



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

Date: October 10, 2001

Approved by: *Daniel Boyd*

Approval with Conditions

Action

Denial

Recommendation

Uphold Director's Decision

APPLICANT

Jose Antonio
937 Old Oakland Road
San Jose, CA 95112

OWNER

JEV Properties
937 Old Oakland Road
San Jose, CA 95112

00-051

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.

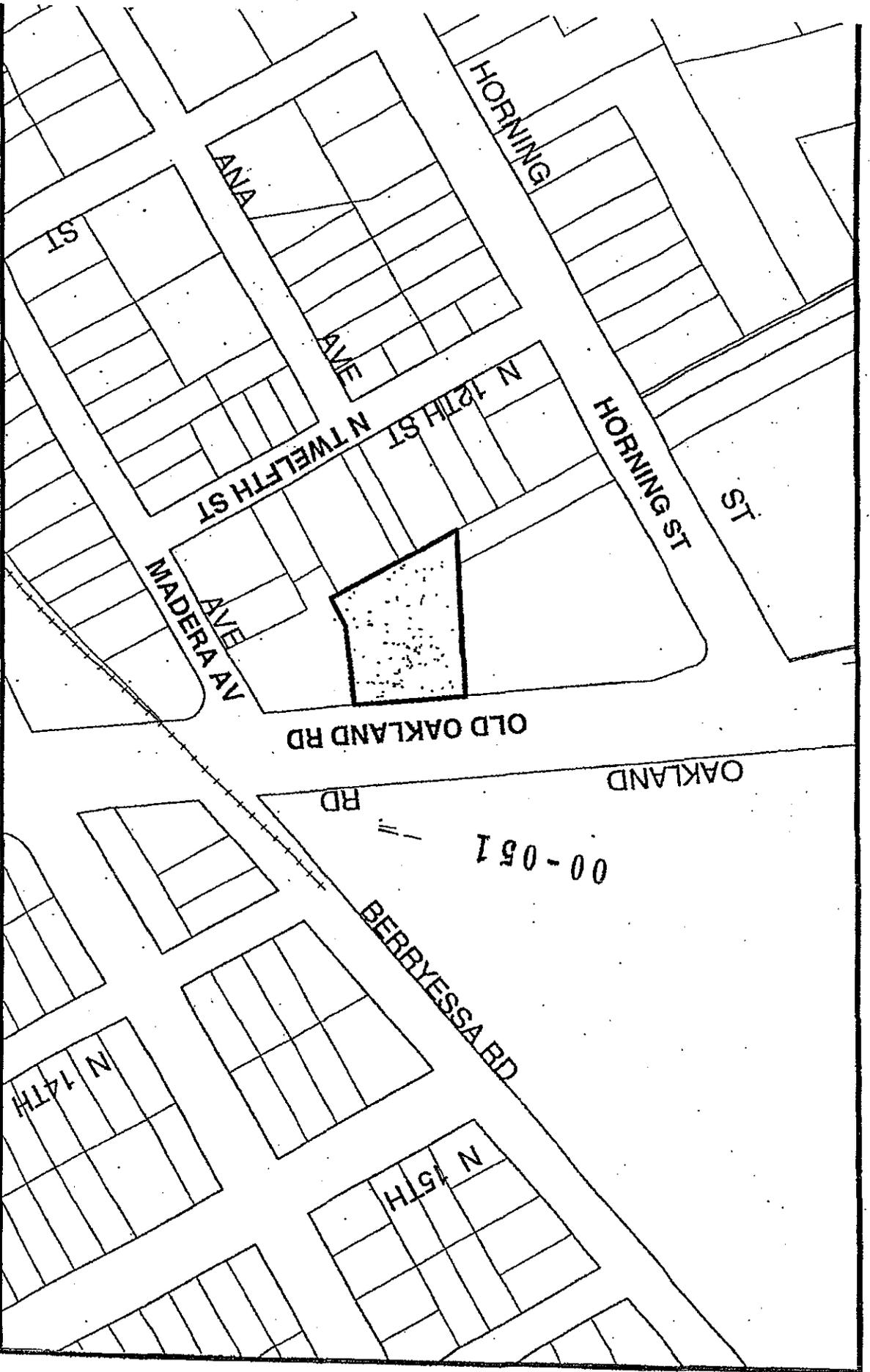
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9. **Games.** No pool or billiard tables, coin-operated or other games regulated by the City shall be permitted in excess of the number allowed by Title 20 of the Municipal Code.
10. **Trash, Refuse, Garbage and Litter.**
- a. Cleaning shall include 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" = 175'



File No: CP00-07-051

District: 3

Official No. 67



COUNCIL AGENDA: March 20, 2007

ITEM: 11.2

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 28, 2007

Approved:

Deanna Patra

Date:

3/5/07

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.

RECOMMENDATION

Adoption of a resolution to uphold the Planning Commission's decision to conditionally approve the renewal of a Conditional Use Permit to allow the continued operation of a drinking and entertainment establishment with late night use from 6:00 a.m. and 12:00 midnight, Sunday through Thursday; and from hours of 6:00 a.m. and 2:00 a.m. Friday and Saturday.

OUTCOME

Adopt a resolution to approve the subject Conditional Use Permit with the conditions approved by the Planning Commission would allow the continued operation of a drinking and entertainment establishment and late night use from 6:00 a.m. and 12:00 midnight, Sunday through Thursday; and from hours of 6:00 a.m. and 2:00 a.m. Friday and Saturday. Amplified music shall cease at 12:00 midnight Sunday through Thursday, and 1:00 a.m. Friday and Saturday. Alcohol service shall cease at 12:30 a.m. daily.

BACKGROUND

The applicant, Jose Antonio Valencia-Alfaro (Mexicali Club), requested a renewal of a Conditional Use Permit (CP00-051, attached) to allow the continued operation of a drinking and entertainment establishment and late night use until 2:00 a.m. daily, with no proposed physical expansion of the use or facility. Mexicali is a 2,200 square foot drinking establishment with

entertainment located on a 0.64 gross acre site at the west side of Oakland Road approximately 430 feet southerly of Horning Street (937 Oakland Road).

On October 25, 2007, the Planning Commission held a public hearing to consider the proposed renewal of the Conditional Use Permit (CUP). The Director of Planning recommended approval of the Conditional Use Permit with special conditions for reasons stated in the original staff report (see attached). The Planning Commission approved the proposed project with reduced operating hours and a required a compliance review hearing in one year. (See attached "October 25, 2007 Planning Commission Synopsis").

On November 21, 2007, the applicant, Jose Antonio Valencia-Alfaro (Mexicali Club) appealed the Planning Commission's decision to conditionally approve the subject proposal. The Permit Appeal, submitted by Jose Antonio Valencia-Alfaro (Mexicali Club), states: "Change of hours of operation to allow until 2:00 a.m." The appellant has filed this appeal in order for the City Council to approve the renewal of Conditional Use Permit with extended late night hours until 2:00 a.m. daily.

ANALYSIS

Conformance of Existing Nightclub to City Ordinances and Policies

The original staff report (attached) provides a full analysis of this project with respect to the conformance of the existing nightclub to all applicable City ordinances and policies. In summary, the nightclub is a legal non-conforming use in the LI Light Industrial Zoning District. The existing nightclub does not conform to several conditions of a Conditional Use Permit issued in 2000 (CP00-051, attached) including paving of the parking lot and construction of a trash enclosure. Additionally, neighborhood conditions have changed since issuance of the original Conditional Use Permit due to the ongoing construction of a new 202 unit single-family attached residential project (formerly the Modern Ice facility) located directly across Oakland Road from the existing nightclub. Finally, staff has received phone calls from residents in the area regarding noise problems related to late night uses at the site.

The Planning Commission's conditions of approval for the project improve the project's level of conformance with the City's Zoning Ordinance, City Council Policy 6-27: Evaluation of 24-Hours Uses, as well as the previous Conditional Use Permit (CP00-051) by scaling back the operation hours of the club and requiring improvements to the existing site. Implementation of the permit renewal as approved by the Planning Commission would allow the applicant to comply with existing permit conditions and improve the physical appearance for the site. The Planning Commission also required a one-year conformance review for the project to allow for review of noise issues and permit compliance. If the operations works well and the neighbors have no complaints at the conformance review in one year, the Planning Commission could decide to allow late night hour use seven days per week.

If the City Council chooses to allow the applicant to operate the use until 2:00 a.m. daily, late night noise at the site will likely continue to be a problem. The applicant would still be required to pave the rear parking lot and construct a trash enclosure.

Conclusion

Due to the noncompliance with conditions of the previously issued Conditional Use Permit, evidence of changed conditions of the neighborhood, and evidence that continued use of the nightclub until 2:00 a.m. daily creates a nuisance, the Director recommends that the City Council uphold the Planning Commission's decision to conditionally approve the renewal of a Conditional Use Permit to allow the continued operation of a drinking and entertainment establishment and late night use from 6:00 a.m. and 12:00 midnight, Sunday through Thursday; and from hours of 6:00 a.m. and 2:00 a.m. Friday and Saturday. Amplified music should cease at 12:00 midnight Sunday through Thursday, and 1:00 a.m. Friday and Saturday. Alcohol service should cease at 12:30 a.m. daily.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the Police Department and City Attorney's office.

