



AGENDA REPORT

Meeting of the San Marcos Planning Commission

MEETING DATE: November 2, 2015
SUBJECT: Pompeii Room, dba Club Tropics
CASE: P15-0028: CUP 15-004

Recommendation

Staff recommends conditional approval of a Major Conditional Use Permit ("CUP") renewal to allow the continued operation of an adult nightclub, 21 and over (Club Tropics) as well as live entertainment and dancing. In accordance with the California Environmental Quality Act (CEQA), the City of San Marcos does find the project Categorically Exempt (EX 15-029) pursuant to Section 15301 of the California Code of Regulations (CCR), in that that the project involves no expansion to the continued use.

Introduction

Club Tropics is operated within 7,518 square feet of a 49,469 square foot building in the Plaza San Marcos Commercial Center (Attachment "A"). The site has 210 parking spaces on 3.67 acres (Attachments "D" and "E"). Club Tropics is located in the northeast corner of the center with a floor plan consisting of a dance floor, chairs and tables to serve patrons (Attachment "F"). Operational live entertainment consists of playing Latin music by either a live band or disc jockey. Persons under the age of 21 are prohibited on site. There is no kitchen/restaurant services provided as part of the nightclub.

Background

Zoning Ordinance Chapter 20.425 regulates the operation of bars, alcohol service, and entertainment land uses within the City to ensure that the establishment and continuing operation of the land use will not constitute a public nuisance. To this end, the Chapter requires that all land uses with onsite alcohol sales and/or live entertainment shall be required to obtain a Director or Conditional Use Permit depending upon the requirements of the applicable zone. The project site is located within the San Marcos Plaza Specific Plan Area (SPA). The SPA uses the Commercial Zoning Chapter for regulation of commercial land uses with the SPA zone. As such, a Conditional Use Permit ("CUP") is the required level in accordance with Chapter 20.425 for the operation of a nightclub in the SPA zone.

There have been eight Conditional Use Permit renewals and modifications for Club Tropics granted since 1988, the last being CUP 88-19 (11R) approved by the Planning Commission on March 5, 2012. The nightclub is open Monday-Sunday from 9:00 p.m.-2:00 a.m., and operates with a type 48 liquor license (On-sale General Public Premises) issued by the California Department of Alcoholic Beverage Control (ABC).

As outlined for implementation in the Security and Safety Plan, operational conditions for the nightclub require a minimum of three security guard personnel Monday through Thursday and five security guard



personnel Friday through Sunday. In addition to providing security inside the nightclub and at the club entrance, two additional security personnel are required to patrol the parking lot, immediate peripheral areas of the shopping center, behind the building during the weekends, and on weekdays during seasonally high periods (summer).

As part of prior nightclub permit approvals, a Monitoring Program was established and maintained for the club activities. The applicant continues to be required to provide the required documentation, including maintaining and updating the Security and Safety Plan, insurance documentation listing the City as additional insured, and verification that all security and alcohol serving personnel have completed the required training for their job positions.

To provide assurance, the operator will continue to maintain qualified personnel in order to minimize incidents at the site; the project has been conditioned to maintain a \$5000 enforcement account deposit to pay for any potential impacts to City services resulting from enforcement action related to the operation of an adult nightclub. The applicant shall ensure that the enforcement account balance is maintained at the required deposit level of \$5,000 during the entire term of CUP 15-004. Should the applicant fail to restore the required deposit level within thirty (30) days of notice, all rights afforded to the applicant by CUP 15-004 shall cease, until which time the \$5,000 balance in the enforcement account is restored.

In August 2013, the City notified the operator that required Monitoring Program documents were out of compliance with CUP 88-19 (11R) (PC 12-4286) Conditions E.1, E.2 and E.13. The required Alcohol Beverage Control Board (ABC) License, Insurance Certificate, and Guard Cards were expired and current documents were required. There was a lag time from the applicant in providing the required document updates. As a result, from August 2013 to July 2014 there was an active code enforcement case for CUP 88-19 (11R). The operator provided the up-to-date documents on or before July 2014 at which time the case was closed. Staff time allocated to this code enforcement action was billed against the enforcement account.

The applicant has requested that the Conditional Use Permit term continue for no less than three years, as has been granted in the past. When the applicant failed to provide the required Monitoring Program documents in a timely manner, as occurred in 2013, the applicant was notified by City Code Enforcement, and submitted the required documentation in early 2014. The deposit account described above served to reimburse for staff time to resolve the violation.

Discussion

The CUP expired March 5, 2015 and a renewal application was submitted on April 17, 2015. A multi-agency inspection (Sheriff's Office, California Department of Alcoholic Beverage Control (ABC), San Marcos Fire Protection District, and San Marcos Code Enforcement was conducted May 8, 2015 to determine if the business was operating in compliance with the CUP, in order for the City to determine if the operator could continue to operate during the processing of the CUP renewal. There were operational violations identified by the Sheriff's Office that included lack of patrol of an area identified in the ABC License, a guard card violation, and inability to provide the requested ABC conditions upon request. These violations were not enough of a public safety concern for the inspection team to recommend an operational closure. During a second inspection conducted on June 5, 2015, the



inspection team verified that the business operator resolved the violations observed during the first inspection.

Two noise complaints were received during the processing of the application. Two complaints were received from the residential apartment community (Eaves San Marcos) located to the northwest of the nightclub. In response to the noise complaints, a noise study was prepared by RECON Environmental (see Attachment "G") to determine nightclub operational noise levels to the surrounding land uses and relative to the City Noise Ordinance.

The General Plan Noise and Land Use Compatibility Guidelines for Transportation Noise is 65 exterior Community Noise Equivalent Level (CNEL) and 45 interior for Multi-family Residential and Commercial. The CNEL is based upon an average of 24 hour noise readings. Given the origin and time of the nightclub operational noise, the General Plan CNEL which focuses on traffic noise is less of a factor to consider for the project noise impact analysis.

The City of San Marcos Municipal Code Title 20 – Zoning Ordinance contains General Development Standards. Performance standards in Section 20.300.070(F) set restrictions on noise levels by zoning. The Noise standards contained in Section 20.300.070 (F) are assessed at the property line of the receiving property based on the zone. The Club Tropics property is zoned Specific Plan Area (SPA) and the use is a commercial shopping center. The SPA zone allows for various uses.

Club Tropics is regulated as a commercial use. Surrounding properties to the northeast and west are also zoned SPA. The uses include a multi-family residential apartment complex northwest of Nordahl Road and Center Drive, and commercial to the northeast and southwest. Additionally, single-family residential (R-1-10) uses are located to the southeast. As Club Tropics hours of operation are Monday-Sunday, 9:00 P.M. to 2:00 A.M., the nightclub is subject to nighttime noise level limits.

Existing noise levels at the project site were measured using Larson-Davis LxT Sound Expert Sound Level Meters. Measurements took place between 10:00 P.M., September 25 and 1:30 A.M. September 26, 2015. Noise levels were measured in the alley behind Club Tropic ("Location 1"), in the parking lot in front of Club Tropic ("Location 2"), and in front of the Eaves San Marcos apartment complex ("Location 3"). The locations of the measurements are shown on Figure 1 in Attachment G.

The applicable noise standard for the Eaves San Marcos apartment complex is 65 dB(A) Leq during the daytime and 55 dB(A) Leq at night. As the hours of operation of Club Tropics are 9:00 P.M. to 1:30 A.M., only the 55 dB(A) Leq nighttime noise standard is relevant to this analysis. As shown on Table 3, Attachment G, noise levels in front of residences in the Eaves San Marcos apartment complex (Location 3) ranged from 54.6 to 59.9 dB(A) Leq between 10:00 P.M., September 25 and 1:30 A.M. September 26, 2015. These noise levels exceed the applicable noise standard. Based on field observations, the dominant source of noise was vehicle traffic on Center Drive and Nordahl Road.

During the same interval, noise levels were also measured at locations adjacent to Club Tropics including the alley behind Club Tropics (Location 1) and the parking lot in front of Club Tropics (Location 2). Noise levels in the alley behind Club Tropics ranged from 49.7 to 55.3 dB(A) Leq and noise levels in the parking



levels in the alley behind Club Tropics ranged from 49.7 to 55.3 dB(A) Leq and noise levels in the parking lot in front of Club Tropics ranged from 54.2 to 57.2 dB(A) Leq. These noise levels are less than noise levels measured at the nearest residences in the Eaves San Marcos apartment complex primarily due to distance from Nordahl Road. As noise levels immediately adjacent to Club Tropics are less than noise levels at the Eaves San Marcos apartment complex, it is evident that Club Tropics is not the dominant noise source at the Eaves San Marcos apartment complex.

Based on the analysis presented in this report, Club Tropics does not substantially contribute to the noise environment at the Eaves San Marcos, either as the dominant noise source, by generating short-term spikes in noise levels, or by generating perceptible noise in the absence of the dominant noise source. Club Tropics does not contribute to a violation of the City Municipal Code at the Eaves San Marcos apartment complex. Based upon the analysis, no noise mitigation measures are required. The operation will be conditioned to continue to keep the rear doors closed at all times, and to monitor the operational noise levels at the property line of the subject property to confirm that the operation does not exceed 55 dB(A), as specified in Section 20.300.070(F) and Chapter 10.24 SMMC.

Environmental Review

In accordance with the California Environmental Quality Act (CEQA), the City of San Marcos does find the project Categorically Exempt (EX 15-029) pursuant to Section 15301 of the California Code of Regulations (CCR), in that that the project involves no expansion to the continued use.

Recommendation

Staff recommends approval and that the term of the renewal is three years (March 5, 2018) from the date of CUP expiration.

