

STAFF REPORT

PLANNING COMMISSION MEETING

MEETING DATE: June 17, 2019

SUBJECT: CUP 18-0009 Club Tropics Conditional Use Permit Renewal
APN: 228-120-47-00; ADDRESS: 740 Nordahl Road, Suite 125

Recommendation

Recommend conditional approval of a Conditional Use Permit to allow the continued operation of an adult nightclub, 21 and over, 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 15-021) pursuant to Section 15301 of the California Code of Regulations (CCR), in that that the project involves no expansion to the continued use.

Background

Club Tropics ("Club") 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 (Attachment "D"). The Club 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 "E"). 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 service provided as part of the nightclub.

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 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 in the Plaza San Marcos Commercial Center within the Norman-Hutchinson 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 of entitlement type in accordance with Chapter 20.425 for the operation of a nightclub in the SPA zone.

There have been twelve (12) Conditional Use Permit renewals and modifications for the Club operation granted since 1988, the last being CUP 15-004 approved by the Planning Commission on November 2, 2015. The nightclub is open Monday-Sunday from 9:00 p.m.-2:00 a.m., and operates with a type 48

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liquor license (On-sale General Public Premises) issued by the California Department of Alcoholic Beverage Control.

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 conditioned 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 \$5,000 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 18-0009. Should the applicant fail to restore the required deposit level within thirty (30) days of notice, all rights afforded to the applicant by CUP 18-0009 shall cease, until which time the \$5,000 balance in the enforcement account is restored.

Discussion

The CUP expired March 15, 2018 and a renewal application was submitted on August 3, 2018. Although there was a lag time as to the submittal date, as there were no operational code violations on file, and staff understood the operator to be in compliance with CUP 15-004, the City allowed the nightclub to continue operating during the processing of the CUP renewal.

The San Marcos Fire Protection District inspected the facility on January 2, 2019 and the City Planning Division (Planning) inspected the site on May 15, 2019. Planning staff did not observe any CUP 15-004 violations and the Sheriff's Community Oriented Policing and Problem Solving Unit Department commented during the project processing that their agency has no problem with the operation as long as Conditional Use Permit conditions are followed.

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 and 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 ("Eaves") 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.

One noise complaint was received during the processing of the renewal application from a resident on Via Flora Road, situated east of the site behind Club Tropics (Attachment A). In 2015, there were also noise complaints from the Eaves multi-family apartments to the west. At that time, a noise study was prepared to address the 2015 complaints and a new noise study (see Attachment "F") has now been prepared by RECON Environmental to address operational noise to single-family homes on Via Flora Road and also serves to provide current club noise levels to the Eaves apartment site.

The noise study indicated that the noise levels by the Eaves are in the low to mid 60 decibel (dBA) range, with a 55-57 dBA after midnight. The overall noise level between 10:30 p.m. and 1:30 a.m. was 62.5 dBA. Due to the higher noise levels at the Eaves as the result of Nordahl Road traffic, Club Tropics noise, although audible, is not a major contributor to the noise levels experienced in the ambient condition at the Eaves.

As to Club operational noise to residents on Via Flora Road to the east, the City Zoning Ordinance Performance Standards (Section 20.300.070 (E), Table 20.300-4), regulates that the commercial and noise limit shall not exceed 55 dBA at the property line overnight. Furthermore, a single-family residential noise level shall not exceed 50 dBA based upon a zoning code performance standard and that the single-family residential noise level limit be applied to the outdoor living area (defined as 400 square feet adjacent to the house) of the associated dwelling unit, rather than at the property line. The noise level behind the club at the property line is 51-52 dBA L_{eq} between 11:00 p.m. and 1:00 a.m and 53 dBA overall during the entire measurement period (10:30 p.m. and 1:30 a.m.). When applying the noise level measurement at the outdoor living area, the 80 foot distance from the club to the single-family home would reduce noise levels by at least 4 dBA to the nearest outdoor living areas associated with the Via Flora Road residences. Thus, the noise level from the Club Tropics would be 48-49 dBA L_{eq} and would comply with the City noise performance standard of 50 dBA. No noise reduction measures are necessary or recommended at this time.

The operation is also conditioned to continue to keep the rear doors closed at all times, and to monitor the operational noise levels to confirm that the operation does not exceed 55 dBA at the

property line and 50 dBA to the single-family residential outdoor living areas to the east during overnight hours, as specified in Zoning Ordinance Section 20.300.070 (E).

Environmental Review

In accordance with the California Environmental Quality Act (CEQA), the City of San Marcos does find the project Categorically Exempt (EX 19-021) pursuant to Section 15301 of the California Code of Regulations (CCR), in that that the project involves no expansion to the continued use.

Public Outreach

A Notice of Application was sent to property owners and stakeholders following the project's submittal to the City resulting in one noise complaint from a Via Flora resident. A response to this complaint is provided in the noise discussion above. A Notice of Public Hearing was sent to property owners and stakeholders notifying them of the Planning Commission hearing.

Attachment(s)

Adopting Resolution

Resolution PC 19-0000 (CUP 18-0009)

A – Aerial Location Map

B – Requested Entitlement

C – Site & Project Characteristics

D – Site Plan

E – Floor Plan

F – Noise Report

Prepared by:



Susan Vandrew Rodriguez, Associate Planner

Approved and Submitted by:



Joseph Farace, Planning Manager

PC AGENDA ITEM #3

RESOLUTION PC 19-4790

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS 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

CUP 18-0009
Jason Dunn Jr.

WHEREAS, on August 3, 2018, the City received an application from Jason Dunn Jr. on behalf of Club Tropics requesting a Conditional Use Permit to allow the continued operation of 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 Specific Plan Area Zone in the Richland Neighborhood more particularly described as:

Brief Legal Description: 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(s): 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

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 (08R) to October 6, 2011, per PC 08-4046; and

WHEREAS, on March 5, 2012, the Planning Commission granted an extension of CUP 88-19 (11R) to March 5, 2015, per PC 12-4286; and

WHEREAS, on November 2, 2015, the Planning Commission granted CUP 15-004, per PC 15-4496, to allow the continued operation of an adult nightclub with live entertainment; and

WHEREAS, on March 15, 2018, CUP 15-004 expired, and the applicant submitted a CUP renewal application on August 3, 2018,

WHEREAS, the City allowed the owner to continue to operate during the processing of CUP 18-0009 application submitted on August 3, 2018; and

WHEREAS, on January 2, 2019, the San Marcos Fire Protection District conducted an operation inspection and planning staff conducted an inspection on May 15, 2019 to verify business operation compliance with CUP 15-004 conditions per PC 12-4286; and

WHEREAS, the Development Services Department did study and recommend approval of said request for CUP 18-0009 to allow the continued operation of the nightclub; and

WHEREAS, on June 17, 2019, the Planning Commission held a duly noticed public hearing in the manner prescribed by law to consider said request; and

WHEREAS, the Planning Commission did review and consider a Categorical Exemption (EX 19-021) in accordance with the California Environmental Quality Act (CEQA), 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 business operation has existed since 1988, and therefore pursuant to City Council Policy (CC Resolution 2001-5607), the project is not required to annex into Community Facility District (CFD) 98-01: Improvement Area 1, Police Only, CFD 98-02: Lighting, Landscape and Street Maintenance.

