

RESOLUTION PC 12-4286

A RESOLUTION OF THE SAN MARCOS PLANNING COMMISSION APPROVING A RENEWAL OF A CONDITIONAL USE PERMIT TO CONTINUE THE OPERATION OF AN ADULT NIGHTCLUB AS WELL AS LIVE ENTERTAINMENT AND DANCING IN THE COMMERCIAL-SPECIFIC PLAN (C-SP) ZONE IN THE RICHLAND NEIGHBORHOOD

Case No. CUP 88-19 (11R)
Club Tropics

WHEREAS, the City of San Marcos received a request from Jason Club Tropics in behalf of Jason Dunn Sr. on August 1, 2011 to renew an existing Conditional Use Permit allowing an adult nightclub 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:

Parcel A of Parcel Map 14527
Assessor's Parcel Number 228-120-44

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 to an all adult (alcohol serving) nightclub (age 21 and older) per Council Resolution 90-3614; and

WHEREAS, on February 11, 1997, the City Council did consider and granted the appeal of the Planning Commission condition regarding the payment of fees for law enforcement and emergency responses to the nightclub, and the City Council approved an extension of the Conditional Use Permit to January 6, 1999 per Resolution 96-2930; and

WHEREAS, on January 4, 1999, the Planning Commission granted an extension to January 6, 2002 per Resolution PC 99-3123, and

WHEREAS, on December 3, 2001, the Planning Commission granted a modification and extension to January 6, 2005 per PC 01-3433; and

WHEREAS, on April 4, 2005, the Planning Commission granted an extension to April 4, 2008, per PC 04-3797; and

WHEREAS, on October 6, 2008, the Planning Commission granted the last extension to October 6, 2011, per PC 08-4046; and

WHEREAS, this entitlement includes live entertainment and dancing as part of the approval; and

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WHEREAS, the Development Services Department did study and recommend approval of said request for an extension; and

WHEREAS, this action is categorically exempt from CEQA per Section 15301, Class 1 (Existing Facilities); and

WHEREAS, the required Planning Commission public hearing held on March 5, 2012 was duly advertised; and

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

1. The granting of the Conditional Use Permit will not be materially detrimental to the public health, safety, or welfare or injurious to the properties or improvements in the Richland Neighborhood with compliance with Conditional Use Permit conditions Entertainment Establishment Permit and Dance Permit conditions, and Alcohol Beverage Control Board (ABCD) conditions which includes implementation of the nightclub Safety and Security Plan.
2. The proposed use is consistent with the policies of the General Plan in that the proposed use is conditionally permitted within the Commercial-Specific Plan (C-SP) Zone and the use, as conditioned, will not adversely effect the implementation of the General Plan, the Richland Neighborhood Plan.

NOW THEREFORE, the Planning Commission resolves as follows:

- A. The foregoing recitals are true and correct.
- B. A Categorical Exemption per Section 15301, Class 1 (Existing Facilities) is hereby approved pursuant to the California Environmental Quality Act (CEQA).
- C. The Conditional Use Permit is approved per the submitted site plan and floor plans for the 7,518 square foot total nightclub received on August 18, 2011, and shall not be expanded or modified, unless a modification to this permit is approved.
- D. Prior to reliance on the Conditional Use Permit renewal (no later than 30 days from approval):
 1. Concurrent with the approval of this Conditional Use Permit, and on an annual basis no later than January 31st of each year hereafter, the applicant shall submit the following documents:
 - a. An updated "Safety and Security Plan" shall be submitted to demonstrate how the applicant will conduct security responsibilities to ensure peace and order is maintained during the

use of the nightclub. The plan shall also include operational drink serving policies and security policies. The City, through its Planning Division and the Sheriff's Department, shall reasonably approve, modify or deny the Safety and Security Plan within 10 days of permit issuance.

- b. A copy of a "guard card" and recipient identification for all personnel who have completed training by a qualified course shall be provided for those staff providing security services for the facility which shall be submitted to the Sheriff's Department. Within 10 days of hiring any new personnel, the applicant shall provide a copy of 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. At anytime whereby 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.

2. The applicant shall submit to City Certificates of Insurance evidencing the following coverage requirements and demonstrating compliance with the required City provider provisions:
 - a. 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.
 - b. Liquor Liability: Minimum coverage levels shall be one million dollars per occurrence, two million dollars aggregate.
 - c. 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.

- d. Applicant shall name 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.
3. The applicant shall deposit \$5,000 in an enforcement account with the City of San Marcos to cover the costs of enforcement actions (if required). In the event enforcement action is necessary as a result of the operation of the adult nightclub, 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 88-19 (11R). Should the balance of the enforcement account ever fall below 50% of the required deposit level (i.e. \$2,500), and the applicant fails to restore the required deposit level within thirty (30) days of notice, all rights afforded to the applicant by CUP 88-19 (11R) shall cease until which time the \$5,000 balance in the enforcement account can be restored.
4. 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.
5. Within 30 days of CUP issuance, the applicant shall submit a corrected floor plan to include accurate labeling of all the use of all rooms and areas within the building along with a correct numbers of seats and tables.
6. A Certificate of Occupancy ("C of O") reissuance is required identifying the maximum occupancy load. A new "C of O" will be issued after the Building Division has reviewed the latest new floor plan, inspected the premises and determined compliance with the Conditions of Approval of CUP 88-19 (11R) contained herein, the California Building Code and other relevant portions of the San Marcos Municipal Code.
7. The applicant shall comply with all 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 Fire District requirements prior to reliance upon the subject use permit.

