

SUPPLEMENTAL

COUNCIL AGENDA: 03-20-07

ITEM: 11.2



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: March 15, 2007

Approved

Kay Wines

Date

3/15/07

SUPPLEMENTAL TRANSMITTAL MEMO

COUNCIL DISTRICT: 3

SNI: None

SUBJECT: CPA00-051-01. APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE A CONDITIONAL USE PERMIT RENEWAL TO ALLOW THE CONTINUED OPERATION OF A DRINKING AND ENTERTAINMENT ESTABLISHMENT AND LATE NIGHT USE LOCATED ON A 0.64 GROSS ACRE SITE AT THE WEST SIDE OF OAKLAND ROAD APPROXIMATELY 430 FEET SOUTH OF HORNING STREET.

REASON FOR SUPPLEMENTAL

Please find attached supporting documentation for item 11.2 on the March 20, 2007 City Council Meeting agenda. In the copying process, this item was inadvertently attached to item 11.3 instead of 11.2.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building, and Code Enforcement

For questions please contact Mike Enderby at (408) 535-7843.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Item Number
P.C. 10/17/01 Item 3:1

File Number
CP 00-07-051

Application Type
Conditional Use Permit

Council District 3

Planning Area
Central

Assessor's Parcel Number(s)
235-16-013

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Akoni Danielsen

Location: West side of Old Oakland Road, approximately 340 feet south of Horning Street (937 Old Oakland Road)

Gross Acreage: 0.64

Net Acreage: 0.64

Net Density: N/A

Existing Zoning: LI Light Industrial

Existing Use: Legal Non-conforming Drinking Establishment

Proposed Zoning: No Change

Proposed Use: Drinking Establishment and Entertainment Establishment

GENERAL PLAN

Completed by: AD

Land Use/Transportation Diagram Designation

Light Industrial with Mixed Industrial Overlay

Project Conformance:

Yes No

See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AD

North: truck washing station

LI Light Industrial

East: industrial/warehouse

LI Light Industrial

South: automotive repair

LI Light Industrial

West: storage yard

LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: AD

Environmental Impact Report

Exempt

Negative Declaration circulated on

Environmental Review Incomplete

Negative Declaration

FILE HISTORY

Completed by: AD

Annexation Title: Orchard No. 8

Date: 11/01/1951

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: October 10, 2001

Approved by: *Daniel Boyd*
 Action
 Recommendation

APPLICANT

Jose Antonio
937 Old Oakland Road
San Jose, CA 95112

OWNER

JEV Properties
937 Old Oakland Road
San Jose, CA 95112

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Akoni Danielsen

Department of Public Works

None received.

Other Departments and Agencies

See conditions of approval.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

This request is for a Conditional Use Permit (CUP) to allow the addition of an entertainment use to an existing legal non-conforming drinking establishment (Mexicali Club) on a 0.64-gross acre site in the LI Light Industrial Zoning District. The site is located at the west side of Oakland Road, approximately 340 feet southerly of Horning Street (939 Oakland Road) in a predominantly industrial neighborhood. Adjacent uses include a truck washing station to the north, the Modern Ice plant to the east across Oakland Road, automotive repair to the south and a storage yard to the west. There are residential uses mixed into the industrial pattern a block to the west, and a mix of commercial uses along Oakland Road.

The Zoning Code defines a drinking establishment as any place where alcohol is sold, offered for sale, or served to patrons independent of any other activity, including but not limited to eating, entertainment, karaoke, etc. An entertainment establishment is defined as any establishment (indoors or outdoors) where entertainment, either passive or active, is provided for the pleasure of the patrons, either independent or in conjunction with any other use. Such entertainment includes but is not limited to, vocal instrumental music, dancing, karaoke, comedy, and acting.

