

RESOLUTION NO. 73718

A 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

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, on April 3, 2007; 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, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

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 (5) 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. Changed conditions in the neighborhood include construction of 202 single-family attached residential units located directly adjacent to Mexicali across Old Oakland Road.
22. Staff visited the site in May 2006 and observed a trash area located in the front driveway next to the public right of way, a rear gravel parking lot that was not paved or striped, and a rear parking area being used for vehicle storage.
23. After visiting the site, staff has found Mexicali to be in noncompliance with condition 10b in the existing permit (CP00-051) requiring that all trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all time because the trash container for the project is being stored in the driveway next to the public right of way.
24. Staff has received phone calls from area residents with concerns regarding loud noise at Mexicali late at night throughout the evening during business hours on weekdays.
25. Based on comments received from neighbors who have called the Planning Department and during a Planning Commission hearing held on October 25, 2007, staff believes Mexicali to be in noncompliance with the existing Conditional Use Permit Condition No. 8a (CP00-051) requiring all windows and doors to remain closed to minimize the impacts of amplified sound based on comments received from neighbors who have called the Planning Department.
26. The project has not complied with Conditional Use Permit file no. CP00-051 Condition 8.a., which states, "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 montly 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.

27. Based on a search of the property and records related to this use, no quarterly reports regarding entertainment noise has been submitted to Director of Planning.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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, Planning staff recommends that the project continue to be conditioned to control crowds queuing on the sidewalk and litter from patrons.
33. 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. Planning staff has determined based upon Sanborn Fire Maps that 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 the Planning Director has determined that this proposal is not a substantial change in use that would require expansion of provided parking.
34. A site visit by City staff to the property in May 2006 confirmed that the parking area was being used for outdoor storage of vehicles. Based on subsequent site visits and verbal communication with the applicant, the applicant has since removed the vehicles.

35. 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.
36. The Conditional Use Permit for this project has been conditioned to restrict admittance to patrons 21 years of age and older.
37. The project proposes operating hours from 6:00 a.m. to 2:00 a.m. daily.
38. Mexicali has not proposed outdoor areas for entertainment.
39. Under the previously issued Conditional Use Permit, CP00-051, amplified sound is permitted between current business hours of 6:00 a.m. to 2:00 a.m.
40. Based on resident concerns regarding amplified sound, staff recommended to Planning Commission restricting the hours of amplified sound to end at 12:00 midnight.
41. Planning Commission approved the proposed project with amplified music ceasing at 12:00 midnight Sunday through Thursday, and 1:00 a.m. on Friday and Saturday.
42. Due to the adjacency of residential uses to the parking area, staff recommended to Planning Commission that the hours of operation for the facility require closure at 1:00 a.m.
43. Planning Commission approved the proposed project with hours of operation between 6:00 a.m. and 12:00 midnight, Sunday through Thursday, and between the hours of 6:00 a.m. and 2:00 a.m. Friday and Saturday.
44. 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.
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 based on Fact #28-34.
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 3rd day of April, 2007, by the following vote:

AYES:	CHIRCO, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED
NOES:	CAMPOS
ABSENT:	NONE
DISQUALIFIED:	NONE
VACANT:	DISTRICT 4

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk