

**Exhibit A**  
**DRAFT Conditions of Approval**  
**P12-1821, 4825 Hopyard Road**  
**Coconuts Beach Bar and Seafood Grill**  
**February 27, 2013**

**Project Specific Conditions:**

**Planning Division**

1. The proposed business operation and activities shall conform substantially as described in the plans, narrative, and other materials (Exhibit B), dated "Received February 13, 2013," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received February 13, 2013," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. When Coconuts Beach Bar and Seafood Grill opens for business, this Conditional Use Permit approval shall supersede all prior Conditional Use Permit approvals for the tenant space, including but not limited to bar, night club, and teen night activities.
4. The establishment shall be limited to a maximum of 500 persons (patrons and employees combined).
5. The operator shall maintain a system to count the number of patrons who are in the club establishment at any given time. The operator shall provide the number of occupants upon request by Pleasanton Police Department or Fire Department personnel.
6. The City does not require that the establishment have a dress code, however, if the operator chooses to have a dress code, then the following shall be required: Prior to operation, the operator shall post the dress code on the establishment's website and via signage on the subject property so that patrons will be able to view the dress code prior to or upon arrival and prior to waiting in line to enter the establishment. The design and location of

said signage shall be submitted for review and approval by the Director of Community Development prior to installation.

7. During the hours of operation for the night club's activities that serve patrons 18 years old and up, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as he/she enters the establishment. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request. This condition does not apply to Teen Nights since those patrons will be using school identification cards.
8. The operator shall stop serving alcohol at 1:40 a.m., and shall collect all alcoholic beverages by 1:50 a.m. The operator shall require patrons to leave the establishment by 2:00 a.m. and the parking lot areas by 2:30 a.m.
9. Beginning at 1:40 a.m., the operator shall start to gradually increase lighting within the establishment, and all of the interior lights shall be turned on by 1:50 a.m.
10. The operator shall designate an outdoor smoking area that is located at least 20 feet away from any door or opening. Said area shall be roped off, provided with two (2) portable ashtrays, and shall be monitored and kept clean.
11. The operator shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The operator shall install "No Smoking" signs in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
12. The operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
13. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director of Community Development, this Conditional Use Permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
14. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. The applicant shall maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the club shall remain closed during all hours of operation shall be placed on or next to all exterior doors.
15. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval

prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.

16. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
17. The business owner/operator shall adhere to a “good neighbor” policy, meaning that the operator and employees must respect the rights of neighboring properties and tenants and, to the best of their ability, shall ensure their patrons’ compliance with the City’s noise and smoking regulations and all conditions of approval related to parking location, noise, loitering, etc.
18. Prior to operation, the operator shall provide the Chief of Police with a final security plan along with the name of the Security Manager who will be responsible for ongoing collaboration with Police staff regarding that plan. This plan shall be subject to the review and approval of the Chief of Police and shall minimally include:
  - a. Number of security personnel the operator intends to have on-site in relation to the number of patrons. During the hours that the establishment is operating as a night club for 18 years old and up and/or for 21 years old and up patrons, the operator is required to provide a minimum of one security guard to every 50 patrons, plus a minimum of two security guards to monitor the parking lot and surrounding areas.
  - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where persons are assigned, e.g., parking lot, door post, patio, etc.
  - c. All security staff shall wear a distinctive uniform identifying them as security officers.
  - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the operator and all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the operator. At no time shall any security personnel register with the State at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request by Pleasanton Police Department personnel.
  - e. During the hours that the establishment is operated as a night club, all patrons shall be searched by gender-appropriate personnel or through the use of a metal detector.
  - f. A plan for staging of patrons in line for admission.

- g. Once the night club is filled to capacity, the operator shall advise all persons standing in line that the night club is at capacity and the operator shall direct the persons that they must leave the property immediately.
  - h. A patron-removal plan shall include the use of rear exit doors for removal of unruly patrons. Patrons who have engaged in unruly behavior shall be separated by security staff and shall be taken out of the establishment at separate times. Patrons shall be taken to their vehicle and required to leave the premises. However, if the patron is intoxicated, the operator shall not escort the patron to their car but shall make other arrangements for the patron to leave the premises. If the patron is severely intoxicated or has been engaged in fighting or some other criminal act, the operator shall immediately notify the Pleasanton Police Department.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to ensure that it is working properly, and the videos shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
  - j. The operator shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
  - k. All security staff shall be provided with, be trained in the use of, and utilize state-of-the-art communication devices, such as hand-held radios or headsets.
  - l. The operator's security plan shall include language whereby the operator commits to maintaining a direct line of communication with the Pleasanton Police Department regarding all security-related issues.
19. If patrons cause problems to occur in the vicinity of the establishment with regard to traffic control, the Chief of Police may direct the operator to erect signs at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 1107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC.
20. This Conditional Use Permit approval will lapse in accordance with Pleasanton Municipal Code section 18.124.100.

21. The operator shall provide at least limited food service (such as appetizers) during all operating hours of the business. Prior to issuance of a tenant improvement permit or operation of the business, the operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
22. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Chief of Police.
23. Within 45 days of the original hire date, employees who serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the establishment, and re-training shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.
24. All activities shall comply with Chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
25. The operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.
26. The operator shall maintain the area surrounding the establishment in a clean and orderly manner at all times. By 6:00 a.m. the morning after the establishment operates as a nightclub, the operator shall have inspected the parking lots and surrounding businesses within the Gateway Square Shopping Center and removed and/or cleaned up any litter, vomit, etc., that were likely to have been left by Coconuts Beach Bar and Seafood Grill's patrons (restaurant or night club use).

### **21 years old and Up Lounge Nights**

27. In addition to the conditions listed in this exhibit, the 21 years old and up lounge nights shall be subject to the following conditions:
  - a. The operator shall restrict in and out privileges to the use of the smoking area. A security guard shall be posted at the smoking area to monitor the patrons. No other in and out privileges are permitted. Patrons shall be screened before being allowed to re-enter the establishment.