WHEREAS, the business operation was established prior to the formation of Community Facility District CFD 2011-01: Fire and Paramedic and CFD 2011-01, Congestion Management, and proposes no expansion or intensification that would require its annexation at this time to either of these CFDs; and

NOW, THEREFORE, the Planning Commission does hereby resolve as follows:

- A. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Resolution.
- B. The Planning Commission hereby approves this Conditional Use Permit per the submitted plans date stamped August 3, 2018 (7,518 square feet of a 49,469 square foot retail commercial center) except as modified herein, and subject to compliance with the conditions of approval in Exhibit A attached hereto and incorporated by reference and made a part of this Resolution as though fully set forth herein.
- C. The Planning Commission's decision is based on the following findings and determinations:
 1. Approval of the Conditional Use Permit would 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 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).

3. An entertainment use allowed in conjunction with the Conditional Use Permit in a Specific Plan Area (SPA) Zone which relies upon the SMMC Chapter 20.220-2 Commercial Zone Permitted Uses table is compatible with the existing and future land uses of the Specific Plan Area (SPA) Zone, and the general area in which the proposed use is located.
4. The conditions imposed are necessary to protect the best interests of the surrounding property and neighborhood or to lessen or prevent any detrimental effect, in that the Conditional Use Permit shall comply with Alcoholic Beverage Control Board (ABC) License conditions, implement the City approved nightclub Safety and Security Plan, and monitor ongoing City Noise Ordinance compliance.

D. This Conditional Use Permit is Categorically Exempt EX 19-021 from environmental review pursuant to CEQA Section 15301, Class 1 (Existing Facility with No Expansion).

E. This Conditional Use Permit shall become null and void if not acted upon within twelve (12) months of the adoption of this resolution, or the approved use ceases to operate at the subject property for a period more than twelve (12) months.

F. This Conditional Use Permit shall expire on June 17, 2024. Any request for permit extension shall be applied for by the permittee no later than 120 days prior to the expiration date.

G. 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 June 17, 2024.

H. Any future expansion to the facility shall require a modification to this Conditional Use Permit. The Conditional Use Permit application must be submitted for review and approval by the Development Services Department prior to the issuance of any building permits.

I. The Planning Division may, but is not obligated to, inspect the premises annually to ensure compliance with all conditions of the use permit approval. If the Planning Division determines that compliance is not being achieved after a cure period, then a public hearing must be scheduled for possible use permit modification and/or revocation, in accordance with SMMC Chapter 20.505.

J. The applicant/developer shall comply with all provisions and requirements set forth in the San Marcos Municipal Code, and all City ordinances, resolutions, policies and procedures, and with all applicable state and federal regulations, as may be amended from time to time, whether or not such provisions or requirements have been specifically set forth in these conditions, all of which are now incorporated by reference and made a part of this Resolution with the same force and effect as though fully set forth herein.

- K. 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, or equipment needed, and the hiring of local residents to stimulate the San Marcos economy to the greatest extent possible.
- L. To the extent permitted by law, the applicant/developer shall defend and hold the City of San Marcos, 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 permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim 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 operations of the 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. The 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 the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of San Marcos, California, at a regular meeting thereof, held on this 17th day of June, 2019, by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

Kevin Norris, Chairman

ATTEST:

Gina Henderson, Senior Office Specialist

EXHIBIT A
RESOLUTION PC 19-4790
CUP 18-0009
Conditions of Approval

A. Reliance on the Conditional Use Permit shall comply with the following operational standards:

1. The applicant shall submit and maintain in the City files the following documents:
 - a. A “Safety and Security Plan” shall be maintained in the City project file to demonstrate how the applicant conducts 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 maintained in the City project file 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 maintain in the City project file 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 submittal of an updated 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 18-0009. 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 18-0009 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 continue to 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. 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 vacuation 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 nightclub operation, the operator shall monitor noise levels to ensure compliance with noise levels to nearby land uses as specified in Section 20.300.070(F) and Chapter 10.24 SMMC. Should the City receive a noise complaint that questions operational noise compliance, noise measurements shall be conducted by a qualified acoustician, at owner's expense, to verify compliance. If the applicant and/or the City determines that noise levels are exceeding 55 decibels (dBA) at the property line and 50 dBA to the single-family residential outdoor living areas to the east, then the volume level of the sound amplifying equipment shall be modified until attainment of an exterior sound level of 55 dBA at the property line and 50 dBA to the single-family residential outdoor living areas to the east, 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.
30. 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. Unless there is an agreement in place, club patrons are prohibited from parking in lots other than 730 and 740 Nordahl Road.
31. The sublease of the site to any other third party is prohibited unless otherwise approved by the City.
32. The applicant must maintain a City of San Marcos Business License for the duration of the business.
33. The applicant is responsible for compliance with all relevant portions of the City of San Marcos Municipal Code.
34. All required fire extinguishers must be certified annually by a licensed contractor.
35. 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.

36. 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.
37. 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.
38. 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.
39. The Owner or Manager is required to be on-site during operational hours.
40. There shall be no food service provided at this location. No kitchen or food preparation facilities shall be operational, including outdoor vending food carts, kiosks, or food trucks without further review and approval from the Planning Division; the Club Manager shall prohibit such activity from occurring during club hours.
41. 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.
42. 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.
43. 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.

44. “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.
45. The establishment shall impose restrictions denying admission to any person under the influence of any illegal substance.
46. 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.
47. Persons under the age of 21 are prohibited on site.
48. 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
49. 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.
50. 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.
51. 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.
52. Any incident requiring security measures (reactive intervention or mediation) by on-site staff shall be reported immediately to the Sheriff’s Department.
53. 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.

- B. 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.
- C. 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.
- D. Building address and suite number shall be clearly labeled for day and night-time emergency responses.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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.

- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. The applicant/developer shall maintain a City Business License for the duration of the business operations.
- P. Prior to issuance of any building permit, the applicant/developer shall comply with the following conditions:

1. The applicant/developer must obtain written approval from the Planning Division that the modifications proposed under any Building Permit will be in substantial conformance with this adopted Conditional Use Permit.
2. Tenants are required to obtain written permission from the building owner, or owner's agent, prior to obtaining a building permit from the city. Per SMMC Section 17.08.030 (Section 105.10), the tenant must obtain written permission from the building or property owner that the applicant/developer is authorized to proceed with the proposed construction.
3. Remodeled structures and/or tenant improvements must be designed to conform to the latest design standards adopted by the State of California in the California Building Code, Part 2, Title 24, California Code of Regulations.
4. Building plans and instruments of service submitted with a Building Permit application must be signed and sealed by a California licensed design professional as required by the State of California Business and Professions Code.
5. The City is located in Seismic Design Category "D." Buildings and structures must be designed to adequately transmit the dynamic lateral forces in accordance with the requirements of the latest adopted California Building Code.
6. The handling, storage, use and disposal of hazardous, toxic or flammable materials shall be clearly indicated on all floor plans submitted for a building permit and shall be in compliance with any and all Federal, State, County and City rules, regulations, and requirements for hazardous waste control, including but not limited to the Hazardous Waste Control Act of 1973 (HWCA) (Health & S C §25100 *et seq.*), as may be amended from time to time, whether or not such provisions or requirements have been specifically set forth in these conditions, all of which are now incorporated by reference and made a part hereof with the same force and effect as though fully set forth herein.
7. The proposed development shall comply with the latest Federal Law, Americans with Disabilities Act, and State Law, California Code of Regulations, Title 24, for accessibility standards.

8. The project shall include an automatic fire extinguishing system in accordance with the latest adopted California Building Code, California Residential Code and/or San Marcos Fire Code Ordinance. Fire suppression systems shall conform to the standards adopted by the National Fire Protection Association and the San Marcos Fire Marshal.
- Q. During the construction phase, the applicant/developer shall comply with the following conditions:
 1. Dust and dust producing materials shall be controlled within the maximum acceptable concentrations for silica and silicates in accordance with the California Code of Regulations, Title 8, Section 5155. Water and dust palliative shall be used to prevent excessive dust during blasting, construction and grading operations. Projects are required to comply with the Air Pollution Control District's standards for mitigating fugitive dust during all phases of construction.
 2. All construction operations authorized by building permits, including the delivery, setup and use of equipment must be conducted on premises during the hours of 7:00 AM and 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 and fines as appropriate. Citation for hours of work violations requires a mandatory court appearance in North County Superior Court.
 3. During construction the owner/developer/contractor shall implement and maintain the storm water pollution prevention measures as required on the approved plans. Violations of the City's Storm Water Management Ordinance will result in Stop Work Orders, Notices of Violation and citations with fines. Work on the project may be delayed until the City determines that the project is in compliance with the storm water requirements.
- R. Prior to occupancy, the applicant/developer shall comply with the following conditions:
 1. Prior to a final inspection or issuance of a Certificate of Occupancy, the proposed development must satisfy the conditions of approval prior to the occupancy. The applicant/developer must obtain approval from all City departments and other agencies before requesting a Certificate of Occupancy from the Development Services Department.

ATTACHMENT A- ATTACHMENT A Aerial Location Map



PC AGENDA ITEM #3

ATTACHMENT B – Requested Entitlement

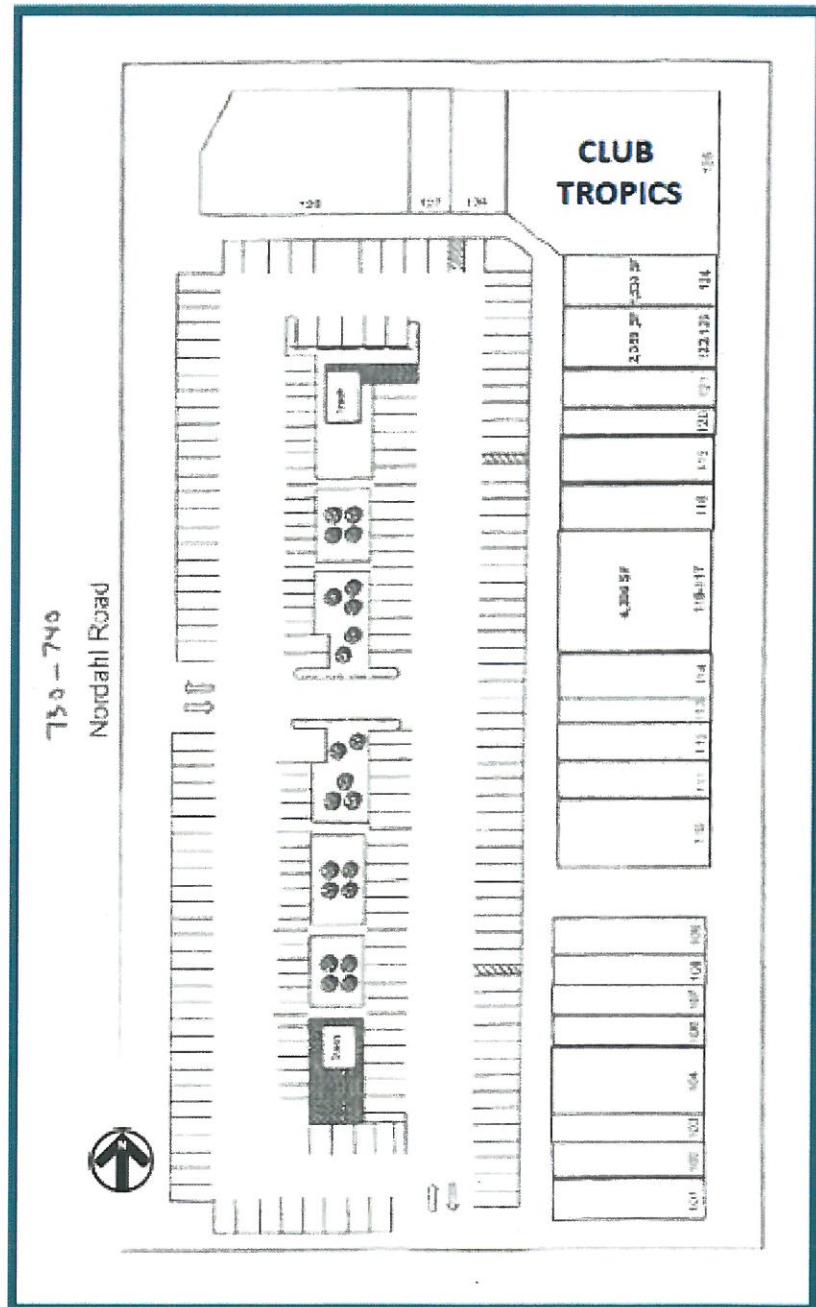
- Adoption of Conditional Use Permit (CUP18-0009)

ATTACHMENT C – Site and Project Characteristics

	Existing	Zoning Designation	Land Use Designation
Property	San Marcos Plaza *	SPA	SPA (NH)
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 (NM)
Flood hazard zone	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Sewer	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Water	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
General Plan Conformance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Land Use Compatibility	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