FISCAL/POLICY ALIGNMENT

The proposed project is aligned with applicable General Plan and development policies.

COST SUMMARY/IMPLICATIONS

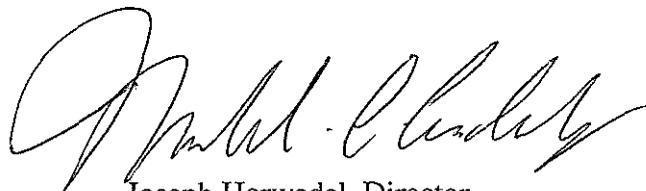
Not applicable.

BUDGET REFERENCE

Not applicable.

ENVIRONMENTAL REVIEW

Exempt, CPA00-051-01



Joseph Horwedel, Director
Planning, Building and Code Enforcement

For questions, please contact Mike Enderby at (408) 535-7806.

Attachments:

- Excerpt of Synopsis from 10/11/06 Planning Commission hearing
- Appeal Application
- Planning Commission Staff Report & Attachments, Planning Commission Resolution
-

cc: Applicant/Appellant

RESOLUTION NO.

Resolution of the City Council of the City of San José granting, subject to conditions, a Conditional Use Permit Amendment to use certain real property described herein for the purpose of allowing a drinking establishment, late night use between 12:00 midnight and 2:00 a.m., and off-sale of alcohol within an existing commercial building.

FILE NO. CPA00-051-01

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on April 25, 2006, an application (File No. CPA00-051-01) was filed for a Conditional Use Permit Amendment for the purpose of renewal of a Conditional Use Permit (CUP) to allow the continued operation of a drinking and entertainment establishment and late night use until 2:00 a.m. daily, with no proposed expansion of use, on that certain real property (hereinafter referred to as "subject property"), situate on the west side of Oakland Road approximately 430 feet southerly of Horning Street, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, the Planning Commission conducted a hearing on said application; and

WHEREAS, on October 25, 2006, the Planning Commission approved the application, from which decision the applicant has appealed to this City Council; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this City Council; conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Planning Commission; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Mexicali Club," dated July 21, 2000. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by

anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The applicant, Mexicali, is requesting renewal of a Conditional Use Permit (CUP) to allow the continued operation of a drinking and entertainment establishment and late night use until 2:00 a.m. daily, with no proposed expansion of use.
2. Mexicali is a 2,200 square foot drinking establishment with entertainment located at the west side of Oakland Road approximately 430 feet southerly of Horning Street.
3. The subject site is zoned LI Light Industrial.
4. The subject site is 0.64 gross acres in size.
5. The subject site is surrounded to the north by a truck washing facility, to the east by residential (under construction), to the south by outdoor pallet storage, and to the west by an outdoor storage yard and residential uses.
6. The building has double doors opening onto Oakland Road, and a single door facing the driveway on the south side of the building. No additions or alterations are proposed to the exterior of the building.
7. Parking is available at the rear of the site behind the existing building.
8. The Zoning Ordinance requires a Conditional Use Permit for any establishment other than office uses in any Commercial District that operates between the hours of 12:00 midnight and 6:00 a.m.
9. The drinking establishment was originally instituted in 1947 and is a legal nonconforming use in the Light Industrial District because it has operated continuously since 1971 when the Zoning Ordinance began requiring a CUP for drinking establishments in the M-1 Manufacturing District.
10. In 2001, the Planning Commission approved the current CUP (file no. CP00-051) to allow the addition of an entertainment use to the existing legal non-conforming drinking establishment for a period of up to five years.
11. The Conditional Use Permit (CP00-051) permit required a timely application for renewal more than 90 days and no greater than 180 days prior to the date of expiration. The applicant has met that requirement by filing a Conditional Use Permit Amendment on April 25, 2006.

12. The Director of Planning has determined that this project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301, which categorically exempts the permitting of existing private facilities involving negligible or no expansion of use at the time of the lead agency's determination. The project qualifies for this exemption because no building additions or expansion of use is proposed.
13. The site has a General Plan Land Use/Transportation Diagram designation of Light Industrial.
14. Parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/ Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated.
15. The status of existing legal non-conforming uses with regard to zoning is not affected by the General Plan Land Use designation.
16. The subject site is located within the 13th Street Strong Neighborhoods Initiative Area.
17. Public notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property within 500 feet of the subject site. Staff has been available to discuss the project with the public.
18. After visiting the site and receiving phone calls from residents living within 500 feet of the site, staff has found Mexicali to be in noncompliance with conditions in the existing permit (CP00-051) regarding noise and trash disposal. Additionally, the existing parking provided has not been paved or striped, as required by the previously issued permit. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.
19. When considering renewal of a Conditional Use Permit, Section 20.100.750 "Renewal Findings" of the Zoning Code makes a presumption that the proposed use continues to meet the findings for a Conditional Use Permit unless there is evidence of noncompliance with any condition of any prior permit or law or ordinance, or by evidence of any changed condition in the neighborhood, or by evidence that the continued use creates a nuisance as defined by this Title, or an impairment of public peace, health, safety, morals or welfare."
20. The Police Department Vice Section and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement Department have reported no code violations or noncompliance with the club's current Conditional Use Permit.
21. Residents in the area have complained about loud music and noise late at night throughout the week from the Mexicali Club.
22. Residents also mention that the front doors to the club are kept open throughout the evening during business hours.
23. Quarterly reports have not been submitted to staff for review of the noise level at the property line as required by the CP00-051.

24. Staff believes Mexicali to be in noncompliance with the existing Conditional Use Permit based on comments received from neighbors.
25. The existing parking area provided has not been paved or striped, as stated in the previously issued permit.
26. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.
27. Staff has received phone calls from area residents with concerns regarding loud noise at Mexicali late at night throughout the week. Residents also mention that the front doors to the club are kept open, which does not comply with Conditional Use Permit file no. CP00-051 condition 8.a. Quarterly reports have not been submitted to staff for review of the noise level at the property line which does not comply with permit condition 8.c.
28. After visiting the site and receiving comments from residents living within 500 feet of the site, staff has found Mexicali to be in noncompliance with conditions in the existing permit (CP00-051) regarding trash because the trash container for the project is being stored in the driveway next to the public right of way.
29. City Council Policy 6-27, Evaluation of 24-Hour Uses, is intended to ensure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should be consistent with City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.
30. Mexicali is an existing drinking establishment located outside of the Downtown Core. The project is not located within 500 feet of an existing bar or any existing school.
31. Residential uses are located along the site's western property line, but are separated from Mexicali by an approximately 7-foot high masonry wall with some mature landscaping that has historically served as a buffer to the adjacent uses. Additionally, there is a new 202 unit, single-family attached residential development under construction directly across Oakland Road from Mexicali.
32. In order to minimize the impact of noise on existing and new residential uses, staff recommends that all doors and windows to the Mexicali Club are to remain closed with mechanical ventilation provided, and the hours of amplified sound be restricted to the hours of 6:00 a.m. to 12:00 midnight.
33. The Police Department has evaluated the proposal to ensure the safety and security of both patrons and citizens. The memorandum does not indicate that the existing use has been a law enforcement problem. The project is not considered a high crime area, and the Police Department is neutral on the issuance of the permit. Consistent with the Policy, the project will continue to be conditioned to control crowds queuing on the sidewalk and litter from patrons.
34. Mexicali has not proposed outdoor areas for entertainment. Currently amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m.

35. The building contains approximately 2,200 square feet 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 15 spaces and has also informally used available parking on the adjacent property to the north, owned by the same property owner. The proposed renewal does not result in additional seating or floor area open to the public, and therefore is not a substantial change in use that would require expansion of provided parking.
36. A site visit by staff to the property confirmed that the parking area was being used for outdoor storage of vehicles. The applicant has since removed the vehicles.
37. The Conditional Use Permit has been conditioned to keep all off-street parking spaces in good repair, free of litter and debris, potholes, obstructions, and stored materials.
38. The Conditional Use Permit for this project has been conditioned to restrict admittance to patrons 21 years of age and older.
39. The project proposes operating hours from 6:00 a.m. to 2:00 a.m. daily.
40. Mexicali has not proposed outdoor areas for entertainment. Currently amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m. Area residents near the site report loud music late at night can be heard throughout the neighborhood.
41. Based on resident concerns regarding amplified sound, staff recommends restricting the hours of amplified sound to end at 12:00 midnight.
42. Due to the adjacency of residential uses to the parking area, staff is recommending that the hours of operation for the facility require closure at 1:00 a.m.
43. The building contains approximately 2,200 square feet of useable area, for a nominal requirement of 55 parking based on the Zoning Ordinance parking requirement of 1 space per 40 square feet for dancehalls. 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 15 spaces and has also informally used available parking on the adjacent property to the north also owned by the same property owner. The proposed renewal does not result in additional seating or floor area open to the public, and therefore is not a substantial change in use that would require expansion of provided parking.
44. The site plan submitted for the project currently shows 15 parking spaces located at the rear of the property. The applicant also claims that additional parking is available at the adjacent truck wash facility located to the north of the property. A site visit by staff to the property confirmed that the parking area was being used for outdoor storage of vehicles. The applicant has since removed the vehicles
45. Staff recommends a condition of approval requiring the applicant to submit a Permit Adjustment demonstrating the completion of paving and striping of parking spaces in the rear

parking area with landscaping adjacent to the west property line. Staff has conditioned the permit to keep the parking area clear of debris and stored materials. The project also includes a condition that the gate must remain open when business is open.