## **18 years old and Up Nights**

28. In addition to the conditions listed in this exhibit, the 18 years old and up activities shall be subject to the following conditions:
- a. Patrons that are 18 years or older but less than 21 years of age shall use the main entrance and shall be allowed to use the “front room” (larger room) of the establishment only. The “front room” shall sell only non-alcoholic beverages served in manufacturer’s cans or bottles. The “front room” shall be separated from the “back room” (smaller room) by a security check point and patrons that are under age 21 may not enter the “back room”.
  - b. Patrons that are 21 years of age and older shall use a separate entrance, the secondary entrance, to enter the facility and shall be stamped with a black light to show that they are 21 or older. Alcohol service shall be provided in the “back room” only and shall be served in plastic cups for easy monitoring. Patrons that are over 21 years of age may access the entire facility, including the “front room” but will be prohibited from taking alcoholic beverages past the security checkpoints, to the “front room”, or into the restrooms.
  - c. The operator shall provide separate entries for patrons that are under age 21 and for patrons that are 21 years old and older. The entry shall be clearly indicated with on-site signage. Signage placement and design shall be submitted for the review and approval of the Director of Community Development prior to operation of the first 18 and up event.
  - d. The operator shall provide security guards in both hallways to the restrooms to perform security checks and not allow alcoholic beverages to pass the security point and not allow persons under 21 to enter the “back room”.
  - e. In addition to the required security staff, the operator shall provide a bathroom attendant in each restroom who shall monitor the restrooms.
  - f. The operator shall restrict in and out privileges to the use of the smoking area. A security guard shall be posted at the smoking area to monitor the patrons. No other in and out privileges are permitted. Patrons shall be screened before being allowed to re-enter the establishment.

## **Teen Nights**

29. In addition to the conditions listed in this exhibit, the teen night activities (hereafter “Teen Nights”) shall be subject to the following conditions:
- a. Patrons shall be limited to high school students between the ages of 14 and 18 years old. This requirement does not prohibit the attendance by the legal parents and/or guardians of the patrons. Patrons shall not be admitted unless they have a valid, current school identification card in their possession.
  - b. Teen nights shall only take place on Sundays during the summer months and on holidays when regular school classes are not being held on the

- following day. No teen nights shall take place on a school night. Teen nights shall be limited to the hours of 6:00 pm to 9:00 pm.
- c. The business operator shall not hold another activity/operation/event during the same time a Teen Night is occurring.
  - d. No patron admitted into the establishment shall be permitted to leave and thereafter reenter.
  - e. No alcoholic beverages may be sold, consumed, or made available.
  - f. The operator shall provide a bathroom attendant, in addition to the required security staff, to be stationed in each restroom to monitor the activities.
  - g. Admission to teen nights shall be denied to any person showing evidence of having consumed any alcoholic beverage, or to any person showing evidence of being under the influence of a controlled substance, or to any person in possession of an alcoholic beverage or controlled substance.
  - h. Prior to the commencement of teen nights, the operator shall provide to the Director of Community Development and to the Police Chief the entire season's teen night schedule and a description of operations, including number of security staff to be provided at each event, for review and approval.
  - i. Prior to the first teen night, the operator shall secure a permit from the Chief of Police for the season. The permit shall incorporate the requirements of this Conditional Use Permit approval and any additional requirements determined to be necessary by the Police Chief. The operator shall adhere to the conditions and requirements of the permit at all times.

**Standard Conditions:**

**Planning Division**

30. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
31. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify, and hold harmless the City, its City Council, its officers, boards, commissions, employees, and agents from and against any claim (including claims for attorneys' fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

## **Building Division**

32. Prior to issuance of a business license, the applicant shall contact the Building and Safety Division and the Fire Marshal to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

### **Code Requirements:**

*Applicants are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

## **Building Division**

33. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
34. Any tenant improvements shall be designed and constructed to meet all applicable Title 24 state energy requirements.

**{end}**





February 11, 2013

Ms. Janice Stern  
Planning Manager  
City of Pleasanton  
200 Bernal Avenue  
Pleasanton, CA 94566

Re: Conditional Use Permit  
Coconuts Beach Bar & Seafood Grill  
Site 1D, Gateway Square

Dear Janice:

This letter is being provided in accordance with the Declaration of Covenants, Conditions and Restrictions for Hacienda, Article III, Section 3.2, Paragraph 3.2.3, Plan Changes and Plans for Changes to Improvements. The Design Review Committee for the Hacienda Owners Association has reviewed the application for a conditional use permit. This application was submitted by Coconuts Beach Bar & Seafood Grill, on behalf of FFHS Gateway L.P., Site 1D, dated February 6, 2013. This modification is in substantial compliance with the guidelines set forth in the Design Guidelines and Covenants, Conditions and Restrictions.

The proposed conditional use permit will allow Coconuts Beach Bar & Seafood Grill to operate a restaurant with a night club for various age groups at 4825 Hopyard Road. The restaurant will be open daily from 11:30 am to 9:00 pm. At 9:00 pm the restaurant closes and the business will transition into a night club open from 10:00 pm to 2:00 am for different age groups on various nights including teen nights over summer and holiday school breaks. The proposed application contemplates a maximum occupancy of 500 patrons and employees at any given time. In consideration of the conditional use permit, the applicant has reviewed site parameters of concern including: parking, traffic and noise. Based on a comprehensive review of space allocation and business practice, the applicant has demonstrated that their use is compatible with currently approved uses. The description of the use proposal for this modification is attached.

This application is hereby approved by the Hacienda Owners Association and may be processed for necessary approvals by the City of Pleasanton. Please feel free to contact me at the Association's office if I can be of any assistance in this matter.

Sincerely,

James Paxson  
General Manager, HBPOA

cc: Gene Havrilenko  
Eric DeBlasi

cc: 01D\_mod039\_approval\_fm  
dc: DEVDLS:AF:MOD

## Neo Nightclub Overview

On Saturday **October 1<sup>st</sup>, 2011**, Neo nightclub re-opened its doors for business. On that evening, Lt. Jim Knox and Sergeant Tamm went to the club and spoke with the club owner, Jenny Wolfes. Knox introduced himself as the swing shift watch commander Wednesday through Saturday evenings and also as the District 2 commander. Knox told Wolfes at this time that we as a police department would like to work with her to provide resources such as training and assist her in resolving any issues that may arise during their operation. Wolfes was thankful and asked to have a drug and drug influence awareness class provided to their staff. This was arranged and provide to their staff on November 4th.