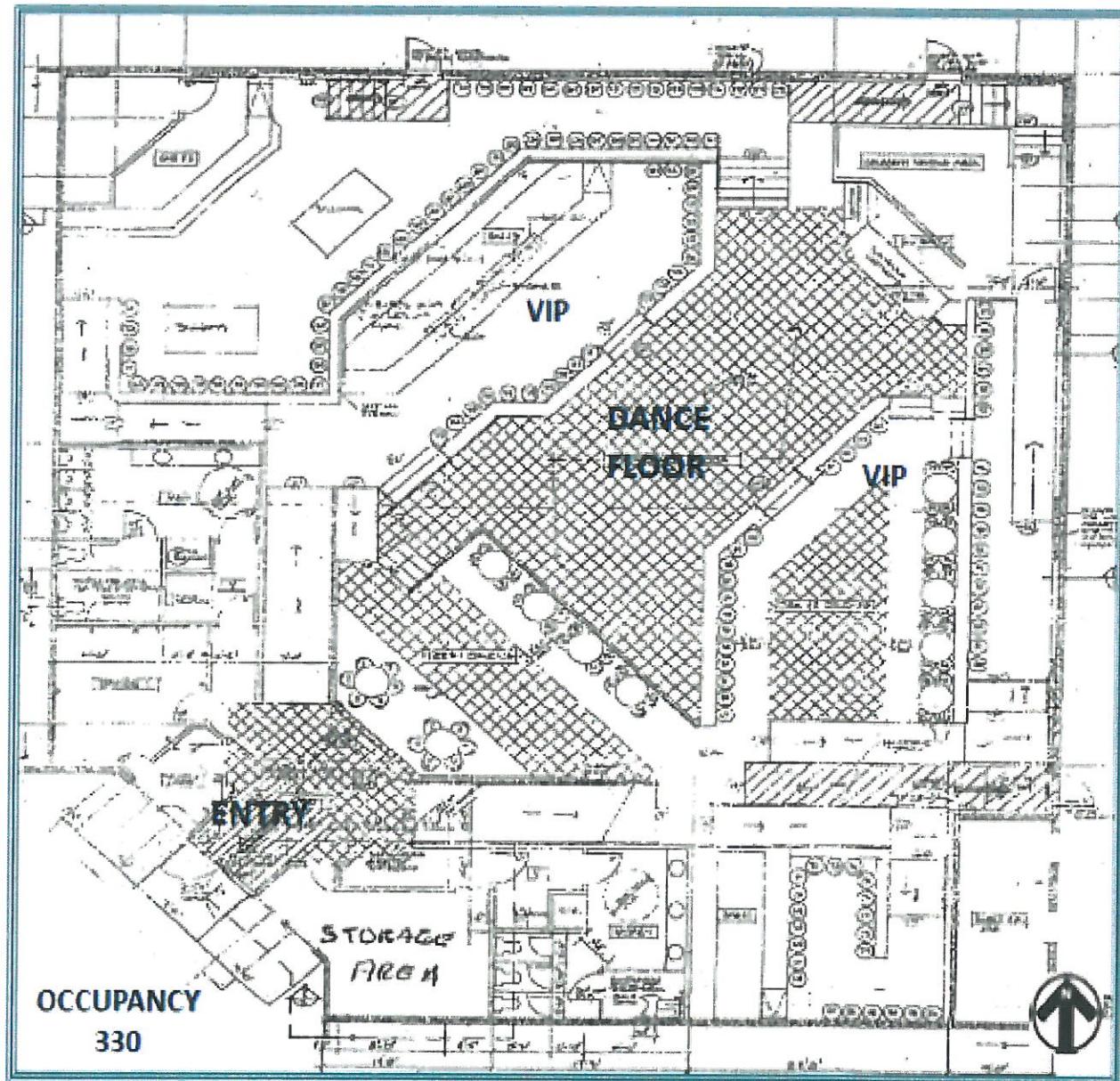
*Norman-Hutchinson (NH) Specific Plan Area

ATTACHMENT D –Site Plan



PC AGENDA ITEM #3

ATTACHMENT E- Floor Plan



PC AGENDA ITEM #3



City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

ATTACHMENT F – Noise Report

PC AGENDA ITEM #3



Rincon Consultants, Inc.

2215 Faraday Avenue, Suite A
Carlsbad, California 92008

760 918 9444 OFFICE AND FAX

info@rinconconsultants.com
www.rinconconsultants.com

June 5, 2019

Project No. 18-06701

Ms. Susan Vandrewp Rodriguez
City of San Marcos
Development Services Department
1 Civic Center Drive San Marcos, CA 92069
Via email: SVandrew@san-marcos.net

**Subject: Club Tropics – Noise Compliance Study,
740 Nordahl Rd Building 125, San Marcos, CA 92069**

Dear Ms. Vandrew Rodriguez:

Per your request, Rincon Consultants, Inc. (Rincon) has assessed the noise originating from Club Tropics 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, the Club Tropics facility does not substantially contribute to the noise environment at the Eaves San Marcos or along Via Flora Road, either as the dominant noise source, by generating short-term spikes in noise levels, or by generating measureable noise in the absence of the dominant noise source. Based on our analysis of the measured noise levels, Club Tropics does not contribute to a violation of the City Municipal Code at the Eaves San Marcos apartment complex or at residences along Via Flora Road.

Fundamentals of Noise

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

Noise is as a sound that is defined as loud or unpleasant. Noise levels are described in units called decibels (dB). Decibels are a simplified measurement of the sound, or noise energy, which is 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 not double the numeric value (e.g. $50+50=100$ dB). Rather, it would increase the noise level by 3 dB (e.g. $50+50=53$ dB) while 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 account for this difference in sensitivity, the A-scale approximates the frequency response of the average young ear. When people make relative judgments of the loudness or annoyance of a sound, their judgments correlate well with the A-scale 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 dBA. Human perception of noise has no simple correlation with acoustical energy. A 3-dBA change in noise levels is generally perceived by the

PC AGENDA ITEM #3



average human ear as barely perceptible, a 5-dBA change is readily perceptible, and a 10-dBA change is perceived as a doubling or halving of the noise level.

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 usually variable in its intensity. Consequently, a variety of noise descriptors have been developed to describe these different periods.

The equivalent noise level (L_{eq}) is the equivalent steady-state noise level in a stated period of time. The time period may be specified, such as $L_{eq(3)}$, which would be a 3-hour period, $L_{eq(0.5)}$ would be half an hour period; when no period is specified, i.e. L_{eq} , a 1-hour period is assumed. Other descriptors included in this analysis are the minimum noise level (L_{min}) and maximum noise level (L_{max}) that occur within a stated period of time, typically the duration of the L_{eq} noise measurement. The 90th percentile statistical descriptor (L_{90}) is the noise level that is exceeded for 90 percent of a stated period of time. L_{90} is considered to represent the background noise without the source in question (Caltrans 2013). Where the noise emissions from a source of interest are constant (such as noise from a fan, air conditioner or pool pump) and the ambient noise level has a degree of variability (for example, due to traffic noise), the L_{90} descriptor may adequately describe the noise source.

