



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Mayor Reed
Councilmember Nguyen
Councilmember Campos
Councilmember Oliverio

SUBJECT: Conditional Use Permit for the
Fiesta Restaurant Nightclub

DATE: December 14, 2007

Approved

Date

Church Reed
Malissa Nguyen
Nora Campos RF

RECOMMENDATION

Approve staff's recommendation for approval of a Conditional Use Permit (CUP) to allow changes to the hours of operation of entertainment, construction of an interior partition to separate the restaurant from the nightclub, and to permit an off-site parking arrangement where patrons would utilize the VTA parking lot at 3390 Monterey Highway, subject to the following conditions:

- A one-year evaluation of the CUP, to be conducted by Planning, Building, and Code Enforcement, will be submitted to the City Council for its review.
- After 9 pm, the applicant must utilize a separate entrance for nightclub patrons on the southern side of the building.

BACKGROUND

On October 10, 2007, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (CUP) filed by Miguel Sandoval on behalf of the Fiesta Club. The Planning Commission voted (4-2-0) to deny the CUP that would allow the Fiesta Club to separate the restaurant from the nightclub with an eight-foot partition, citing past violations involving minors, Police opposition, and concerns about comingling of minors and nightclub patrons.

Under the previous CUP, approved in September 2004, the Fiesta Club has had one violation for underage consumption of alcohol. Following this citation, the owners took the necessary steps to terminate the employee in question for serving alcohol to minors. There have been no violations since.

As an additional precautionary measure to prevent the comingling of minors and nightclub patrons, the applicants have agreed to restrict nightclub patrons to a separate entrance on the southern side of the building.

The applicant's proposal goes above and beyond the requirements put on similar businesses operating throughout the city. For example, other establishments that wish to separate their patrons have only been required to install a four-foot partition, whereas Fiesta Club has offered to install an eight-foot partition. Also, while the City does not have the legal authority to impose restrictions on the sale of alcohol, as this is regulated and permitted by the California Department of Alcoholic Beverages Control, Fiesta Club has voluntarily agreed to disallow the presence or sale of alcohol in the restaurant after 9 pm.

The community has shown overwhelming support for the proposal, demonstrated by nearly 400 signatures collected on a supportive petition submitted prior to the Planning Commission hearing in 2004, and approximately 200 additional petition signatures submitted prior to the Planning Commission hearing on October 10, 2007. At the same time, only one complaint from the community has been recorded.

The Fiesta Club is not located in an area currently over-concentrated with off-sale and on-sale alcohol permits or crime. According to staff's memo, the reason for not upholding the Planning Commission's conditional approval of the CUP, allowing only the alternative parking arrangement, is that it is not clear that the implementation of the proposed CUP would "result in obnoxious and/or illegal behavior by the patrons of the business."

Cc: City Attorney
City Clerk
Mayor and City Council

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RECEIVED