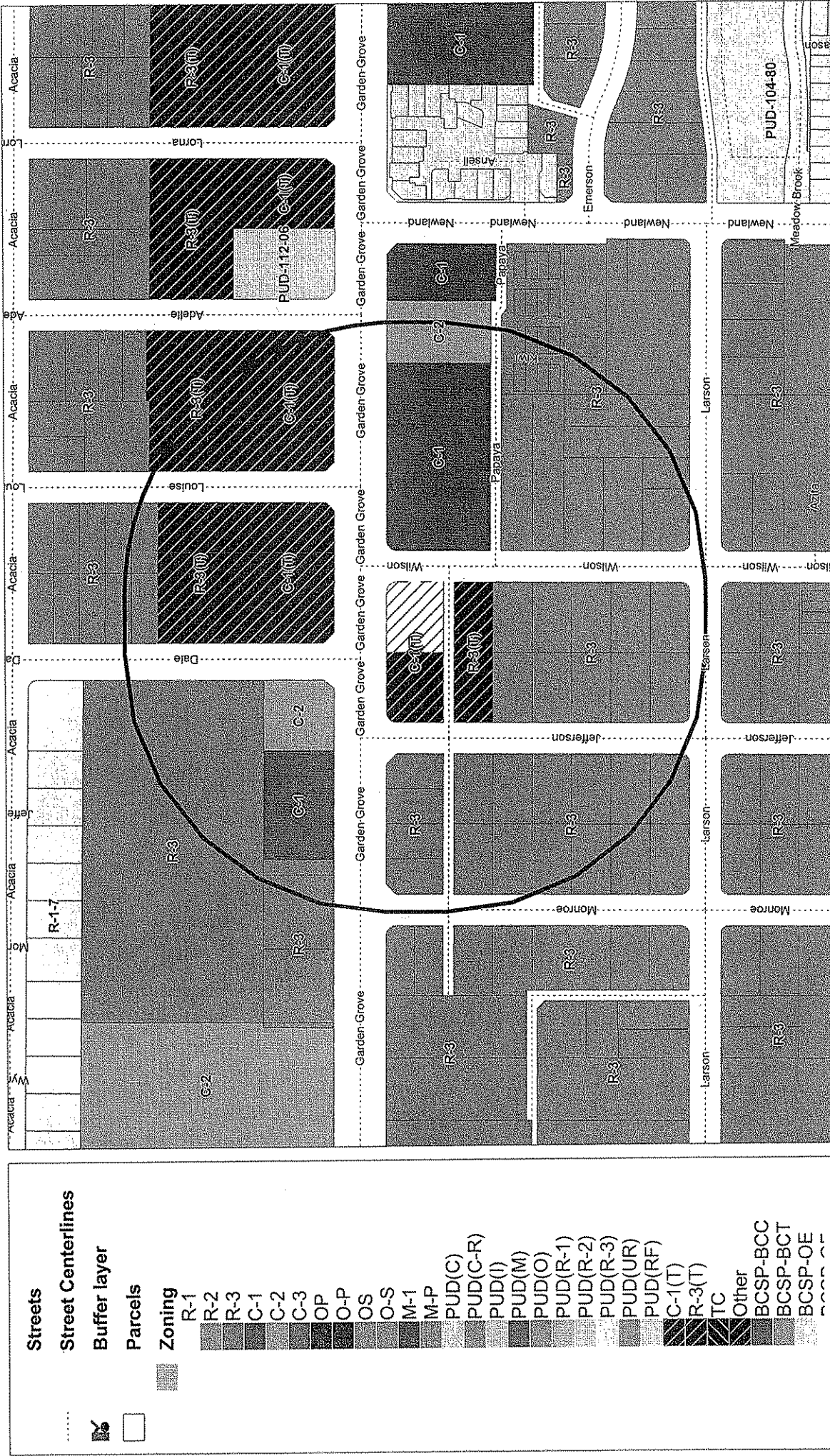
Staff recommends that the Planning Commission take the following action:

1. Deny Conditional Use Permit No. CUP-309-10.

Karl Hill
Planning Services Manager

Chris Chung
Assistant Planner

CUP-309-10 - 8516 GARDEN GROVE BLVD.