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, the noise level drops off at a rate of 6 dBA for each doubling of distance when assessed in a hardscape environment. Noise from a line source (e.g., roadway, pipeline, railroad, etc.) typically attenuates at about 3 dBA per doubling of distance (Caltrans 2013a). The propagation of noise is also affected by the intervening ground, known as ground absorption. Under soft site conditions, such as soft dirt, grass, or scattered bushes and trees, the rate at which noise levels drop off increases by 1.5 dBA 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. Section 20.300.070(E) Noise, sets restrictions on noise levels by zoning. Table 1 provides the interior and exterior noise guidelines for various types of uses and developments.

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. Club Tropics is regulated as a commercial use. Surrounding properties to the northeast and west are also zoned SPA. Land uses on these properties include a multi-family residential apartment complex northwest of Nordahl Road and Center Drive and commercial northeast and southwest. Additionally, single-family residential (R-1-10) uses are located to the southeast. Because 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.



Table 1 Exterior Noise Standards by Zone

Zone	Allowable Noise Level (dBA Leq) Measured from the Property Line
Single-Family Residential (A, R-1, R-2) ^{1,2}	
7 a.m. to 10 p.m. (daytime)	60
10 p.m. to 7 a.m. (overnight)	50
Multifamily Residential (R-3) ^{1,2}	
7 a.m. to 10 p.m. (daytime)	65
10 p.m. to 7 a.m. (overnight)	55
Commercial (C, O-P, SR) ³	
7 a.m. to 10 p.m. (daytime)	65
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

Notes:

1. For single-family detached dwelling units, the "exterior noise level" is defined as the noise level measured at an outdoor living area which adjoins and is on the same lot as the dwelling, and which contains at least the following minimum net lot area: (i) for lots less than 4,000 square feet in area, the exterior area shall include 400 square feet, (ii) for lots between 4,000 square feet to 10 acres in area, the exterior area shall include 10 percent of the lot area; (iii) for lots over 10 acres in area, the exterior area shall include 1 acre.
2. For all other residential land uses, "exterior noise level" is defined as noise measured at exterior areas which are provided for private or group usable open space purposes. "Private Usable Open Space" is defined as usable open space intended for use of occupants of one dwelling unit, normally including yards, decks, and balconies. When the noise limit for Private Usable Open Space cannot be met, then a Group Usable Open Space that meets the exterior noise level standard shall be provided. "Group Usable Open Space" is defined as usable open space intended for common use by occupants of a development, either privately owned and maintained or dedicated to a public agency, normally including swimming pools, recreation courts, patios, open landscaped areas, and greenbelts with pedestrian walkways and equestrian and bicycle trails, but not including off-street parking and loading areas or driveways.
3. For non-residential noise sensitive land uses, exterior noise level is defined as noise measured at the exterior area provided for public use.

Noise Measurements

Existing noise levels at the project site were measured using three EXTECH 407780A Sound Level Meter. Measurements were taken between 10:30 p.m., March 15 and 1:30 a.m. March 16, 2019. Actual start and end times of each measurement are included in Appendix A. Noise levels were measured behind Club Tropic in an open landscaped area ("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.

The following parameters were used during each measurement:

