



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nadine N. Nader

SUBJECT: SEE BELOW

DATE: December 17, 2007

Approved

Kay Winer

Date

12/17/07

**SUBJECT: CURRENT PROCESS AND PRACTICE INVOLVED IN THE
PERMITTING OF ENTERTAINMENT AND DRINKING
ESTABLISHMENTS**

On December 7, 2007 the original staff report and supplemental for item 9.2 on the Downtown Overlay on the December 18, 2007 Council Agenda were forwarded to Mayor and Council. The attachments to the supplemental memo were inadvertently not attached. Attached to this memorandum you will find another copy of the supplemental memorandum with the attachments.

Nadine Nader

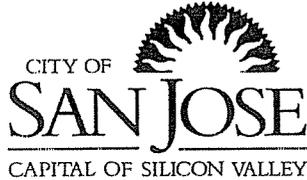
NADINE N. NADER

Agenda Services Manager

SUPPLEMENTAL

COUNCIL AGENDA: 12/18/07

ITEM: 9.2



Memorandum

TO: HONORABLE MAYOR,
CITY COUNCIL, AND
REDEVELOPMENT AGENCY
BOARD

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: December 6, 2007

Approved

Date

12/7/07

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUPPLEMENTAL MEMORANDUM

**SUBJECT: CURRENT PROCESS AND PRACTICE INVOLVED IN THE
PERMITTING OF ENTERTAINMENT AND DRINKING
ESTABLISHMENTS**

BACKGROUND

On November 14, 2007, Councilmembers Liccardo and Williams presented a memorandum to the Rules Committee requesting to add to the Council agenda an item related to a Zoning Overlay in Downtown (see Attachment 1, memorandum dated 11/14/2007). As a result of the discussion, staff was directed to prepare a memorandum with information on the following items:

1. The current process for the consideration of Conditional Use Permits for entertainment uses and drinking establishments;
2. The current process for the renewal of Conditional Use Permits for entertainment uses and drinking establishments;
3. Staff's current efforts related to the implementation of Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars (see Attachment 2); and
4. The current process for the review and issuance of entertainment business permits and entertainment ownership/management licenses.

This memorandum is intended to provide backup information for the Council in their consideration of the item related to a Zoning Overlay in the Downtown presented in a separate memorandum.

ANALYSIS

Currently, there are two processes which control the establishment of entertainment and drinking establishments. The first is a Conditional Use Permit process, which is administered by the Department of Planning, Building and Code Enforcement. The second is an Entertainment Permit process, which is administered by the Police Department. The following sections outline each of these processes.

Current Process for Conditional Use Permits for Entertainment and Drinking Establishments

The current land use regulations for entertainment establishments and drinking establishments, typically referred to by many as nightclubs and bars respectively, require that the business be located in one of the following four commercial zoning districts, CP-Commercial Pedestrian, CN-Commercial Neighborhood, CG-Commercial General, or DC-Downtown Primary Commercial, and have a Conditional Use Permit (i.e. land use permit) approved by the Director of Planning. As a point of clarification, entertainment establishments include more than just nightclubs per the definition included in Title 20¹. The Conditional Use Permit process involves an application submitted to the Department of Planning, Building and Code Enforcement along with applicable fees to cover the processing of said applications, typically between \$5,000-\$6,000.

Given the nature of the projects and potential impact on surrounding uses, the City Council Policy on Public Outreach, Policy 6-30 has identified these types of project as one requiring a community meeting as well as a mailing to parties within 1,000 foot radius of the site. In addition to the community meeting, a sign is posted on the site informing the public of the application on file giving them basic information as well as contact information for City staff. In addition to the public outreach to the community through a meeting and site sign, all Conditional Use Permits are heard at a public hearing before the Planning Commission which is the decision making body for such permits. Any appeal of the Planning Commission's decision is heard by the City Council at a de novo hearing.

All applications for Conditional Use Permits for entertainment and drinking establishments go through an internal review by the several City departments/divisions, including Police, Fire, Building, Environmental Services, Transportation, Public Works, and the Redevelopment Agency. Planning staff refers the project to the aforementioned City departments/divisions when the application is submitted and the respective departments/divisions have up to 30 days from

¹ Section 20.200.350 of Title 20 defines Entertainment Establishment 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 and instrumental music, dancing, karaoke, comedy and acting.

application submittal to respond to Planning with comments. With respect to those who typically have comments on these types of applications, including Police and Fire, staff has developed a close working relationship with staff from those Departments to discuss both the project and potential conditions to be imposed on the project to address concerns.