The subject application was filed and deemed complete prior to February 19, 2001, the effective date of the rewrite of the Zoning Code, and so has been processed according to the requirements of the M-1 Manufacturing Zoning District (now LI Light Industrial) in effect at the time it was deemed complete. Entertainment establishments are allowed upon issuance of a CUP in the M-1 Manufacturing District.

Planning staff have determined the Mexicali Club is a legal non-conforming drinking establishment that has routinely been open for business since 1947. Prior to 1971, drinking establishments were allowed by right in the M-1 Manufacturing Zoning District. In 1971, the Zoning Code was amended so that drinking establishments were allowed with a CUP, and the Club, which had never previously been subject to a CUP, became a legal non-conforming use. Since 1965, drinking establishments have been allowed dancing by the patrons as an incident to the operation, as well as instrumental and vocal music for the listening pleasure of the patrons, but no other entertainment. There could be no door charge as this would

turn the entertainment into the primary use and be considered an entertainment establishment. The requested CUP would allow collection of a door charge and entertainment as a primary use.

No additions or alterations are proposed to the exterior of the building. The building features double doors opening onto Oakland Road, and a single door facing the driveway alongside the southern side of the building. Proposed site improvements include new paving and striping of the parking lot at the rear of the property, and parking lot lights.

ENVIRONMENTAL REVIEW

The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts projects with existing facilities involving little or no expansion of an existing use. The project proposes no addition to the existing building, nor increase in seating or floor area open to the public. Additionally, the area in which the site is located is not environmentally sensitive.

GENERAL PLAN CONFORMANCE

The site has a General Plan Land Use/Transportation Diagram designation of Light Industrial with Mixed Industrial Overlay. Areas with this overlay designation contain or are surrounded by an existing mix of uses, so that additional non-industrial uses would not compromise the integrity of areas reserved exclusively for industrial uses. Examples of non-industrial uses include, but are not limited to, primary or secondary schools, hotels and motels, nightclubs, churches, free standing daycare centers, big box retailers, large gymnasiums, sports or arts instruction facilities, and hospitals. Drinking and entertainment establishments have been allowed to operate in industrially designated areas when they would not frustrate the City's industrial land use and economic development policies. The key consideration has been whether the non-industrial use would compromise the industrial integrity of the area by conflicting with the development and operation of surrounding industrial properties. In this case, the Mexicali Club has operated on the site for nearly 55 years, and the addition of an entertainment use in conjunction with the bar should not create conflicts with the surrounding industrial properties.

PUBLIC OUTREACH

Public Notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property with 500 feet of the subject site. Staff has been available to discuss the project with the public.

ANALYSIS

The primary project issue is conformance with Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.

In 1991 the City Council adopted, and in 1993 revised, Guidelines for evaluating bars and nightclubs (attached). The Policy identifies the key issues of land use compatibility, noise, parking, garbage and litter, and restrictions on use.

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Land Use Compatibility. The Policy discourages new entertainment establishments from opening adjacent to or near existing or planned residential uses. As stated above, residential uses are present in the neighborhood to the west. Additionally, the large Modern Ice property to the east across four-lane Oakland Road has recently been the subject of a General Plan Amendment for high density residential uses. However, the drinking establishment has existed since 1947, and the addition of entertainment should be compatible with the nearby residences for reasons described in more detail below. Per the Policy, the establishment is dispersed from other drinking/entertainment establishments and is not within 500 feet of a school. Consistent with the Policy, the project has been conditioned to control crowds queuing on the sidewalk and litter from patrons.

The Police Department has evaluated the proposal to ensure the safety and security of both patrons and citizens. Accordingly, the draft Permit includes conditions recommended by the Chief of Police requiring security guards responsible for interior and exterior surveillance, and additional exterior lighting. The Police Department has not indicated the existing use has been a law enforcement problem, nor has it suggested that the addition of the entertainment use would pose a law enforcement problem.

