

Resolution No. **2017-08-10-0502**

## **STOCKTON PLANNING COMMISSION**

### **RESOLUTION APPROVING THE MODIFICATION OF A USE PERMIT FOR A LOUNGE WITH THE ON-SALE OF GENERAL ALCOHOLIC BEVERAGES AT 2333 PACIFIC AVENUE (P17-0431/P09-083)**

The City initiated the modification of the conditions of approval for a Use Permit (P09-038) to allow a lounge with the on-sale of general alcoholic beverages and live entertainment consisting of disc jockey, live band, and acoustic music, for property located at 2333 Pacific Avenue; and

The Police Department has received numerous complaints from the surrounding neighborhood regarding excessive noise and nuisance activities from the subject site since July 28, 2016. The business has been cited on numerous occasions for failing to monitor noise levels; and

On May 17, 2017, the operator met the Community Development Director, Planning Director, and a Lieutenant from the Police Department to discuss possible solutions to the excessive noise complaints from area residents; and

The business operator made physical sound attenuation improvements in the lounge to reduce noise impacts; and

To ensure that the operator continuously maintains the noise levels to comply with the noise standards of the City's General Plan and Development Code, staff recommends modification of the conditions of approval of the subject Use Permit; now, therefore,

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF STOCKTON, AS FOLLOWS:**

A. The Planning Commission hereby approves the modification of the conditions of approval for a Use Permit (P17-0431/P09-038) to allow a lounge with the on-sale of general alcoholic beverages, for property located at 2333 Pacific Avenue (Exhibit 1, Site and Floor Plans), based on the following Findings of Fact and revised Conditions of Approval:

#### General Findings

1. The subject use is allowed within the CG (Commercial, General) zoning districts, subject to approval of the revised conditions and new conditions for the noted Use Permit and compliance with all other applicable provisions of the Development Code.

2. The subject use, with modified conditions of approval, would maintain the integrity and character of the surrounding neighborhood, because the subject use would operate in an existing commercial building in the CG zoning district and be compatible with the existing retail uses in the Miracle Mile commercial district.

3. The subject use is consistent with applicable general land uses, objectives, policies, and programs of the General Plan and any applicable specific plan or master development plan related to the subject use, because it is a commercial use on a site designated for Commercial land uses and is consistent with the following General Plan policies:

Health and Safety Policy No. HS-2.2, Noise Compatibility Guidelines - The City shall allow the development of noise sensitive land uses (which include, but are not limited to, residential neighborhoods, schools, and hospitals) only in areas where existing or projected noise levels are "acceptable" according to Table HS-11.1 "Land Use Compatibility for Community Noise Environments." Noise mitigation measures may be required to reduce noise in outdoor activity areas and interior spaces to achieve these levels.

HS-2.17, Commercial Uses - The City shall require that noise produced by commercial uses not exceed 75 dB Ldn/CNEL at the nearest property line.

The business operator made the physical sound attenuation improvements of the premise to reduce noise levels. These improvements contained the installation of sound proofing material on both sides of the front and back doors and vent closures in back closet area; consultation with a sound professional regarding a speaker movement, positioning and base volume; turning off the seating area 2 speakers no later than 10:00 p.m.; using a noise decibel reading device to monitor the noise level, and security officers to patrol the subject site.

4. The subject site would be physically suitable for the type and density/intensity of use being proposed including the provision of services (e.g., sanitation and water), public access, and the absence of physical constraints (e.g., earth movement, flooding, etc.), because the subject use already has existing services and there are no known physical constraints.

5. The establishment, maintenance, or operation of the subject use at the location proposed and for the time period(s) identified, if applicable, is not expected to endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, peace, or general welfare of persons residing or working in the neighborhood of the proposed use, because revised and new Conditions of Approval adequately address potential public convenience, health, safety and peace issues that may be associated with the subject use.

6. The design, location, size, and operating characteristics of the subject use are expected to be compatible with existing and future land uses on the site and in the vicinity of the subject property, because the subject use is classified as a retail use, in accordance with Table 2-2 (Allowable Land Uses and Permit Requirements) of the Development Code, and is expected to be compatible with existing and future uses already in place in the same commercial area. The anticipated customer base, traffic patterns, noise levels, and general operational conditions of the subject use are similar to those of existing uses in this commercial district.