Filter: A-weighted

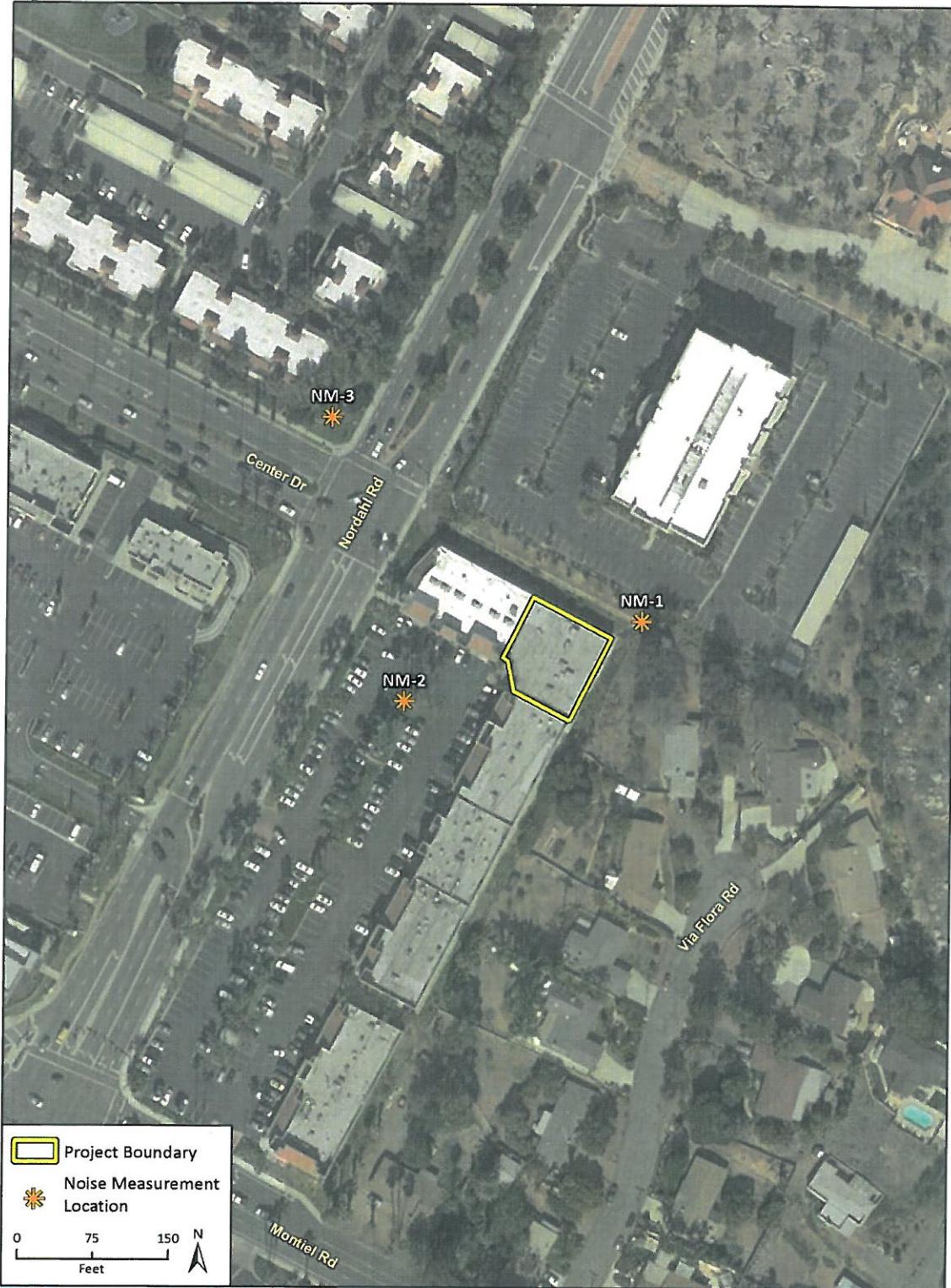
Response: Slow

Time History Period: 1 second

Height of Instrument 5 feet above grade



Figure 1 – Noise Measurement Locations

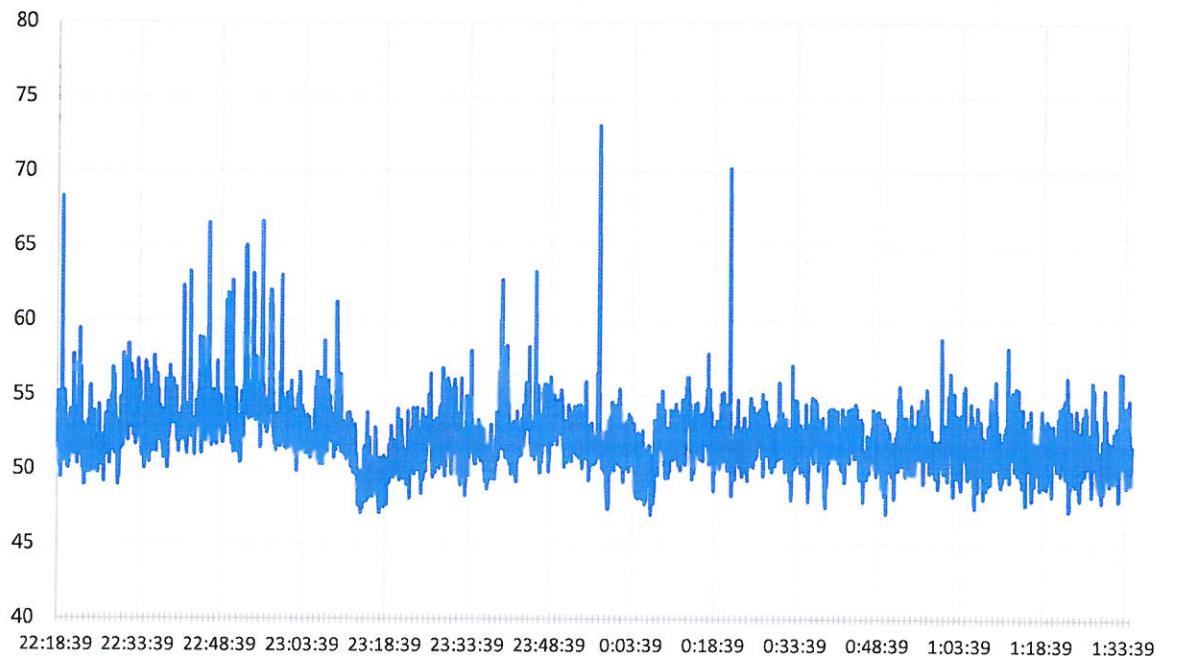


Imagery provided by Microsoft Bing and its licensors © 2019.



Location 1 was approximately 40 feet from the west corner of Club Tropics and approximately 250 feet from Nordahl Road. The main noise source at this location was traffic from State Route 78 (SR-78) and music from Club Tropics. A secondary noise source was traffic on Nordahl Road. There were no other notable noise sources at this location. The measured noise sources resulted in relatively steady noise levels with few spikes. A graph of the 1-second intervals during the noise level measurement is provided in Figure 2.

Figure 2 – Noise Level Measurement at Location 1



Location 2 was approximately 100 feet east of the entrance of Club Tropics and approximately 100 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. A graph of the 1-second intervals during the noise level measurement is provided in Figure 3.

Location 3 was approximately 30 feet west of Nordahl Road. The main noise source at this location was vehicle traffic on Center Drive and Nordahl Road. 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 and the ambient noise levels measured at this location are the result of the traffic on Nordahl Road. A graph of the 1-second intervals during the noise level measurement is provided in Figure 4.