Noise. The operation of the entertainment use has been regulated to protect surrounding uses. All entertainment will occur within the existing building. Windows and doors will not be left open, and adequate ventilation is provided so that openings to the outside can be closed when the establishment is at full capacity. Noise generated by the establishment is conditioned to not exceed 60 dBA at the property line. To ensure compliance, noise measurements will be taken monthly after the entertainment use opens and a report submitted quarterly to the Planning Director. Should the establishment exceed 60 dBA at the property line, the report must identify measures to achieve compliance. As there is no proposed construction, surrounding uses will not be impacted from that typical activity.

Parking. The standard parking requirement for drinking and entertainment establishments is one space per 40 square feet of useable patron area. The building contains approximately 2,200 sq.ft. of useable area, for a nominal requirement of 55 parking spaces. However, the Zoning Code exempts structures or uses instituted prior to 1965 from the current requirements unless there is a substantial change in use. The Club was legally established in 1947 with 18 spaces, and has also informally used available parking on the adjacent property to the north also owned by the property owner. Staff is not aware that the existing drinking establishment has created parking impacts to the surrounding neighborhood. The proposed entertainment use would not result in additional seating or floor area open to public, and therefore is not a substantial change in use that would trigger application of the current rates. As mentioned above, new lighting will be provided to better illuminate existing parking available to the existing and proposed use.

Garbage and Litter. The project will be required to keep all publicly used areas free of litter, trash, cigarette butts, and garbage, and will daily damp wash the sidewalks in front of the building. Mechanical equipment used for outside maintenance, including blowers and street-sweepers, will not be used between 10:00 p.m. and 6:00 a.m. Ashtrays will be provided outdoors to accommodate smokers.

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Use Restrictions. Per the Policy, the drinking and entertainment establishment will not operate after 2:00 a.m. daily. The maximum occupancy will be as identified by the Fire Marshall. The draft Permit includes a five year time condition. At that time, the establishment will be reevaluated for compatibility with surrounding uses and applicable land use policy. A compliance review before the Planning

Commission is required in response to complaints filed with the Director of Planning.

Conclusion. Based on the above analysis, staff concludes that the proposed entertainment and drinking establishment, as conditioned by this Conditional Use Permit, would be compatible with the surrounding neighborhood and in conformance with the General Plan, applicable Zoning Code regulations, and Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.

RECOMMENDATION

Planning Staff recommends that the Planning Commission approve the Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Light Industrial with Mixed Industrial Overlay on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
2. The 0.64 acre site is located in the LI Light Industrial Zoning District.
3. The project site is developed with a single-story structure currently used as a legal non-conforming bar with approximately 2,200 sq.ft. of useable area for patrons.
4. The project proposes the addition of entertainment activities that would constitute an entertainment use.
5. No building addition or increase in net useable area for patrons is proposed. No exterior changes are proposed to the structure.
6. The subject application was deemed complete prior to February 19, 2001, the effective date of the rewrite of the Zoning Code, and so has been processed according to the requirements of the M-1 Manufacturing Zoning District in effect at the time it was deemed complete.
7. The M-1 Manufacturing District allowed entertainment establishments upon issuance of a Conditional Use Permit.
8. The bar and nightclub would operate between the hours of 6 a.m. until 2 a.m.
9. The existing gravel parking lot would be paved and striped and new lighting installed.
10. The site is surrounded to the north by a truck washing facility, to the east by a warehouse/ice plant, to the south by an automotive repair use, and to the west by an outdoor storage yard and residential uses. The site is not within 500 of a school.
11. The Police Department has recommended additional security guards and parking lot lighting to address security of both patrons and citizens.