On the evening of Saturday, **November 26<sup>th</sup>**, a large crowd was in attendance at Neo and required the allocation of 9 officers to assist their security personnel at closing time. After this incident, Lt. Knox met with Wolfes at Club Neo on December 2<sup>nd</sup>. Knox explained the issues which had occurred on the previous Saturday and explained that the police department could not sustain that allocation of that type of resource as a result of her club operations. Knox explained to Wolfes that they must have security personnel monitoring the parking to prevent problems as a result of drug, alcohol and violence issues. Wolfes told Lt. Knox that she would have her security consultant present the following evening to come up with a game plan to eliminate problems. Lt. Knox further reiterated that the police department would work with her and her staff to help find a solution.

*Club Neo was at capacity this evening. They had a live performer, "R.O.D. Live" advertised for this evening. The crowd was largely from out of the area. Early swing shift was held due to the potential for problems. At about 0030 hrs, about 100 unhappy people were turned away. At closing time a very large crowd swarmed the west lot and a "sideshow" type environment appeared to be forming. The 9 officers on scene with the help of 16 Neo security personnel were able to clear the lot with no incidents.*

*DEA called to advise they had 12 units doing surveillance for a gang investigation in the area of NEO. They had no specific information of projected violence at or around the club.*

On Friday, **December 2<sup>nd</sup>**, Lt Knox met with Jenny Wolfes outside Club Neo at approximately 2120 hours. Knox explained to her that the club needed to have security monitoring the parking lots. He explained the prior Saturday Evening and the resources which were allocated because of the attendance at the club. Knox Explained to Wolfes that the department could not sustain that type of service and things would have to change. She told Knox that her security consultant would be at the club the following evening to assess the attendance and make suggestions on how to alleviate the problems. Knox told Wolfes that PPD was willing to work with her and the club and we would like to deal with problems before they happen. She assured Knox they would

take care of it. Wolfes stated she believed max capacity to be in the 850 range but state they try to maintain around 650 people inside.

**Saturday, December 3rd, 2011**

*Club Neo was filled to capacity. The two incidents below occurred as the club was closing.*

**11-53456 242 PC:** A 26 year old male resident of Hayward was found walking in the Club Neo lot with head wounds. The male said he was "Jacked" in the lot. He was unwilling to provide officers with suspect or additional info. He was taken to Eden Hospital with minor scalp lacerations.

**11-53458 647f PC:** Officer Stocking saw an intoxicated male urinating in the p-lot near Club Neo. A 46 year old male resident of Oakland was arrested and booked into SRJ.

On the evening of Thursday **December 8<sup>th</sup>**, Lt. Knox spoke with Wolfes by telephone at 1950 hours. She told Lt. Knox that she was working with her security consultant and would have 22 security staff present on Saturday evening. She said they would have 4 security officers in the parking lot with spot lights and bullhorns. She also mentioned that she was considering having golf carts brought in to provide mobility to the security personnel in the large lot. Wolfes also stated the guest list would be cut off early (10:00 pm) and the cover charge would be raised, all in attempts to "fade" people. This evening turned out to be relatively uneventful.

**Saturday, December 10rd, 2011**

*The Neo Nightclub was again filled to capacity with a large number of patrons waiting to get inside. Besides a couple of public intoxication arrests, the event was orderly.*

On the evening of Friday **December 16<sup>th</sup>**, Lt. Knox spoke with Wolfes at 2050 hours as a follow-up to the previous weekend. Wolfes told Knox that she would have similar staffing and procedures to the previous weekend for that coming Saturday and she had brought in police type barricades to help prevent free flow of patrons in and out of the club. She indicated they would stop letting people into the club at midnight.

On the evening of Saturday **December 17<sup>th</sup>**, the club attendees created similar issues to those on November 26<sup>th</sup> only crimes were committed and due to the volume, they could not be controlled by the 10 PPD officers and 3 Dublin units present. This crowd was estimated to be about 600-700 people and there was an estimated 25-30 crimes committed in the parking lot. Pushing and shoving matches were witnessed, fights occurred, people were threatening each other making shooting type gestures with their hands or tapping their waistbands signaling they had weapons, bottles were being thrown from moving vehicles, people were being bumped with cars and knocked down, they were riding on cars and there were cars spinning their tires and driving

recklessly in the lot. After the patrons left the Neo lot, an estimated 100 people drove to the nearby Shell station and looted the store and took over the parking lot. Officers arrived and were able to disperse this crowd. (PPD Report 11-55619)

On **December 20<sup>th</sup>**, the police department staff met with the city attorney and staff from code enforcement and planning. The conditional use permit for Neo was reviewed and several violations were identified. Lt. Knox called Wolfes and asked for an immediate meeting that afternoon with all the stake holders present. Wolfes agreed and a meeting took place with Wolfes, her security consultant Peter Aguilar and the above mentioned city personnel. Wolfes was told of the previous weekend events and provided a copy of the documentation created as a result. She was told of all the identified conditional use permit violations and told to come into compliance asap. She was further told to provide an amended security plan to the department by the end of business on December 22nd. In addition, a flyer was shared with Ms. Wolfes for an event planned on that Friday evening. It was expressed to Wolfes that there were over 600 people confirmed as “attending and over 500 as “maybes”. We expressed to Wolfes that the Pleasanton Police Department did not have the resources available to police an event of that size. Wolfes spontaneously stated that she would simply not open her club on the 23<sup>rd</sup> as she was not advertising the event and did not want problems. The club was in fact closed on the 23<sup>rd</sup>.

Several days passed and Wolfes did not submit the amended security plan as requested. Lt. Laurence contacted Aguilar on **December 27<sup>th</sup>** and only after this contact was he emailed an amended security plan.

On Saturday **December 31<sup>st</sup>**, the department put together an operational order with ancillary staffing to deal with any potential issues related to Club Neo. The department had several officers monitoring the parking lot, who located intoxicated individuals who could not care for themselves. These incidents were documented in reports, as well as some other observations of issues.