SCALE 1 : 3,161



N



PROJECT DATA

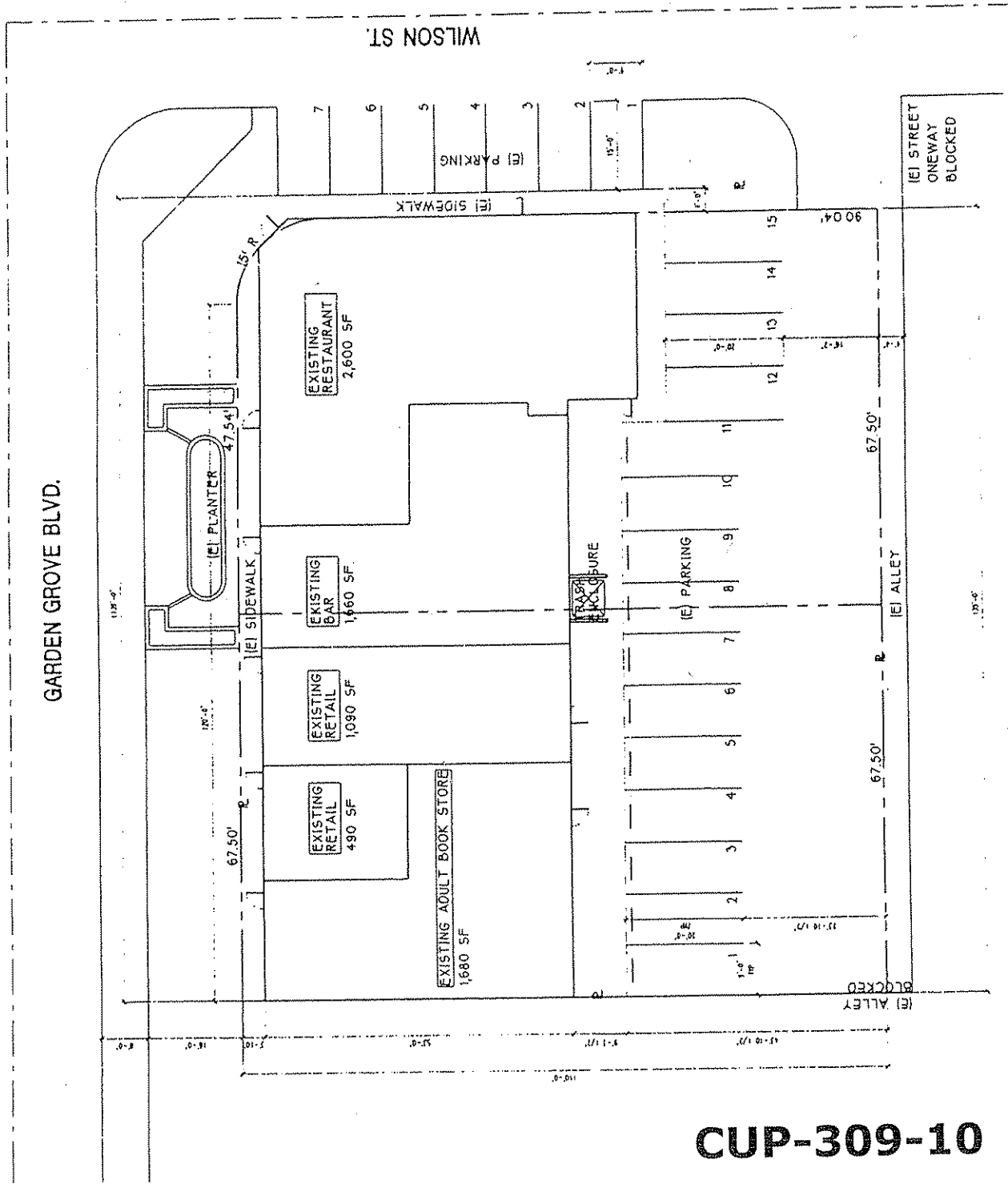
- 1. PROJECT ADDRESS: 8400 GARDEN GROVE BLVD
GARDEN GROVE, CA 92644
- 2. DESCRIPTION OF WORK: PROPOSING TO EXPAND ALTERNATIVE ADULT BOOK STORE TO 84A
- 3. TYPE OF CONSTRUCTION: V - N
- 4. TOTAL AREA SF: APPROX. 1,800 SF
- 5. OCCUPANCY: B & A3