Figure 3 – Noise Level Measurement at Location 2

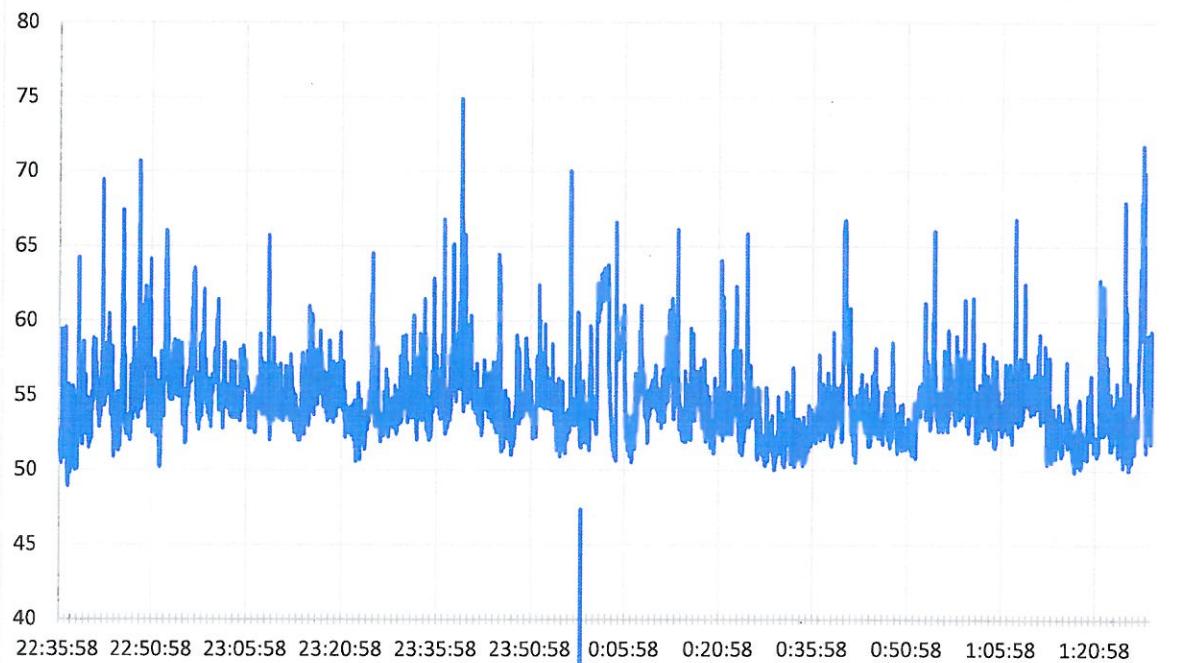
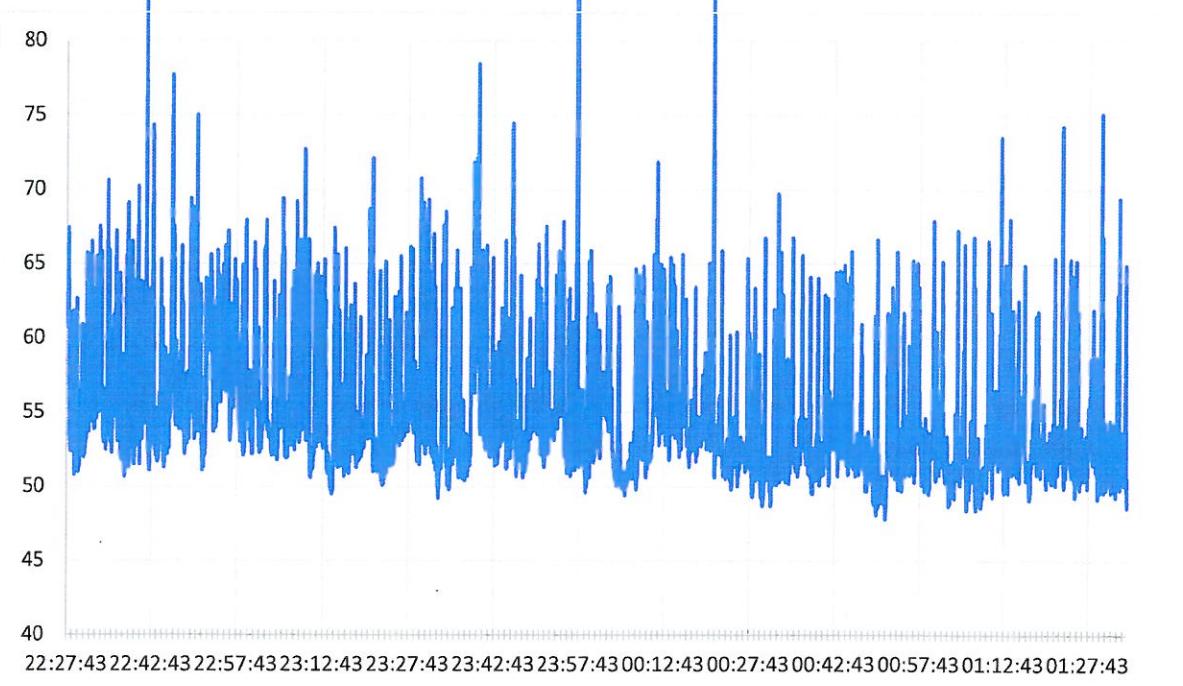


Figure 4 – Noise Level Measurement at Location 3





All three meters were active continuously between 10:30 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 11:00 p.m. to 11:45 p.m. ("Interval 1"), then there was an intermission from 11:45 p.m. to 12:15 a.m. ("Interval 2"), then live music resumed from approximately 12:15 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 2 and the full hour noise levels during the 11:00 p.m. and 12:00 a.m. hours are summarized in Table 3. Detailed noise level measurement data is available in Appendix A.

Table 2 Noise Measurement Summary

Location	Interval Time	L_{eq}
1 Behind Club	11:00 p.m. – 11:45 p.m.	52.3
	11:45 p.m. – 12:15 a.m.	53.5
	12:15 a.m. – 01:00 a.m.	52.3
	01:00 a.m. – 01:30 a.m.	51.7
2 Parking Lot	11:00 p.m. – 11:45 p.m.	55.9
	11:45 p.m. – 12:15 a.m.	54.8
	12:15 a.m. – 01:00 a.m.	54.8
	01:00 a.m. – 01:30 a.m.	53.9
3 Eaves	11:00 p.m. – 11:45 p.m.	57.9
	11:45 p.m. – 12:15 a.m.	68.4
	12:15 a.m. – 01:00 a.m.	57.8
	01:00 a.m. – 01:30 a.m.	62.8

Analysis and Conclusions

The applicable noise standards for the residences along Via Flora Road are 60 dBA L_{eq} between 7:00 a.m. and 10:00 p.m. (daytime) and 50 dBA L_{eq} between 10:00 p.m. and 7:00 a.m. (nighttime). At the Eaves San Marcos apartment complex, the standards are 65 dBA L_{eq} during the daytime and 55 dBA L_{eq} at night. The Club Tropics hours of operations are 9:00 p.m. to 1:30 a.m. Live bands play after 10:00 p.m. Therefore, the applicable limits for the assessment of live music are 50 dBA L_{eq} for the residences along Via Flora Road and 55 dBA L_{eq} at the Eaves.



Table 3 Noise Measurement Summary

Location	Interval Time	L_{eq}
1 Behind Club	11:00 p.m. – 12:00 a.m.	53.1
	12:00 a.m.– 01:00 a.m.	52.2
2 Parking Lot	11:00 a.m.– 12:00 a.m.	55.8
	12:00 a.m.– 01:00 a.m.	55.6
3 Eaves	11:00 a.m.– 12:00 a.m.	65.7
	12:00 a.m.– 01:00 a.m.	57.7

As shown on Tables 2 and 3, noise levels in front of residences at the Eaves apartment complex (Location 3) ranged from 57.7 to 65.7 dBA L_{eq} between 11:00 p.m., March 15 and 1:00 a.m. March 16, 2019. While these noise levels appear to exceed the applicable noise standard, the noise source is vehicle noise.¹ Vehicle noise operating on roadways is not regulated by the San Marcos Noise Ordinance. Based on field observations, Club tropics was not a measurable contributor to the noise level at the Eaves San Marcos and 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 an open landscaped area behind Club Tropics (Location 1) and the parking lot in front of Club Tropics (Location 2). Noise levels behind Club Tropics ranged from 52.2 to 53.1 dBA L_{eq} and noise levels in the parking lot in front of Club Tropics ranged from 55.6 to 55.8 dBA L_{eq} .

Based on the noise levels measured and the observed noise sources in the vicinity of Club Tropics, the dominant noise source at residences along San Marcos and Via Flora Road are traffic-related. Additionally, the times the band played do not consistently line up with louder noise levels at the other measurement locations. As shown in Table 1, the noise level after the live band played was consistent at 52.3 dBA L_{eq} . The noise level between live music sessions was 1 dBA higher than during the live band event while it was 1 dBA lower after the band played. Assuming that Club Tropics is the primary noise source during the periods of 11:00 p.m. – 11:45 p.m. and 12:15 a.m. – 1:00 a.m., the Club is generating a noise level at the back wall of 52.3 dBA $L_{eq}(0.75)$.