Attachments

- A – Aerial Location Map
- B – Requested Entitlement
- C – Site & Project Characteristics
- D – Site Plan
- E – Parking Lot Layout
- F – Floor Plan
- G– Noise Report

Prepared by:

Susan Vandrew Rodriguez, Associate Planner

Reviewed by:

AGENDA ITEM NO. _____





Karen Brindley, Planning Division Manager

Approved/Submitted by:

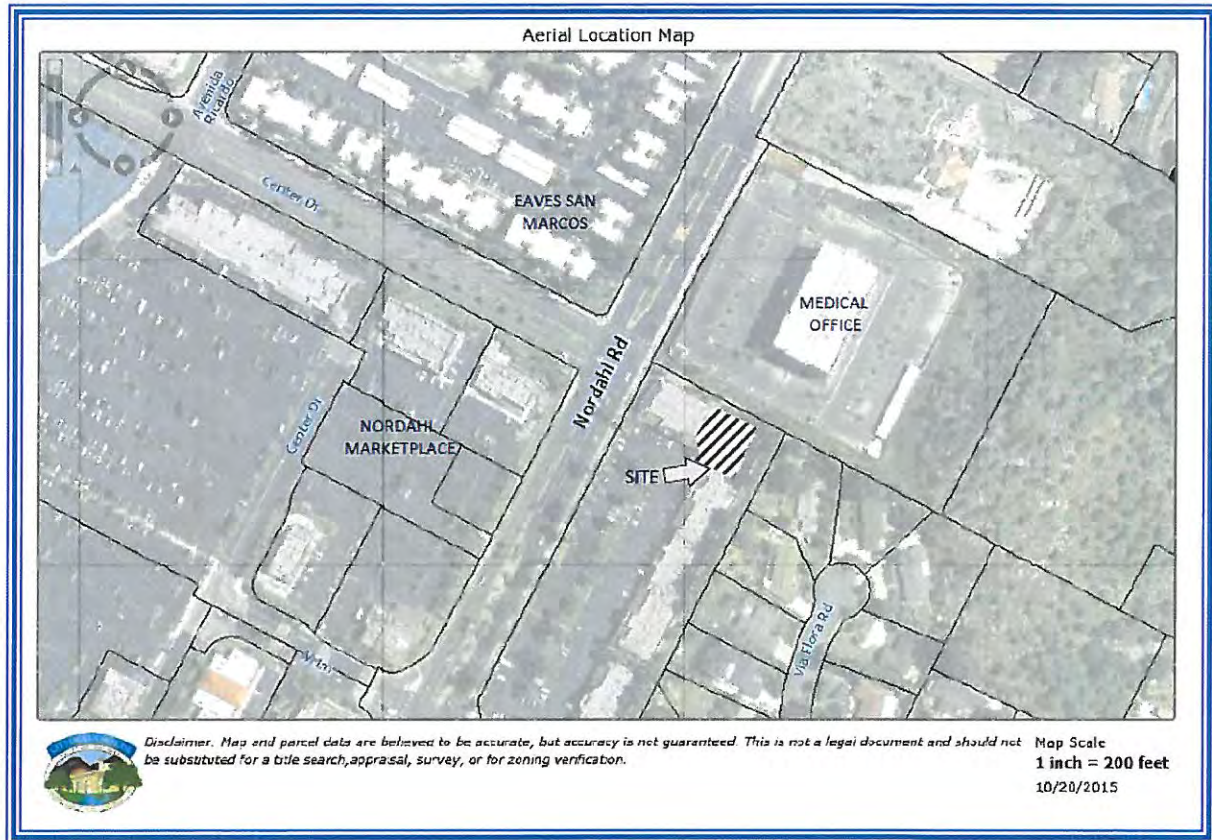


Matt Little, Development Services Director/City Engineer

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ATTACHMENT A
Aerial Location Map





ATTACHMENT B
Requested Entitlement

- A Conditional Use Permit to allow the continued operation of a nightclub (21 and over) that includes live entertainment and dancing.

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ATTACHMENT C
Site & Project Characteristics

<u>Property</u>	<u>Existing Land use</u>	<u>Zoning</u>	<u>General Plan¹ Designation</u>
Subject	San Marcos Plaza	SPA	SPA (SMP)
North	Medical Office Building	SPA	SPA (NM-PO)
South	Commercial Center	SPA	SPA (NH)
East	Single Family Residential	R-1-10	VLDR
West	Nordahl Marketplace	SPA	SPA (N)
Flood Hazard Zone	☐ yes ☒ no		
Sewer	☐ yes ☒ no		
Septic	☐ yes ☒ no		
Water	☐ yes ☒ no		
Gen. Plan Conformance	☒ yes ☐ no		
Land Use Compatibility ²	☒ yes ☐ no		