PROJECT DIRECTORY

ARCHITECT
GRACE PARTNERSHIP, INC.
840 & WILSON PLACE
LOS ANGELES, CA 90020
TELEPHONE: 310-471-7788
FACSIMILE: 310-471-4687

PARKING ANALYSIS

EXISTING PARKING ON SITE: 8 SPACES
OFF-SITE (OUTSIDE OF PROPERTY LINE): 7 SPACES



EXISTING SITE PLAN

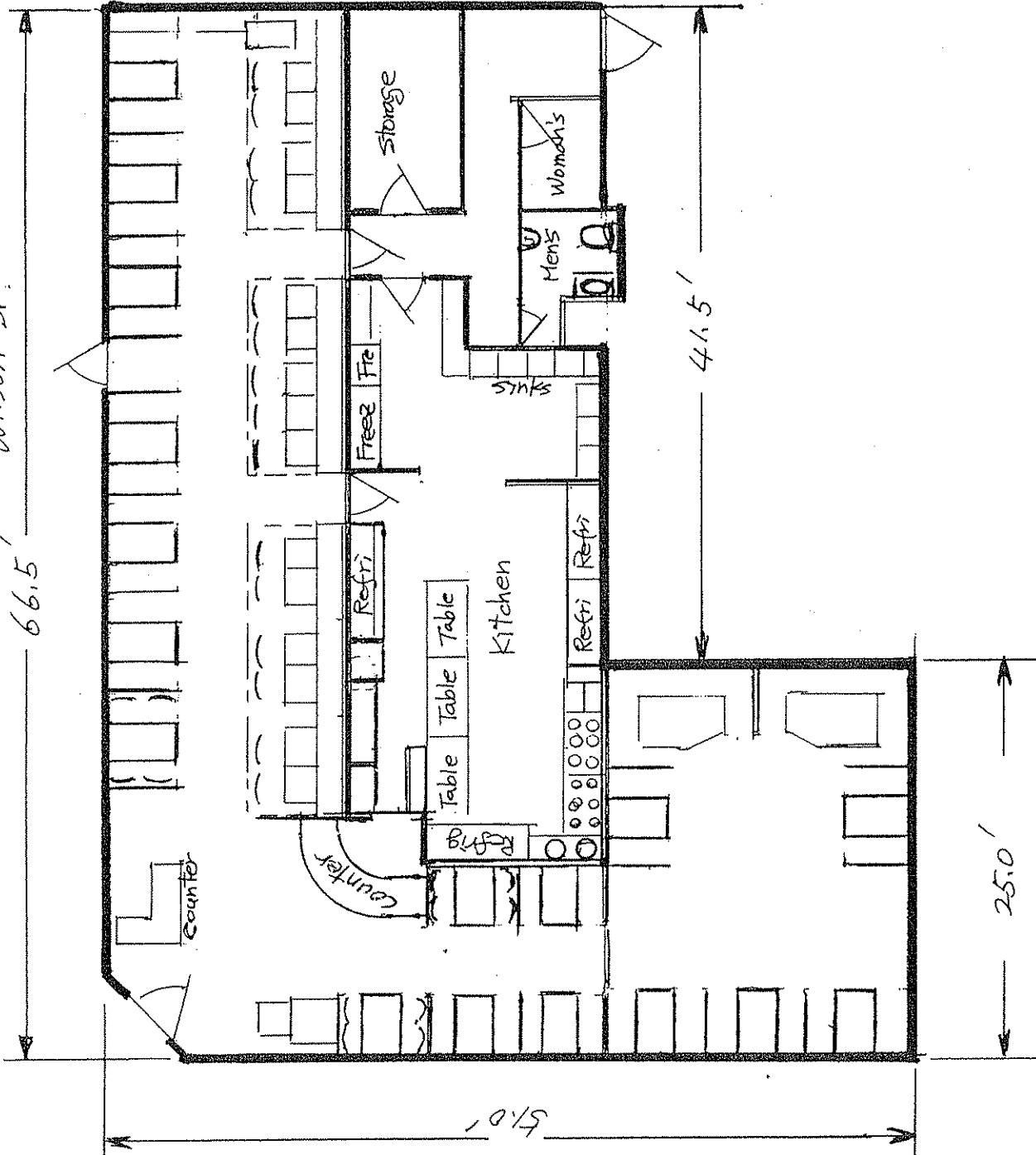
SCALE: 1" = 10'-0"

CUP-309-10

Wilson St.

66.5'

32.0'



Garden Grove Blvd

41.5'

25.0'

FLOOR PLAN

8516 Garden Grove Blvd.
 Garden Grove, CA 92844



RESOLUTION NO. 5730-10

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE APPROVING CONDITIONAL USE PERMIT NO. CUP-309-10.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby approve Conditional Use Permit No. CUP-309-10 for a property located at the northeast corner of Garden Grove Boulevard and Wilson Street, at 8516 Garden Grove Boulevard, Assessor's Parcel No. 097-212-17.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-309-10, the PLANNING COMMISSION of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Song Won Yi.
2. The applicant is requesting Conditional Use Permit approval in order to operate a new restaurant, Ice Kiss Restaurant, with a new original State 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 Medium Density Residential, and is zoned C-1 (T) (Neighborhood 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 held on December 16, 2010, 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 meeting of December 16, 2010; 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 9.32.030, are as follows:

FACTS:

The subject site is approximately 14,850 square feet and is improved with a multi-tenant commercial building located on the northeast corner of Garden Grove Boulevard and Wilson Street. The specific tenant space under application is a 2,600 square foot space.

The property has a General Plan Land Use designation of Medium Density Residential. The property is zoned C-1 (T) (Neighborhood Commercial).

The applicant is requesting Conditional Use Permit approval in order to operate a new restaurant, Ice Kiss Restaurant, with a new original State 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 under-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 65.
- The crime count for the District is 288.
- Average crime count per district in the City is 94.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 206% 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. 888.02.
- ABC Census Reporting District No. 888.02 allows for six (6) on-sale licenses within the District. Currently, there are three (3) on-sale licenses in the District. The approval of this CUP will increase the number of ABC Licenses in this District by one (1), and the total number of on-sale licenses in the District will be four (4).

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 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.

Although the proposed establishment is located in a high-crime area with an under-concentration of on-sale ABC licenses, Staff 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 Ice Kiss Restaurant. It is the opinion of Staff 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 establishment shall 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 Community Development Department and the Police Department have reviewed the request and are 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 Medium Density Residential and is zoned C-1 (T) (Neighborhood 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.

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 possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.30 (Conditional Use Permits).
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-309-10.

ADOPTED this 16th day of December, 2010

/s/ KRIS BEARD
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 December 16, 2010, by the following votes:

AYES:	COMMISSIONERS:	BEARD, BUI, ELLSWORTH, PAK
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	BONIKOWSKI, CABRAL
VACANCY:	COMMISSIONERS:	ONE

/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 January 6, 2011.

EXHIBIT "A"
Conditional Use Permit No. CUP-309-10

8516 Garden Grove Boulevard

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 (Alcoholic Beverage Control) 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. 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.