This City Council concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Designation of General Commercial.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project, as conditioned, conforms to the Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars regarding the Land Use Compatibility, Noise, Parking, Garbage and Litter, and Typical Use Restrictions provisions.
5. The proposed project, as conditioned, would be compatible with adjacent residential uses to the west because of an existing masonry wall approximately seven feet in height and the addition of a landscape strip that would border the existing wall.
6. The proposed project, as conditioned, would be compatible with residential uses to the east with the limitation on the use of amplified sound until 12:00 a.m., and the requirement to keep all doors and windows closed with mechanical ventilation during all hours of operation.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the City Council 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.

Therefore, the City Council hereby **approves** said Conditional Use Permit Amendment.

ADOPTED and issued this 20th day of March, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

Chuck Reed, Mayor

ATTEST:

Lee Price, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

c:

PUBLIC HEARING NOTICE

The City Council of the City of San José will consider an Appeal of a Conditional Use Permit Renewal at a public hearing in accordance with the San José Municipal Code on:

March 20, 2007
6:30 p.m.
City Council Chambers
City Hall
200 East Santa Clara Street
San Jose, CA 95113

The project being considered is:

CPA00-051-01. APPEAL of the Planning Director's decision to approve a Conditional Use Permit Amendment for a timely renewal with reduced operating hours of an existing drinking and entertainment establishment, on a 0.64 gross acre site in the LI Light Industrial Zoning District, located on the west side of Oakland Road approximately 430 feet south of Horning Street. Council District 3. SNI: 13th Street. CEQA: Exempt.

Reports, drawings, and documents along with a draft permit and recommendations will be available for review during the week of the public hearing from 9:00 a.m. to 5:00 p.m., Monday through Friday at:

Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113
(408) 535-7800

<http://www.sanjoseca.gov/planning/hearings/>

You are welcome to attend and to speak on this issue. To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-7800 or (408) 294-9337 (TTY) at least two business days before the meeting. **Muốn biết tin tức bằng tiếng Việt Nam về tờ thông tin này, xin quý vị liên lạc Trung Nguyen ở số (408) 535-7883. Para información en Español acerca de esta solicitud, comuníquese con Juan Borrelli al (408) 535-3555.**

** If you choose to challenge this land use decision in court, you may be limited to only those issues you, or someone else, raised and discussed at the public hearing or in written correspondence delivered to the City at or prior to the public hearing.*

Comments and questions are welcome and should be referred to the **Project Manager, Michelle Stahlhut**, at the e-mail address: Michelle.Stahlhut@sanjoseca.gov in the Department of Planning, Building and Code Enforcement. Please refer to the above file number for further information on this project.



Jean Hamilton, Acting Deputy Director
Plan Implementation Division

Dated: January 31, 2007

Noticing Radius: 500 ft.

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

October 25, 2006 Planning Commission Synopsis (Excerpt)

CPA00-051-01. Conditional Use Permit Amendment for the renewal of the original permit for an existing drinking and entertainment establishment, on a 0.64 gross acre site in the Light Industrial Zoning District, located on west side of Oakland Road approximately 430 feet south of Horning Street. Council District 3. SNI: 13th Street. CEQA: Exempt.

APPROVED (7-0-0) WITH CONDITIONS:

1) HOURS OF OPERATION TO MIDNIGHT SUNDAY THROUGH THURSDAY, 2) HOURS OF OPERATION TO 2 A.M. FRIDAY AND SATURDAY WITH MUSIC TO STOP AT 1 A.M., 3) ADDITION OF LITTER “CLEAN-UP” CONDITION, AND 4) A 1-YEAR COMPLIANCE REVIEW HEARING WITH 1000 FOOT NOTICING RADIUS TO SURROUNDING NEIGHBORHOOD.

Applicant's representative explained applicant's response to staff recommended conditions. In response to question from Chair Campos, the applicant stated outdoor yard area was being cleaned up and stored cars would be removed. Chair Campos commented interior of establishment is good quality, but asked when parking lot improvements, actually required 5 years ago by the original permit, would be done. The applicant's representative stated applicant willing to do all required to clean up site.

Commissioner Kalra asked about staff's recommendation to limit hours of operation, and stated he could understand need for operation to 2:00 am and asked the applicant if the music could end at 1:00 am. The applicant stated music stops at 1:30 am now. The applicant's representative responded music doesn't start nor does business pick up until 10:00 pm – so closing at midnight allows for only two hours. Commissioner Kalra inquired whether stopping music at 1:00 am would be acceptable with 3 hours of patron time. In response to Commissioner Kalra, applicant said prime business days are Thursday, Friday and Saturday and in response to Commissioner Kalra's question about possible midnight closing on weekdays (Monday – Thursday), the applicant stated he would prefer to remain open all days to 2:00 am given new security measures.

The applicant's representative commented there had been many times in past that the door was left open in rear, and staff commented that residents and neighbors living across from front doors have been complaining due to noise. Applicant commented that new security on site would address parking lot noise and keeping doors closed.

Chair Campos commented to applicant about options the Commission could recommend and stated Commission was working toward a compromise. Staff clarified concern about closing hours was partly related to parking lot that would now be in use for parking.

Several speakers noted past problems including noise, litter and fights and commented there would be new residential development directly across the street. In response to

Chair Campos, area residents explained concentration of music on weekends and that late Sunday night noise is a problem for those needing to go to work Monday morning. One speaker stated that even with doors closed, vibration from music carried 150 feet to his house on Madera Avenue. The area residents stated they'd consider a closing time of midnight a good compromise. In response to Commissioner Kalra, the neighborhood speaker stated that although compromise is possible, since the club is a destination, allowing the club to be open late brings fights and problems to neighborhood, and that future residents of new homes across the street would likely be more affected by use in future.

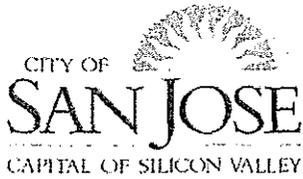
In response to Commissioner Zito, the neighborhood speaker stated code violation complaints had been filed in the past and also complaints with Police. In response to Commissioner Zito, staff clarified that the police memorandum hadn't indicated concern and that trash clean-up condition could be added.

Commissioner Zito moved staff recommendation with changes to close at 12:00 am Sunday to Thursday, and on Friday and Saturday to 2:00 am, with parking music off at 1:00 am and an additional clean up condition reflects usual requirement in downtown and a Compliance Review hearing in one year with a notice sent to 1000 foot radius.

Commissioner Zito stated he concurred with staff that with renewed use of parking area behind building, area noise could be nuisance to proximate houses.

Motion carried 7-0

The City Attorney explained to the applicant that in a year, if the operation works well and neighbors don't have complaints, that the Commission could extend later hours to all week.



Put on calendar for review

CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER <u>CPA 00-051-01</u>	RECEIPT # <u>434050</u>
PROJECT LOCATION <u>W BT SIDE OF OAKLAND RD. APPROXIMATELY 430 FEET SOUTHERLY OF MORNING STREET</u>	AMOUNT \$ <u>2060⁰⁰</u>
	DATE <u>11/21/06</u>
	BY <u>C. Rodriguez</u>

TO BE COMPLETED BY PERSON FILING APPEAL
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT: <u>939 OAKLAND RD. SAN JOSE CA 95112</u>
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <u>CHANGE OF HOURS OF OPERATION TO ALLOW UNTIL 2:00 AM</u>

PERSON FILING APPEAL	
NAME <u>JOSE ANTONIO VALENCIA-ALFARO</u>	DAYTIME TELEPHONE <u>(408) 829-6429</u>
ADDRESS <u>939 OAKLAND RD. SAN JOSE CA 95112</u>	CITY STATE ZIP CODE
SIGNATURE <u>[Signature]</u>	DATE
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PROPERTY OWNER	
NAME <u>JEV CONCRETE, INC</u>	DATE
ADDRESS <u>935 OAKLAND RD. SAN JOSE CA 95112</u>	CITY STATE ZIP CODE

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street,
San José, California 95113-1905

Hearing Date/Agenda Number
P.C. 10/25/06 Item 40

STAFF REPORT

File Number
CPA00-051-01

Application Type
Conditional Use Permit Renewal

Council District
3

Planning Area
Central

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

PROJECT DESCRIPTION

Completed by: Michelle Stahlhut

Location: West side of Oakland Road approximately 430 feet southerly of Horning Street

Gross Acreage: 0.64 Net Acreage: 0.64 Net Density: n/a

Existing Zoning: LI Light Industrial Existing Use: Drinking and entertainment establishment with late night use