¹Designations

SMP: San Marcos Plaza

NM-PO: Nordahl Medical – Professional Office

NH: Norman Hutchinson

VLDR: Very Low Density Residential

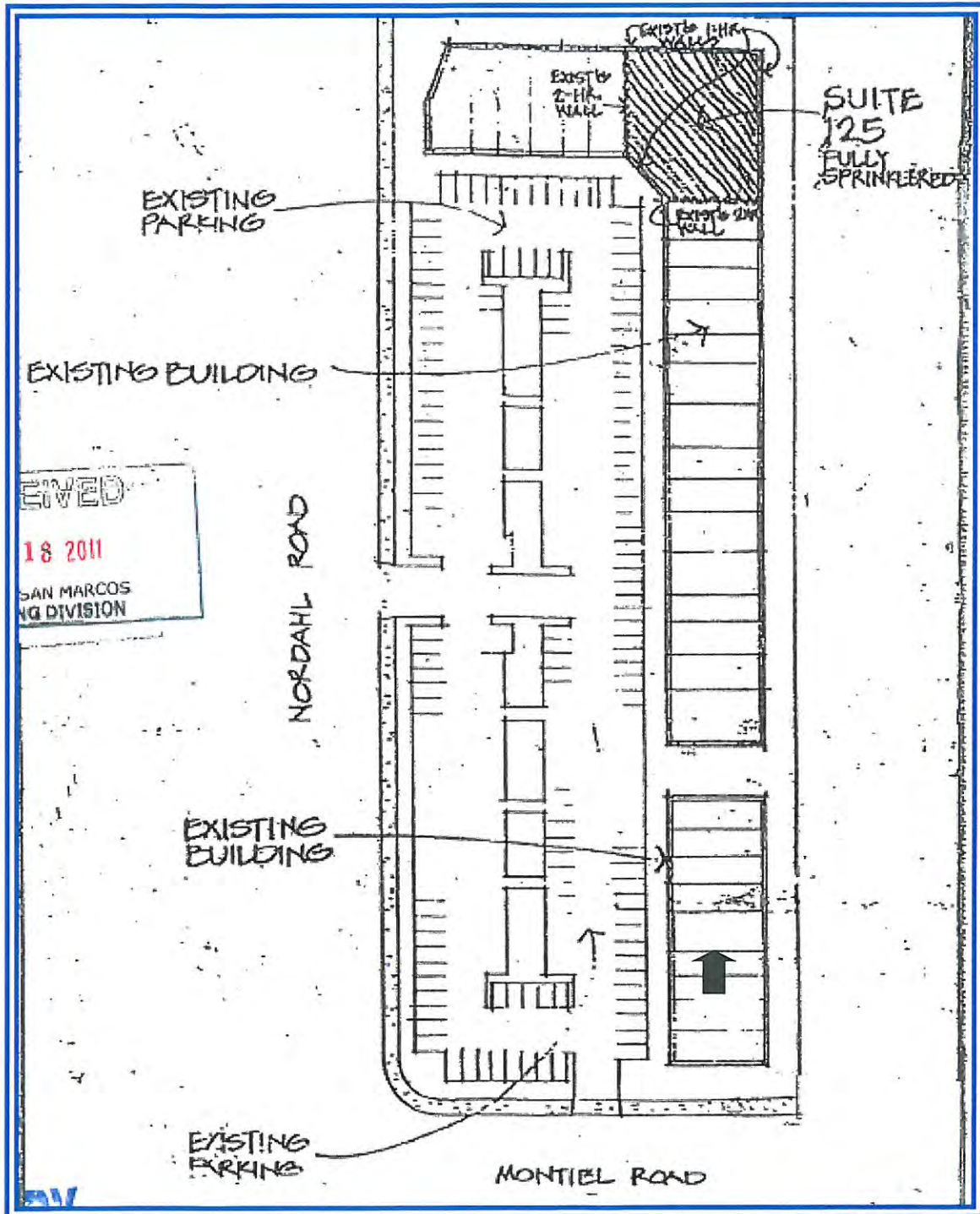
N: Nordahl Marketplace

²With approval of CUP

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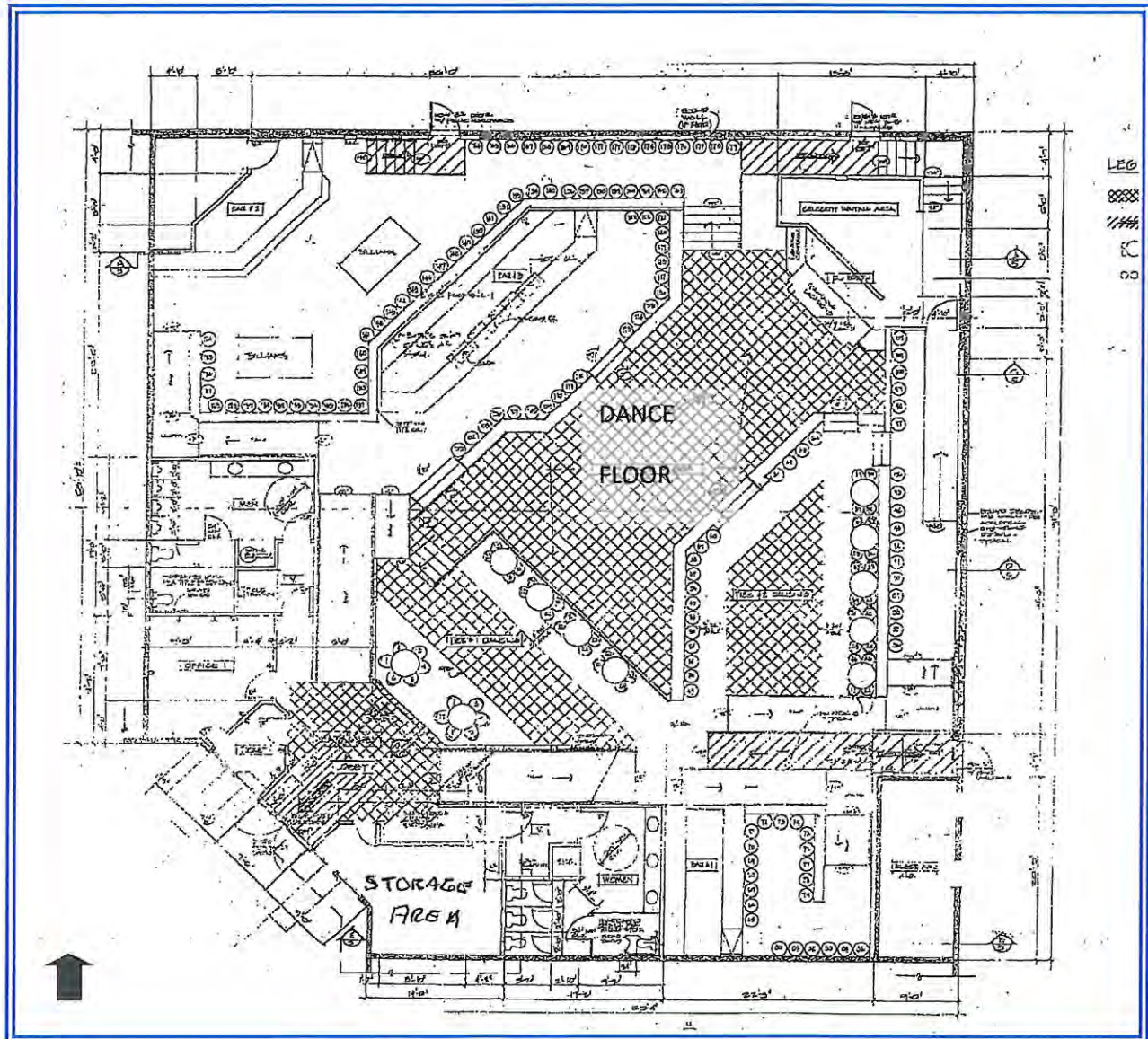
ATTACHMENT D
Site Plan



AGENDA ITEM NO. _____



ATTACHMENT F
Floor Plan



AGENDA ITEM NO. _____



ATTACHMENT G
Noise Study

AGENDA ITEM NO. _____



An Employee-Owned Company

October 6, 2015

Ms. Susan Vandrew Rodriguez
City of San Marcos
Development Services Department
1 Civic Center Drive
San Marcos, CA 92069

Reference: Club Tropics – Noise Assessment Study (RECON Number 7997)

Dear Ms. Vandrew Rodriguez:

Per your request, RECON Environmental, Inc. (RECON) has assessed the noise originating from Club Tropics (site) at 740 Nordahl Road, Suite 125, in the City of San Marcos. This study provides a description of the existing noise environment, a description of applicable regulations, and an evaluation of existing noise against applicable regulations.

Based on the analysis presented in this report, Club Tropics does not substantially contribute to the noise environment at the Eaves San Marcos, either as the dominant noise source, by generating short-term spikes in noise levels, or by generating perceptible noise in the absence of the dominant noise source. Club Tropics does not contribute to a violation of the City Municipal Code at the Eaves San Marcos apartment complex.

Fundamentals of Noise

Prior to discussing noise impacts, it is important to have a basic understanding of the descriptors used to discuss noise and means by which noise propagates.

Noise is as a sound that is loud or unpleasant or that causes disturbance. Noise levels are described in units called the decibel (dB). Decibels are measured on a logarithmic scale that quantifies sound intensity in a manner similar to the Richter scale used for earthquake magnitudes. Thus, a doubling of the energy of a noise source, such as doubling of traffic volume, would increase the noise level by 3 dB; a halving of the energy would result in a 3 dB decrease.

The human ear is not equally sensitive to all frequencies within the sound spectrum. To accommodate this phenomenon, the A-scale, which approximates the frequency response of the average young ear when listening to most ordinary everyday sounds, was devised. When people make relative judgments of the loudness or annoyance of a sound, their judgments correlate well with the A-scale sound levels of those sounds. Therefore, the “A-weighted” noise scale is used for measurements and standards involving the human perception of noise. Noise levels using A-weighted measurements are designated with the notation dB(A). Human perception of noise has no simple correlation with acoustical energy. A change in noise levels is generally perceived as follows: 3 dB(A) barely perceptible, 5 dB(A) readily perceptible, and 10 dB(A) perceived as a doubling or halving of noise (California Department of Transportation [Caltrans] 2013).

The impact of noise is not a function of loudness alone. The time of day when noise occurs and the duration of the noise are also important. In addition, most noise that lasts for more than a few seconds is variable in its intensity. Consequently, a variety of noise descriptors have been developed

including the equivalent noise level (L_{eq}), the minimum noise level (L_{min}), the maximum noise level (L_{max}), and the 90th percentile statistical descriptor (L_{90}), which are all used in this report.

The L_{eq} noise level is the equivalent steady-state noise level in a stated period of time that is calculated by averaging the acoustic energy over a period of time. The time period may be specified; $L_{eq(3)}$ would be a 3-hour period; $L_{eq(0.5)}$ would be half an hour period; when no period is specified, a 1-hour period is assumed. The L_{min} and L_{max} are the minimum and maximum noise levels that occur within a stated period of time, typically the duration of a noise measurement. The L_{90} is the noise level that is exceeded for 90 percent of a stated period of time, typically the duration of a noise measurement.

Noise from a localized source (approximating a “point” source) radiates uniformly outward as it travels away from the source in a spherical pattern, known as geometric spreading. Thus, noise levels decrease or “drop off” at a constant rate relative to the doubling distance. For a localized point source, noise level drop off at a rate of 6 dB(A) for each doubling of the distance when assessed in a hardscape environment. Under soft site conditions, such as soft dirt, grass, or scattered bushes and trees, the rate at which noise levels drop off increases to 7.5 dB(A) per doubling of distance due to added ground absorption. In addition to attenuation from distance, noise levels may also be attenuated by shielding provided by intervening terrain, barriers, and structures.

Applicable Standards

The City of San Marcos Municipal Code Title 20 – Zoning Ordinance contains General Development Standards. Performance standards in Section 20.300.070(F) set restrictions on noise levels by zoning. Table 1 provides the interior and exterior noise guidelines for various types of uses and developments.

Table 1 Noise Standards by Zone	
Zone	Allowable Noise Level Measured from the Property Line [dB(A) L_{eq}]
Single-Family Residential (A, R-1, R-2)	
7 A.M. to 10 P.M. (daytime)	60
10 P.M. to 7 A.M. (overnight)	50
Multifamily Residential (R-3)	
7 A.M. to 10 P.M. (daytime)	65
10 P.M. to 7 A.M. (overnight)	55
Commercial (C, O-P, SR)	
7 A.M. to 10 P.M. (daytime)	60
10 P.M. to 7 A.M. (overnight)	55
Industrial	
7 A.M. to 10 P.M. (daytime)	65
10 P.M. to 7 A.M. (overnight)	60
SOURCE: San Marcos Municipal Code Section 20.300.070 (F) – Table 20.300-4.	

Noise standards contained in Table 1 are assessed at the property line of the receiving property based on the zone. The Club Tropics property is zoned Specific Plan Area (SPA) and the use is a commercial shopping center. The SPA zone allows for various uses. For the purposes of applying the noise limits, the noise limit of the land use is applied. For example, Club Tropics is regulated as a commercial use. Surrounding properties to the northeast and west are also zoned SPA. The uses include a multi-family residential apartment complex northwest of Nordahl Road and Center Drive,

October 6, 2015

and commercial northeast and southwest. Additionally, single-family residential (R-1-10) uses are located to the southeast. As the hours of operation of Club Tropics are 9:00 P.M. to 1:30 A.M. Thursday through Monday, Club Tropics is subject to nighttime noise level limits.

Noise Measurements

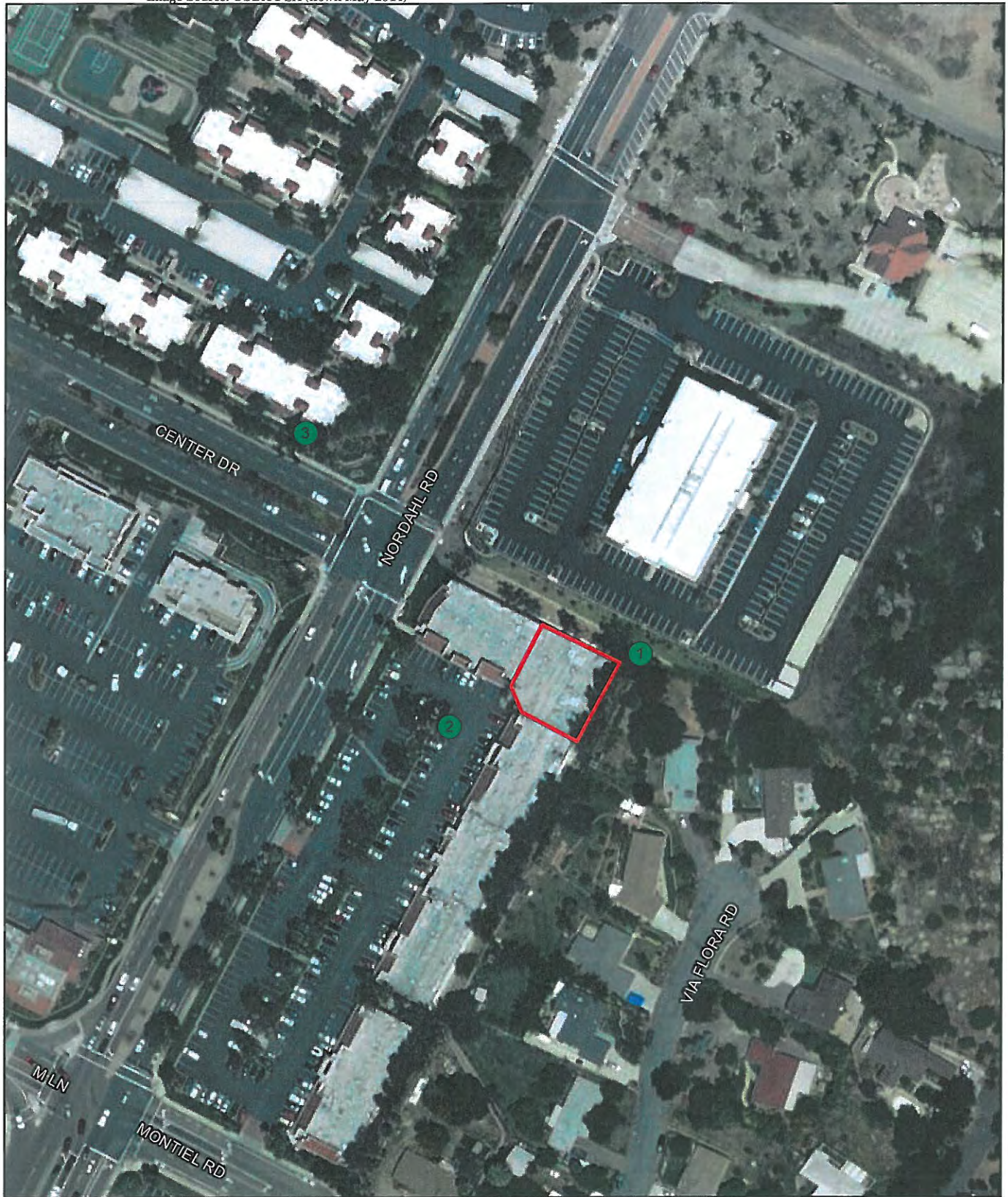
Existing noise levels at the project site were measured using Larson-Davis LxT Sound Expert Sound Level Meters. Measurements took place between 10:00 P.M., September 25 and 1:30 A.M. September 26, 2015. Noise levels were measured in the alley behind Club Tropic ("Location 1"), in the parking lot in front of Club Tropic ("Location 2"), and in front of the Eaves San Marcos apartment complex ("Location 3"). The locations of the measurements are shown on Figure 1.