***11-57395, warrant arrest:** We stopped a male resident of Oakland in the parking lot of Club Neo and cited him out on a warrant.*

***12-00009, 647(f) PC:** We located a male resident of Fremont passed out in a vehicle in the Club Neo parking lot. He had vomited on himself, and security officers said they were aware of him and had placed him in the vehicle for his own safety. He was booked at SRJ.*

***12-00013, 647(f) PC:** We located a female resident of Oakland arguing with security at the front of Club Neo. She repeatedly refused security's requests to leave the premises. She was arrested and booked at SRJ.*

Lt. Elerick contacted Wolfes on Tuesday **January 3<sup>rd</sup>** and told her he would meet with Lt. Knox upon his return from vacation and review the amended plan with him and get back to her afterward.

On Friday **January 6<sup>th</sup> 2012**, Lt. Elerick and Sergeant Tamm were given a flyer for a planned event on 01/07/12 (Birthday Bash). They contacted Wolfes and notified her that they were concerned by the content of the flyer and felt that the event was going to create issues for the club again. They were seeking information from Wolfes so that they could plan appropriate staffing for the event. Wolfes said she did not have the event scheduled and she did not advertise it.

On Friday **January 6<sup>th</sup>**, about 1820 hours, Lt. Knox spoke with Wolfes to follow-up with her on the event. She informed Knox that she located the individual who was advertising the Birthday Bash and spoke with him, she told him he must relocate the event for the following evening, which he did. I agreed to meet with Wolfes the following night at the club. There were no documented problems related to the club this night.

On Saturday **January 7<sup>th</sup>**, Lt. Knox met with Wolfes and noted the implementation of some of her procedural changes. He also noted another C.U.P violation, as her smoking area was in violation of PMC. Knox had a lengthy conversation with Wolfes regarding procedures for handling incidents such as fights, intoxicated persons and how security staff should interact with patrons. He encouraged her and her staff to call for police assistance at the earliest signs of a problem.

***12-00943 DUI:** Officer Kroutil stopped a female (24) from Desoto Texas, after she left Club Neo and traveled S/B on Hopyard Rd. in the N/B lanes. She failed FST's and elected to have a blood draw. Booked at SRJ.*

***12-00945 DUI:** Officer Pittl stopped a female (24) out of Stockton after she left Club Neo and made an unsafe turning movement. She failed FST's, registered a .14 BAC and was booked at SRJ*

On Friday **January 13<sup>th</sup>**, at 1910 hours, Lt. Knox spoke with Wolfes by phone to discuss suggestions for security plan changes or amendments and to see where she was with compliance to the previously identified C.U.P. violations. This conversation lasted approximately 30 minutes and included numerous suggestions, including upgrading their ID checker system. Lt. Knox had Officer Tujague go to the Sunshine Saloon to identify what type of ID capture system they utilized and upon receiving the information, called Wolfes back and provided her the Manufacturer information and model number which is used by them. Knox provided Wolfes the website information and looked at the different models while on the phone with Wolfes. Wolfes told Knox she would work on the amended security plan with the suggestions provided to her and resubmit to Knox before or upon his return on Wednesday January 18<sup>th</sup>.

On Saturday **January 14<sup>th</sup>**, a large scale fight broke out inside the club which insighted additional fights including as many as 100-200 patrons. The patrons fled outside the club and the fights continued. During the course of one fight in the north parking lot a 23 year old male was shot in the leg. Outside assistance was summoned and ultimately 39 officers responded to

Neo or to assist with policing the city while officers dealt with the shooting at Neo. Responding agencies included Livermore Police, Dublin Police, Alameda Sheriff's office and California Highway patrol. In addition, fire department personnel from LPFD and paramedics from Paramedics plus also responded to this scene. **PPD case 12-1965**

On Wednesday **January 18<sup>th</sup>**, at 1726 hours, Knox received an amended security plan via email from Wolfes' attorney, George Mull. An acknowledgement email was sent in reply. No other communication has come from Wolfes to Knox.

On Friday **January 20<sup>th</sup>**, the Director of Community Development issued an automatic suspension letter for NEO's conditional use permit. The letter was given to NEO's attorney George Mull. Mull and the city attorney's appeared in Federal Court and argued their points regarding a TRO blocking the automatic suspension of the C.U.P. The judge ruled in NEO's favor and NEO may remain open for business this weekend.

Officer Yee conveyed that one of the security guards for Neo told him that during the fight and shooting, he removed his security shirt and ran off to get away from the situation. I was also informed by Sgt. White of DPS that per an individual he knows that was present, said security started the fight when they struck a female patron in the face.

On Saturday **January 21<sup>st</sup>**, PPD completed an extensive operational order as a contingency plan if similar activities were to occur as previous Saturday weekends. The club was kept to low numbers, 158 per security staff count and NEO was also turning away potential patrons based upon their residence city (e.g., City of Richmond etc.) There were numerous security officers present, 29 stated by Neo management. Attorney George Mull was present at the club along with Wolfes and Aguilar. There were no noted problems and follow-up inspection of the property in the morning showed it was left clean.

On Thursday **January 26<sup>th</sup>**, Lt. Bretzing and Lt. Knox met with Wolfes at 1400 hours at PPD to discuss the security plan and proposed changes moving forward. Wolfes indicated she was going to bring in some new DJ's\performers and she intends to change the club format beginning February 17<sup>th</sup>. She indicated that the format on Friday nights would be salsa\salsa rock and they would be serving tacos during these events. She further indicated she would still be opening just Friday and Saturday nights. She is working on a Saturday format but did not want to comment on it yet as it was unconfirmed. Wolfes indicated she would provide a new business plan Monday or no later than mid-week the following week. She further indicated that her former manager (Sinbad) has been let go and that Pete Aguilar (security consultant) has been hired as the manager and will be present each night the club is open. She indicated that she is going to contract with established promoters to promote the club's new format. She conveyed that she received information that Karma (club in Dublin) may be responsible for the former promotions which she was unaware of and did not authorize. When asked about a commitment to occupancy reduction she stated that she could not commit to that, as that would be up to Randall Weil (the



plastic surgeon who Mull advises us is now the majority owner of the club). When asked if they would be committing to the recommendations sent to Julie Harryman via email by George Mull, she stated that those were intended as temporary fix until we met on January 30<sup>th</sup>. She said she does not welcome party buses but does not believe she can control their drop-offs but feels they will be an issue moving forward with the new format. She stated that she would purchase the new ID checking system which Lt. Knox recommended to her but had not done so as of yet. She stated her count system was based upon ticket sales and a clicker at the exit. She was asked to have two counters at the door (1 entry and 1 exit) so a count could be readily established when requested and she agreed to do so in support of tickets sales. Wolfes provided the name and phone number for her security provider and reiterated that they have been unable to get the video from the night of the shooting.