FINAL

5. 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

6. The restaurant shall not exceed the posted occupancy load, as determined by the Fire Department.

Police Department

7. 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.
8. Hours of operation shall be permitted only between the hours of 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:00 p.m., Friday and Saturday.
9. There shall be no customers or patrons in or about the premises when the establishment is closed.
10. 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.
11. 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.
12. 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.
13. 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.
14. The business, prior to opening, 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 or an ABC approved "Responsible Beverage Service (RBS) Training" program.

15. Any violations or noncompliance with the conditions of approval may result in the issuance of an Administrative Citation up to \$1,000 pursuant to GGMC 1.22.010(a).

Community Development Department

16. 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.
17. 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.
18. 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.
19. At all times when the establishment is open for business, the sale of alcoholic beverages shall be incidental to the sale of food.
20. 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.
21. No outside storage or displays shall be permitted at any time.
22. 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.

23. 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.
24. There shall be no raised platform, stage or dance floor allowed on the premises at any time.
25. There shall be no uses or activities permitted of an adult-oriented nature as outlined in City Code Section 9.08.070.
26. There shall be no separate bar or lounge area to provide direct service of alcoholic beverages to customers.
27. At no time shall the counter be used for the direct service, consumption, and sales of alcoholic beverages to customers.
28. The window of the door to the banquet room shall remain clear and un-obstructed, and shall provide complete visibility into the room at all times. No items, including plants, curtains, stickers, blinds or shades, shall be placed in the area of the window of the door of the banquet room.
29. There shall be no outdoor patio dining area available for 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. Additionally, the applicant/owner shall remove all USA markings from the public right-of-way upon completion of the project.

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-309-10.
42. A copy of the decision and the conditions of approval for Conditional Use Permit No. CUP-309-10 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-309-10, and his/her agreement with all conditions of the 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-309-10. 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.

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

CONTINUED
 PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-309-10
 APPLICANT: SONG WON YI
 LOCATION: NORTHEAST CORNER OF GARDEN GROVE BOULEVARD AND WILSON STREET AT
 8516 GARDEN GROVE BOULEVARD
 DATE: DECEMBER 16, 2010

REQUEST: To operate a new restaurant, Ice Kiss Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The applicant also requests the hours of operation to be from 10:00 a.m. to 1:00 a.m., seven days a week. The site is in the C-1 (T) (Neighborhood Commercial) zone.

Staff report was read and recommended denial, however, staff would be supportive of an alternate resolution of approval that was prepared with conditions of approval that included standard hours of operation for the restaurant to be from 10:00 a.m. to 10:00 a.m. Sunday through Thursday, and 10:00 a.m. to 11:00 p.m. Friday and Saturday.

Staff stated that the restaurant is in District 65, which has a 206 percent above the average crime rate, with calls for police service for drugs, alcohol, violence, and sex crimes; that directly south is a residential tract; that the CLEW report findings indicate that 10 percent of alcohol outlets account for 50 to 60 percent of police calls; that calls increase as the night progresses; that restaurants often morph into bars going from low-risk to high-risk establishments; that entertainment and alcohol become the main draw to the establishments; that police staffing for monitoring Alcoholic Beverage Control (ABC) type establishments is low.

Commissioner Ellsworth asked staff if there would be an impact to the nearby board and care facility. Staff replied that the noise, combined with alcohol, would be a concern.

Commissioner Pak questioned if the Tofu Village had a Conditional Use Permit before they closed. Staff replied no.

Commissioner Pak asked when the standard hours of operation of 10:00 a.m. to 10:00 p.m. Sunday through Thursday, and 10:00 a.m. to 11:00 p.m. Friday and Saturday, were implemented. Staff replied about 2007 when there was an increase in ABC license requests.

Vice Chair Bui asked if the restaurant could be separated from the bar area with different hours of operation for each venue. Staff responded that a bar-type establishment with a Type "48" License could stay open until 2:00 a.m.; that hard liquor is allowed for a Type "47" License, which has a higher relation to crime; and that a Type "41" License is strictly a restaurant.

Staff referred to a list of restaurants submitted by the applicants. Research indicated that three of the businesses had drunk in public arrests and assaults that occurred after 12:30 a.m.; and four had sales to minors.