Location 1 was approximately 30 feet from the west corner of Club Tropics and approximately 250 feet from Nordahl Road. The main noise source at this location was music from Club Tropics. Other sources of noise included traffic on Nordahl Road. There were no other sources of noise at this location.

Location 2 was approximately 85 feet east of the entrance of Club Tropics and approximately 105 feet from Nordahl Road. The main noise source at this location was music from Club Tropics, which resulted in relatively steady noise levels. Other sources of noise at this location included parking lot activities (such as people walking to and from vehicles, vehicle engines, and stereos), and vehicle traffic on Nordahl Road. These noise sources were highly variable throughout the measurement.

Location 3 was approximately 32 feet north of Center Drive and approximately 90 feet west of Nordahl Road. The main noise source at this location was vehicle traffic on Center Drive and Nordahl Road. Traffic volumes on Nordahl Road and Center Street were counted in 30-minute intervals and are shown in Table 2. As shown, traffic volumes decreased as time passed. Additionally, parking lot activities including car stereos were occasionally audible for brief periods of less than a minute. Other sources of noise at this location included heating, ventilation, and air conditioning units associated with the Eaves San Marcos apartment complex. Music from Club Tropic was not audible at Location 3.

Table 2 30-minute Traffic Counts		
Roadway	Interval	Total Vehicles
Nordahl Road ¹	9:51 P.M. to 10:21 P.M.	136
	11:00 P.M. to 11:30 P.M.	98
	12:00 A.M. to 12:30 A.M.	57
	1:00 A.M. to 1:30 A.M.	53
Center Drive	9:51 P.M. to 10:21 P.M.	109
	11:00 P.M. to 11:30 P.M.	64
	12:00 A.M. to 12:30 A.M.	28
	1:00 A.M. to 1:30 A.M.	41
¹ Traffic counts for Nordahl Road only include through vehicles. To avoid double counting, vehicles that turned from Nordahl Road onto Center Drive or Center Drive onto Nordahl Road were only counted toward Center Drive traffic counts.		



- Club Tropics
- Noise Measurement Location

The following parameters were used:

Filter:	A-weighted
Response:	Slow
Time History Period:	1 second
Height of Instrument	5 feet above grade

All three meters were active continuously between 10:00 P.M. and 1:30 A.M. This interval was selected because it included the noisiest activities at Club Tropic (live music and normal club operations after the conclusion of music).

Club Tropics featured live music from approximately 10:00 P.M. to 11:00 P.M. ("Interval 1"), then there was an intermission from 11:00 P.M. TO 12:00 A.M. ("Interval 2"), then live music resumed from approximately 12:00 A.M. to 1:00 A.M. ("Interval 3"). This was followed by normal operations from 1:00 A.M. to 1:30 A.M. ("Interval 4"). Measurement data at each location and during each interval is summarized in Table 3 and full measurement data is available in Attachment 1.

Table 3 Noise Measurements						
Location	Interval	Time	Noise Level (dB[A])			
			L _{EQ}	L _{MAX}	L _{MIN}	L ₉₀
1 (Back Alley)	1	10:00 P.M. to 11:00 P.M.	55.3	67.3	47.0	50.9
	2	11:00 P.M. to 12:00 A.M.	49.7	68.4	44.9	45.8
	3	12:00 A.M. to 1:00 A.M.	53.0	63.2	44.9	49.3
	4	1:00 A.M. to 1:30 A.M.	51.7	63.4	45.2	45.9
2 (Parking Lot)	1	10:00 P.M. to 11:00 P.M.	57.2	70.8	50.1	53.5
	2	11:00 P.M. to 12:00 A.M.	56.4	75.0	46.5	50.5
	3	12:00 A.M. to 1:00 A.M.	55.2	80.0	45.2	48.8
	4	1:00 A.M. to 1:30 A.M.	54.2	66.7	46.5	49.1
3 (Eaves)	1	10:00 P.M. to 11:00 P.M.	59.9	86.1	47.7	50.4
	2	11:00 P.M. to 12:00 A.M.	57.5	80.9	44.3	46.5
	3	12:00 A.M. to 1:00 A.M.	54.6	73.0	43.9	46.6
	4	1:00 A.M. to 1:30 A.M.	55.2	72.5	45.1	46.5

Analysis and Conclusions

The applicable noise standard for the Eaves San Marcos apartment complex is 65 dB(A) L_{eq} during the daytime and 55 dB(A) L_{eq} at night. As the hours of operation of Club Tropics are 9:00 P.M. to 1:30 A.M., only the 55 dB(A) L_{eq} nighttime noise standard is relevant to this analysis. As shown on Table 3, noise levels in front of residences in the Eaves San Marcos apartment complex (Location 3) ranged from 54.6 to 59.9 dB(A) L_{eq} between 10:00 P.M., September 25 and 1:30 A.M. September 26, 2015. These noise levels exceed the applicable noise standard. Based on field observations, the dominant source of noise was vehicle traffic on Center Drive and Nordahl Road.

During the same interval, noise levels were also measured at locations adjacent to Club Tropics including the alley behind Club Tropics (Location 1) and the parking lot in front of Club Tropics (Location 2). Noise levels in the alley behind Club Tropics ranged from 49.7 to 55.3 dB(A) L_{eq} and noise levels in the parking lot in front of Club Tropics ranged from 54.2 to 57.2 dB(A) L_{eq}. These noise levels are less than noise levels measured at the nearest residences in the Eaves San Marcos apartment complex primarily due to distance from Nordahl Road. As noise levels immediately adjacent to Club Tropics are less than noise levels at the Eaves San Marcos apartment complex, it is evident that Club Tropics is not the dominant noise source at the Eaves San Marcos apartment complex.

Although not the primary driver of nighttime average noise levels, noise from Club Tropics may contribute to the character of the noise environment by generating short-term spikes in noise levels or by generating noise levels that are perceptible intermittently when the main noise source is absent or minimal. For example, noise level spikes could potentially occur when doors are temporarily ajar or when parking lot activities occur. Music could be intermittently perceptible when there is a break in traffic. To assess this condition, the one-minute L_{eq} during the noisiest and quietest minutes were analyzed. Tables 4 and 5 display the noise levels at each measurement location during the loudest and quietest minutes in each interval as measured at Eaves San Marcos.

As discussed previously, noise radiates outward as it travels away from the source. Thus, noise levels decrease as this distance from the source increases. If Club Tropics were to contribute to the noise environment by generating short-term spikes in noise levels, then the short-term spikes in noise levels near to Club Tropics (such as in the parking lot and back alley) would exceed noise levels at the Eaves, which is further away. As shown in Table 4, each of the loudest noise levels at the Eaves San Marcos was greater than noise levels in the parking lot and back alley. Therefore, it can be concluded that noise from Club Tropics did not generate the short-term spikes in noise levels that were observed at the Eaves San Marcos.

During the noise measurements, there were frequent intervals with no traffic on Nordahl Road or Center Drive. If Club Tropics were to contribute to the noise environment by generating noise levels that are perceptible intermittently when the traffic source is absent or minimal, then the quietest minutes would occur when noise levels from Club Tropics were also minimal. As shown in Table 5, during the quietest minutes of each interval, noise levels observed in the parking lot and back alley of Club Tropics decreased only by 0.7 and 1.6 dB(A) respectively. Noise level changes of less than 3 dB(A) are less than perceptible (Caltrans 2013). As the quietest minutes observed at the Eaves San Marcos did not correspond to substantial dips in noise levels generated by Club Tropics, it can be concluded that Club Tropics did not substantially contribute to the noise environment during intervals with no traffic on Nordahl Road or Center Drive.

Based on the analysis above, Club Tropics does not substantially contribute to the noise environment at Eaves San Marcos, either as the dominant noise source, by generating short-term spikes in noise levels, or by generating perceptible noise in the absence of the dominant noise source. It is concluded that Club Tropics does not contribute to a violation of the City Municipal Code at the Eaves San Marcos apartment complex. Exceedances of City noise standards at Eaves San Marcos are attributable to intermittent vehicle trips from Nordahl Road and Center Drive.

Sincerely,



William Maddux
Senior Noise Specialist

References Cited

California Department of Transportation (Caltrans)
2013 Technical Noise Supplement to the Traffic Noise Analysis Protocol. September 2013.

