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## STAFF REPORT

### REGULAR MEETING OF THE SAN MARCOS PLANNING COMMISSION

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**MEETING DATE:** November 18, 2019

**SUBJECT:** Consideration of Proposed Land Use Regulations Relating to  
Accessory Entertainment in Tasting Rooms  
Resolution PC 19-4807, Project TA 19-0003,  
CEQA Exemption 19-030

## RECOMMENDATION

APPROVE a Resolution recommending that the City Council adopt an ordinance amending certain provisions under Title 20 (20.425.060, Table 20.230-2) of the San Marcos Municipal Code to allow accessory entertainment in Tasting Rooms and find the project categorically exempt from the California Environmental Quality Act (CEQA).

## INTRODUCTION

The City currently allows microbrewery/tasting rooms by right in the Light Industrial (L-I), Industrial (I), and Heavy Industrial (I-2) zones. Tasting rooms are an accessory use to the beer manufacturing that occurs on site, where the sale and sampling of beer produced on site is allowed and the size of the tasting room cannot exceed fifty percent (50%) of the building area.

During the last comprehensive update to the Zoning Ordinance in 2012, the City wanted to encourage the microbrewery industry within San Marcos and modified the code to explicitly allow microbreweries with tasting rooms by right in industrial zones to minimize regulation and encourage this component of economic growth within the community. Distilleries, meaderies, and hard cider production were uncommon in 2012, so these types of alcohol production/manufacturing were not defined or assigned land use permissions in the Zoning Ordinance. It was also uncommon for wineries/tasting rooms in San Marcos to be located outside of the Agricultural/Estate Residential zones, whereas today wine production/manufacturing (with tasting rooms) also occurs in the industrial zones. Due to the ongoing evolution of the types of businesses that manufacture/produce alcohol products, staff has interpreted that wineries, meaderies, distilleries, and hard cider production have the same land use permissions within the

industrial zones, since the uses involve the manufacturing of product and have similar land use characteristics as microbreweries.

The existing Zoning Ordinance does not recognize that entertainment would be allowed as an accessory use within tasting rooms. This proposal will allow for accessory entertainment within tasting rooms with operational standards.

The proposed Resolution recommends that the City Council adopt an ordinance amending various provisions of the Zoning Ordinance governing accessory entertainment within tasting rooms, including Industrial Land Use Table 20.230-2 and Section 20.425.060 (Specific Use Standards for Microbrewery and Tasting Room Uses), to allow limited entertainment by right.

## DISCUSSION

Live entertainment is primarily regulated through San Marcos Municipal Code Chapters 5.04 (Uniform Licensing Procedures) and 5.10 (Entertainment License). These sections of the municipal code outline the definition and types of entertainment, licensing procedures, and operational requirements such as noise generation, hours of operation, and miscellaneous rules that provide guidelines to minimize potential negative impacts while maintaining public safety. Typically, live entertainment is an accessory use to a primary land use allowed by right within the commercial zones, such as restaurants and/or bars. The City does not issue entertainment licenses for land uses within the industrial zones, so any past inquiry to allow accessory live entertainment at microbreweries was denied.

Since 2012, the microbrewery industry has become more competitive within the region, and most brewing operations have tasting rooms. This also applies to wineries, distilleries, meaderies, and hard cider production. Many businesses that operate want to provide additional components/experiences for their customers, including tasting the manufactured product and providing background ambiance in the form of entertainment. The San Marcos Chamber of Commerce approached the City earlier this year and requested the City evaluate the potential of allowing limited accessory entertainment within tasting rooms. Given the existing limitations of Section 20.425.060 which regulate microbrewery/tasting rooms, staff conducted research into other local and statewide jurisdictions. Staff concluded there is a range of regulatory schemes, ranging from entertainment being allowed by right in tasting rooms in limited zones (Vista,) or allowed in conjunction with some level of use permit.



The majority of the researched jurisdictions require a conditional use permit for a microbrewery and tasting room. This applies primarily to each city's general commercial zoning district, but it was also found to apply in districts classified as industrial.

Generally live entertainment was found as not permitted "by right" and required approval of a special use permit, or to be part of the conditional use process as accessory to the principal use. This finding applies to the same districts mentioned in the previous paragraph.

Of the cities researched, the most permissive was found to be the City of Vista, while the most restrictive is the City of Poway. Carlsbad recently updated its entertainment licensing regulations to allow for entertainment in businesses that are not considered "bonafide eating establishments," such as breweries.