On Friday **January 27<sup>th</sup>** at 2000 hours, Jenny Wolfes called Lt. Knox and informed him that the club had more tables reserved than the typical Friday night and they would be a little busier than there typical 50-75 patrons. She indicated there would be some 49ers present, a local birthday group (2tables) and 2 tables from San Jose. At about 2330 hours Officer Sarasua met with Aguilar and requested the count. Aguilar estimated the total to be 125-150 patrons in the club. There were no noted problems this night.

On Saturday **January 28<sup>th</sup>** at 2330 hours, the crowd was reported to be 120. There was adequate security present who were visible both in the parking lot and inside the club. There was a party bus located parked in the south parking lot of the club. Sgt Fragomeli indicated that the parking lot was not adequately cleaned up and that a box containing empty "Blue Moon" beer bottles had been located in the lot the following morning and it was still present in the lot the following evening (January 29<sup>th</sup>)

On Monday **January 30<sup>th</sup>** at 1530 hours, City staff, including the City Manager and staff from PPD, Planning, and the City Attorney's Office met with Wolfes, her attorneys and Pete Aguilar and discussed proposed amendments to the operational plan and security plan. Both parties agreed to the majority of items but left several items open for further discussion. These items included occupancy number, hour for the discontinuation of alcoholic beverage service and lighting conditions.

On Friday **February 3<sup>rd</sup>**, officers reported about 15 cars in the parking lot this evening. Neo staff stated there were approximately 60 patrons in the club during the night. There were no documented problems this evening.

On Saturday **February 4<sup>th</sup>**, Lt. Knox and Sgt. Fragomeli conducted a walk-through of the club. Security consultant Aguilar stated there were 238 patrons in attendance during this evening. There were no documented problems this evening.

On Friday **February 10<sup>th</sup>**, Officer Niceley reported Neo staff stated there were 73 patrons in the club that evening at 0030 hours. There were no documented problems this evening.

On Saturday **February 11<sup>th</sup>**, officers reported that at 2320 hours Neo staff reported 133 patrons in the club. There were no problems related to the club documented this evening.

On Friday **February 17<sup>th</sup>**, Lieutenant Knox went to the club at 2345 hours and met with Pete Aguilar. This was the first night of the "new format" as proposed by Wolfes. The club advertised as "Glamour, Pleasanton's Premier Latin Night Club". Aguilar stated the patron count was 210.

**Friday, February 17, 2012**

*12-6699 647(f) PC: A female (Hussein) was contacted outside Club Neo after she was detained by security for stealing another customers jacket. The jacket was recovered and the victim didn't desire prosecution. Hussein was arrested for public intoxication and booked at SRJ.*

On Saturday **February 18<sup>th</sup>**, Officers reported at 0030 hrs. Neo reported 243 patrons had entered, 49 left and they were at 194 at that time. At closing, one patron was arrested for public intoxication after he was seen challenging 16-20 security guards to fight in the parking lot. (12-06882)

At 0530 hours, Officer Niceley located multiple plastic cups, beer bottles, trash and pile of vomit in the parking lot. Pictures were taken and downloaded into DIMS. 12-06893

**Saturday, February 18, 2012**

*12-06882 647(f) PC: Jabari White was arrested for 647(f) PC after he was seen attempting to challenge approximately 16-20 security guards in the parking lot of Neo. White was also found to have a no-bail 11352(a) H&S warrant for his arrest. Booked at SRJ.*

On Friday **February 24<sup>th</sup>** Officers reported 10 cars in the parking lot and only about 50 people in the club. No formal count was requested and there were no issues related to the club this night.

On Saturday **February 25<sup>th</sup>** Sgt. Fragomeli reported 120 patrons for the night and at 0015 hours there were 90 patrons in the club. There were no reported issues related to the club this night.

On Friday **March 2<sup>nd</sup>** Sgt. Leonardo reported Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 3<sup>rd</sup>** Sgt. Fragomeli reported that the count at Neo this evening around 1230 hours was 268 patrons. There were no incidents at the club, however, 1 DUI arrest was made of a patron who had been at the club.

**Saturday, March 3, 2012**



**12-08842 DUI:** At 0116 hours, Officer Yee conducted a traffic stop on a 23 year old female (insert name?). The driver was later arrested for 12500(a) VC and 23152(a) VC (.137 BAC). She stated she was drinking at Club Neo prior to the traffic stop.

On Friday **March 9<sup>th</sup>** Neo was closed for business. All lights were off and no club staff was present.

On Saturday **March 10<sup>th</sup>** Sgt. Fragomeli reported Neo was open for business. As of 0045 hours 63 patrons had entered the club and 52 departed. There were no reported problems related to the club this evening.

On Friday **March 16<sup>th</sup>** Neo was open for business. There were approximately 12 cars in the parking lot and not many patrons inside the club. No count was obtained this night and there were no problems associated with the club.

On Saturday **March 17<sup>th</sup>** Neo was open for business, at about 2315 hours the number of patrons in the business was 121. There were no reported problems related to the club this evening.

On Friday **March 30<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **March 31<sup>st</sup>** Neo was open for business. At 2345 hours the number of patrons in the business was 43. There were no problems related to the business.

On Friday **April 6<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **April 7<sup>th</sup>** Neo was open for business. At 0130 hours the number of patrons counted into the business for the night was 59. There were no reported problems related to the club this evening.

On Friday **April 13<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **April 14<sup>th</sup>** Neo was open for business. At 0030 hours, the number of patrons counted into the business for the night was 83.