Although it is not a requirement of the Conditional Use Permit application process, it has been the practice of staff to require a Management Plan for the proposed entertainment establishment to get a better sense of how the applicant proposes to operate the business. There currently is no standard form for how a management plan should be submitted or what at a minimum it should contain. This is something that could be discussed further as to whether it is useful to have such a plan and through what process it is most appropriate, the land use permit or the entertainment business permit.

Once the comments have been submitted back to Planning staff and the community input has been received through the community meeting and any other form such as e-mail, phone, etc., staff then fully analyzes the proposal in light of the comments, input and, applicable policies (in this case Council Policy 6-23), and develops a recommendation to the Planning Commission. The Planning Commission then holds a public hearing on the application and considers Planning Staff's recommendation as well as any input at the hearing by the applicant and other interested parties and acts on the application by either approving, denying, or deferring for further discussion before a final decision.

Police Department Referral/Review Process Related to Entertainment Uses

Planning staff requests input from the Police Department in regard to an application for a Conditional Use Permit for any entertainment land use. The Police Department reviews the application, conducting an analysis and review of the property's history in regard to crime or entertainment related issues. The Police Department also checks with the Department of Alcoholic Beverage Control ("ABC") to determine the number of ABC licenses currently issued in the area of the proposed Conditional Use Permit as well as the ABC licenses that were previously used at the applicant's address, paying specific attention to any significant criminal history.

In offering comments to Planning staff, the Police Department also weighs in on how new entertainment uses would impact Police Department resources in the downtown core due to the high number of already existing entertainment venues. To have a better assessment of the impact, the Police Department will meet with the owners of a new venue to clarify the specifics on how the entertainment use will actually occur in terms of time, place and manner. In the end, any concerns of the Police Department are memorialized in a memorandum which is sent by the Police Department to Planning staff. Planning staff will then work with the Police Department and the applicant in an effort to include terms in the Conditional Use Permit that will respond to the needs and concerns of both.

When requested to review an application for renewal of a Conditional Use Permit, the review by the Police Department goes through a very similar process; however, its position can vary based

upon the history of criminal activity at the venue and the current conditions of Police Department resources. For example, in situations where there has been a history of criminal activity associated with the venue which has gone unaddressed by the applicant, the Police Department may oppose the issuance of the renewal. In most instances, this opposition only comes following numerous attempts by the Police Department to abate the criminal activity which have been unsuccessful, including: meetings with the applicant; meetings with the business owner (if not the same as the applicant); issuance of administrative citations to the business owner; issuance of criminal citations to the business owner; reporting violations to ABC; and working with the City Attorney's Office to bring a nuisance abatement action and Unfair Business Practice action against the property owner and/or the business owner.

Current Process with Related to Renewal Of Conditional Use Permits for Entertainment and Drinking Establishments

There has been a long standing practice of including as a condition of approval in a Conditional Use Permit for entertainment or drinking uses a term of five (5) years in order to provide the ability to review the impacts, if any, of the operations, revise the conditions of the CUP accordingly, and renew said permit. The requirements for renewal state that an application must be submitted in a "timely manner" which means no sooner than 180 days or later than 90 days before the permit expiration. Should the application for renewal be submitted in a timely manner, the term of the Conditional Use Permit for which the renewal is for is automatically extended through the date of final action on the application for renewal. Should an application for renewal be submitted less than 90 days prior to the expiration of Conditional Use Permit, Section 20.100.740 of Title 20 specifies that it shall be deemed to be an application for a new Conditional Use Permit and that continuation of the use beyond the expiration of the Conditional Use Permit shall be a violation of Title 20. However, it has been the practice of staff to consider it as an application submitted in good faith and considered it in the same manner as an application submitted in a "timely manner" especially in light of the rebuttable presumption discussion below.

All that being said, the intent of the condition related to the term of the permit is not to cause the original permit to arbitrarily go away or give the City the ability to cause the use to go away without reason, but rather to check in on the use and ensure that the operation has been operating in a manner that has not created a nuisance and continues to be in harmony with the surrounding uses. This position correlates with Section 20.100.750 Renewal Findings, in Title 20, that consideration of a renewal application shall be based on a rebuttable presumption that the use as permitted by the Conditional Use Permit meets the findings required for a Conditional Use Permit including that the use will not "adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare..."