Although many jurisdictions require some level of use permit for the microbrewery and/or entertainment component, the City has determined that microbreweries are compatible with industrial uses and as such have been allowed by right. Staff has structured the proposed parameters of allowing limited live entertainment within tasting rooms to be consistent with the philosophy of encouraging business growth in the City, while establishing operating standards that will mitigate potential impacts to surrounding businesses and residential areas. This includes allowing entertainment which is limited to acoustical performances to occur inside the tasting room/brewery building (i.e., entertainment is not allowed on the patio). It also includes limiting entertainment to Thursday, Friday, and Saturday up to 10:00 PM. As such, any potential noise impacts would be reduced to a level below significance. By limiting entertainment to the weekend days this will ensure entertainment remains as an accessory use rather than becoming the primary land use. Staff does not anticipate negative impacts to occur with this regulatory scheme in place.

With the provisions identified below, staff is recommending that limited live entertainment be allowed with a license within microbrewery/tasting rooms. Based on the operational standards, allowing acoustical live entertainment within tasting room buildings will have minimal impact to the primary brewery operation or surrounding businesses. Applicants will be required to obtain an entertainment license in conformance with SMMC Chapters 5.04 and 5.10 in order to commence entertainment.

The proposed Resolution amends the following regulations contained in the Zoning Ordinance:

- **Chapter 20.230 Industrial Districts, Table 20-230-2, Industrial District Permitted Uses**

- Add "Note 5; See 20.425.060" in the "Additional Use Regulations" column for the land use classification "Microbrewery/Tasting Room."
- At bottom of Table 20-230-2, add Note 5 text, "Accessory entertainment is allowed in conjunction with Permitted use, subject to 20.425.060."
- **Add Section 20.425.060.D Accessory Entertainment Within Tasting Rooms**
  - Accessory entertainment is subject to the provisions of Chapters 5.04 and 5.10, which regulate licensing and entertainment.
  - Allows accessory acoustical entertainment on Fridays, Saturdays, and Sundays to 10:00 PM, inside the brewery/tasting room building (no outside entertainment is allowed). No amplified music is permitted with the exception of a microphone for vocal purposes as is typical with acoustic instrument music performances.
  - Accessory entertainment also allowed in winery, distillery, and other comparable uses such as meaderies and hard cider production tasting rooms.
  - The use of a promoter or charging a cover charge is prohibited.
  - Includes a provision that if the land use permissions require a Director's Permit or Conditional Use Permit for a Microbrewery/Tasting Room, Microbrewery/Tasting Room with Restaurant; or Winery/Tasting Room, the entertainment requests will be regulated through a Director's Permit/Conditional Use Permit.
  - Requires the business owner to comply with all ABC license provisions.

A public workshop was held with stakeholders on October 21, 2019 where staff provided an overview of the proposed changes to ten individuals representing the public, Chamber of Commerce, and six local businesses. The feedback was supportive and most of the questions were aimed at seeking clarification of the proposed changes while also asking for information about the licensing process. Staff indicated the licensing procedures (as identified in the Municipal Code) are not being modified at this time and tasting rooms will



be subject to the same procedures as all other businesses. However, it is anticipated that in the near term staff will evaluate and implement methods to streamline the licensing process to improve efficiency and the customer experience.

It is recommended the Planning Commission approve the attached Resolution recommending the City Council adopt an ordinance amending certain Zoning Ordinance provisions regulating accessory entertainment in tasting rooms and find the project categorically exempt from the California Environmental Quality Act (CEQA).

## ENVIRONMENTAL DETERMINATION


The proposed Resolution has been reviewed by the Development Services Department for compliance with CEQA. Staff recommends a finding of no physical effect and/or an exemption under CEQA (CEQA Exemption 2019-030), as the proposed Text Amendment is not a project within the meaning of Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. The proposed modification would allow a potential accessory use relating to currently permitted uses, and would allow by permit additional activity to occur within those uses. Additionally, even if the proposed Text Amendment was considered a project subject to CEQA, it would be exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility it would have a significant effect on the environment.