At 2300 hours, Lt. Knox located four females in a car to the rear of the post office on Chabot drive and north of the Marriott Hotel. One of the females was out of the car urinating in the raised planter next to the post office dumpster enclosure. Officer Lewellyn issued one female a citation for PMC – urinating in public and cited another passenger out on an outstanding warrant. The driver of the car said they were looking for Club Neo but the one girl had to pee. (12-14422, citation PL237446)

On Friday **April 20<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **April 21st** Neo was open for business. At 2230 hours, there were approximately 20 cars parked in front of the business and the number of patrons was estimated to be less than 100. No count was obtained due to calls for service.

On Friday **April 27<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **April 28<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Friday **May 4<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **May 5<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Friday **May 11<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **May 12<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Friday **May 18<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **May 19<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Friday **May 25<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Saturday **May 26<sup>th</sup>** Neo was closed for business. All lights were off and no staff was present.

On Friday **June 1st** Neo was closed for business. All lights were off and no staff was present.

On Saturday **June 2nd** Neo was closed for business. All lights were off and no staff was present.

On Friday **June 8th** Neo was closed for business. All lights were off and no staff was present.

On Saturday **June 9th** Neo was closed for business. All lights were off and no staff was present.

On Friday **June 15th** Neo was closed for business. All lights were off and no staff was present.

On Saturday **June 16th** Neo was closed for business. All lights were off and no staff was present.

**\*\*No activity monitored from June 16, 2012 to February 1, 2013\*\***

## **EXHIBIT E**

### **Prior Approvals Information Packet**

- Exhibit E-1 Excerpt from the Minutes of the April 3, 2012 City Council Meeting:
- Exhibit E-2 Letter denying Case UP-90-43/PCUP-273, dated April 5, 2012
- Exhibit E-3 City Council Agenda Report, dated April 3, 2012, including the following attachments:
1. Draft City Council Resolution with Exhibit A, Recommended Conditions of Approval
  2. Appeal Statement from Mr. Mull, dated February 23, 2012
  3. Excerpt of the Planning Commission Meeting Minutes, dated February 8, 2012
  4. Police Activity Overview for Club NEO prepared by Police Lt. Knox for October 1, 2011 through March 17, 2012
  5. February 8, 2012 Planning Commission Staff Report, with the following:
    - A. Draft Modified Conditions of Approval
    - B. Excerpt of the Minutes of the August 25, 2010 Planning Commission Meeting for PCUP-273
    - C. Excerpt of the Minutes of the October 10, 1990 Planning Commission Meeting for UP-90-43
    - D. Planning Commission Resolution No. PC-2010-18 approving PCUP-273
    - E. Planning Commission Resolution No. PC-90-93 approving UP-90-43
    - F. Planning Commission staff report for PCUP-273
    - G. Planning Commission staff report for UP-90-43
    - H. Notice of Violation letter dated December 21, 2011, from the Planning Division
    - I. Police Activity Overview for Club NEO prepared by Police Lt. Knox for October 1, 2011 to January 26, 2012
    - J. Previous approvals for Teen Night (Information Packet)
    - K. Public Comments
    - L. Location and Noticing Maps
  6. Planning Commission Resolution adopted on February 8, 2012

9. **Public Hearing:** UP-90-43/PCUP-273, George Mull (Appellant) – Consider an appeal of a Planning Commission decision modifying the existing Conditional Use Permits for the operation of Club Neo located at 4825 Hopyard Road, Suite F10

Community Development Director Dolan presented the staff report, stating that Club Neo occupies approximately 10,750 square feet in Gateway Square on the corner of Stoneridge Drive and Chabot Drive. He reviewed site maps and floor plans, noting that while the facility has a Hopyard Drive address, no entrances or outdoor areas face Hopyard. The facility consists primarily of two bar areas, a VIP area, and office and food preparation areas.

The City originally approved a nightclub use at this location in 1990, with occupancy of 643. In 2010, the City processed and approved an application to increase total occupancy to 812 persons based on the successful history of this use at the location and the new operator's extensive experience in

managing other nightclubs. The expanded use was also supported by Hacienda Business Park management.

Two incidents in recent months resulted in several public safety and general welfare issues that caused staff to question whether the findings made to approve the Conditional Use Permit (CUP) were appropriate. In responding to the incidents, staff also uncovered several violations of the CUP's conditions of approval. Mr. Dolan described the incidents of December 17 & 18, 2011 and January 14, 2012, both of which required police assistance from neighboring communities and the latter of which resulted in the shooting of a club patron.

Mayor Hosterman asked whether it would be a fair assessment that the terms and conditions of this particular use have led to more incidents requiring police presence than anything Pleasanton has experienced in the past.

Police Chief Spiller confirmed. He said that not only is this uncommon for establishments in the Pleasanton community, the calls for service are inordinate in terms of managing public safety at this establishment under prior names and operators.

Mr. Dolan reviewed the points of noncompliance, based on the following conditions of approval: Good Neighbor Policy; Training for Intervention Procedures (TIPS) – some individuals were not currently, or had never been, certified; Security Plan – despite multiple requests, the operator failed to submit an amended security plan for review by the police department until after the reported incidents; and that the operator monitor adjacent areas for peace and cleanliness

He reviewed a timeline of key events, beginning with approval of the application in mid-2010 before the facility opened under the new operator in September 2010. Immediately following the January 2012 incident, staff issued a letter suspending the club's CUP as was authorized in the original approval. The operator challenged the suspension in federal court and the judge ruled in favor of the club based on the City's failure to hold a public hearing to evaluate the situation. The Planning Commission subsequently heard the issue at a public hearing on February 8, 2012 and ultimately voted to change certain conditions of approval.

After much discussion between staff and the Police Department, it was determined that the City is unable to provide the resources for any more than 300 patrons at this particular facility. The maximum occupancy was subsequently reduced to 300 with the caveat that the club could request an increase if it complied with all conditions of approval, obtained positive recommendations from the Chief of Police and Director of Community Development, and operated without incident for 30 days. The Commission also added conditions requiring utilization of an ID scanner at the club entrance, visible exterior posting of the club's dress code, and restrictions and protocols for closing the establishments.

The Commission considered staff's recommendation as well as revocation of the permit at its hearing and ultimately voted unanimously on what is before the Council tonight. The club has implemented many of the conditions of approval and maintained an ongoing dialogue with the Police Department since the Planning Commission hearing. Staff believes the outcome of the public hearing to be reasonable and recommends that the Council deny the appeal and uphold the Planning Commission's decision to revise the conditions of approval.