Section 20.100.750 of Title 20 goes on to say that "the presumption shall be rebutted by any 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 in this Title (Title 20), or any impairment of public peace, health, safety, morals or welfare.” Should the presumption be rebutted, the Conditional Use Permit shall not be renewed, unless the required findings for a Conditional Use Permit have been made.

Staff’s current efforts related to the implementation of Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars

City Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars (see Attachment 2), is the policy Planning staff uses when reviewing any application for an entertainment or drinking establishment citywide. This policy was first effective in June of 1991, and revised in February of 1993. Although the policy has not been revisited for over 14 years, the purpose and guidelines for review are still relevant. The purpose of the policy is to ensure that “the use conforms to City requirements and is compatible with its surrounding neighborhood. The guidelines include the following areas for review: land use compatibility, noise, parking, and garbage and litter. Additionally, the policy also includes typical use restrictions including but not limited to age restrictions, hours of operation, occupancy limitations, noise restrictions, and term limits.

Planning staff reviews each proposal against the current policy and includes a discussion of conformance with the policy and the various guidelines (see an example of a Planning Commission report contained in Attachment 3). The discussion presents the guidelines, and describes how the proposal is or is not consistent with the policy. If the proposal is not consistent, the discussion identifies how the proposal, through conditions, can be determined to be consistent with the guidelines. Additionally, it has been the practice of staff to attach a copy of the policy to all the staff reports prepared for a project involving an entertainment or drinking establishment (e.g., nightclub or bar).

Current Process for issuance of Entertainment Business Permits and Entertainment Ownership/Management Licenses

Chapter 6.60 of Title 6 of the San Jose Municipal Code requires businesses, which provide or allow certain types of entertainment (dancing, singing, audience participation in the entertainment, or live entertainment) in conjunction with alcohol, to have an entertainment business permit issued by the Chief of Police. Chapter 6.60 also requires every individual that has an ownership interest in the business and every manager engaging in management duties for the business to each have an entertainment ownership/management license, also issued by the Chief of Police. The process to obtain an entertainment business permit or ownership/management license is initiated after approval of a Conditional Use Permit or Planned Development Permit by the Director of Planning allowing for the land to be used for entertainment purposes.

Typically, the owner will apply for an entertainment business permit and ownership/management license after approval of the Conditional Use Permit or Planned Development Permit. Occasionally, the ownership/management license is handled separately from the application for the entertainment business permit usually due to the appointment of a new manager or change in

December 6, 2007

Subject: Current Practice of Permitting Entertainment and Drinking Establishments

Page 6

business ownership. However, the Police Department's review process is the same. Upon application to the Police Department, the Police Department conducts an investigation into the applicant's background to determine if the individual should be issued a business permit or ownership/management license. The Police Department can only deny an applicant based on specific criteria found in Chapter 6.02 which includes, but is not limited to: felony convictions within the last five years; conviction of crimes related to the qualifications of the trade; and, revocation or suspension of the same type of permit within the last five years. If the application is denied by the Police Department's Permits Unit, the applicant is entitled to a hearing first by the Chief of Police or his delegate. If the applicant is still not satisfied, he can appeal to the Appeals Hearing Board. All hearings are open to the public.

Because, at this point, an entitlement for land use (i.e. the Conditional Use Permit) has already been approved, the focus of the entertainment permit is on the operation of an establishment, not whether or not it should be allowed. A license for an owner or manager can be denied only for specific reasons outlined in Title 6. It should also be understood that once the land use is approved for entertainment, the business ownership can change without triggering a new public hearing for a new land use consideration. Thus, unless there is a specific reason for denial of an entertainment business permit or ownership/management license under Title 6 the permit or license will be approved and issued by the Police Department.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Police Department and the Redevelopment Agency.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jeannie Hamilton in Planning, Building and Code Enforcement at 408-535-7850.