7. The proposed action is a Categorically Exempt use, in accordance with the provisions of Section 15301, Class 1, of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines, because it will be located within an existing commercial building and existing infrastructure is adequate to serve the site and subject use.

#### Modified Conditions of Approval

1. Comply with all applicable Federal, State, County, and City codes, regulations, and adopted standards, and pay all applicable fees.
2. In the event the sale of alcoholic beverages or operation of this use prove detrimental to the health, safety, peace or general welfare of the surrounding neighborhood, this Use Permit shall be subject to revocation or modification as provided in the Development Code.
3. The consumption of alcoholic beverages shall only be allowed within the lounge and the patio area. Signs advising patrons of this condition shall be posted at all points of ingress and egress.
4. Food service shall be available at all times while alcohol is being served on the premises.
5. "No Loitering" signs shall be posted on the exterior of the business in accordance with the Stockton Municipal Code.
6. Every employee involved in the sale of alcohol shall complete L.E.A.D. (Licensee Education on Alcohol and Drugs) training through the local office of the State Department of Alcoholic Beverage Control within six months of the employees' hire date. Alcoholic Beverage Control also maintains an approved list of other Responsible Beverage Service trainer courses which may be substituted for this condition.
7. Any pay phones installed shall be located inside the business only and be configured for outgoing calls only.
8. A minimum of one Police Department-approved, State-licensed, uniformed security officer per every 100 patrons (or portion thereof) shall be provided and shall

remain on duty until one hour after the business has closed. Upon the discretion of the Chief of Police, additional security guards may be required.

9. A video surveillance system with at least seven-day continuous recording capability shall be in place and archived for at least 30 days. The video surveillance system shall cover the exterior of the premises including the entrances and exits to the building.
10. A strict dress code of no gang-affiliated apparel shall be enforced.
11. The establishment's owner(s) or an employee of the business shall be present in all areas where alcoholic beverages are being served or consumed.
12. No obstructions shall be attached, fastened or connected to the partitions, ceiling or walls which separate booths or customer seating areas within the interior space of the establishment.
13. Partitions separating booths or customer seating areas shall not exceed 52 inches in height.
14. The owner/operator shall not maintain or construct any type of enclosed or private room, except for restrooms, intended for use by patrons for any purpose.
15. No outside speakers shall be permitted on the subject premises and any noise or music originating from the establishment shall not pose a nuisance to the surrounding area and shall conform to the noise standards for commercial land uses, as specified in the City's General Plan and Development Code.
16. The operator of the establishment shall monitor the area surrounding the lounge to prevent patrons from congregating outside the premises and to prevent parking and noise problems.
17. Speakers or amplified sound shall not be provided in the outdoor patio area of the establishment. All entrances and windows shall remain closed during the hours of operation, except for doors for necessary ingress and egress.
18. An identification scanning device shall be utilized to check the California Department of Motor Vehicle identification, or other Government issued identification, of all patrons entering the business to purchase or consume alcohol. This device shall have recording capability with which to capture the patron's identification information. This information shall be provided to the Police Department upon request in the course of a criminal investigation.
19. All signs shall be subject to approval by the Community Development Director or Planning Commission.

20. The Use Permit shall be posted in a conspicuous place and be made available immediately to the City personnel upon inspection of the premises.
21. The Use Permit shall be subject to review at six months and one year following the effective date of the modification of this Use Permit.
22. An application for a special event shall be submitted no less than 14 days before the event in accordance with the Stockton Municipal Code (SMC) section 12.72.060.
23. The seating area 2 speakers shall be turned off no later than 10:00 p.m.
24. The business operator shall submit a Noise Study with noise mitigations prepared by a professional noise consultant to minimize the noise level in the lounge within 30 days following approval of the modification of this Use Permit.
25. The Use Permit shall become effective after the completion of a ten-day appeal period following approval of the modification of this Use Permit (SMC section 16.100.020.C.1).

PASSED, APPROVED, and ADOPTED August 10, 2017

  
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ELIZABETH MOWRY HULL, CHAIR  
City of Stockton Planning Commission

ATTEST:

  
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DAVID W. KWONG, SECRETARY  
City of Stockton Planning Commission