Commissioner Pak questioned why four out of five businesses in the applicant's list have later closing times. Staff responded that some conditions of approval are older, from 2000, and staff has tried to be consistent with closing times over the last several years.

Staff added that in the 1990's, the family-style restaurants were allowed to stay open their requested hours; that hours became inconsistent; that crime increased; that seven or eight years ago, the movement became to have Type "41" and "47" be consistent; that the number of officers at night decreased as crimes increased; and that from time to time there would be inconsistencies.

Staff further added that in 2009, the evaluated issues were over-concentration and crime rate, however, the City Council changed policy in order to have consistent hours of operation so as not to punish good operators.

Commissioner Pak questioned the hours of operation for the Go Goo Ryeo and BBQ restaurants, as many of the conditional use permits (CUP) have different hours and the City should be flexible with the hours.

Staff replied that the Go Goo Ryeo is a Type "47" restaurant with a previous, older CUP that has an 11:00 p.m. closing time, and that the restaurant combined with a karaoke establishment in 2010. Also, the intent was not to keep the restaurant open later, only that the kitchen be open to serve the karaoke portion of the business; and, that the standard hours are typical for a Type "41" License.

Commissioner Pak commented that the restaurant name of Ice Kiss refers to a refreshment made of ice called 'shave ice'.

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

Ms. Song Wong Yi, the applicant, approached the Commission along with her translator, Il Ann, who was also the building manager. The applicant described the business, stating that she has a successful Los Angeles restaurant for the past six years; that Tofu Village had a Type "41" License that expired in March of 2010 and operated until 12:00 a.m.; that another BBQ restaurant, across Garden Grove Boulevard near Beach Boulevard, is open until 2:00 a.m. and is less than two years old; that 10:00 p.m. is too early to close when others are open later; and that the business would be less competitive in this economy.

Vice Chair Bui questioned why the restaurant should have later hours. The applicant responded that customers like late coffee, dessert, and dinner after 10:00 p.m. and there is nowhere to go; and that the Korea town branch is open until 1:00 a.m.

Commissioner Ellsworth asked why there is a need to serve alcohol later at night if only desserts and late meals are served. The applicant replied that after dinner, customers want a variety of wine and dessert; that their current hours of operation in Garden Grove are 11:00 a.m. to 12:00 a.m. seven days a week; that in Los Angeles, the hours are 11:00 a.m. to 1:00 a.m.

Commissioner Pak questioned why the applicant came to this area. The applicant replied that she did not know the area was blighted with a high crime rate, but thought the place would be good.

Commissioner Ellsworth asked if the applicant understood the City's concerns with alcohol late at night. The applicant replied yes, however, in the one month she has been open, there have been no loud people; and that she wants a different style of food and internet café.

Commissioner Pak noted that the City could not accommodate the 1:00 a.m. closing time. The applicant responded that she would stop selling alcohol at 11:00 p.m. and keep the business open until 12:00 a.m.

Staff clarified that if the business were two separate facilities, that may work, as monitoring one facility with a shut down of alcohol would be too difficult to police.

Commissioner Pak cited the Tofu House in Korea Town that is a 24-hour restaurant with a Type "41" License, and that no alcohol could be served after 1:30 a.m.

Staff added that the business is on the books and the Police Department strongly recommended against the request of a 24-hour restaurant serving alcohol, however, the Planning Commission overruled the staff's recommendation.

The applicant asked if she could close Sunday through Thursday at 11:00 p.m. and Friday and Saturday at 12:00 a.m.

Commissioner Ellsworth noted that the City has learned from past problems and is looking for consistency.

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

Staff noted that the Los Angeles establishment is open to 1:00 a.m, however, it is a café type establishment; that the Tofu Village ABC License may have been established when only a CUP was required; that with Star BBQ's later closing time, after 1986, the person to person transfer allowed for the CUP to continue if the establishment had not been closed for more than 30-days.