Attachments:

1. Rules Committee Memorandum, November 14, 2007, Item G2
2. City Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars
3. Planning Commission Staff Report for CP06-024, Voodoo Lounge

ATTACHMENT 1

RULES COMMITTEE: 11-14-07
ITEM: G2

SUPPLEMENTAL



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Councilmembers
Sam Liccardo and
Forrest Williams

SUBJECT: Zoning Overlay Downtown--
Add to Agenda

DATE: November 8, 2007

Approved

Forrest Williams Date

11-8-07

REASON FOR SUPPLEMENTAL:

Clarification and Additional Recommendations

RECOMMENDATIONS

Approve the addition of the following to the December 6 Council Agenda:

- Reaffirm support for Council Policy 6-23.
- Direct the City Manager to fully implement the intent of Council Policy 6-23 for both new applications and existing Conditional Use Permits (CUPs) in the Downtown.
- Direct the City Manager to limit the length of time for CUPs in the Downtown to a term of two years.



Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

**FROM: Councilmembers
Sam Liccardo and
Forrest Williams**

**SUBJECT: Zoning Overlay Downtown--
Add to Agenda**

DATE: November 5, 2007

Approved

Sam Liccardo
Forrest Williams

Date *11-6-07*

RECOMMENDATION

Approve the addition of the following item to the November 20, 2007 City Council meeting agenda:

- Direct the City Manager and the Redevelopment Agency Director to jointly develop new Entertainment Zone Planning Guidelines for the Downtown, and
- Return to City Council with specific recommendations no later than June 24, 2008.

ANALYSIS

With this memorandum, we seek to place on the Council agenda a recommendation to direct the Redevelopment Agency Director and the City Manager to develop a plan for identifying locations in the downtown core for nightclubs and other entertainment uses in the future, in light of the surge in high-density housing development throughout the core. Planners may consider restrictions based on such factors as the club's size, capacity, operating hours, and location, to guide the future issuance of Conditional Use Permits.

We expect to have specific recommendations return through the Community and Economic Development Committee and to the City Council by no later than the last Council meeting in June of 2008 for review and approval of the final plan.

BACKGROUND

On June 25, 1991, Council approved Policy 6-23, "Guidelines for Evaluation of Nightclubs and Bars." Policy 6-23 set forth guidelines address land use compatibility, providing that "nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses," but only so long as "they do not adversely impact existing

or planned residential uses or conflict with other General Plan Goals and Policies.” It further provided that “[n]ew 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 General Plan.

In November 2005, the Council adopted an Urgency Ordinance authorizing the San Jose Chief of Police to suspend an entertainment permit to protect public safety. The Council revisited the Urgency Ordinance in June 2006, and accepted the Taskforce recommendation to establish a Downtown Working Group (DWG) composed of the various stakeholders. The DWG, co-chaired by Councilmember Forrest Williams and Chief Rob Davis, began monthly meetings in October 2006.

The DWG has extensively discussed the need to strike a balance between entertainment and residential uses in the Downtown. Redevelopment Agency held several meetings with club owners to discuss plans for increased residential units in the downtown area. The number of residential units in the Downtown increased by 2,500 over the last five years, and is expected to grow by some 4,500 additional units through 2012.

At our urging, on February 28, 2007, the DWG approved “initiating land use and specific zoning policies to delineate entertainment zones in order to reduce potential conflicts between night clubs and Downtown residential uses.” Public Safety, Finance and Strategic Support Committee received a status report on March 15, 2007.

On March 27 of this year, the Council approved the Downtown Working Group’s recommendations. The time has come to move forward to implement this planning process, and to effectuate the objectives of Policy 6-23. This memorandum has been coordinated with City Attorney’s Office.

ATTACHMENT 2

City of San José, California

COUNCIL POLICY

TITLE GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS	PAGE 1 of 4	POLICY NUMBER 6-23
EFFECTIVE DATE June 25, 1991	REVISED DATE February 23, 1993	
APPROVED BY COUNCIL ACTION June 25, 1991, Item 9w; 2/23/93, Item 9f		

BACKGROUND

Throughout its history, San José has been the center of cultural and entertainment activities. With the reemergence 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 1988 to encourage the development of nightlife activities Downtown. The intent of this policy is to avoid a concentration of nighttime 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. In addition, the City and Redevelopment Agency have received numerous inquiries for additional nightclub proposals. The growth of bars in San José 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 José requires an approved Conditional Use Permit. Bars are establishments that serve alcoholic beverages. Bars require an approved Conditional Use Permit to operate in the City of San José.