San Marcos City
2015 Municipal Code, through Ordinance No. 2014-1406, adopted on January 13.

Table 4
Loudest Minutes at Eaves San Marcos

Interval	Loudtest Minute	Noise Levels ($L_{\text{eq}}(1\text{m})$ dB[A])								
		Eaves San Marcos			Parking Lot		Back Alley			
		Measured	Avg.	Δ	Measured	Avg.	Δ	Measured	Avg.	Δ
10:00 P.M. to 11:00 P.M.	10:13	64.3		4.4	57.5		0.3	56.5		1.2
	10:17 ¹	72.8	59.9	12.9	58.2	57.2	1.0	58.9	55.3	3.6
	10:44	63.9		4.0	55.3		-1.9	57.3		2.0
11:00 P.M. to 12:00 A.M.	11:06	65.4		7.9	57.0		0.6	54.6		4.9
	11:37 ²	67.9	57.5	10.4	63.3	56.4	6.9	55.2	49.7	5.5
	11:42	60.4		2.9	56.1		-0.3	48.8		-0.9
12:00 A.M. to 1:00 A.M.	12:02	59.8		5.2	50.5		-4.7	51.2		-1.8
	12:57	60.2	54.6	5.6	55.3	55.2	0.1	53.1	53.0	0.1
	12:59	60.3		5.7	58.1		2.9	54.3		1.3
1:00 A.M. to 1:30 A.M.	1:00	57.0		1.8	55.3		1.1	52.5		0.8
	1:08	58.5	55.2	3.3	54.5	54.2	0.3	54.9	51.7	3.2
	1:13	63.1		7.9	57.3		3.1	55.5		3.8
		Average Difference		6.0			0.8			2.0

¹ The temporary increase in noise levels at 10:17 P.M. corresponds with an observed motorcycle pass-by on Center Drive. The pass-by was noted as the motorcycle was observed to have a malfunctioning muffler.

² The temporary increase in noise levels at 11:37 P.M. corresponds with an observed SUV pass-by on Nordahl Drive. The pass-by was noted as the vehicle was observed to be traveling well in excess of the speed limit.

¹ The temporary increase in noise levels at 10:17 P.M. corresponds with an observed motorcycle pass-by on Center Drive. The pass-by was noted as the motorcycle was observed to have a malfunctioning muffler.

² The temporary increase in noise levels at 11:37 p.m. corresponds with an observed SUV pass-by on Nordahl Drive. The pass-by was noted as the vehicle was observed to be traveling well in excess of the speed limit.

Table 5 Quietest Minutes at Eaves San Marcos												
Interval	Quietest Minute	Noise Levels ($L_{eq(1m)}$ dB[A])										
		Eaves San Marcos			Parking Lot			Back Alley				
		Measured	Avg.	Δ	Measured	Avg.	Δ	Measured	Avg.	Δ		
10:00 P.M. to 11:00 P.M.	10:28 P.M.	53.5	59.9	6.4	56.6	57.2	0.6	55.9	55.3	-0.6		
	10:47 P.M.	52.5		7.4	57.0		0.2	55.4		-0.1		
	10:54 P.M.	52.6		7.3	56.3		0.9	55.1		0.2		
11:00 P.M. to 12:00 A.M.	11:33 P.M.	46.9	57.5	10.6	52.1	56.4	4.3	48.5	49.7	1.2		
	11:39 P.M.	49.3		8.2	60.9		-4.5	45.8		3.9		
	11:53 P.M.	48.5		9.0	53.6		2.8	47.4		2.3		
12:00 A.M. to 1:00 A.M.	12:19 A.M.	48.0	54.6	6.6	54.9	55.2	0.3	52.2	53.0	0.8		
	12:27 A.M.	47.1		7.5	54.0		1.2	53.6		-0.6		
	12:40 A.M.	45.1		9.5	50.9		4.3	52.0		1.0		
1:00 A.M. to 1:30 A.M.	1:20 A.M.	48.3	55.2	6.9	53.2	54.2	1.0	51.5	51.7	0.2		
	1:25 A.M.	47.2		8.0	55.9		-1.7	45.8		5.9		
	1:29 A.M.	46.2		9.0	55.8		-1.6	47.2		4.5		
		Average Difference		8.0				0.7	1.6			

ATTACHMENT 1

Measurement Location 1 - Back Alley

Summary				
Filename	LxT_Data 037			
Serial Number	3994			
Model	SoundTrack LxT®			
Firmware Version	2.206			
User				
Location				
Job Description				
Note				
Measurement Description				
Start	2015/09/25 21:38:20			
Stop	2015/09/26 1:40:56			
Duration	4:02:35.5			
Run Time	4:02:35.5			
Pause	0:00:00.0			
Pre Calibration	2015/09/25 21:36:51			
Post Calibration	None			
Calibration Deviation	—			
Overall Settings				
RMS Weight	A Weighting			
Peak Weight	A Weighting			
Detector	Slow			
Preamp	PRMLxT1			
Microphone Correction	Off			
Integration Method	Linear			
Overload	145.0 dB			
	A	C	Z	
Under Range Peak	101.2	98.2	103.2 dB	
Under Range Limit	37.6	35.6	43.6 dB	
Noise Floor	24.6	25.2	32.7 dB	
Results				
LAeq	53.1 dB			
LAE	94.7 dB			
EA	329.994 µPa²h			
EA8	652.938 µPa²h			
EA40	3.265 mPa²h			
LApeak (max)	2015/09/25 21:38:28	106.9 dB		
LASmax	2015/09/25 21:38:28	75.4 dB		
LASmin	2015/09/26 0:30:51	44.9 dB		
SEA	dB			
LAS > 85.0 dB (Exceedence Counts / Duration)	0	0.0 s		
LAS > 115.0 dB (Exceedence Counts / Duration)	0	0.0 s		
LApeak > 135.0 dB (Exceedence Counts / Duration)	0	0.0 s		
LApeak > 137.0 dB (Exceedence Counts / Duration)	0	0.0 s		
LApeak > 140.0 dB (Exceedence Counts / Duration)	0	0.0 s		
LCeq	70.8 dB			
LAeq	53.1 dB			
LCeq - LAeq	17.7 dB			
LAleq	57.4 dB			
LAeq	53.1 dB			
LAleq - LAeq	4.3 dB			
# Overloads	0			
Overload Duration	0.0 s			
Dose Settings				
Dose Name	OSHA-1	OSHA-2		
Exch. Rate	5	5 dB		
Threshold	90	80 dB		
Criterion Level	90	90 dB		
Criterion Duration	8	8 h		
Results				
Dose		%		
Projected Dose		%		
TWA (Projected)		dB		
TWA (t)		dB		
Lep (t)	50.1	50.1 dB		
Statistics				
LAS5.00	56.4 dB			
LAS10.00	56.0 dB			
LAS33.30	53.3 dB			
LAS50.00	51.8 dB			
LAS66.60	50.0 dB			
LAS90.00	46.5 dB			
Calibration History				
Preamp	Date dB re. 1V/Pa			
PRMLxT1	2015/09/25 21:36:51	-51.2		
PRMLxT1	2015/09/03 15:00:14	-51.1		
PRMLxT1	2015/09/03 6:57:32	-51.2		
PRMLxT1	2015/09/02 7:05:00	-51.6		
PRMLxT1	2015/08/28 8:41:47	-51.1		
PRMLxT1	2015/08/28 6:59:30	-51.2		
PRMLxT1	2015/08/27 15:01:47	-51.2		
PRMLxT1	2015/08/27 13:42:27	-51.3		
PRMLxT1	2015/07/01 14:52:53	-51.2		
PRMLxT1	2015/07/01 6:59:02	-51.2		
PRMLxT1	2015/06/30 14:44:58	-51.3		

Measurement Location 2 - Parking Lot

Summary							
Filename	LxT_Data.073						
Serial Number	3827						
Model	SoundExpert™ LxT						
Firmware Version	2.206						
User							
Location							
Job Description							
Note							
Measurement Description							
Start	2015/09/25 22:00:04						
Stop	2015/09/26 1:00:05						
Duration	3:30:01.4						
Run Time	3:30:01.4						
Pause	0:00:00.0						
Pre Calibration	2015/05/25 21:50:42						
Post Calibration	None						
Calibration Deviation	—						
Overall Settings							
RMS Weight	A / Weighting						
Peak Weight	A / Weighting						
Detector	Slow						
Preamp	PRMLxT1L						
Microphone Correction	Off						
Integration Method	Linear						
OBA Range	Normal						
OBA Bandwidth	1/1 and 1/3						
OBA Freq. Weighting	A / Weighting						
OBA Max Spectrum	At Lmax						
Overload	121.8 dB						
	A	C	Z				
Under Range Peak	78.1	75.1	80.1 dB				
Under Range Limit	26.0	25.2	32.0 dB				
Noise Floor	16.3	18.1	22.0 dB				
Results							
LAeq	56.1 dB						
LAE	97.1 dB						
EA	570.612 µPa²h						
LApeak (max)	2015/09/25 22:41:19	100.3 dB					
LASmax	2015/09/26 0:18:14	80.0 dB					
LASmin	2015/09/26 0:30:51	45.2 dB					
SEA	dB						
LAS > 85.0 dB (Exceedence Counts / Duration)	0	0.0 s					
LAS > 115.0 dB (Exceedence Counts / Duration)	0	0.0 s					
LApeak > 135.0 dB (Exceedence Counts / Duration)	0	0.0 s					
LApeak > 137.0 dB (Exceedence Counts / Duration)	0	0.0 s					
LApeak > 140.0 dB (Exceedence Counts / Duration)	0	0.0 s					
Community Noise							
	Ldn	LDay 07:00-22:00	LNight 22:00-07:00	Lden	LDay 07:00-19:00	LEvening 19:00-22:00	LNight 22:00-07:00
	66.1			56.1 66.1			56.1
LCeq	68.7 dB						
LAeq	56.1 dB						
LCeq - LAeq	12.6 dB						
LAlaq	60.7 dB						
LAeq	56.1 dB						
LAlaq - LAeq	4.6 dB						
# Overloads	0						
Overload Duration	0.0 s						
# OBA Overloads	0						
OBA Overload Duration	0.0 s						
Statistics							
LAS5.00	59.6 dB						
LAS10.00	58.2 dB						
LAS33.30	55.8 dB						
LAS50.00	54.4 dB						
LAS66.60	52.5 dB						
LAS90.00	50.1 dB						
Calibration History							
Preamp	Date	dB re. 1V/Pa					
PRMLxT1	2015/06/01 14:58:37	-50.5					
PRMLxT1	2015/06/01 14:58:10	-50.8					
PRMLxT1	2015/03/23 12:06:20	-50.8					
PRMLxT1	2015/03/03 13:49:49	-50.9					
PRMLxT1	2015/03/03 13:28:13	-50.6					
PRMLxT1	2015/03/03 13:27:59	-50.6					
PRMLxT1	2015/03/03 13:27:25	-50.7					
PRMLxT1	2015/03/03 13:27:10	-50.7					
PRMLxT1	2015/03/03 13:26:55	-50.7					
PRMLxT1	2015/03/03 13:26:42	-50.6					
PRMLxT1L	2015/03/03 13:26:28	-50.6					
PRMLxT1L	2015/09/25 21:50:41	-28.1					
PRMLxT1L	2015/09/25 21:59:16	-28.1					
PRMLxT1L	2015/09/21 15:23:22	-28.1					
PRMLxT1L	2015/09/21 7:21:46	-28.1					
PRMLxT1L	2015/09/17 12:30:12	-28.1					
PRMLxT1L	2015/09/17 12:12:20	-28.1					
PRMLxT1L	2015/09/17 11:20:00	-28.2					
PRMLxT1L	2015/09/17 11:00:02	-28.0					
PRMLxT1L	2015/09/17 10:15:36	-28.1					
PRMLxT1L	2015/09/17 9:57:34	-28.0					
PRMLxT1L	2015/09/17 9:41:45	-28.0					