Councilmember Cook-Kallio reported visiting the club with Lt. Knox the previous Saturday evening. She noted a number of patrons were turned away at the door because of their dress, some of whom walked away frustrated. She wondered how many patrons might be turned away, who have no means of leaving the premises and subsequently loiter.

Chief Spiller could not say but noted that the club's security staff is responsible for addressing loitering, whatever the reason.

Councilmember Thorne asked whether any other clubs or bars in Pleasanton have a similar occupancy and if the Police Department is confident in its ability to address any situation that could arise with a crowd of 300.

Chief Spiller estimated this to be the largest facility, in terms of both size and occupancy, but did feel confident that the Department's resources and mutual aid protocols would be sufficient.

Councilmember Thorne questioned the reasoning behind the 30-day period.

Mr. Dolan said staff would be open to any timeframe, which would begin following a decision by the Council.

Mayor Hosterman opened the public hearing.

Gene Havrilenko, Property Manager of Gateway Square Shopping Center, said that the effects of the Commission's decision reach beyond the club's operator to the ownership group. Since reducing the occupancy from 812 to 300 persons, the operator has made no rent payments and indicated that there are not likely to be any forthcoming. Club Neo occupies 10,230 of the center's 87,000 square feet, making this a significant impact on the center's revenue. He asked that the Council reconsider the Commission's recommendation and compromise with occupancy of 500 or 550.

George Mull, Diamond Pleasanton Enterprise, Inc., appellant, disagreed with staff's allegations that the club has violated its conditions of approval. The club has operated since September 2010 without issue, until these two isolated incidents in recent months. Club staff has worked with the City and Police Department to mitigate impacts. He attributed the incidents, as well as the City's decision to reduce occupancy, to the significant increase in African American patrons since November 2011. He cautioned the Council that upholding the Commission's decision places both him and the City at risk of violating the Civil Rights Act of 1964.

Mayor Hosterman cautioned Mr. Mull to be careful in his characterizations.

Mr. Mull said the City's racially motivated attitude is anti-business, and anti-development. The operators' \$500,000 investment in the club is at risk, as the club can simply not operate in this size space with such a low occupancy. He asked that they reach some sort of compromise on a larger and more viable occupancy.

Mayor Hosterman closed the public hearing. She noted that the appellant has already sued the City and cautioned the Council not to respond to any of Mr. Mull's comments. The Council's duty in this hearing is to respond to what are clearly significant health and safety issues. She moved the staff recommendation, making it clear that the operator is welcome to request a change to the conditions in the future, following a period of positive performance.

Councilmember Thorne said he recently rode with the Police Department on a Saturday night and was startled by the amount of activity. He doubted that the City had the resources to address any use with an occupancy of 800. He said he would prefer a minimum review period of 60 days, but could support 30.

Councilmember Cook-Kallio said she read the report thoroughly and was struck by the number of incidences (nine or ten) that had occurred over the course of several months. Staff's narrative makes it clear that the business owner and Police Department were aware of the issue. She asked if the operator had ever turned over security footage from the night of the shooting.

Chief Spiller did not believe so and cited damage to the operator's surveillance equipment.

Councilmember Cook-Kallio appreciated that Club Neo is first and foremost a business, but said the primary concern of the Council is the health and welfare of Pleasanton citizens and visitors. She expressed her concern over the nature and number of incidents within a relatively short period, as well as the number of times that mutual aid was required.

Councilmember McGovern said she would have supported revocation of the CUP. She shared strong concerns with this kind of reckless and dangerous activity occurring anywhere in Pleasanton, let alone within 600 feet of a neighborhood. She attributed the club's reduced patronage to the public's concern for their safety, not the lowered occupancy. She referred to the staff report, which cited examples of inebriated patrons being removed from the club and placed in their cars only to find out that they had later vomited. She expressed significant concern with the manner in which people who clearly cannot care for themselves are treated and asked what sort of laws might regulate this.

Chief Spiller said shares the same concern, and while the State Alcohol and Beverage Commission governs the serving of obviously intoxicated patrons and the penal code addresses those who meet the elements of "drunk in public," there is nothing that speaks specifically to this. The Police Department, in working with the operator, would like to see security partner more effectively with the department, utilizing their resources for the type of situation described.

Councilmember McGovern reiterated her concern and hoped the amended security plan would include a protocol for addressing patrons in such a state. She said she would still tend to lean towards revocation and would request a 90-day waiting period at the minimum.

Councilmember Thorne and Councilmember Cook-Kallio said they could support 90 days.

Mayor Hosterman cautioned that one of the issues is balancing the health and safety of the public with the viability of the business. In all fairness, she felt it appropriate to give them the opportunity to request an increase in 30 days. Staff and the Police Department will closely monitor the situation in the meantime and if they consider the use to pose a risk to the community at any point in time, the Council will be notified.

Councilmember Cook-Kallio asked what the consequences of another incident within the 30-day period would be. Mr. Dolan said they would not likely be able to apply for expanded occupancy. As currently written, the eligibility to make application would be contingent upon a positive recommendation by both himself and Chief Spiller.

Councilmember McGovern said she would vote "no," favoring revocation instead.

**MOTION:** It was m/s, Hosterman/Thorne, to waive full reading and adopt **Resolution No. 12-515** to deny the appeal and uphold the Planning Commission's decision to modify the conditions of approval. Motion carried by the following vote:

Ayes: Councilmembers Cook-Kallio, Thorne, Mayor Hosterman  
Noes: Councilmember McGovern  
Absent: Councilmember Sullivan



April 5, 2012

George W.M. Mull  
1415 L Street, Suite 1000  
Sacramento, CA 95814

Dear Mr. Mull:

**SUBJECT: UP-90-43/PCUP-273**

At its meeting of April 3, 2012, the City Council held a public hearing regarding your appeal of the Planning Commission's decision to modify the existing Conditional Use Permit for the operation of Club Neo located at 4825 Hopyard Road, Suite F10. The Council denied your appeal, thereby upholding the Planning Commission's decision to modifying the Conditions of Approval for Case UP-90-43/PCUP-273, subject to the attached Conditions of Approval on Exhibit A of the agenda report.

This action is effective immediately.