PURPOSE

The City allows nightclub and bar uses only through the discretionary Conditional Use Permit process to ensure that the development 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

TITLE	GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS	PAGE	POLICY NUMBER
		2 of 4	6-23

Support for the Core Area overlay and parcels fronting Santa Clara Street. New nightclubs and bars adjacent to hotel uses should minimize the potential 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 provided 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 be located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that would 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 as well as 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 has 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 sound 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

TITLE	PAGE	POLICY NUMBER
GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS	3 of 4	6-23

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 José 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 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.

TITLE	GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS	PAGE	POLICY NUMBER
		4 of 4	6-23

- 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.

ATTACHMENT 3

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

STAFF REPORT

Hearing Date/Agenda Number
P.C 06/05/06 Item No.:

File Number
CP06-024

Application Type
Conditional Use Permit Amendment

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
467-22-148

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: East side of South 2nd Street approximately 120 feet south of Santa Clara Street (14 S. 2nd St.)

Gross Acreage: 0.41

Net Acreage: 0.41

Net Density: n/a

Existing Zoning: DC Downtown
Primary Commercial District

Existing Use: Drinking and entertainment establishment with late night use until 2:00 a.m.

Proposed Zoning: No change

Proposed Use: Continuance of existing use, drinking and entertainment establishment with late night use until 2:00 a.m.

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Commercial Bar/Nightclub

DC Downtown Primary Commercial

East: Commercial

DC Downtown Primary Commercial

South: Mixed Use

DC Downtown Primary Commercial

West: Commercial

DC Downtown Primary Commercial

ENVIRONMENTAL STATUS

Completed by: FLB

Environmental Impact Report adopted
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete
 Addendum to EIR

FILE HISTORY

Completed by: FLB

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____

Action
 Recommendation

OWNER	BUSINESS OWNER / CONTACT	
Jim Fox Saratoga Capital 66 E. Santa Clara St. San Jose, CA 95113	David Powell Velvet Affairs, Inc. 14 S. 2 nd St. San Jose, CA 95113	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: FLB

Department of Public Works

- No comments.

Other Departments and Agencies

- Police

GENERAL CORRESPONDENCE

- None

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, David Powell with Velvet Affairs, Inc., is requesting a Conditional Use Permit to allow the continued operation of an existing drinking and entertainment establishment with late night use until 2:00 a.m. on a 0.41 gross acre site on the east side of South 2nd Street, 120 feet south of Santa Clara Street. The previous Conditional Use Permit (CUP) approval under file number RCP99-020 was approved on December 8, 1999 to allow a drinking and entertainment establishment with late night use until 2:00 a.m., however, the approval expired on December 8, 2004.

The subject site is located within the boundaries of the DC Downtown Primary Commercial Zoning District. Per Table 20-140 of the Municipal Code, a CUP is required for drinking and entertainment establishments. Section 20.70.510(B) of the Municipal Code specifies that approval of a CUP is required for a drinking establishment to operate between the hours of midnight and 6:00 a.m. Table 20-140 of the Municipal Code also indicates that no parking is required for eating, drinking, or entertainment establishments in the Downtown Primary Commercial Zoning District. No on-site parking is proposed.

The site is flat and is bordered by commercial uses to the north, east, and west. A mixed-use project is under construction immediately to the south. Other drinking and entertainment establishment uses, along with other late night uses, are located in the immediate vicinity. The subject Saratoga Capital building is listed on the Historic Resources Inventory as a Contributing Structure to a National Register District and as a designated City Landmark. No changes to the exterior of the building are proposed.

Project Description

The existing drinking and entertainment establishment, Voodoo Lounge, occupies the approximately 5,000 square foot tenant space. This includes approximately 4,000 square feet on the main floor and approximately 1,000 square feet of mezzanine area. No outdoor or unenclosed areas are included with the drinking, entertainment, or late night use proposal. This CUP proposes to continue the existing drinking, entertainment, and late night use (until 2:00 a.m.). The proposed entertainment includes live music, DJ,

other amplified music, and dancing within the enclosed area. No changes to the exterior of the building are proposed, and generally, no changes to the uses authorized by the previous CUP are proposed.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15301 of the California Environmental Quality Act Guidelines. Section 15301 exempts 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 subject project qualifies in that no expansion of the existing drinking establishment, entertainment establishment, and late night use is proposed as part of this CUP. The use does not involve the use of significant amounts of hazardous substances, is located where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive.