Proposed Zoning: No change Proposed Use: Allow continuation of above use

GENERAL PLAN

Completed by: MS

Land Use/Transportation Diagram Designation
Light Industrial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: MS

North: Truck wash facility LI Light Industrial

East: Single-family attached residential (under construction) A(PD) Planned Development

South: Pallet storage facility LI Light Industrial

West: Outdoor storage / Residential LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: MS

Environmental Impact Report found complete
 Negative Declaration
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: MS

Annexation Title: Orchard No. 8

Date: November 1, 1951

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: 
 Action
 Recommendation

APPLICANT/OWNER

Jose Antonio / Valencia Alfaro
939 Old Oakland Road
San Jose, CA 95127

Elvira Valderrama
949 Old Oakland Road
San Jose, CA 95127

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: MS

Department of Public Works

None Received

Other Departments and Agencies

See attached memorandum from the Police Department

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Mexicali, is requesting renewal of a Conditional Use Permit (CUP) to allow the continued operation of a drinking and entertainment establishment and late night use until 2:00 a.m. daily, with no proposed expansion of use. Mexicali is a 2,200 square foot drinking establishment with entertainment located on a 0.64 gross acre site at the west side of Oakland Road approximately 430 feet southerly of Horning Street. The site is surrounded to the north by a truck washing facility, residential (under construction) across Oakland Road to the east, to the south by outdoor pallet storage, and to the west by an outdoor storage yard and residential uses. The subject 1-story building is located at the front of the site with the parking area in the rear. The building has double doors opening onto Oakland Road, and a single door facing the driveway on the south side of the building. No additions or alterations are proposed to the exterior of the building.

The Zoning Ordinance requires a Conditional Use Permit for any establishment other than office uses in any Commercial District that operates between the hours of 12:00 midnight and 6:00 a.m. The drinking establishment was originally instituted in 1947 and is a legal nonconforming use in the *Light Industrial District* because it has operated continuously since 1971 when the Zoning Ordinance began requiring a CUP for drinking establishments in the former M-1 Manufacturing District.

In 2001, the Planning Commission approved the current CUP (file no. CP00-051) to allow the addition of an entertainment use to the existing legal non-conforming drinking establishment for a period of up to five years. 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 Conditional Use Permit (CP00-051) permit required a timely application for renewal more than 90 days and no greater than 180 days prior to the date of expiration. The applicant has met that requirement by filing a Conditional Use Permit Amendment on April 25, 2006.

In considering renewal of the Conditional Use Permit, staff reviews the project for compliance with the existing permit, as well as taking into consideration comments submitted by the Police Department, any changed conditions in the neighborhood, and whether the continued use creates a nuisance in the neighborhood.

The Police Department Vice Section and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement Department have reported no code violations or noncompliance with Mexicali Club's current Conditional Use Permit.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301, which categorically exempts the permitting of existing private facilities involving negligible or no expansion of use at the time of the lead agency's determination. The project qualifies for this exemption because no building additions or expansion of use is proposed.

GENERAL PLAN CONFORMANCE

The site has a General Plan Land Use/Transportation Diagram designation of Light Industrial. The renewal of the Conditional Use Permit conforms to the SJ2020 General Plan because parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated. Since the gross acreage of the proposed project at 0.64 acres is less than two acres, the project is deemed to be in conformance with the General Plan. Additionally, the status of existing legal non-conforming uses with regard to zoning is not affected by the General Plan Land Use designation. Finally, the renewal of the Conditional Use Permit for the proposed project conforms to the Growth Management Major Strategy in that the proposed use is located on an infill site where the City can provide services consistent with a balanced budget.

ANALYSIS

The primary policies and regulations applicable to the review and analysis of renewal of the conditional use permit are (1) San Jose Municipal Code Section 20.100.750 "Renewal Findings," (2) Compliance with the existing Conditional Use Permit File No. CP00-051, attached, (3) City Council Policy 6-27: Evaluation of 24-Hour Uses, and (4) City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars. The analysis of each of these issues is discussed below.

San Jose Zoning Code 20.100.750 Renewal Findings

When considering renewal of a Conditional Use Permit, Section 20.100.750 "Renewal Findings" of the Zoning Code makes a presumption that the proposed use continues to meet the findings for a Conditional Use Permit unless there is evidence of noncompliance with any condition of any prior permit or law or ordinance, or by evidence of any changed condition in the neighborhood, or by evidence that the continued use creates a nuisance as defined by this Title, or an impairment of public peace, health, safety, morals or welfare."

After visiting the site and receiving phone calls from residents living within 500 feet of the site, staff has found Mexicali to be in noncompliance with conditions in the existing permit (CP00-051) regarding noise and trash disposal. Additionally, the existing parking provided has not been paved or striped, as required by the previously issued permit. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.

See following analysis of compliance with the existing permit and with City Council policies for compliance with renewal findings.

Existing Conditional Use Permit: CP00-051

The Police Department Vice Section and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement Department have reported no code violations or noncompliance with the club's current Conditional Use Permit.

Staff has visited the site and received comments from residents in the neighborhood regarding the project. Based on this input, staff believes Mexicali to be in noncompliance with the following conditions of the original permit, File No. CP00-051:

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.*

Staff has received phone calls from area residents with concerns regarding loud noise at Mexicali late at night throughout the week. Residents also mention that the front doors to the club are kept open, which does not comply with Conditional Use Permit file no. CP00-051 condition 8.a. Quarterly reports have not been submitted to staff for review of the noise level at the property line which does not comply with permit condition 8.c.

Based on neighborhood concerns, staff recommends measures to bring the entertainment use into compliance with the permit by requiring the windows and doors remain closed, and requiring amplified sound to cease at 12:00 midnight.

10. Trash, Refuse, Garbage, and Litter.

c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.

Currently, the trash container for the project is being stored in the driveway next to the public right of way, as illustrated in Figure 1.

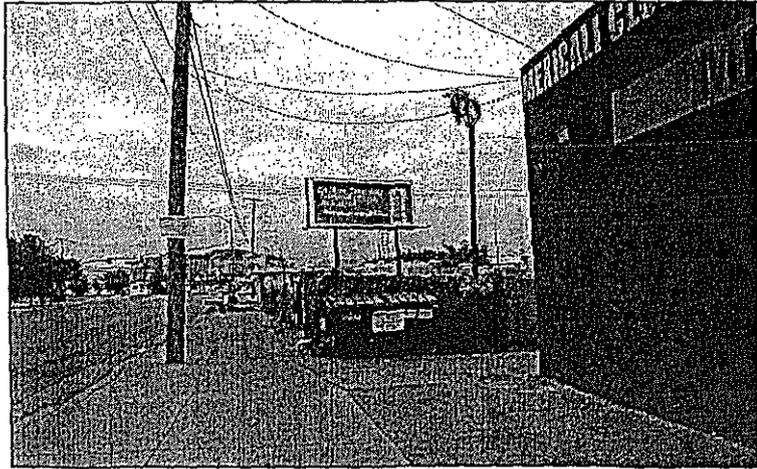


Figure 1. Facing south along Oakland Road

Although the applicant has moved the trash bin into the parking area of the site, staff recommends the permit be conditioned to require construction of a trash enclosure at the rear of the site to effectively screen the trash container from public view.

City Council Policy 6-27: Evaluation of 24 Hour Uses

City Council Policy 6-27, Evaluation of 24-Hour Uses, is intended to ensure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should be consistent with City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars. Please see the discussion below.

City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

The City allows nightclub and bar uses only through the discretionary Conditional Use Permit process to ensure that the use conforms to City requirements and is compatible with its surrounding neighborhood. The *Guidelines for Evaluation of Nightclubs and Bars* are intended to facilitate the evaluation process for individual permit applications by identifying the project characteristics necessary for approval. The following discussion cites guidelines from City Council Policy 6-23 that are applicable to the proposed project, followed by an analysis of how the proposed project currently conforms to the policy.

Land Use Compatibility

d. New bars outside the Downtown Core should be dispersed and, at a minimum, not located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that they do not adversely affect any nearby residential or school uses.

Mexicali is an existing drinking establishment located outside of the Downtown Core. The project is not located within 500 feet of an existing bar or any existing school.

Residential uses are located along the site's western property line, but are separated from Mexicali by an approximately 7-foot high masonry wall with some mature landscaping that has historically served as a buffer to the adjacent uses. Additionally, a new residential development is under construction directly across Oakland Road from Mexicali. The "Modern Ice" project consists of 202 single-family attached residential units.

In order to minimize the impact of noise on existing and new residential uses, staff recommends that operation of the Mexicali Club be restricted to the hours of 6:00 a.m. to 1 a.m. Additionally, amplified sound should be restricted to the hours of 6:00 a.m. to 12:00 midnight, and all doors and windows to the Mexicali Club are to remain closed with mechanical ventilation provided.

f. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement.