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## ATTACHMENT(S)

- A. Resolution PC 18-4730 Amending SMMC Title 20

Prepared and submitted by:

  
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Karen Brindley, Planning Manager

**ATTACHMENT A**  
**PC RESOLUTION 18-4730**

RESOLUTION PC 19-4807

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE RELATING TO ACCESSORY ENTERTAINMENT IN TASTING ROOMS

Project TA 19-0003, CEQA Exemption 19-030  
City of San Marcos

WHEREAS, Chapter 20.425 of the San Marcos Municipal Code (SMMC), as well as certain provisions contained in Title 20 of the SMMC (Zoning Ordinance), regulate Tasting Rooms in the City of San Marcos. The City's regulations were last updated in 2012; and

WHEREAS, the City deems it beneficial to update the existing zoning regulations to allow accessory entertainment within microbrewery/winery tasting rooms; and

WHEREAS, the City specifically desires to allow limited accessory entertainment within tasting rooms, to address the changing dynamic of breweries/winery tasting rooms; and

WHEREAS, the City desires to update Table 20.230-2 Industrial District Permitted Uses, by adding a Note reference to the "additional uses regulations" to refer to section 20.425.060; and

WHEREAS, the City further desires to add a section to the current microbrewery and tasting room uses (20.425.060) that further establishes the operational standards to allow accessory entertainment; and

WHEREAS, the Development Services Department did study said request and recommends approval of said request; and

WHEREAS, a public workshop was held on October 21, 2019; and

WHEREAS, the required public hearing held on November 18, 2019 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission considered this request as exempt from the California Environmental Quality Act (CEQA) (CEQA Exemption 19-030) because this is not a project within the meaning of Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. The

proposed modification would allow a potential accessory use relating to currently permitted uses, and would allow by permit additional activity to occur within those uses. In the event this Resolution is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment; and

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

1. The proposed Text Amendment to the Zoning Ordinance will not adversely affect the implementation of the San Marcos General Plan in that the Text Amendment does not conflict with any goal, objective, or policy of the General Plan.

2. The proposed Text Amendment to Zoning Ordinance will not be detrimental to the public health, safety, morals, and welfare in that the Text Amendment will address the regulation of massage businesses, in compliance with State law.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitals are true and correct.
2. The project exemption (EX 19-030) from CEQA pursuant to Section 15378 of the CEQA Guidelines and/or Section 15061(b)(3) is hereby recommended to the City Council for approval.
3. The Text Amendment modifying certain provisions contained in the Zoning Ordinance, as specified in redlined, underlined strikeouts, below, is hereby recommended to the City Council for approval.

#### CHAPTER 20.230 - INDUSTRIAL ZONES

##### Section 20.230.040 - Allowable Industrial Uses and Permit Requirements

- A. **Permit Requirements.** Table 20.230-1 identifies the types of land use permits required to establish land uses in Industrial Zones, consistent with this Zoning Ordinance.
1. All proposed development projects within the Industrial Zones shall be subject to Site Development Plan Review in conjunction with the permit requirements of Table 20.230-2.
- B. **Industrial Land Uses.** Table 20.230-2 identifies the land use permit types in all Industrial Zones. Industrial uses are intended to be the primary permitted use, supplemented by light-industrial and business support uses that are complementary to industrial activities.



- C. **Additional Use Regulations.** In addition to the regulations, development standards, and provisions of this chapter, all land uses are subject to the specific use standards identified in the "Additional Use Regulations" column of Table 20.230-2; refer to the referenced sections for additional operational standards and regulations applicable to the use. All land uses are also subject to all the following standards: Chapters 20.320 (Signs on Private Property), 20.330 (Water Efficient Landscape Standards), 20.335 (Walls and Fences), 20.340 (Off-Street Parking and Loading), and 20.400 (Specific Use Standards).
- D. **Prohibited Uses.** When a use is not specifically listed, that use is prohibited. However, consistent with Section 20.205.030.C (Unlisted and Similar Compatible Uses), the Director shall have the authority to determine whether the proposed use shall be permitted or conditionally permitted based on the finding that the proposed use is similar to and no more detrimental than a particular use permitted in the Zone.

**Table 20.230-2**  
**Industrial District Permitted Uses**

Land Use <sup>(1)</sup>	L-I	B-P	I	I-2	Additional Use Regulations
<b>Residential Uses</b>					
Caretaker Unit	---	---	A	A	Note 1
Emergency Shelter	---	---	P	---	
<b>Recreation, Education, and Public Assembly Uses</b>					
Club	DP	DP	CUP	CUP	
College, Nontraditional Campus Setting	CUP	DP	---	---	Note 2
College, Traditional Campus	---	CUP	---	---	
Conference/Convention Center	---	CUP	---	---	
Museum, Library, or Gallery	DP	DP	---	---	
Places of Assembly	DP	DP	DP	---	Note 2; Section 20.400.160 (Places of Assembly)
<b>General Retail Uses</b>					
ATM, Interior to Building/Vestibule	P	P	---	---	
ATM, Freestanding Exterior/Exterior Wall	---	P	---	---	
Automotive Fueling Station	CUP	---	---	---	Chapter 20.420 (Automotive Services)
Automotive Rentals	DP	DP	DP	DP	Section 20.400.040 (Automotive Sales and Rentals)
Automotive Sales, Wholesale	P	---	DP	---	Section 20.400.040 (Automotive Sales and Rentals)
Catering	P	---	P	P	
Catering, Food Truck	---	---	P	---	Section 20.400.230 (Vehicle Storage)