ANALYSIS

The primary issues evaluated for this proposal include (1) General Plan Conformance, (2) conformance with City Council Policy 6-27 for the Evaluation of 24 Hour Uses, and (3) conformance with City Council Policy 6-23 for the Evaluation of Nightclubs and Bars.

General Plan Conformance

The proposed use of the commercial building is consistent with the San José General Plan Land Use/Transportation Diagram designation of Core Area in that drinking and entertainment uses are intended uses under the designation. The Core Area designation is intended for a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use also furthers the City's General Plan Downtown Revitalization Major Strategy. This Major Strategy encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses. The existing entertainment and drinking establishment would further the intent of the General Plan Policies by supporting continued investment in the downtown area, by encouraging the continued occupancy of downtown commercial space, and by promoting active entertainment uses in the Downtown Core.

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

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure 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 meet the City Council Policy on the 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 uses only through the discretionary Conditional Use 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 needed project characteristics necessary for approval. The following discussion cites applicable policy (*in italics*) followed by an analysis of how the proposed project conforms to the policy.

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.

The subject site is located in the Downtown Core, and all entertainment activities would be located within the building, thereby reducing any potential noise impacts to the surrounding area. While the subject site is currently surrounded by commercial uses, residential uses are under construction directly to the south. Additional residential units are anticipated in the surface parking lot adjacent to Fountain Alley to the southwest of the project site. With all entertainment isolated to the interior of the building and no alcohol permitted outside, Staff does not anticipate negative noise impacts from the use on the future nearby residential properties. Doors and windows shall be closed as necessary to reduce potential noise impacts on adjacent uses. Furthermore, conditions of approval require that the “use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.”

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 General Plan. Nightclubs may be located near areas designated Core Area and Residential Support for the Core Area and parcels fronting Santa Clara Street. New nightclubs and bars adjacent to hotel uses should minimize the potential negative impacts on the guests of those facilities.

The area immediately surrounding the proposed nightclub/bar is designated for Core Area in the General Plan. The Core Area designation intends for a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use furthers this intent, and the conditions incorporated into the permit regarding indoor-only use would limit the potential impacts from the nightclub on the future residential uses in the vicinity.

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 should be part of the nightclub proposal to control crowds and litter, and to ensure adequate pedestrian circulation.

Conditions of approval address the queuing of patrons. Queuing areas must maintain a minimum five (5) foot clearance from any obstructions in the right-of-way, and queues shall be arranged in a manner such that impacts on adjacent uses are minimized.

Conditions of approval would also require broom cleaning of the adjacent sidewalks each evening after closing. Hose washing of the sidewalks is required as necessary to ensure that no litter, garbage, or waste is present on the street or sidewalk adjacent to the club by sunrise the following day.

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 or controls or procedures to increase effective law enforcement.

The attached Police Department memorandum states it is neutral regarding issuance of a CUP for the existing use. Conditions of approval require that the appropriate permits be obtained from the Police Department. The number of security personnel is also conditioned in this permit, however, per the condition of approval, the operator will ultimately be subject to Police approval for the number of security personnel.

g. New nightclubs and bars are discouraged from locating in areas where there have been above-average police calls for service.

The attached Police Department memorandum states that Beat E3 where the proposed use is located does have reported crime statistics above the City Average. Planning staff supports the application given that (1) the location is in the Downtown Core, (2) the club exists, and (3) the Police Department does not oppose issuance of the subject Conditional Use Permit.

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.

Conditions of approval would require that all visible trash, cigarette butts, and any other materials be removed from the adjacent public right-of-way and any public right-of-way within 200 feet of the subject site that is not directly adjacent to another bar or nightclub facility. As noted above, conditions would require that this broom cleaning of the adjacent sidewalks occur each evening after closing. Hose washing of the sidewalks is required as necessary to ensure that no litter, garbage, or waste is present on the street or sidewalk adjacent to the club by sunrise the following 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.

Proposed conditions would prohibit use of mechanical equipment used for outside maintenance from 10:00 p.m. to 6:00 a.m. daily because residential uses will be located adjacent to the subject site.