The Police Department has evaluated the proposal to ensure the safety and security of both patrons and citizens (See attached memo). The memorandum does not indicate that the existing use has been a law enforcement problem. The project is not considered a high crime area, and the Police Department is neutral on the issuance of the permit. Consistent with the Policy, the project will continue to be conditioned to control crowds queuing on the sidewalk and litter from patrons.

Noise

b. Windows and doors should not be open during the operation of the facility where noise impacts the surrounding area. Adequate ventilation should be provided so that openings to the outside can be closed when the bar or club is at full capacity.

There is evidence that residents in the area have been impacted by noise from Mexicali. Staff recommends a condition to require the applicant to keep windows and doors close during operation of the facility, and to provide mechanical ventilation to facilitate this condition.

c. Outdoor areas for entertainment including areas with roof openings should not be allowed where noise impacts the surrounding area. Hours of operation and/or amplified sound should be carefully regulated to ensure compatibility with adjacent uses.

Mexicali has not proposed outdoor areas for entertainment. Currently amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m. Area residents near the site report loud music late at night can be heard throughout the neighborhood.

Staff recommends that the hours of amplified music club be restricted to end at 12:00 midnight. Music should not be audible from residential properties after 9:00 p.m.

Parking

a. For new nightclubs or bars, an analysis of both day and nighttime parking availability within 1200 feet of the proposed facility should be provided by the project proponent. Parking demand should be calculated at one space for each 40 square feet of usable patron area. Where there are insufficient spaces to meet the demand generated by the proposed bar or nightclub, parking should be provided by the operator at a location convenient and readily accessible to the patrons of the facility. Parking may be supplied by contracting with nearby property owners, offering validation services and/or valet services, or such other means that would not reduce the spaces available for existing uses. This may requires the approval of an Off-Site or Alternating Use Parking Arrangement as specified in the San Jose Municipal Code.

The building contains approximately 2,200 square feet of useable area, for a nominal requirement of 55 parking based on the Zoning Ordinance parking requirement of 1 space per 40 square feet for dancehalls. 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 15 spaces and has also informally used available parking on the adjacent property to the north also owned by the same property owner. The proposed renewal does not result in additional seating or floor area open to the public, and therefore is not a substantial change in use that would require expansion of provided parking.

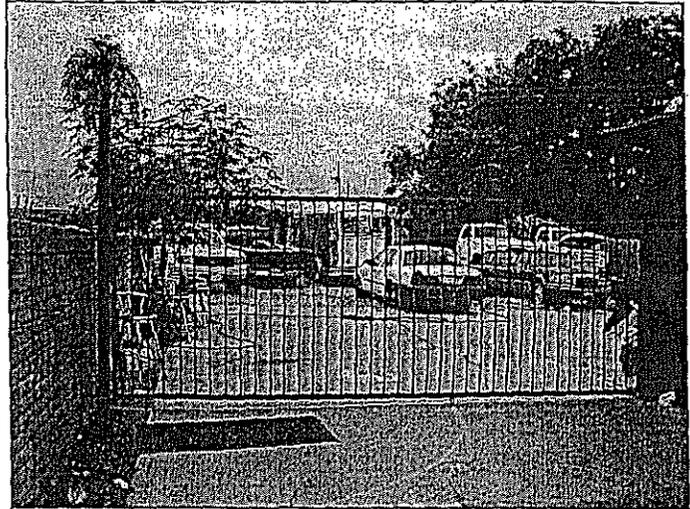


Figure 2. Parking lot in rear

The site plan submitted for the project currently shows 15 parking spaces located at the rear of the property. The applicant also claims that additional parking is available at the adjacent truck wash facility located to the north of the property. A site visit by staff to the property confirmed that the parking area was being used for outdoor storage of vehicles. The applicant has since removed the vehicles

Staff recommends a condition of approval requiring the applicant to submit a Permit Adjustment demonstrating the completion of paving and striping of parking spaces in the rear parking area with landscaping adjacent to the west property line. Staff has conditioned the permit to keep the parking area clear of debris and stored materials. The project also includes a condition that the gate must remain open when business is open.

Typical Use Restrictions

a. Admittance to bars and nightclubs will be restricted to patrons 21 years of age and older.

The Conditional Use Permit for this project has been conditioned to restrict admittance to patrons 21 years of age and older.

c. Nightclubs and bars should not operate after 2:00 a.m. daily.

The project proposed operating hours from 6:00 a.m. to 2:00 a.m. daily. However, staff recommends a condition of approval limiting hours of operation from 6:00 a.m. to 1:00 a.m. daily.

f. Amplified sound, amusement games and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.

Based on resident concerns regarding amplified sound, staff recommends restricting the hours of amplified sound to end at 12:00 midnight.

Conclusion

Based on the above analysis, staff concludes that the proposed conditional use permit renewal, as conditioned by this Conditional Use Permit Amendment, 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. Staff is recommending that the Conditional Use Permit be issued with a five-year time condition, in order to monitor operation of the club, and to allow for additional updates from the Police Department to the Planning Commission. At anytime, in the event that staff observes non-compliance within this five year period, proceedings to bring the permit back for review by the Planning Commission could occur if needed.

PUBLIC OUTREACH

Public notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property within 500 feet of the subject site. Staff has been available to discuss the project with the public. The agenda and staff report for the project have been available on the Planning Department website. Staff has received several phone calls from residents in the neighborhood regarding ongoing problems with loud music and noise during late night hours throughout the week.

RECOMMENDATION

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

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

1. The applicant, Mexicali, is requesting renewal of a Conditional Use Permit (CUP) to allow the continued operation of a drinking and entertainment establishment and late night use until 2:00 a.m. daily, with no proposed expansion of use.
2. Mexicali is a 2,200 square foot drinking establishment with entertainment located at the west side of Oakland Road approximately 430 feet southerly of Horning Street.
3. The subject site is zoned LI Light Industrial.
4. The subject site is 0.64 gross acres in size.
5. The subject site is surrounded to the north by a truck washing facility, to the east by residential (under construction), to the south by outdoor pallet storage, and to the west by an outdoor storage yard and residential uses.
6. The building has double doors opening onto Oakland Road, and a single door facing the driveway on the south side of the building. No additions or alterations are proposed to the exterior of the building.
7. Parking is available at the rear of the site behind the existing building.
8. The Zoning Ordinance requires a Conditional Use Permit for any establishment other than office uses in any Commercial District that operates between the hours of 12:00 midnight and 6:00 a.m.
9. The drinking establishment was originally instituted in 1947 and is a legal nonconforming use in the Light Industrial District because it has operated continuously since 1971 when the Zoning Ordinance began requiring a CUP for drinking establishments in the M-1 Manufacturing District.
10. In 2001, the Planning Commission approved the current CUP (file no. CP00-051) to allow the addition of an entertainment use to the existing legal non-conforming drinking establishment for a period of up to five years.
11. The Conditional Use Permit (CP00-051) permit required a timely application for renewal more than 90 days and no greater than 180 days prior to the date of expiration. The applicant has met that requirement by filing a Conditional Use Permit Amendment on April 25, 2006.
12. The Director of Planning has determined that this project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301, which categorically exempts the permitting of existing private facilities involving negligible or no expansion of use at the time of the lead agency's determination. The project qualifies for this exemption because no building additions or expansion of use is proposed.
13. The site has a General Plan Land Use/Transportation Diagram designation of Light Industrial.

14. Parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/ Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated.
15. The status of existing legal non-conforming uses with regard to zoning is not affected by the General Plan Land Use designation.
16. The subject site is located within the 13th Street Strong Neighborhoods Initiative Area.
17. Public notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property within 500 feet of the subject site. Staff has been available to discuss the project with the public.
18. After visiting the site and receiving phone calls from residents living within 500 feet of the site, staff has found Mexicali to be in noncompliance with conditions in the existing permit (CP00-051) regarding noise and trash disposal. Additionally, the existing parking provided has not been paved or striped, as required by the previously issued permit. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.
19. When considering renewal of a Conditional Use Permit, Section 20.100.750 "Renewal Findings" of the Zoning Code makes a presumption that the proposed use continues to meet the findings for a Conditional Use Permit unless there is evidence of noncompliance with any condition of any prior permit or law or ordinance, or by evidence of any changed condition in the neighborhood, or by evidence that the continued use creates a nuisance as defined by this Title, or an impairment of public peace, health, safety, morals or welfare."
20. The Police Department Vice Section and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement Department have reported no code violations or noncompliance with the club's current Conditional Use Permit.
21. Residents in the area have complained about loud music and noise late at night throughout the week from the Mexicali Club.
22. Residents also mention that the front doors to the club are kept open throughout the evening during business hours.
23. Quarterly reports have not been submitted to staff for review of the noise level at the property line as required by the CP00-051.
24. Staff believes Mexicali to be in noncompliance with the existing Conditional Use Permit based on comments received from neighbors.
25. The existing parking area provided has not been paved or striped, as stated in the previously issued permit.

26. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.
27. Staff has received phone calls from area residents with concerns regarding loud noise at Mexicali late at night throughout the week. Residents also mention that the front doors to the club are kept open, which does not comply with Conditional Use Permit file no. CP00-051 condition 8.a. Quarterly reports have not been submitted to staff for review of the noise level at the property line which does not comply with permit condition 8.c.
28. After visiting the site and receiving comments from residents living within 500 feet of the site, staff has found Mexicali to be in noncompliance with conditions in the existing permit (CP00-051) regarding trash because the trash container for the project is being stored in the driveway next to the public right of way.
29. City Council Policy 6-27, Evaluation of 24-Hour Uses, is intended to ensure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should be consistent with City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.
30. Mexicali is an existing drinking establishment located outside of the Downtown Core. The project is not located within 500 feet of an existing bar or any existing school.
31. Residential uses are located along the site's western property line, but are separated from Mexicali by an approximately 7-foot high masonry wall with some mature landscaping that has historically served as a buffer to the adjacent uses. Additionally, there is a new 202 unit, single-family attached residential development under construction directly across Oakland Road from Mexicali.
32. In order to minimize the impact of noise on existing and new residential uses, staff recommends that all doors and windows to the Mexicali Club are to remain closed with mechanical ventilation provided, and the hours of amplified sound be restricted to the hours of 6:00 a.m. to 12:00 midnight.
33. The Police Department has evaluated the proposal to ensure the safety and security of both patrons and citizens. The memorandum does not indicate that the existing use has been a law enforcement problem. The project is not considered a high crime area, and the Police Department is neutral on the issuance of the permit. Consistent with the Policy, the project will continue to be conditioned to control crowds queuing on the sidewalk and litter from patrons.
34. Mexicali has not proposed outdoor areas for entertainment. Currently amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m.
35. The building contains approximately 2,200 square feet 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 15 spaces and has also informally used available parking on the adjacent property to the north, owned by the same property owner.

The proposed renewal does not result in additional seating or floor area open to the public, and therefore is not a substantial change in use that would require expansion of provided parking.

36. A site visit by staff to the property confirmed that the parking area was being used for outdoor storage of vehicles. The applicant has since removed the vehicles.
37. The Conditional Use Permit has been conditioned to keep all off-street parking spaces in good repair, free of litter and debris, potholes, obstructions, and stored materials.
38. The Conditional Use Permit for this project has been conditioned to restrict admittance to patrons 21 years of age and older.
39. The project proposes operating hours from 6:00 a.m. to 2:00 a.m. daily.
40. Mexicali has not proposed outdoor areas for entertainment. Currently amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m. Area residents near the site report loud music late at night can be heard throughout the neighborhood.
41. Based on resident concerns regarding amplified sound, staff recommends restricting the hours of amplified sound to end at 12:00 midnight.
42. Due to the adjacency of residential uses to the parking area, staff is recommending that the hours of operation for the facility require closure at 1:00 a.m.
43. The building contains approximately 2,200 square feet of useable area, for a nominal requirement of 55 parking based on the Zoning Ordinance parking requirement of 1 space per 40 square feet for dancehalls. 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 15 spaces and has also informally used available parking on the adjacent property to the north also owned by the same property owner. The proposed renewal does not result in additional seating or floor area open to the public, and therefore is not a substantial change in use that would require expansion of provided parking.
44. The site plan submitted for the project currently shows 15 parking spaces located at the rear of the property. The applicant also claims that additional parking is available at the adjacent truck wash facility located to the north of the property. A site visit by staff to the property confirmed that the parking area was being used for outdoor storage of vehicles. The applicant has since removed the vehicles
45. Staff recommends a condition of approval requiring the applicant to submit a Permit Adjustment demonstrating the completion of paving and striping of parking spaces in the rear parking area with landscaping adjacent to the west property line. Staff has conditioned the permit to keep the parking area clear of debris and stored materials. The project also includes a condition that the gate must remain open when business is open.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Designation of General Commercial.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project, as conditioned, conforms to the Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars regarding the Land Use Compatibility, Noise, Parking, Garbage and Litter, and Typical Use Restrictions provisions.
5. The proposed project, as conditioned, would be compatible with adjacent residential uses to the west because of an existing masonry wall approximately seven feet in height and the addition of a landscape strip that would border the existing wall.
6. The proposed project, as conditioned, would be compatible with residential uses to the east with the limitation on the use of amplified sound until 12:00 a.m., and the requirement to keep all doors and windows closed with mechanical ventilation during all hours of operation.

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.

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 of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire five years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such five-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "Mexicali", dated October 10, 1996, on file with the Department of Planning, Building and Code Enforcement to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).

5. **Permit Adjustment.** Within 60 days of approval of this permit, the applicant shall submit a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement for the following:
- a. *Trash Enclosure.* Submit details for construction for a covered trash enclosure located at the rear of the property.
 - b. *Parking Lot.* Submit plans to pave and stripe the rear parking lot. The dimensions of parking spaces and aisles should comply with the San Jose Zoning Ordinance.
 - c. *Landscaping.* Submit plans to install a landscape strip five feet in width net with trees and shrubs adjacent to the existing masonry wall.
 - d. *Mechanical Ventilation.* Submit plans to install mechanical ventilation for the existing building.

CONCURRENT CONDITIONS

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

1. **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.
2. **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 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.
3. **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. Amplified music shall cease at 12:00 midnight.

4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Parking Area.** All off street parking spaces should be maintained by the property owner in good repair, free of litter and debris, potholes, obstructions, and stored materials. The gate to the parking area should remain open when the associated business is open.
6. **Landscaping.** Planting and irrigation are to be maintained, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building and Code Enforcement.
8. **Hours of Operation.** This drinking establishment shall be permitted to operate between the hours of 6:00 a.m. and 1:00 a.m., Monday through Sunday. Amplified music should cease at 12:00 midnight.
9. **Alcohol Service.** Alcohol service shall cease at 12:30 a.m. daily.
10. **Age Limitations.** The minimum age for patrons of this facility shall be 21 years or older.
11. **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 after dark hours.
12. **Police Permit.** The project operate shall continue to maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
13. **ABC Licensing.** The applicant shall comply with the requirements of the California State Alcoholic Beverage Control Board.
14. **Occupancy.** The maximum occupancy of the subject building shall not exceed the occupancy limit as determined by the City of San Jose Fire Department.
15. **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.

CONDITIONS SUBSEQUENT

1. **Time Limit.** The renewal of this Conditional Use Permit expires and has no further force or effect five years from the date of this Permit.

Please note that this Conditional Use Permit has been granted for a period of five (5) years only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

2. **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 Director of Planning. In order to be timely, and application for renewal must be filed more than 90 calendar days but less than 180 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 the denial of the application for renewal has become final.

3. **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, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not 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 as presently conducted creates a nuisance.

- c: Jose Antonio / Valencia Alfaro, 939 Oakland Rd, San Jose, CA 95112
Elvira Valderrama, 949 Old Oakland Rd, San Jose, CA 95112



File No: CPA00-051-01

District: 3

Quad No: 67

Scale: 1"= 300'

Map Created On: 04/25/2006

Noticing Radius: 500 feet



**CITY OF SAN JOSÉ, CALIFORNIA
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
STATEMENT OF EXEMPTION**

FILE NO. CPA00-051-01

LOCATION OF PROPERTY West side of Oakland Road approximately 430 feet southerly of Horning Street (939 Old Oakland Rd)

PROJECT DESCRIPTION Conditional Use Permit Amendment to allow the continued operation of an existing drinking and entertainment establishment and late night use until to 2:00 a.m.; with no proposed expansion of use on a 0.64 gross acre site

ASSESSOR'S PARCEL NUMBER 235-16-013

CERTIFICATION

Under the provisions of Section 15301, Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be 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.

15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized are not intended to be all-inclusive of the types of projects which fall within Class 1. The key consideration is whether the project involves negligible or expansion of an existing use.

Joseph Horwedel, Acting Director
Department of Planning, Building and Code
Enforcement

Date October 11, 2006



Deputy

Project Manager: Michelle Stahlhut

(Rev. 10/23/02)



Memorandum

TO: Michelle Stahlhut
Planning Department

FROM: Ofr. Rick Galea #3495
San Jose Police Vice Unit

SUBJECT: The Mexicali Club
939 Old Oakland Road

DATE: May 15, 2006

Approved

Date

I have received your request for input regarding The Mexicali Club, 939 Old Oakland Road, San Jose, Ca. 95112. The Mexicali Club is an existing bar and night club that currently has an On-Sale ABC license to sell beer and wine. They are seeking to renew their Conditional Use Permit.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(3). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.

The Mexicali Club is located in San Jose Police Beat V2. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
V2 (2005)	227	416	643	No
City Average	317	345	661	

Department of Alcohol Beverage Control (ABC) records indicate The Mexicali Club is in census tract 5001. Pursuant to B&P Section 23958.4 (a)(3) ... the ratio of on-sale retail licenses and off-sale retail licenses to population in census tract 5001 **does** exceed the ratio of on-sale retail licenses and off-sale retail licenses to population in the county in which the applicant premises are located.

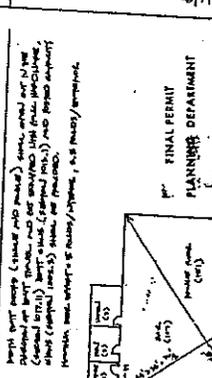


THE HICKORY CLUB
 100 West 11th Street
 New York, N.Y. 10011
 (212) 462-1234



PROJECT DATA
 PROJECT NO. 99-001
 CLIENT THE HICKORY CLUB
 ARCHITECT CONSULTING PARTNERS
 DATE 11/11/88

DESCRIPTION OF WORK
 PRELIMINARY SITE PLAN FOR THE PROPOSED RECONSTRUCTION OF THE HICKORY CLUB BUILDING, 100 WEST 11TH STREET, NEW YORK, N.Y. THE PROPOSED RECONSTRUCTION WILL BE A 12-STOREY BUILDING WITH A TOTAL FLOOR AREA OF 1,200,000 SQ. FT. THE PROPOSED RECONSTRUCTION WILL BE A 12-STOREY BUILDING WITH A TOTAL FLOOR AREA OF 1,200,000 SQ. FT.



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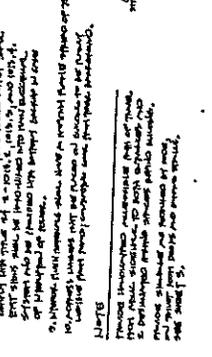
NO.	DATE	DESCRIPTION
1	11/11/88	PRELIMINARY SITE PLAN
2	11/11/88	FINAL PERMIT

DATE 11/11/88
 DRAWN BY [Name]
 CHECKED BY [Name]

PLANNING DEPARTMENT
 110 WEST 11TH STREET
 NEW YORK, N.Y. 10011
 (212) 462-1234

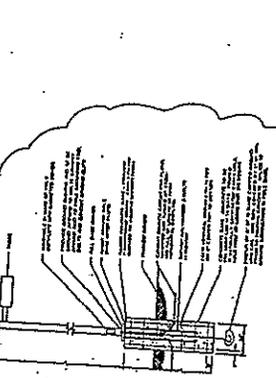
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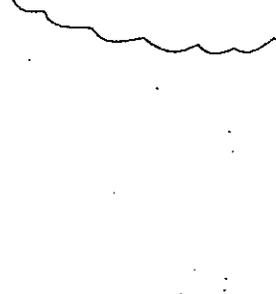
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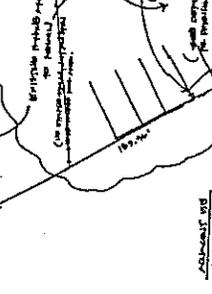
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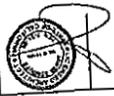
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 NEW YORK, N.Y. 10011
 (212) 462-1234

ARCHITECT
 575 SOUTH OAKLAND ROAD
 SAN FRANCISCO, CALIF. 94116
 (415) 772-4155



ENGINE & CIVILIAN EN

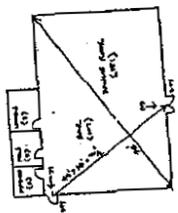
THE HEXIPOLI CLUB
 575 SOUTH OAKLAND ROAD
 SAN FRANCISCO, CALIF. 94116
 (415) 772-4155



Site
 Location Map

PROJECT DATA
 Name: THE HEXIPOLI CLUB
 Address: 575 SOUTH OAKLAND ROAD, SAN FRANCISCO, CALIF. 94116
 Owner: THE HEXIPOLI CLUB
 Architect: ARCHITECT
 Engineer: ENGINE & CIVILIAN EN
 Date: 11-1-11
 Scale: 1/8" = 1'-0"

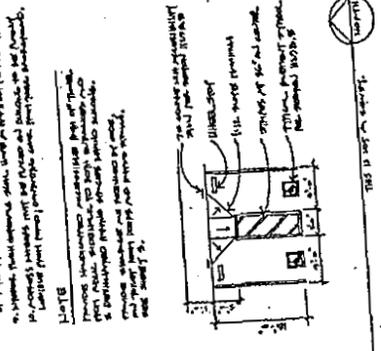
DESCRIPTION
 This project consists of the construction of a new building for the Hexipoli Club. The building will be a three-story structure with a total area of approximately 10,000 square feet. The building will be located on the corner of South Oakland Road and [Street Name]. The building will be designed in a modern style with a mix of materials and colors. The building will include a parking garage, a fitness center, a lounge, and a meeting room. The building will be surrounded by a landscaped area with trees and shrubs. The building will be accessible by public transportation and will have a convenient location for parking.



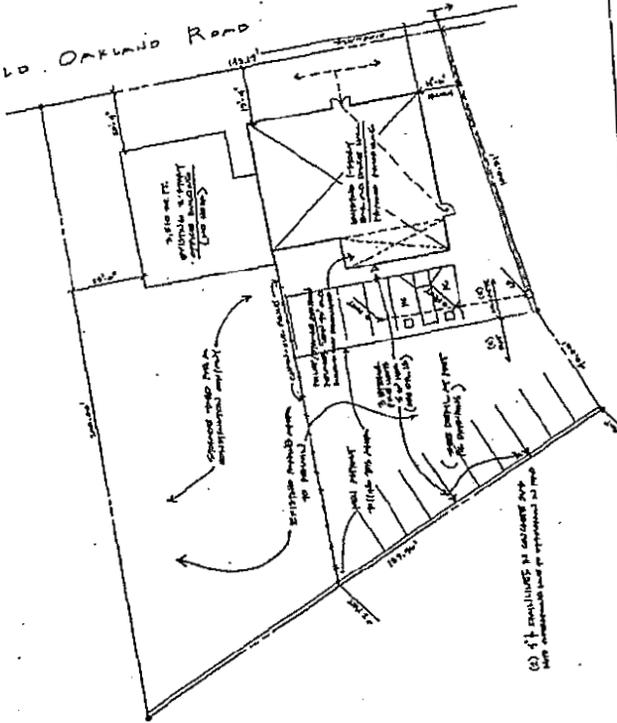
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NO.	DATE	DESCRIPTION
1	11-1-11	PRELIMINARY PLAN
2	11-1-11	FINAL PLAN
3	11-1-11	CONTRACT DOCUMENTS
4	11-1-11	AS-BUILT DRAWINGS

NOTES
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
 4. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES.
 5. THE CONTRACTOR SHALL MAINTAIN THE SITE IN A SAFE AND SOUND CONDITION AT ALL TIMES.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL OF ALL DEBRIS AND WASTE MATERIALS FROM THE SITE.
 7. THE CONTRACTOR SHALL MAINTAIN THE SITE IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS.
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.
 9. THE CONTRACTOR SHALL MAINTAIN THE SITE IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS.
 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES.



OLD OAKLAND ROAD



Final Building and Site Plan

THE HIGHLAND CLUB
 939 OLD OAKLAND ROAD
 SAN JOSE, CA 95128
 (415) 434-7300
 (415) 434-7301

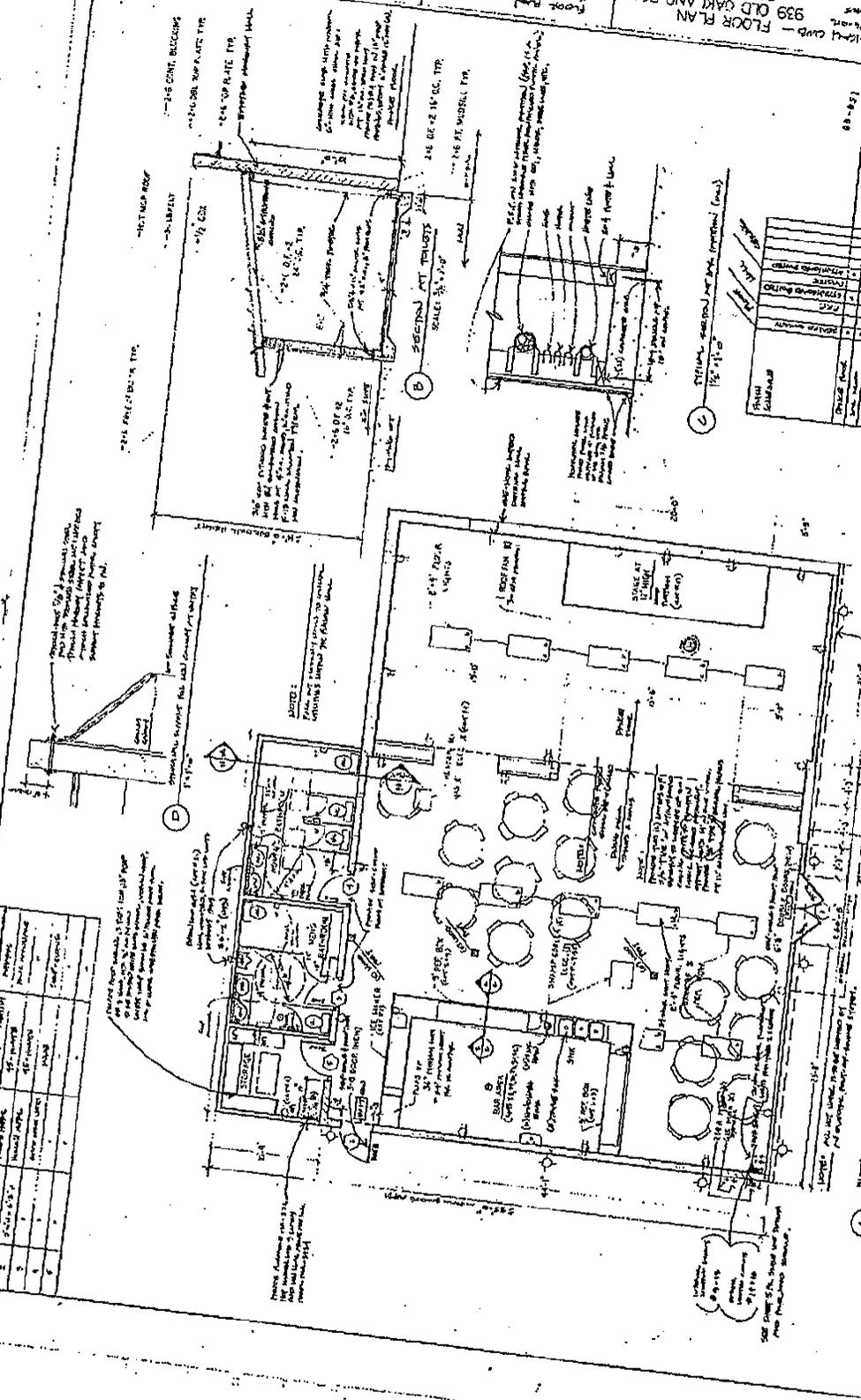
ARCHITECT
 295 East Street, Suite 200
 San Jose, CA 95131
 (415) 734-4444