Via Flora Road Residences Evaluation

Based on footnote 1 of Table 1, the point of compliance with the City noise level limits is at the “outdoor living area” of the residences along Via Flora Road. The outdoor living area is defined as an area that adjoins and is on the same lot as a dwelling unit. The size of the outdoor living area is determined by the size of the lot. One of the nearest single-family residence is 753 Via Flora Road, the lot size is 20,750 square feet (sq. ft.), with an outdoor living area of 2,075 sq. ft. The next closest single-family residence is

¹ Vehicle noise is regulated under the California Vehicle Code Article 2.5, commencing with Section 27200, which preempts the San Marcos Noise Ordinance.



747 Via Flora Road, which has a lot size of 16,958 sq. ft., with an outdoor living area of 1,696 sq. ft. Based on the assessment point, i.e. where the noise limits are enforced, the nearest an outdoor living area would be approximately 25 feet from the property line nearest the Club.

Based on the distance to either outdoor living area, i.e. 25 feet, and standard noise propagation i.e. 6 dBA per doubling of distance, the noise level at the outdoor living area is calculated as 45 dBA L_{eq} or less. Thus, while music from Club Tropics is audible near the property lines of 747 and 753 Via Flora Road, the measured noise levels would not exceed the 50 dBA L_{eq} noise level limit at either of the single-family residential properties outdoor living area.

Eaves San Marcos Residences Evaluation

Based on footnote 2 of Table 1, the point of compliance for the Eaves, a multiple-family residential zone with the City noise level limits is at private or group usable open space. "Private Usable Open Space" is defined as usable open space intended for use of occupants of one dwelling unit, normally including yards, decks, and balconies. When the noise limit for Private Usable Open Space cannot be met, then a Group Usable Open Space that meets the exterior noise level standard would be used. "Group Usable Open Space" is usable open space intended for common use by occupants of a development normally including swimming pools, recreation courts, patios, open landscaped areas, and greenbelts with pedestrian walkways and equestrian and bicycle trails, but not including off-street parking and loading areas or driveways. There are no private or group usable open spaces associated with the nearest building along Nordahl Road within the Eaves. The nearest private usable open space is approximately 60 feet to the northwest of measurement Location 3. The nearest group usable open space is centered in the Eaves located over 400 feet northwest of measurement Location 3.

Due to the much higher traffic noise levels measured at the Eaves San Marcos and the noise levels measured in-front-of and behind Club Tropics, Club Tropics is not a major contributor to noise levels experienced at the Eaves at either private or group usable open spaces.

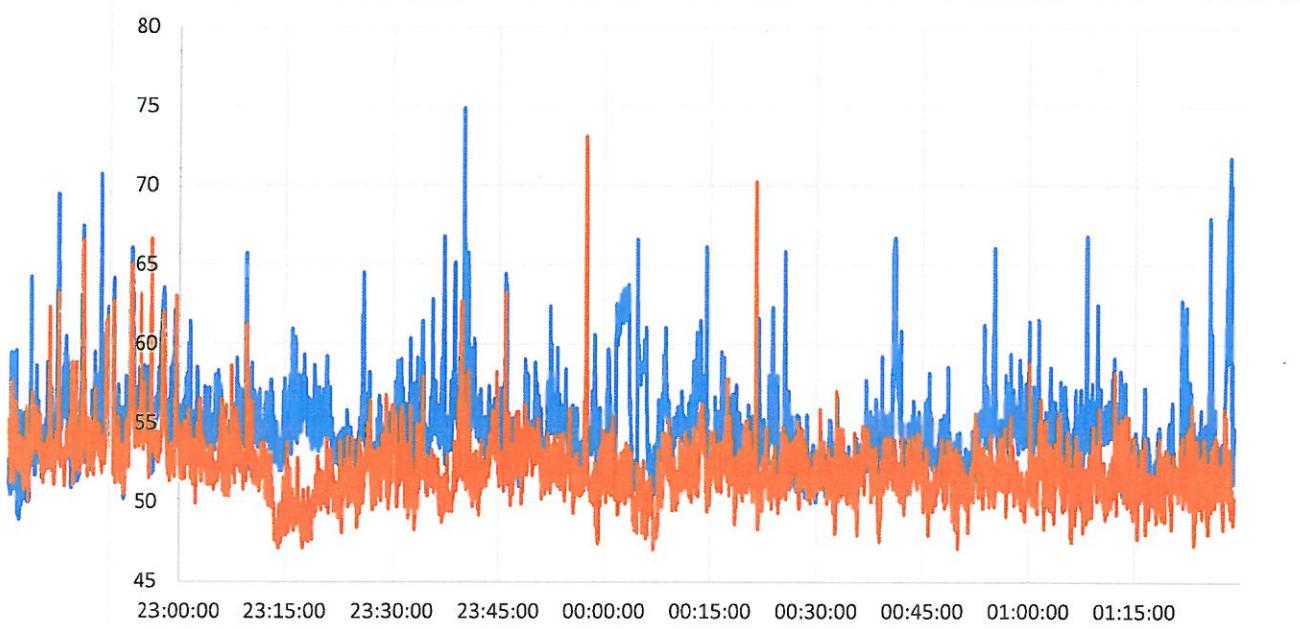
Summary

Although not the primary driver of nighttime average noise levels, noise from Club Tropics may contribute to the noise environment by generating short-term spikes in noise or generating noise that is perceptible intermittently when the main noise source, i.e. traffic, drops to very low volumes. For example, noise level spikes could potentially occur when doors are temporarily ajar or when parking lot activities occur. Music could also 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. Figure 5 displays the noise levels at the measurement locations in front of and behind Club Tropics during the loudest and quietest minutes in each interval with the noise level measurement taken at the back of Club Tropics shown in orange and the noise level measurement taken in the parking lot in blue.

In addition, were Club Tropics to be the significant contributor to the noise environment, the short-term spikes in noise near Club Tropics (such as in the parking lot and behind the club) would match up consistently throughout the measurement. However, as shown in Figure 5, apart from a few events, the peaks or lows do not match up. Therefore, it can be concluded that noise from Club Tropics did not generate but a few of the short-term spikes in noise levels observed.



Figure 5 – Noise Level Interval Comparison in Front and Behind Club Tropics



Conclusion

Based on the above analysis, 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 residences along Nordahl Road or Via Flora Road. Exceedances of City noise standards at Eaves San Marcos are attributable to vehicle noise from Nordahl Road and Center Drive.

Thank you for the opportunity to provide noise-consulting services for Club Tropics. If you have any questions about this analysis, please do not hesitate to contact us.

Sincerely,

Rincon Consultants, Inc.

William A. Maddux
Senior Environmental Scientist

Joe Power, AICP
Principal



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.