E. The Conditional Use Permit is hereby approved subject to the following operational conditions:

1. The applicant shall comply with all licensing requirements and conditions of the Alcoholic Beverage Control (ABC) Board for the serving of alcohol. All conditions of the ABC are hereby incorporated into this Resolution by reference.
2. The applicant shall provide operate the nightlight 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.
3. The club shall shut off all music no later than 1:30 a.m. and increase interior lighting, and have last call for drinks at this time. Alcohol service shall completely cease at 1:45 a.m. and the nightclub shall close at 2:00a.m.
4. Latin music entertainment only is authorized in the form of a Disc Jockey and/or Live Music throughout the term of this Conditional Use Permit 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.
5. The Operation of the adult nightclub shall at all times comply with Chapter 10.24 of the San Marcos Municipal Code (Noise Ordinance).
6. The Owner or Manager is required to be on-site during operational hours.
7. All operations of the adult nightclub shall occur within the enclosed building. No special events or promotions, etc. shall occur outdoors, including in the parking lot or patio areas.
8. All entertainers, staff members and patrons must be clothed at all times so that no Specified Anatomical Areas are visible. "Specified Anatomical Areas" include: 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.
- 9. There shall be no food service provided at this location. No kitchen or food preparation facilities shall be operational, including outdoor vending food carts and kiosks without further review and approval from the Planning Division; the Club Manager shall prohibit such activity from occurring during club hours.
- 10. 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.
- 11. 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.
- 12. All employees who serve alcohol or check identification must attend the ABC L.E.A.D. Training or Responsible Beverage Service (RBS) Training every two (2) years as required by Ordinance No. 2009-1318. Confirmation of program participation must be kept on file and made available upon request.
- 13. 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 three security guards shall be required Wednesday and Thursday.
 - b. A minimum of five security guards shall be required Friday through Sunday.
- 14. 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.

15. The applicant shall provide, at a minimum, 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). These two uniformed security guards are in addition to the security guards indicated in Condition No. 13.
16. 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.
17. Security personnel supervising the parking area shall remain until all patrons have left the parking lot. No loitering shall be allowed during or after business hours.
18. Security staff shall remain on the premises until all patrons have left the general vicinity of the premises and surrounding neighborhood when the business closes, to discourage loitering.
19. All private security guards and security staff (bouncers) shall wear shirts and/or jackets with the word "SECURITY" clearly emblazoned in lettering across the back of the shirts or jackets. The lettering must be in a clearly discernible color and the typeface must be no smaller than 4 inches in height.
20. The establishment's on-duty staff (including security personnel, servers, bartenders, management, etc.) shall not consume alcoholic beverages or be under the influence of an alcoholic beverage or drug on the premises during hours of operation.
21. All beverage containers shall be plastic and the use of glass containers (i.e. cups, bottles, etc, are prohibited.
22. Alcoholic beverages shall not be taken outside of the establishment.
23. "In and Out" privileges of patrons are prohibited. No marked patron shall be allowed reentry into the facility after leaving during an event/ performance.
24. The establishment shall impose restrictions denying admission to any person under the influence of any illegal substance.
25. The rear emergency exit doors shall remain closed (unlocked) at all times during the hours of operation.

26. Persons under the age of 21 are prohibited on site.
27. 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.
28. Any incident requiring security measures (reactive intervention or mediation) by on-site staff shall be reported immediately to the Sheriff's Department.
29. 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, suspension or revocation of this permit.
30. 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.
31. 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 food/beverage service operation.
32. Building address and suite number shall be clearly labeled for day and night-time emergency responses.
33. The proposed development shall comply with Federal Law, Americans with Disabilities Act ("ADA-90"), and State Law, California Code of Regulations, Title 24, for accessibility standards for the disabled.
34. 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.
35. Should this use be considered to be a nuisance which is adverse or detrimental to the public peace, health, safety or general welfare then the Use Permit shall be referred to the Planning Commission for revocation/modification.

36. 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.
37. 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.
38. 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.
39. 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.
40. Jason Dunn Sr. 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 personal at all times.
41. This Conditional Use Permit shall expire on March 5, 2015. Any request for permit extension shall be applied for by the permittee no later than ninety (90) days prior to the expiration date. It is the permittee's responsibility to track the expiration date.

42. As authorized by the California Fire Code, the 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.
43. This Use Permit shall 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 situation and a determination made as to 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.
44. 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.
45. Nothing in this Conditional Use Permit shall prohibit or prevent the City, based upon the appropriate findings and circumstances, from revoking/modifying the Permit, or refusing to extend its term past March 5, 2015.
46. To the extent permitted by law, Applicant/developer shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permit arising from the project as defined in the Conditional Use Permit; (ii) any damages, liability and/or claims of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operation of applicant/developer or its contractors, subcontractors, agents, employees or other persons acting on applicant/developer's behalf which relate to the project and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project including any and all damages, liability and/or claims of any kind which are alleged to have arisen from City's active or passive negligence. However, such indemnity will not apply to damages, liability or claims arising from the active sole negligence or willful misconduct of City. Applicant/developer further

agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of City by counsel selected by City. This indemnification shall not terminate upon expiration of the Conditional Use Permit, but shall survive in perpetuity.

47. Project applicants shall consider the employment of San Marcos residents first for any new employment opportunities generated as a result of this project approval.
48. Project applicants shall solicit bids/proposals from San Marcos businesses first for any supplies, materials, services, and equipment needed to implement this project approval.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 5th day of March 2012 by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

Steve Kildoo, Chairperson
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS CITY PLANNING COMMISSION