Measurement Location 3 - Eaves San Marcos

Summary					
Filename	LxT_Data.017				
Serial Number	3828				
Model	SoundExpert™ LxT				
Firmware Version	2.301				
User					
Location					
Job Description					
Note					
Measurement Description					
Start	2015/09/25 21:51:25				
Stop	2015/09/26 1:30:02				
Duration	3:38:36.3				
Run Time	3:38:36.3				
Pause	0:00:00.0				
Pre Calibration					
Post Calibration	None				
Calibration Deviation	---				
Overall Settings					
RMS Weight	A Weighting				
Peak Weight	A Weighting				
Detector	Slow				
Preamp	PRMLxT1L				
Microphone Correction	Off				
Integration Method	Linear				
OBA Range	Normal				
OBA Bandwidth	1/1 and 1/3				
OBA Freq. Weighting	A Weighting				
OBA Max Spectrum	At Lmax				
Overload	121.8 dB				
	A	C	Z		
Under Range Peak	76.1	75.1	80.1 dB		
Under Range Limit	26.0	25.2	32.0 dB		
Noise Floor	18.3	16.1	22.0 dB		
Results					
LAeq	57.9 dB				
LAE	99.1 dB				
EA	901.708 µPa²h				
LApeak (max)	2015/09/25 22:44:08	104.9 dB			
LASmax	2015/09/25 22:17:34	86.1 dB			
LASmin	2015/09/26 0:40:20	43.9 dB			
SEA	dB				
LAS > 85.0 dB (Exceedence Counts / Duration)	1	1.8 s			
LAS > 115.0 dB (Exceedence Counts / Duration)	0	0.0 s			
LApeak > 135.0 dB (Exceedence Counts / Duration)	0	0.0 s			
LApeak > 137.0 dB (Exceedence Counts / Duration)	0	0.0 s			
LApeak > 140.0 dB (Exceedence Counts / Duration)	0	0.0 s			
Community Noise					
	Ldn	LDay 07:00-22:00	LNight 22:00-07:00	Lden	LDay 07:00-19:00
	85.1	62.4	57.6	62.4	57.6
LCeq	89.7 dB				
LAeq	57.9 dB				
LCeq - LAeq	11.8 dB				
LAlaq	60.6 dB				
LAeq	57.9 dB				
LAlaq - LAeq	2.7 dB				
# Overloads	0				
Overload Duration	0.0 s				
# OBA Overloads	0				
OBA Overload Duration	0.0 s				
Statistics					
LAS5.00	62.4 dB				
LAS10.00	60.2 dB				
LAS33.30	54.5 dB				
LAS50.00	52.1 dB				
LAS66.60	50.1 dB				
LAS90.00	47.2 dB				
Calibration History					
Preamp	Date	dB re. 1V/Pa			
Direct	2015/07/16 9:40:54	-26.0			
Direct	2015/07/16 9:12:39	-26.0			
PRMLxT1L	2015/09/25 21:46:05	-28.1			
PRMLxT1L	2015/08/19 11:36:58	-28.1			
PRMLxT1L	2015/08/19 11:18:33	-28.1			
PRMLxT1L	2015/08/19 11:03:53	-28.2			
PRMLxT1L	2015/08/19 10:42:55	-28.0			
PRMLxT1L	2015/08/19 10:32:34	-28.2			
PRMLxT1L	2015/08/19 10:11:07	-28.1			
PRMLxT1L	2015/08/19 10:11:03	-28.1			
PRMLxT1L	2015/08/19 9:46:09	-28.2			
PRMLxT1L	2015/08/18 9:49:30	-28.1			
PRMLxT1L	2015/08/18 9:29:28	-28.1			

RESOLUTION PC 15-4496

A RESOLUTION OF THE SAN MARCOS PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE CONTINUED OPERATION OF AN ADULT NIGHTCLUB THAT INCLUDES LIVE ENTERTAINMENT AND DANCING IN THE SPECIFIC PLAN AREA ZONE IN THE RICHLAND NEIGHBORHOOD

CUP 15-004
(Project No. P15-0028)
Pompei Room d.b.a. Club Tropics

WHEREAS, the City of San Marcos received a request from Jason Dunn, Jr., on behalf of the Pompeii Room d.b.a. Club Tropics, on April 16, 2015 to renew an existing Conditional Use Permit allowing an adult nightclub with live entertainment and dancing located within 7,518 square feet of a 49,469 square foot retail commercial center located at 740 Nordahl Road, Suite 125, more particularly described as:

PAR A*(EX ST) of Map 14572 Per Doc. 86-483204 filed in the Office of the County Recorder of San Diego County, October 24, 1986.
Assessor's Parcel Number 228-120-47-00

WHEREAS, on September 6, 1988, the Planning Commission considered and approved a Conditional Use Permit (CUP 88-19) to allow the operation of a young adult entertainment center (age 18 and older) per Resolution PC 88-2131; and

WHEREAS, on December 11, 1990, the City Council considered and approved modification of an existing Conditional Use Permit (CUP 88-19 (90 M)) to convert an existing young adult entertainment center (18 and older) to an all adult (alcohol serving) nightclub (age 21 and older) per City Council Resolution 90-3614 extending the permit expiration to September 7, 1993, which served to replace and supersede Planning Commission Resolution PC 88 - 2131; and

WHEREAS, on December 6, 1993, the Planning Commission granted a three year extension of Conditional Use Permit 88-19 to December 11, 1996 to allow the continued operation of an adult (alcohol serving) nightclub (age 21 and older) per Resolution PC 93-2717; and

WHEREAS, on January 2, 1996, the Planning Commission approved a modification to Conditional Use Permit 88-19 (90M) as requested by the City to modify the conditions per Resolution PC 95 -2854 extending the CUP to December 11, 1996, and

WHEREAS, on January 7, 1997, the Planning Commission approved a renewal to extend Conditional Use Permit 88-19 (96R) to January 9, 1999 per Resolution PC 96-2930, and

AGENDA ITEM
2

WHEREAS, the applicant appealed Conditions 14 and 18 of the Planning Commission Resolution PC 96 -2930 which renewed CUP 88-19 (96R) for an additional 2 years; and

WHEREAS, on February 11, 1997, the City Council did consider and grant the appeal of the Planning Commission conditions to PC Resolution 96-2930 regarding Conditions 14 and 18 of CUP 88-19 (96R) pertaining to the payment of fees for law enforcement and emergency responses to the nightclub, respectively, as per City Council Resolution 97-4804 extending CUP 88-19 (96R) to January 6, 1999, and

WHEREAS, on January 4, 1999, the Planning Commission granted an extension of CUP 88-19 (90M) to January 6, 2002 per Resolution PC 99-3123, and

WHEREAS, on December 3, 2001, the Planning Commission granted a modification and extension of CUP 88-19 (96R) to January 6, 2005 per PC 01-3433; and

WHEREAS, on April 4, 2005, the Planning Commission granted an extension of CUP 88-19 (96R) to April 4, 2008, per PC 04-3797; and

WHEREAS, on October 6, 2008, the Planning Commission granted an extension of CUP 88-19 (96R) to October 6, 2011, per PC 08-4046; and

WHEREAS, on March 5, 2012, the Planning Commission granted an extension of CUP 88-19 (96R) to March 5, 2015, per PC 12-4286; and

WHEREAS, on May 8, 2015 and June 5, 2015, multi-agency inspections were conducted to verify business operational compliance with PC 12-4286 and the City has allowed the owner to continue to operate during the processing of the CUP 15-004 (P15-0028) application submitted on April 16, 2015; and

WHEREAS, the Development Services Department did study and recommend approval of said request for CUP 15-004 to allow the continued operation of the nightclub; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA), the City of San Marcos did find the project Categorically Exempt (EX 15-029) pursuant to Section 15301, Class 1 of the California Code of Regulations (CCR), in that that the project involves no expansion to the continued use; and

WHEREAS, the required Planning Commission public hearing held on November 2, 2015 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. Approval of the Conditional Use Permit will not result in detrimental impacts to adjacent properties or the character and function of the neighborhood in that the continued operation of the facility will comply with all applicable provisions of the San Marcos Municipal Code (SMMC), General Plan and California Building Code, and sufficient facilities (i.e. parking) exist on site to service the project as conditioned.
2. The granting of the Conditional Use Permit will not be materially detrimental to the public health, safety, or welfare or injurious to the properties or improvements in the Richland Neighborhood with compliance and Alcoholic Beverage Control Board (ABC) conditions, which includes implementation of the nightclub Safety and Security Plan.
3. The design, development and conditions associated with the Conditional Use Permit are consistent with the goals, policies and intent of the Specific Plan Area (SPA) Zone because it is a commercial use that implements the General Plan by encouraging businesses and existing employers to remain and expand in San Marcos (LU-6.2).
4. The land use allowed in conjunction with the CUP is compatible with existing and future land uses of the Specific Plan Area (SPA) Zone, and the general area in which the proposed use is located.