3 of 3
 12-18-88
 SHEET

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NO.	DESCRIPTION	DATE	BY
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NOTES:
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SEE SHEET 2 FOR BAR AND STAIR
 FROM PRODUCTION DRAWING

Authorized and Current ABC Licenses in Census Tract 5001

Census Tract	Authorized ABC Licenses as of August 2005		Current ABC Licenses as of March 16, 2006		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5001	7	4	16	7	Yes	Yes

The San Jose Police Department is neutral to the issuance of this permit. Please feel free to contact me at 277-4322 if you have any questions.

Ofr. Rick Galea #3495
Administrative Officer
Special Investigations/Vice



GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

BACKGROUND

Throughout its history, San Jose has been a center of cultural and entertainment activities. With the re-emergence of the Downtown, entertainment activities, including nightclubs, have also undergone a resurgence.

To accommodate the growth of entertainment uses, the General Plan was amended in 1987 and again in 1988 to encourage the development of nightlife activities Downtown. The intent of this policy is to avoid a concentration of night time uses in any one area. Entertainment uses may be located throughout, as well as outside, the Downtown if they meet General Plan criteria. Currently there are 22 existing and approved nightclubs in the Downtown area with an authorized total occupancy of over 10,000 persons. The City and Redevelopment Agency have also received numerous inquiries for additional nightclub proposals.

The growth of bars in San Jose over the past decade has been minimal. With the emergence of nightclubs, bars have lost some of their popularity. With the exception of a few new neighborhood bars, most of the existing establishments have been in operation for over 10 years.

DEFINITIONS

Nightclubs are establishments that stay open late at night and provide entertainment, dancing, food and drink and are not ancillary to a full-service restaurant. The operation of a nightclub in the City of San Jose requires an approved Conditional Use Permit. Bars are establishments that serve alcoholic beverages. Bars also require an approved Conditional Use Permit to operate in the City of San Jose.

PURPOSE

The City allows nightclub and bar uses only through the discretionary Conditional Use Permit process to ensure that the use conforms to City requirements and is compatible with its surrounding neighborhood. In making recommendations to the Planning Commission, staff will review proposals on the basis of the following Guidelines for Evaluation of Nightclubs and Bars. Proposals will be examined on a case-by-case basis. To facilitate the evaluation process for individual permit applications, the guidelines identify the project characteristics necessary for approval. Existing nightclubs and bars which are subject to a permit with a time condition are not defined as new uses under this policy.

POLICY

1. Land Use Compatibility

- a. Nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses provided that they do not adversely impact existing or planned residential uses or conflict with other General Plan Goals and Policies.
- b. New nightclubs and bars should be discouraged from locating adjacent to or near any existing residential uses or any areas planned for residential uses in the adopted Horizon 2000 General Plan. Nightclubs may be located near areas designated Core Area Commercial with Residential Support for the Core Area overlay and parcels fronting Santa Clara Street. New nightclubs and bars adjacent to hotel uses should minimize the potential

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

negative impacts on the guests of those facilities.

- c. New nightclubs and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street. Basement and upper story nightclubs are exempt from this provision if that the entrance to those facilities is clearly the sole use at the ground level along the street frontage.
- d. New bars outside the Downtown Core should be dispersed and, at a minimum, not located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that they do not adversely affect any nearby residential or school uses.
- e. New nightclubs should include sufficient space to accommodate queuing for patrons. This space should be provided on-site to the greatest extent possible. If the public right-of-way is proposed for queuing, a management plan to control crowds and litter and to ensure adequate pedestrian circulation should be part of the nightclub proposal.
- f. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement.

- g. New nightclubs and bars are discouraged from locating in areas where there have been above-average police calls for service.
- h. Nightclubs are permitted with the approval of a Conditional Use Permit only in the C-3 Commercial, M-1 Manufacturing and M-4 Manufacturing Zoning Districts.
- i. Bars as a primary use are permitted with the approval of a Conditional Use Permit only in the C-2 and C-3 Commercial Zoning Districts.
- j. The most appropriate General Plan Land Use Designation for nightclubs and bars is Commercial, except for Office and Neighborhood/Community Commercial.

2. Noise

- a. Both new construction and renovation of existing structures should meet the City's noise standards as specified in the Horizon 2000 General Plan. Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use.
- b. Windows and doors should not be open during the operation of the facility where noise impacts the surrounding area. Adequate ventilation should be provided so that openings to the outside can be closed when the bar or club is at full capacity.
- c. Outdoor areas for entertainment, including areas with roof openings, should not be allowed where noise impacts the surrounding area. Hours of operation and/or amplified should be carefully regulated to ensure compatibility with adjacent uses.

- d. Interior noise levels or adjacent uses and exterior noise levels should be monitored by a qualified noise consultant contracted by the applicant or operator commencing at the opening of the nightclub or bar facility. Measurements should be taken at least once monthly at two different times and a report submitted to the Planning Commission after one year of operation.

3. Parking

- a. For new nightclubs or bars, an analysis of both day and nighttime parking availability within 1200 feet of the proposed facility should be provided by the project proponent. Parking demand should be calculated at one space for each 40 square feet of usable patron area. Where there are insufficient spaces to meet the demand generated by the proposed bar or nightclub, parking should be provided by the operator at a location convenient and readily accessible to the patrons of the facility. Parking may be supplied by contracting with nearby property owners, offering validation services and/or valet services, or such other means that would not reduce the spaces available for existing uses. This may require the approval of an Off-Site or Alternating Use Parking Arrangement as specified in the San Jose Municipal Code.
- b. When new nightclubs or bars are required to provide additional parking to meet the demand generated by the proposed site, the parking facilities should be well lighted, consistent with applicable City and Redevelopment Agency standards.
- c. All nightclubs and bars are encouraged to identify the need for loading and

unloading zones as means to enhance traffic circulation around the facility.

- d. All nightclubs and bars should be required to identify and publicize the location and availability of parking for its patrons.

4. Garbage and Litter

- a. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day.
- b. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean-up occurs within 500 feet of existing residential uses.

5. Typical Use Restrictions

- a. Admittance to bars and nightclubs will be restricted to patrons 21 years of age and older.
- b. Nightclubs which include an ancillary, non-separated restaurant are not permitted. Nightclubs may be permitted in such facilities provided that the restaurant use does not operate when the nightclub is in operation.
- c. Nightclubs and bars should not operate after 2:00 a.m., daily.
- d. Entertainment uses that serve no alcohol may be open to patrons 18 to 20 years and older.
- e. The maximum occupancy of a nightclub or bar is limited to the number identified by the Fire Marshall, and may be further limited in the Conditional Use Permit based on

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

parking availability or other land use compatibility issues.

- f. Amplified sound, amusement games and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.
- g. Time limits for Conditional Use Permits for nightclubs and bars should generally be five years, unless there is sufficient evidence to support an alternate limit. Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval.

6. Other Requirements

- a. The Planning Commission, or the City Council on appeal, may impose other appropriate conditions on a project-by-project basis as required to ensure land use compatibility. The guidelines in this policy represent minimum criteria for nightclubs and bars.
- b. The Planning Commission may annually review this policy to determine its adequacy in meeting the changing needs of the City.
- c. The Conditional Use Permit should include standard conditions, such as undergrounding utilities, providing public improvements, screening roof equipment, identifying building colors and materials, etc. necessary for the permit to fulfill the requirements for a Site Development Permit.