Typical Use Restrictions

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

As noted above, all entertainment would be isolated to the interior of the building and no alcohol would be permitted outside. Doors and windows shall be closed as necessary to reduce potential noise impacts on adjacent uses. In addition, the applicant must apply to the Police Department for an Entertainment Permit and any other requisite permits or licenses.

Based on the analysis, staff concludes that the proposed use is consistent with the intent of the Council Policy.

PUBLIC OUTREACH

A sign has been placed on the property during the application process notifying the neighbors of the proposal on file. Notices of the public hearings were mailed to all owners and occupants within a 500-foot radius of the subject site. Planning staff has been available to discuss the proposal with members of the public. Additionally, prior to the Planning Commission public hearing, an electronic version of the staff report was made available online, accessible from the Planning Commission agenda, on the Planning Divisions' website.

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 the relevant facts regarding this proposed project:

1. This site has a designation of Core Area on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned DC Downtown Primary Commercial.
3. The site is 0.41 gross acres in size.
4. The areas surrounding the site are also designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram and are located in the DC Downtown Primary Commercial zoning district.
5. The site is flat and is bordered by commercial uses to the north, east, and west. A mixed-use project is under construction immediately to the south. Other drinking and entertainment establishment uses, along with other late night uses, are located in the immediate vicinity.
6. The building is listed on the Historic Resources Inventory as a Contributing Structure to a National Register District and as a City Landmark Structure. No changes to the exterior of the building are proposed.
7. The existing drinking and entertainment establishment, Voodoo Lounge, occupies the approximately 5,000 square foot tenant space. This includes approximately 4,000 square feet on the main floor and approximately 1,000 square feet of mezzanine area. No outdoor or unenclosed areas are included with the drinking, entertainment, or late night use proposal. This CUP proposes to continue the existing drinking, entertainment, and late night use (until 2:00 a.m.). The proposed entertainment includes live music, DJ, other amplified music, and dancing within the enclosed area. No changes to the exterior of the building are proposed, and generally, no changes to the uses authorized by the previous CUP are proposed.
8. The previous Conditional Use Permit (CUP) approval under file number RCP99-020 was approved on December 8, 1999 to allow a drinking and entertainment establishment with late night use until 2:00 a.m., however, the approval expired on December 8, 2004.

9. A Conditional Use Permit is required to allow the drinking and entertainment establishment and an associated late-night use in the DC Downtown Primary Commercial Zoning District.
10. The Police Department is neutral regarding the issuance of a CUP for the existing nightclub.
11. The nightclub/bar is required to obtain applicable permits from the Police Department.
12. The subject site is located in the Downtown Core/Entertainment District.
13. Alcohol service will cease at 1:30 a.m. daily.
14. Entertainment will cease at 1:30 a.m. daily.
15. Table 20-140 of the Municipal Code indicates that no parking is required for drinking establishments or entertainment establishments in the Downtown Primary Commercial Zoning District. No on-site parking is proposed as part of the project.
16. The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15301 of CEQA.

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

1. The proposed project conforms to the City's General Plan in that drinking and entertainment uses are intended uses under the site's Core Area General Plan Land Use/Transportation Diagram designation. The existing entertainment and drinking establishment would further the intent of the General Plan Policies by supporting continued investment in the downtown area, by encouraging the continued occupancy of downtown commercial space, and by promoting active entertainment uses in the Downtown Core.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance in that setbacks, parking, uses, and other development regulations conform to the applicable criteria.
3. The proposed project is in compliance with the California Environmental Quality Act in that the Director of Planning, Building, and Code Enforcement has determined the project is exempt from environmental review under Section 15301 of CEQA.

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, (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 in that (1) the proposed use is consistent with the "24-hour" downtown concept supported by the General Plan, (2) the location of the drinking and entertainment establishment use is supported by the site's Core Area General Plan Land Use/Transportation Diagram designation, and (3) the use would not adversely impact neighboring properties given that the drinking and entertainment uses are only proposed in the interior of the structure.

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 in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas in that no changes to the exterior of the structure are proposed and the existing building is adequately integrated with the surrounding area.
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 that the subject site is in an urbanized area of the City where streets and other services and facilities are existing.

In accordance with the findings set forth above, a Conditional Use Permit Amendment 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. **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.