Commercial Artist/Production Studio	P	DP	P	P	
Commercial Recreation, Indoor	DP	---	---	---	
Commercial Recreation, Outdoor	DP	---	---	---	
Dry Cleaning or Laundry, Plant	DP	---	P	P	
Employee Services	A	A	A	A	
Funeral Homes/Mortuary	CUP	---	CUP	---	
Hookah Lounge	---	---	---	---	Prohibited in all Zones
Lodging, Hotel	---	CUP	---	---	
Merchandise Sales, New Retail >100,000 s.f.	---	DP	---	---	
Merchandise Sales, New Retail <30,000 s.f.	DP	---	DP	---	
Merchandise Sales, Showrooms	P	---	DP	---	Section 20.400.190 (Showrooms)
Merchandise Sales, Used/Pawn	CUP	---	CUP	---	
Moving Company	P	---	P	P	Section 20.400.230 (Vehicle Storage)
Parcel Delivery Service	P	---	P	P	Section 20.400.230 (Vehicle Storage)
Outdoor Dining	A	A	---	---	Section 20.400.150 (Outdoor Dining)
Parking Facility, Enclosed Freestanding	CUP	CUP	---	---	
Parking Lot Sales	T	---	T	---	Chapter 20.455 (Temporary Events)
Restaurant, Sit-Down	DP	DP	---	---	Drive-through not permitted
Restaurant, Take-Out	P	A	P	---	Drive-through not permitted
<b>Office, Professional, and Business Support Services</b>					
Financial Institution	---	P	---	---	Drive-through not permitted
Internet-Based Sales	P	P	P	P	
Medical; Hospital	---	CUP	---	---	
Medical; Urgent Care	CUP	CUP	---	---	
Office; Corporate, Administrative, Business, ≤5,000 s.f.	P	P	DP	DP	
Office; Corporate, Administrative, Business, ≥5,000 s.f.	P	P	CUP	CUP	
Office; Government	P	P	CUP	CUP	
Office; Medical, Dental, and Holistic	DP	P	---	---	

Research and Development	P	P	P	P	Section 20.400.170 (Research and Development Uses)
Research and Development Fabrication and Light Manufacturing	P	P	P	P	Section 20.400.170 (Research and Development Uses)
Technical/Scientific/Medical Laboratories, Incidental Uses	P	P	P	---	Section 20.400.170 (Research and Development Uses)
<b>Services</b>					
Animal Sales and Services	DP	---	DP	DP	
Auctions, Indoor	DP	---	DP	DP	
Automotive Services, Repair	DP	---	DP	DP	Note 2; Chapter 20.420 (Automotive Services)
Automotive Services, Washing/Detailing	CUP	---	CUP	---	Chapter 20.420 (Automotive Services)
Dry Cleaning or Laundry, Agency	P	P	---	---	
Equipment Rental Yards	---	---	DP	P	Section 20.230.060.H.4 (Outdoor Storage)
Firearm Shooting Range (Indoor) (Ord. No. 2016-1419, 1-23-2016)	---	---	CUP	---	Section 20.400.240 (Firearm Shooting Range (Indoor)), 5.60 (Firearms)
Personal Services, General	DP	DP	---	---	
Personal Services, Fitness/Health Facility	DP	DP	DP	---	
Personal Services, Instructional	DP	---	DP	---	
Tattoo and/or Body Art Facility	---	---	---	---	
<b>Industrial, Manufacturing, and Processing Uses</b>					
Boat Building	---	---	P	P	
Building Material Storage & Sales Yard	---	---	CUP	P	
Furniture and Carpentry	P	---	P	P	
Commercial Bakery	P	---	P	P	Including associated thrift shop outlets
Contractor Office & Services	P	---	P	P	Section 20.400.060 (Contractor Offices and Services)
Food Processing	P	---	P	P	Note 3
Fueling Station; Fleets	---	---	CUP	CUP	
Industrial Design and Services	P	P*	P	P	* Limited to on-site support
Machine Repair Shop	P	---	P	P	
Manufacturing and Assembly	P	DP	P	P	Note 4