Staff added that typically, when restaurants are renovated and closed during that time, there is not a requirement to apply for another CUP, even if there is a change of ownership during the renovation when the person-to-person transfer of the license has occurred; that a new CUP is required when the business is completely closed, activity has stopped, and the business license is expired; that the next operator may not be a good operator, and that the CUP runs with the land.

Vice Chair Bui acknowledged the need for safety in the City, as well as a need to set a standard, however, some owners could be crippled in the bad economy. He also stated that Asians socialize late into the night with drinks and asked if the City could compromise by granting 10:30 p.m. and 11:30 p.m. closing times so that customers would not feel intimidated to leave the restaurant.

Staff explained that two years ago, this case could have been denied, not because of the hours, but because of the crime rate, however, as of March 2009, the City Council allowed flexibility and now more restaurants are coming in without staff looking at the crime rate or number licenses per census district.

Commissioner Ellsworth cited a resident revolt that had occurred years ago on Garden Grove Boulevard as a result of crime in the area and that though the City wants businesses to generate revenue, if the City is too flexible with the standards, policing issues could increase later.

Commissioner Pak expressed that the Ice Kiss would be beneficial to Garden Grove; that a fish soup restaurant was not successful; that the Tofu Village did not survive as the parking was not great; that this license is the fourth ABC license in the census district; and that assistance to this restaurant would make the business successful, perhaps with a suggested closing time of 11:00 p.m. seven days a week.

Chair Beard added that the applicant has the right of appealing the Planning Commission's decision to the City Council; that the options are – to deny the Type "41" License, however, the business could choose their hours of operation, or to approve the new resolution for a Type "41" License with the standard hours of 10:00 a.m. to 10:00 p.m. Sunday through Thursday, and 10:00 a.m. to 11:00 p.m. Friday and Saturday.

Chair Beard moved to approve the alternate resolution of approval for a Type "41" License with the standard hours of operation to be from 10:00 a.m. to 10:00 p.m. Sunday through Thursday, and 10:00 a.m. to 11:00 p.m. Friday and Saturday, pursuant to the facts and reasons contained in Resolution No. 5730-10.

Commissioner Pak followed with a substitute motion to approve the alternate resolution of approval for a Type "41" License with amended hours of operation to be from 10:00 a.m. to 11:00 p.m. seven days a week, seconded by Vice Chair Bui, pursuant to the facts and reasons contained in Resolution No. 5730-10. The motion failed with the following vote:

AYES:	COMMISSIONERS:	BUI, PAK
NOES:	COMMISSIONERS:	BEARD, ELLSWORTH
ABSENT:	COMMISSIONERS:	BONIKOWSKI, CABRAL
VACANCY:	COMMISSIONERS:	ONE

With the motion failed, Commissioner Ellsworth seconded Chair Beard's motion. The motion carried with the following vote:

AYES:	COMMISSIONERS:	BEARD, BUI, ELLSWORTH, PAK
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	BONIKOWSKI, CABRAL
VACANCY:	COMMISSIONERS:	ONE

APPEAL

Request for City Council or Planning Commission
Public Hearing

RECEIVED
CITY OF GARDEN GROVE
CITY CLERK'S OFFICE
2010 DEC 23 P 1:47

TO: City Clerk
City of Garden Grove

Pursuant to Section 9.32.110 of the Municipal Code (see reverse), I hereby appeal the decision of the CIRCLE ONE (Planning Commission / Zoning Administrator) in Case No. CUP-309-10, and petition the CIRCLE ONE (City Council) / Planning Commission) for a Public Hearing to consider CIRCLE ONE (approving / denying / modifying) the subject application for the following reasons:

City's Approval of closing time of 10PM Sunday through Thursday and 11PM on Friday and Saturday would be detrimental for my Business.

I have ICE KISS #1 in Los ANGELES Korea Town and its closing time is 1AM, Seven days a week. AS ICE KISS #2 in Garden Grove, I have made many improvement to the Surrounding of this Store which is located in very blighted area of the city. I plan to Run a very Successful Restaurant and I hope to bring more customers to ICE KISS #2 in Garden Grove from and around Orange County. Please extend Business hours 12:00 Midnight Seven days a week. Thank you.