3. **Additional Permits.** Obtain all applicable permits required per the San José Municipal Code including but not limited to required permits from the Police Department. The number of existing and proposed pool tables shall be disclosed to the Police, and the number of security guards present shall conform to the conditions specified in the Police Permit approval.

CONCURRENT CONDITIONS

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

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Voodoo Lounge" dated May 1, 2006, on file with the Department of Planning, Building and Code Enforcement.
2. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP06-024, shall be printed on all construction plans submitted to the Building Division.
3. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.
4. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City. Doors and windows shall be closed as necessary to reduce potential noise impacts on adjacent uses.
5. **Ventilation.** Adequate ventilation, including but not limited to mechanical ventilation, shall be provided so that openings to the outside can be closed when the bar is at full capacity.
6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
7. **Operations Plan.** The facility shall operate in conformance with the attached operations plan titled "Voodoo Lounge Proforma." If the operations plan conflicts with any conditions found in this permit, the conditions within the permit shall take precedence.
8. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include damp washing as necessary of all exterior walls and sidewalks along the project's frontage. Broom cleaning of the adjacent public right-of-way shall occur before 8:00 a.m. each morning. All visible trash, cigarette butts, and any other materials shall be removed from the adjacent public right-of-way and any public right-of-way within 200 feet of the subject site that is not directly adjacent to another bar or nightclub facility. Hose washing of the sidewalks shall occur as necessary to accomplish this task, however, solid waste and bodily fluids shall not be rinsed into the storm drains. For vomit, human excrement, and bodily fluids such as blood, sawdust and/or other cleaning methods shall be used to clean the affected area.

- b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 6:00 a.m. daily.
 - c. 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 adjacent rights-of-way, nor create a nuisance for adjoining businesses.
9. **Dumpster.** The dumpster serving the use shall be stored in the temporary enclosure area until the permanent enclosure located within the building under construction immediately to the south is completed. Within 60 days of the approval of this application, the applicant shall provide staff with evidence that the establishment has entered into a formal agreement with the adjacent property owners to utilize the trash enclosure area within the adjacent building. On pick-up days, the dumpster shall be moved to the City sidewalk no earlier than 1:30 a.m. The dumpster shall be retrieved and returned to the interior of the building no later than 5 p.m. on the same pick up day or within one hour of employees reporting to work after the pick-up has occurred, whichever is earlier.
10. **Hours of Operation.** Hours of operation are limited to 6:00 a.m. to 2:00 a.m., seven days a week.
11. **Alcohol Service.** Alcohol service shall cease at 1:30 a.m., daily.
12. **Entertainment.** Entertainment shall cease at 1:30 a.m., daily.
13. **Outdoor Uses.** This permit does not authorize any outdoor drinking or entertainment.
14. **Age of Patrons.** No patrons under the age of 21 years old shall be allowed within the establishment when it is operating as a drinking and entertainment establishment. If a restaurant use is instated, patrons under 21 years of age are permitted within the restaurant area. All persons under 21 years of age shall exit the establishment before 10:30 p.m. or before the restaurant use ceases and the entertainment and/or drinking establishment uses commence, whichever is earlier.
15. **Public Right-of-Way & Queues.** Neither patrons waiting in the queue, nor ropes to control the queue, shall impede pedestrian travel in the public right-of-way at any time. A minimum of five feet of clear space shall be provided between queuing locations and any obstructions in the public right-of-way, including but limited to a minimum five-foot separation between street trees, light posts, and street signs. Queues shall be arranged as to minimize impacts on any adjacent uses.
16. **Lighting.** This permit allows no new on-site, exterior lighting. Any exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
17. **Changes to the Structure.** No exterior modifications to the structure are approved with this permit. Any exterior changes shall require approval by the Director of Planning, Building, and Code Enforcement.
18. **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.
19. **Environmental Services Department Comments.** The proposed facility must conform to the City of

San Jose industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system will require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.

20. **Parking Locations.** The business shall post the locations of nearby parking in a prominent location on the business frontage.
21. **Security.** A minimum of two security officers shall be on duty for every 100 patrons using the facility during its hours of operation. Should the Police require additional security personnel, the applicant shall comply with the more stringent Police regulations.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two 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 two-year period, the proposed use of this site or the construction of buildings 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/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit.

Please note that this Conditional Use Permit has been granted for a period of 5 year(s) 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.

3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. 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.
4. **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