Microbrewery/Tasting Room	P	---	P	P	<a href="#">Note 5; See 20.425.060</a>
Microbrewery/Tasting Room with Restaurant	DP	---	---	---	
Metal Working Shop	---	---	P	P	
Newspaper Printing	---	---	P	P	
Outdoor Storage, Primary Use	---	---	---	P	Section 20.230.060.H (Outdoor Storage)
Outdoor Storage, Accessory Use	A		A	A	Section 20.230.060.H (Outdoor Storage)
Self-Storage	CUP	---	---	---	Section 20.400.180 (Self-Storage)
Warehousing, Indoor	P	A	P	P	Section 20.230.060.H (Outdoor Storage)
Water Treatment and Filtering Services	---	---	DP	DP	
Wholesale, Processing, and Distribution	P	---	P	P	Section 20.230.060.H (Outdoor Storage)
<b>Recycling Facilities</b>					
Small Collection Facility	DP	---	DP	DP	
Large Collection Facility	DP	---	DP	P	
Small Processing Facility	---	---	CUP	CUP	
Large Processing Facility	---	---	CUP	CUP	
Reverse Vending	A	A	A	A	Section 220.445.040
<b>Transportation, Communication, and Utility Uses</b>					
Antenna or Communication Facility	P	P	P	P	Chapter 20.465 (Telecommunication Facilities)
Parking; Fleets	A	---	A	A	Section 20.400.230 (Vehicle Storage)
Transportation Dispatch, Fleet Usage	---	---	DP	DP	Section 20.400.230 (Vehicle Storage)
Transportation Dispatch Only	P	---	P	P	

Notes: See Table 20.230-1 for definitions.

1. All proposed development projects within the Industrial Zones shall be subject to Site Development Plan Review in conjunction with the permit requirements of Table 20.230-2.
2. A Director's Permit (DP) shall be required for the establishment of the land use in an existing building to ensure adequate parking and student services are provided and to minimize effects on other land

uses within the building or site. A Conditional Use Permit (CUP) shall be required for the establishment of a use in conjunction with a new building (development of the building in conjunction with the use).

3. Permitted accessory use in conjunction with a primary use on the same industrial Zone parcel. Unit shall be continuously occupied exclusively by a superintendent or a caretaker and his/her immediate family; the unit shall be consistent with the development standards and setback of the R-3 Zone, provide one (1) paved and covered off-street parking space, and shall not be located within a required setback.

4. The compounding, processing, packaging, or treatment of food is permitted by right, except fish, lard, meat, pickles, sauerkraut, or vinegar; these uses shall be subject to CUP restrictions.

5. Limited accessory entertainment is allowed in conjunction with Permitted use, subject to 20.425.060.

## CHAPTER 20.425 - BARS, ALCOHOL SERVICE, AND ENTERTAINMENT

### Section 20.425.060 - Microbrewery and Tasting Room Uses

In addition to the standards of this chapter, breweries, wineries, and tasting rooms shall be subject to the following standards:

A. **Limitations.** This land use shall not be permitted with five hundred (500) feet of, or adjacent to, Residential (R) Zone property.

B. **On-Site Alcohol Sales.** Service, tastings, and sales of alcohol shall be limited to product produced on-site, directly affiliated with the primary operational land use.

C. **Ancillary Sales.** Ancillary retail sales directly associated with the manufacture, production, or brand of the primary brewery/tasting room shall be permitted.

D. **Accessory Entertainment Within Tasting Rooms.** Accessory entertainment will be allowed, subject to the following provisions:

1. Entertainment is subject to the provisions of Chapters 5.04 (Uniform Licensing Procedures) and 5.10 (Entertainment License).

2. Live entertainment, limited to acoustical performances, is allowed by right; No amplified music is permitted with the exception of a microphone for vocal purposes as is typical with acoustic instrument music performances.

3. All entertainment must be conducted inside the brewery/tasting room building (no outside entertainment is allowed).

4. The use of a promoter or charging a cover charge for the entertainment is prohibited.

5. Live entertainment is limited to Thursday, Friday, and Saturday, up to 10:00 PM.

6. This provision also applies to wineries and distilleries with tasting rooms.

7. If land use permissions require a Director's Permit or Conditional Use Permit for a Microbrewery/Tasting Room; Microbrewery/Tasting Room with Restaurant; or

Winery/Tasting Room, entertainment requests will be regulated through the Director's Permit/Conditional Use Permit.

8. Applicants must comply with all provisions of the business' ABC license.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, at a regular meeting held on this 18th day of November, 2019, by the following roll call vote:

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSENT: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:

APPROVED:

\_\_\_\_\_  
Kevin Norris, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

\_\_\_\_\_  
Gina Henderson, Senior Office Specialist  
SAN MARCOS CITY PLANNING COMMISSION