(Use additional sheets if necessary)

Date: 12-23-2010 Appeal Fee (see reverse): _____

Appellant: Song Won YI - SONG Won YI.

Address: 8516 Garden Grove Blvd

City & ZIP: G. G. 92844 Daytime Phone No.: 213-235-6061

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION
TO APPROVE CONDITIONAL USE PERMIT NO. CUP-309-10

WHEREAS, the case, initiated by Song Won Yi, requesting Conditional Use Permit approval in order to operate a new restaurant, Ice Kiss Restaurant, with a new original State Alcoholic Beverage Control (ABC) Type "41" License (On-Sale, Beer and Wine, Public Eating Place), for a property located on the northeast corner of Garden Grove Boulevard and Wilson Street, at 8516 Garden Grove Boulevard, Parcel No. 097-212-17;

WHEREAS, the applicant, Song Won Yi, has requested through this appeal, the modification of one (1) specific condition of approval, specifically Condition No. 8, under Conditional Use Permit No. CUP-309-10;

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 for land located on the northeast corner of Garden Grove Boulevard and Wilson Street, at 8516 Garden Grove Boulevard, Parcel No. 097-212-17;

WHEREAS, pursuant to Resolution No. 5730-10, the Planning Commission, at a Public Hearing on December 16, 2010, approved Conditional Use Permit No. CUP-309-10;

WHEREAS, pursuant to legal notice, a Public Hearing was held by the City Council on February 8, 2011, 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 February 8, 2011.

NOW, THEREFORE, the City Council of the City of Garden Grove finds, determines, and resolves as follows:

1. The City Council denies the appeal and upholds the Planning Commission's decision to approve Conditional Use Permit No. CUP-309-10, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5730-10 and the following findings and reasons:

(A) Proximity to Residential Properties

- i. The Ice Kiss Restaurant is located immediately adjacent to residential properties on the south side of the restaurant. It is approximately 45 feet from the back of the restaurant building to these residential properties.
- ii. Part of the parking area for the Ice Kiss Restaurant is located immediately behind the restaurant between the back of the restaurant building and the adjacent residential properties.
- iii. Due to the proximity of both the restaurant and its parking lot to the adjacent residents, allowing the Ice Kiss Restaurant to remain open past 10 p.m. on Sundays through Thursdays and past 11 p.m. on Fridays and Saturdays will result on increased noise and disruption of the residents of these residential properties, thereby adversely affecting their health, peace, comfort, and welfare.

(B) Demand on Police Services

- i. Crime and the number of calls for police service generated by establishments that service alcohol increases with late hours of operation for these establishments.
- ii. The Ice Kiss Restaurant is located in a high-crime area.
- iii. The Police Department already has limited resources available to respond to existing calls for service in the area. Allowing late hours of operation for the Ice Kiss Restaurant will place further demands on those limited police resources, thereby adversely affecting the health and safety of the community as a whole.

(C) Public Convenience or Necessity

- i. The Ice Kiss Restaurant is located in a high crime area, with the crime count for the District (228) far exceeding the average crime count per district in the city (94).
- ii. Due to the close proximity of the restaurant to residential properties, with the potential for late night noise and disruption of the residents, and the likelihood of the creation of law enforcement problems at the site, including but not limited to increased crime and calls for police for police service if the hours of operation are later than 10 p.m. on Sundays through Thursdays and 11 p.m. on Fridays and Saturdays, the public convenience and necessity do not justify later hours of operation.

2. Each finding set forth or referred to herein is sufficient in and of itself to justify denial of the appeal.

3. A copy of Planning Commission Resolution No. 5730-10 is on file in the Office of the City Clerk, concurrently submitted in the agenda materials for Conditional Use Permit No. CUP-309-10, and incorporated herein by reference with the same force and effect as set forth in full.