NOW THEREFORE, the Planning Commission resolves as follows:

- A. The foregoing recitals are true and correct.
- B. The Conditional Use Permit Renewal is approved per the submitted site plan and floor plans for the 7,518 square foot nightclub received on April 16, 2015, and shall not be expanded or modified, unless a modification to this permit is approved.
- D. Reliance on this Conditional Use Permit Renewal for the continued operation of the nightclub shall be subject to compliance with the following conditions:
 1. The applicant shall submit and maintain in the City files the following documents:
 - a. An updated "Safety and Security Plan" shall be submitted to demonstrate how the applicant will conduct security responsibilities to ensure peace and order is maintained during the use of the nightclub. The plan shall also include operational drink serving policies and security policies. The City, through the Planning Division and the Sheriff's Department, shall reasonably approve, modify or deny the Safety and Security Plan within 10 days of permit issuance.

- b. A copy of a “guard card” and recipient identification for all personnel who have completed training by a qualified course shall be provided for those staff providing security services for the facility which shall be submitted to the Sheriff’s Department. Within 10 days of hiring any new personnel, the applicant shall provide a copy or the “guard card” to the City for the new hire and the City shall submit the documentation to the Sheriff’s Department for review.
- c. The applicant shall submit to the City Certificates of Insurance for the following coverage requirements which demonstrate compliance with the required City provider provisions:
 - i. Commercial Comprehensive General Liability: Minimum coverage limits shall be one million dollars per occurrence, two million dollars aggregate. The coverage must be occurrence-based and this coverage must be primary to the City's insurance coverage with the City's coverage being non-contributory. Applicant's insurance carrier shall provide a waiver off all subrogation rights. Cross-liability exclusions are prohibited. Defense costs must apply in addition to policy limits.
 - ii. Liquor Liability: Minimum coverage levels shall be one million dollars per occurrence, two million dollars aggregate.
 - iii. Insurance provider shall be an AM best rating of A-IV or A-VII and coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits and there shall be no prohibition against payment of a SIR or deductible in the event of the named insured’s failure to do so.
 - iv. Applicant shall name the City and all of its employees, agents, and affiliated agencies as Additional Named Insured on these coverages and provide Additional Insured Endorsements with coverage equivalent to the CG 2010 11/85 ISO form. Copies of the Certificates of Renewal or copies of the new insurance policies with new Additional Insured Endorsements shall also be submitted to the Planning Division at the end of each annual policy term.

2. Anytime the operator is unable to provide guard cards for the minimum number of security personnel as required in this permit, a private security company shall be contracted by the operator to provide the required security. When a private company is contracted the contact information for said company shall be provided to the City Planning Division for consideration and to allow the City to submit said information to the Sheriff's Department.
3. The applicant shall maintain full compliance with all applicable laws, Ordinances and terms and conditions of licenses issued by the State of California Department of Alcoholic Beverage Control (ABC).
4. Operation of the facility shall be in conformance with the approved Safety and Security Plan. Any changes to the Safety and Security Plan by the applicant shall require resubmittal of the Plan to the City for evaluation and approval. The City and Sheriff's Department reserve the right to review and modify the Safety and Security Plan at any time. Any changes made to the Plan by the City and/or Sheriff's Department shall be provided to the applicant in writing. Should the applicant fail to implement the policies and/or procedures of the Safety and Security Plan to the satisfaction of the City and/or Sheriff's Department, then after a cure period, a hearing before the Planning Commission shall be scheduled for revocation and/or permit modification pursuant to the provisions of Chapter 20.545 SMMC.
5. The applicant shall maintain a deposit of at least \$5,000 in an enforcement account with the City of San Marcos to cover the costs of any enforcement actions (if required), including attorneys fees. In the event enforcement action is necessary as a result of the operation of the entertainment venue, funds in the enforcement account shall be drawn down by the City of San Marcos to mitigate financial impacts to City resulting from enforcement actions. The applicant shall ensure that the enforcement account balance is maintained at the required deposit level of \$5,000 during the entire term of CUP 15-004. Should the balance of the enforcement account ever fall below the required deposit level of \$5,000, and the applicant fails to restore the required deposit level within thirty (30) days of notice, all rights afforded to the applicant by CUP 15-004 shall cease until which time the balance of the enforcement account can be restored to the minimum required amount of \$5,000.
6. Operation of the nightclub shall require that all persons admitted entrance to the facility shall be a minimum 21 years of age or older, this includes all patrons, staff and performers.
7. No person shall be granted entry into the facility if said person appears to be under the influence of any illegal controlled substance, or are intoxicated.

8. No patron shall be allowed reentry after leaving the facility. The applicant shall post a sign at the entry door stating this requirement and all patrons shall be advised of this requirement as they enter the facility and have their identification checked.
9. The establishment shall provide a sufficient number of licensed personnel as outlined herein to ensure the protection of public health, safety and welfare. Security personnel must supervise all patrons inside and outside of the establishment and shall have no other role during their shift other than providing security services (i.e. a bartender cannot also be a “security guard” at the time they are acting as a bartender).
10. At a minimum, all security personnel must have in their possession the following, and records of compliance with all of the following provisions shall be maintained by the owner/operator of the facility and made available to the City and/or Sheriff’s Department at any time:
 - a. Valid “guard card” at the time of hire and maintained throughout employment as a security guard.
 - b. Proof of completion within at least two (2) years of either an ABC Licensee Education on Alcohol and Drugs (L.E.A.D.) training or Responsible Beverage Sales & Service (R.B.S.S.) training. Any member of the security staff that does not have proof of completion of either program shall complete a course within six (6) months.
11. The establishment shall, at all operating times, provide sufficient, licensed security personnel to ensure the protection of the public health, safety and welfare. The security schedule is as follows:
 - a. A minimum of five security guards shall be required during the weekday nightclub operation Monday through Thursday.
 - b. A minimum of seven security guards shall be required during the weekend nightclub operation Friday through Sunday.
12. Depending on the circumstances and nightclub attendance on any given night, the start time as outlined in the Security and Safety Plan should be modified as needed to provide effective security services at the nightclub.
13. The applicant shall designate a minimum of the two (2) licensed and uniformed security guards to patrol the parking lot, external peripheral areas of the center, and behind the building from 10:00 p.m. until closing on Friday and Saturdays, and if needed on weekdays during seasonally high periods (summer).

14. To discourage loitering and ensure the orderly vacation of the facility after closing, security personnel must remain on the premises until all patrons have left the general vicinity of the subject property and surrounding neighborhood.
15. Security guards must be readily identifiable as employees/agents of the permitted premises. At a minimum, all security personnel must wear shirts and/or jackets with the word "SECURITY" clearly emblazoned in lettering across the back of the shirts or jackets. The lettering color must contrast the shirt color and the typeface of the word "SECURITY" must be no smaller than 4 inches in height.
16. Security personnel must keep count of all individuals entering and exiting the facility by use of two (2) mechanical counting devices, one for those entering and one for those exiting. Mechanical counting devices shall be made available for inspection by the Sheriff's Department upon demand and at no time shall the maximum occupancy, as determined by the Fire Marshal, be exceeded.
17. On-duty security personnel or any individual providing private security services on the subject property must not be armed or carry a firearm at anytime.
18. The establishment's staff (including security personnel, servers, bartenders, management, etc.) must not consume alcoholic beverages or be under the influence of alcohol or drugs while on duty.
19. The use of open flame, fireworks, any proximate or general pyrotechnic device or any other flammable or hazardous material as specified in the California Fire Code or Title 19 of the California Code of Regulations is prohibited.
20. The use of glass beverage containers (i.e. cups, bottles, etc.) is prohibited.
21. All operations of the nightclub must occur within the enclosed building. Special events or promotions, etc. are prohibited outdoors, including in the parking lot.
22. All doors to the building must remain closed and secured in a manner consistent with the California Building and Fire Codes.
23. Operation of the nightclub must comply with all applicable provisions of the City's noise regulations contained in Chapter 10.24 and Section 20.300.070(F) of the San Marcos Municipal Code (SMMC).

24. During the operation of the nightclub, exterior noise levels at the property lines of the subject property must be monitored using a calibrated noise meter. Noise levels measured at the property line of the subject property must not exceed 55 dB(A), as specified in Section 20.300.070(F) and Chapter 10.24 SMMC. If the applicant and/or the City determines that noise levels are exceeding 55 dB(A), then the volume level of the sound amplifying equipment shall be modified until attainment of an exterior sound level of 55 dB(A) or less is achieved. Nothing in this provision shall be inferred as a limitation on the authority of the Sheriff's Department (or other designee appointed by the City Manager) to require that the applicant modify the volume of a performance during the operation of the entertainment venue.
25. All entertainers, staff members and patrons must be clothed at all times so that no Specified Anatomical Areas are visible. "Specified Anatomical Areas" include, but are not limited to: less than completely covered human genitals, pubic region, buttocks, anus or female breasts exposing any portion of the areola; or human male genitals in a discernibly turgid state, even if completely covered. Nor shall the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola be allowed at any time.
26. All use of the nightclub must cease at 1:30 A.M. and interior "house" lighting must be restored to normal levels. "Last call" shall also occur during this time and alcohol service at the project site shall completely cease no later than 1:45 A.M.
27. The project must comply with all applicable provisions of Chapter 14.15 SMMC and other regional standards for the protection of stormwater quality.
28. The placement of off-site signs for commercial advertising purposes within the City of San Marcos is strictly prohibited. The applicant must comply with all sign regulations of the City regarding the placement of any signs, posters, bills, pamphlets or similar advertising medium. The applicant will be held responsible for the costs incurred by the City for the removal of any illegal signs advertising events/performances occurring at the project site.