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12. As conditioned by this Permit, entertainment will occur within the building with windows and doors closed. Noise will not exceed 60 dBA at the property line.
13. The Zoning Code requires one space per 40 sq.ft. of useable patron area for drinking and entertainment establishments, or 55 parking spaces for the site's 2,200 sq.ft. of useable patron area.
14. The drinking establishment was instituted in 1947 with 18 parking spaces on-site. Additional parking is available on the adjacent northerly lot also owned by the applicant.
15. Under Section 20.90.210 of the Zoning Code, no structure constructed, or use instituted, prior to November 10, 1965 is required to meet the off-street parking requirements unless there is a substantial change in the structure or use.
16. The proposed change in use is not considered substantial for the purposes of calculating required parking under Section 20.90.210 of the Zoning Code, and therefore the current amount of parking is sufficient to satisfy the off-street parking requirements for both the existing and proposed use.
17. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

The Planning Commission concludes and finds based on an analysis of the above facts that:

1. The proposed project is consistent with the San Jose 2020 General Plan Land/Use Transportation Diagram designation of Light Industrial with Mixed Industrial Overlay.
2. The proposed project is in compliance with the requirements of the California Environmental Quality Act.
3. The proposed entertainment use will be compatible with the uses in the surrounding neighborhood.
4. As conditioned in this Permit, the drinking and entertainment establishment would conform to Council Policy 6-23.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

- c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
 3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
 4. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways are provided on site to provide access to the site without interfering with off-site circulation.
 - b. Pedestrian walkways are provided to all major building entrances. A perimeter sidewalk is provided.
 - c. The proposed number and size of parking spaces complies with the requirements of the Zoning Ordinance.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

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CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

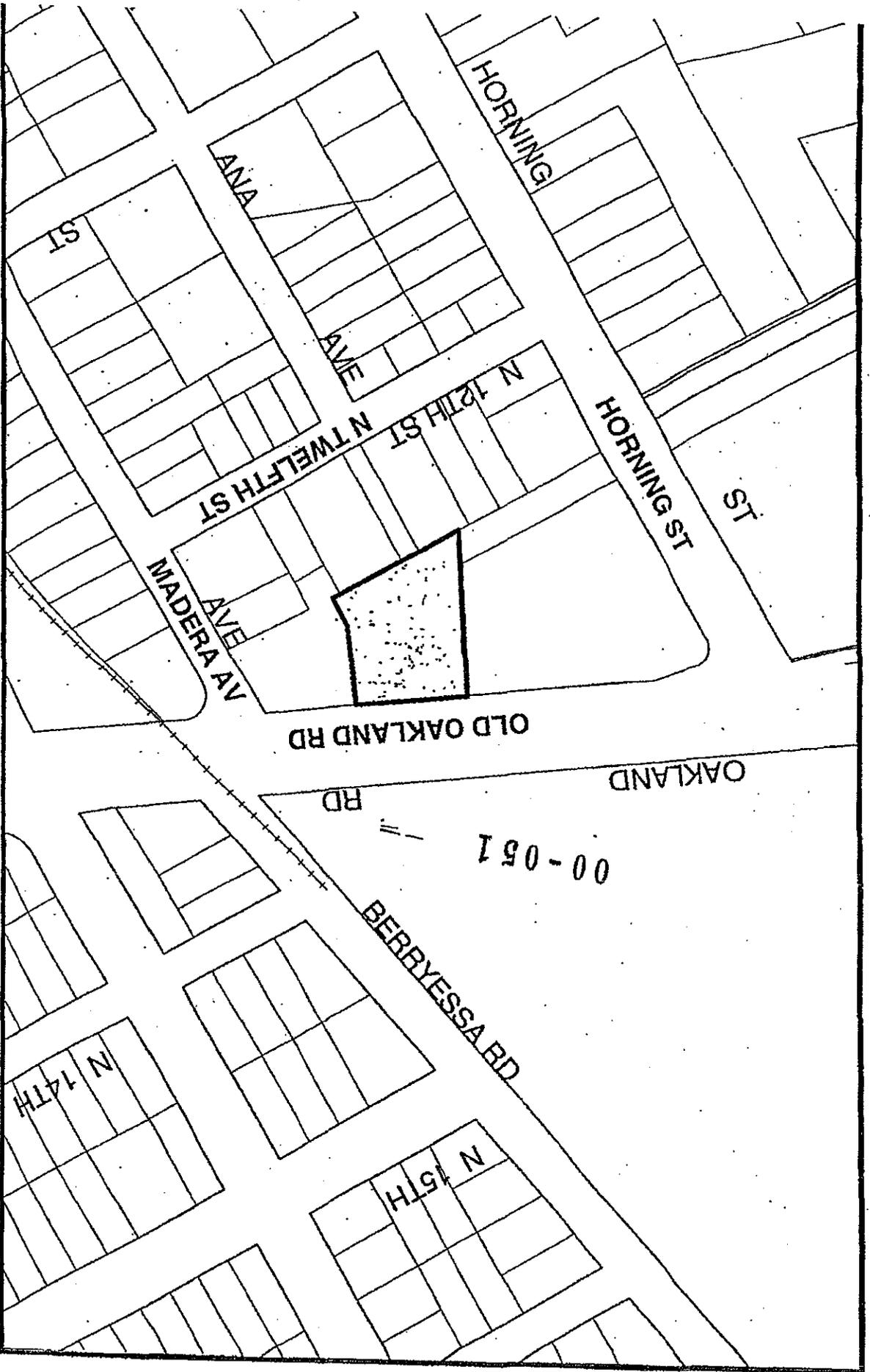
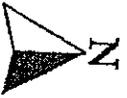
1. **Water Pollution Control Plant Notice.** This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Exterior Improvements.** No exterior improvements have been approved with this permit. Any proposed exterior improvements are subject to approval by the Director of Planning as required.
4. **Roof Equipment.** No new roof equipment is approved with this permit. Installation of new roof equipment is subject to approval by the Director of Planning.
5. **Signs.** No new signs are approved with this permit. New signs are subject to approval by the Director of Planning.
6. **Hours of Operation.** The bar and entertainment use shall be limited to 6 AM to 2 AM daily. Patrons shall have departed the site by 2:30 AM.
7. **Security.** A security officer shall be on duty for every 100 patrons using the bar facility during its hours of operation. Security shall regularly patrol the parking lot during afterdark hours.
8. **Noise and Acoustics.**
 - a. During the hours of nightclub operation, windows and doors must remain closed to minimize the impacts of amplified sound on adjacent land uses. Adequate ventilation must be provided to allow windows and doors to remain closed.
 - b. Noise generated by the facility shall not exceed the standard of 60 dBA measured at the property line.
 - c. During the first year of operation, an acoustical engineer shall take measurements of the noise produced by the entertainment use at the property lines on a monthly basis, and submit quarterly reports to the Director of Planning. In the event entertainment noise exceeds 60 dBA at the property line, the report shall include recommended measures to bring the entertainment use into compliance with this Permit.

9. **Games.** No pool or billiard tables, coin-operated or other games regulated by the City shall be permitted in excess of the number allowed by Title 20 of the Municipal Code.
10. **Trash, Refuse, Garbage and Litter.**
- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of sidewalks along the project's frontage on Old Oakland Road.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontage.
11. **Exterior Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 20 feet above grade.
12. **Occupancy.** Maximum occupancy shall be as determined by the Fire Marshall.
13. **ABC License.** The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.
14. **Entertainment Permit.** The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
15. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
16. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise specified in writing from the Fire Department.
17. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided as required by the Fire Department.
18. **Hazardous Materials Storage.** This permit does not include any approval of facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Site Development Permit.

CONDITIONS SUBSEQUENT

1. **Building Permit.** If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, of the Chapter 20.44, of Title 20, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with Condition #5, below.
4. **Compliance Review.** A Compliance Hearing may be required at the discretion of the Planning Commission or Director of Planning at any time during the period of time this permit is in effect.
5. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

Scale: 1" = 176'



File No: CP00-07-051

District: 3

Official No. 67