29. Sufficient parking facilities are required for the operation of the nightclub. The applicant must establish and maintain a parking agreement with the property owner to allow use of the 210 onsite parking facilities in conformance with Section 20.340.040 SMMC. Sufficient parking facilities must be made available to accommodate the operation of the nightclub. Should it be determined by the City that insufficient parking facilities exist to accommodate the operation of the nightclub, the applicant shall enter into reciprocal parking agreements with adjacent property owners to provide sufficient parking capacity for operation of the entertainment venue. The applicant shall submit the reciprocal parking agreement to the City Attorney for review and approval prior to recordation.
30. The sublease of the site to any other third party is prohibited unless otherwise approved by the City.
31. The applicant must maintain a City of San Marcos Business License for the duration of the business.
32. The applicant is responsible for compliance with all relevant portions of the City of San Marcos Municipal Code.
33. All required fire extinguishers must be certified annually by a licensed contractor.
34. Use of the site shall be conducted so as not to become obnoxious by reason of noise, odor, refuse or maintenance of grounds and in such a manner as will not detrimentally affect adjoining properties and uses.
35. Any modifications, alterations, expansions or other changes shall require the modification to this Conditional Use Permit and may necessitate the issuance of Building Permits and reissuance of a Certificate of Occupancy ("C of O") from the Building Division for improvements required to obtain the appropriate Occupancy associated with the proposed use pursuant to the latest standards adopted by the State of California in the California Building Code.
36. The applicant shall operate the nightclub in compliance with an approved Safety and Security Plan operational plan of how the security personnel will conduct their patrol responsibilities. A copy of this plan shall be kept on site at all times and available upon request by City staff or the Sheriff's Department.

37. Entertainment playing Latin Music only is authorized in the form of a Disc Jockey and/or Live Music throughout the term of this CUP unless there are complaints that require further review of the music style. A change to any other music style shall be reviewed and approved by the Sheriff's Department. Examples of unauthorized and prohibited entertainment include, but are not limited to, wet T-shirt contests, bikini contests, fashion/lingerie shows, casino night themes, burlesque dancers, lap dancers, strippers or any form of adult entertainment.
38. The Owner or Manager is required to be on-site during operational hours.
39. There shall be no food service provided at this location. No kitchen or food preparation facilities shall be operational, including outdoor vending food carts and kiosks without further review and approval from the Planning Division; the Club Manager shall prohibit such activity from occurring during club hours.
40. Signs shall be maintained at each entrance to the parking lot prohibiting trespassing and loitering per Section 10.32.030 of the San Marcos Municipal Code. The placement of off-site signs within the City of San Marcos is strictly prohibited. The applicant shall comply with all sign regulations of the City of San Marcos for the placement of any signs and/or pamphlets. The applicant shall be held responsible for the costs incurred by the City for the removal of any illegal sign advertising the nightclub.
41. Adequate lighting in parking lots shall be provided to deter potential criminal activities (i.e. vehicle burglaries, prowlers, loitering, etc.). All exterior lighting shall comply with lighting standards as approved by the City.
42. Under no circumstances shall any patron be detained without the security force making an arrest, calling, and turning the patron over to the Sheriff's Department.
43. "In and Out" privileges of patrons are prohibited. No marked patron shall be allowed reentry into the facility after leaving and exiting to the parking lot during DJ music performance. As permitted by the Sheriff's Department, patrons may only be allowed temporary exit and reentry from an outdoor smoking area clearing marked and supervised by security personnel, located southeast of the front entry.
44. The establishment shall impose restrictions denying admission to any person under the influence of any illegal substance.

45. The rear emergency exit doors shall remain closed (unlocked) at all times during the hours of operation. All doors should be closed due to potential noise impacts.
 46. Persons under the age of 21 are prohibited on site.
 47. Approved occupant load signs must be posted and maintained in a publicly visible location near the main entrance to the facility, to the satisfaction of the Building Official and/or Fire Marshal
 48. The permitted occupancy load be posted at all times and maximum occupancy load shall not be exceeded at anytime. The floor area and layout of the facility determines the maximum occupant load allowed by law. Any changes made to the floor area including adding or removing walls, adding or removing tables and/or chairs, or increasing/decreasing the size of the stage/dance floor, will require a floor plan to be submitted to the City for review and approval.
 49. The applicant shall continue to comply with all San Marcos Fire District requirements regarding maximum occupancy, flame retardant decorative materials, installation of panic hardware, emergency lighting, fire extinguisher(s), sprinkler systems, and with all other applicable San Marcos Fire District requirements during the term of this use permit.
 50. The licensee(s) shall not maintain or construct any type of enclosed room intended for use by entertainers or customers for any purpose – with the exception of restroom facilities.
 51. Any incident requiring security measures (reactive intervention or mediation) by on-site staff shall be reported immediately to the Sheriff's Department.
 52. Excessive or severe incidents, as determined by the City of San Marcos, Sheriff's Department or ABC, may result in mandatory training classes, imposition of additional restrictive conditions, and/or suspension or revocation of this CUP.
- E. This Conditional Use Permit is subject to the provisions and/or conditional licenses/permits as required by regulatory agencies other than the City of San Marcos, including, but not limited to: State of California, Department of Alcoholic Beverage Control; State of California, Department of Industrial Relations; County of San Diego, Department of Environmental Health.

- F. The business is prohibited from allowing non-stormwater discharge into the City MS-4 system. The operator shall comply with the City's Storm Water Management Inspection Program, and implement a Best Management (BMP) program to include employee training, and facility maintenance program for a beverage service operation.
- G. Building address and suite number shall be clearly labeled for day and night-time emergency responses.
- H. The proposed development shall comply with the latest Federal Law, Americans with Disabilities Act ("ADA-2013"), and State Law, California Code of Regulations, Title 24, for accessibility standards for the disabled.
- I. The storage, use or handling of hazardous, toxic or flammable materials shall be clearly indicated on all floor plans submitted for a building permit. Materials shall be identified in accordance with Health and Safety Code Section 25101.
- J. Any new construction, alteration, improvement, or modification to the existing building requires the issuance of a building permit, compliance with the minimum code requirements of the latest adopted California Building Code and modification of this Conditional Use Permit.
- K. Should any construction need to occur, all construction operations authorized by building permits, including the delivery, setup and use of equipment shall be conducted on premises during the hours of 7:00 AM to 6:00 PM on Monday through Friday, and on Saturday between 8:00 AM and 5:00 PM. No work shall be conducted on Sundays or Holidays observed by the City of San Marcos. Failure to comply will result in the issuance of STOP WORK NOTICES, REVOCATION OF PERMITS and the issuance of citations as appropriate. Citations for hours of work violations require a mandatory court appearance in North County Superior Court.
- L. A separate permit will be required for any new signage, including temporary signs. Signage must comply with any approved Comprehensive Sign Program for the Center. Portable signs (i.e.: A-frame, T-frame, etc.) are prohibited on or off site. No pole, roof, or feather signs are permitted. Any new building signage shall be designed with individual channel letters; no cabinet signs shall be permitted.
- M. To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.

- N. Jason Dunn Sr. (father of the applicant) shall be the sole owner/operator of the establishment. However, this condition shall not prohibit the applicant from accepting an investor or investors in the shares of the corporate ownership of the establishment on the strict condition that dominion and control of said establishment shall remain in Jason Dunn Sr. or upon his death, his heirs or devisees. Prior to the substitution of another owner/operator, or change in majority owner(s), the new ownership/majority owner(s) shall sign an affidavit that they have reviewed, understand, and will comply with all conditions of approval. The manager of the club shall be clearly designated and be identifiable to Sheriff's Department personnel at all times.
- O. As authorized by the California Fire Code, the San Marcos Fire Department will inspect the nightclub to ensure compliance with Life and Safety Code requirements as appropriate. The applicant shall submit to random, unannounced fire inspections, either during hours of operation or after closure.
- P. This Use Permit may be reviewed annually by the Planning Division to determine if its use is having a detrimental impact on the surrounding uses or if the conditions of approval are not being met. This review shall include an analysis of the security plan and a determination made whether the security arrangements can be changed to mitigate the impacts. If based upon this review, it is determined that the conditions of approval are not being complied with or the use is having a detrimental impact then the Conditional Use Permit shall be referred to the Planning Commission for possible modification/ revocation.
- Q. By acceptance of this Conditional Use Permit, the applicant acknowledges it is the City's position and contention that any investment in improvements which support the use of the subject premises shall be made at the risk of the applicant and shall not serve to vest in the applicant a right to the continued possession of the Conditional Use Permit, irrespective of whether the cost of such improvements is or is not amortized prior to the expiration of the term of the renewal Conditional Use Permit, or prior to the earlier revocation/modification of such Conditional Use permit for cause.
- R. This Conditional Use Permit shall expire on March 5, 2018. Any request for permit extension shall be applied for by the permittee no later than one hundred twenty (120) days prior to the expiration date. It is the permittee's responsibility to track the expiration date.
- S. Nothing in this Conditional Use Permit shall prohibit or prevent the City, based upon the appropriate findings and circumstances, from revoking/modifying the Permit, or refusing to extend its term past March 5, 2018.

- T. To the extent permitted by law, Applicant/developer shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permit arising from the project as defined in the Conditional Use Permit; (ii) any damages, liability and/or claims of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operation of applicant/developer or its contractors, subcontractors, agents, employees or other persons acting on applicant/developer's behalf which relate to the project and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project including any and all damages, liability and/or claims of any kind which are alleged to have arisen from City's active or passive negligence. However, such indemnity will not apply to damages, liability or claims arising from the active sole negligence or willful misconduct of City. Applicant/developer further agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of City by counsel selected by City. This indemnification shall not terminate upon expiration of the Conditional Use Permit, but shall survive in perpetuity.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 2nd day of November 2015 by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

Eric Flodine, Chairperson
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS CITY PLANNING COMMISSION