If you have any questions concerning this matter, please feel free to call.

Sincerely,

Janice Stern  
Planning Manager

- c: Jenny Wolfes, Club Neo, 4824 Hopyard Road, Suite F-10, Pleasanton, CA 94588
- James Paxson, Hacienda Owners Assn., 4473 Willow Road #105, Pleasanton, CA 94588
- Chief Dave Spiller, Police Department



**EXHIBIT A**  
**MODIFIED CONDITIONS OF APPROVAL**  
**UP-90-43/ PCUP-273, Diamond Pleasanton Enterprise**  
**4825 Hopyard Road**  
**April 3, 2012**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If the applicant desires additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, or modifications to these conditions, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. These Conditions of Approval shall supersede all prior Conditions of Approval (Resolutions Nos. PC-2010-18 and PC-90-93).
4. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request by Pleasanton Police Department personnel.
5. The club shall be limited to a maximum of 300 patrons. (This number does not include nightclub employees and/or security staff.) If there are no incidents similar to those that occurred on Dec. 17/18 or Jan 14/15 over the next 30 days, and the Club complies with its Conditions of Approval, and the Chief of Police and Community Development Director recommend increasing the number of patrons, Planning staff will schedule a public hearing for the Planning Commission to consider increasing the maximum number of patrons.
6. The City does not require that the nightclub have a dress code, however, if applicant chooses to have a dress code, then the following shall be required: By March 2, 2012, the operator shall post the dress code on the club's website and via signage on the subject property so that patrons will be able to view the dress code upon arrival and prior to waiting in line to enter the club. The design and location of said

signage shall be submitted for review and approval by the Director of Community Development prior to installation.

7. By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as he/she enters the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.
8. The operator shall stop serving alcohol at 1:00 a.m., and all alcoholic beverages shall be collected by 1:30 a.m. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2:00 a.m.
9. Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club, and all the interior club lights shall be turned on by 1:30 a.m.
10. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs are installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
11. The business owner/operator shall designate a smoking area no less than 20 feet from any door or opening. Said area shall be provided with two (2) portable ashtrays and shall be monitored and kept clean.
12. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
13. If the operation of this Use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director of Community Development, this Conditional Use Permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
14. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use or for the removal of unruly patrons only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the club shall remain closed during all hours of operation shall be placed by all doors.
15. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.

16. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
17. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
18. Prior to operation, the club's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police staff and a recommended security force plan. This plan shall be subject to the review and approval of the Chief of Police and shall minimally include:
  - a. Number of security personnel the operator intends to have on-site in relation to the number of patrons.
  - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where persons are assigned, e.g., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.
  - c. All security staff shall wear a distinctive uniform identifying them as security officers.
  - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the State at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request by Pleasanton Police Department personnel.
  - e. All patrons shall be searched through full pat-down search by gender-appropriate personnel or through use of metal detector.
  - f. A plan for staging of patrons in queue for admission.
  - g. Once the club is filled to capacity, all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
  - h. A patron-removal plan will include the use of rear exit doors when having to deal with unruly patrons.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to ensure that it is working properly, and

the videos shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.

- j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
  - k. All club security staff shall be provided with, be trained in the use of, and utilize state-of-the-art communication devices, such as hand-held radios or headsets.
  - l. The club's security plan shall include language whereby the club commits to maintaining a direct line of communication with the Pleasanton Police Department regarding all security-related issues.
19. Private parties held on the club premises and catering services provided by the club shall be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
20. The limousine associated with the club and provided for its customers as a special service shall not be parked on-site during hours when the club is not open for business to the general public.
21. If patrons of the club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 1107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
22. This Conditional Use Permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
23. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

24. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and the Chief of Police.
25. Within 45 days of the original hire date, employees who serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the club, and re-training shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.
26. All activities shall comply with Chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
27. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

## **II. Standard Conditions:**

### **Planning Division**

28. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
29. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. By 6:00 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square Shopping Center and removed and/or cleaned up any litter, vomit, etc.
30. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify, and hold harmless the City, its City Council, its officers, boards, commissions, employees, and agents from and against any claim (including claims for attorneys' fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

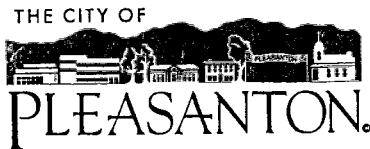
### **III. Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

#### **Building Division**

31. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
32. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshal to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

*{end}*

**CITY COUNCIL AGENDA REPORT****9**

April 3, 2012  
Community Development  
Planning Division

**TITLE: UP-90-43/PCUP-273, CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL TO MODIFY THE EXISTING CONDITIONAL USE PERMITS FOR THE OPERATION OF CLUB NEO, LOCATED AT 4825 HOPYARD ROAD**

**SUMMARY**

On February 8, 2012 the Planning Commission considered a possible modification of the existing Conditions of Approval or revocation of a Conditional Use Permit for the operation of the nightclub, Club NEO. Based on incidents that occurred at the club in December 2011 and January 2012, involving large crowds of persons fighting, a shooting incident, and other criminal activities, the Planning Commission approved a reduction in the nightclub's occupancy to allow a maximum of 300 patrons plus club staff. Previously, the club's conditions of approval limited the total occupancy to 812 persons (patrons and club employees combined). The Planning Commission also modified other conditions of approval related to security, hours for serving alcohol, etc.

On February 23, the nightclub's attorney filed an appeal of the Planning Commission's decision (See Attachment 2) which challenges the Commission's decision to limit the number of nightclub patrons to 300.

**PLANNING COMMISSION ACTION**

Approved the modified Conditions of Approval by a 5-0 vote.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached draft resolution denying the appeal, thereby upholding the Planning Commission's approval to modify the Conditions of Approval for Case No. PCUP-273 as listed in Attachment 1.

**FINANCIAL STATEMENT**

No fiscal impact on the City is anticipated from modification of the conditions of approval.

## **PROJECT DESCRIPTION AND BACKGROUND**

On August 25, 2010, Diamond Pleasanton Enterprise, represented by Ms. Wolfes, received approval from the Planning Commission for modifications to the existing Use Permit to increase occupancy and to allow outdoor dining (PCUP-273). Diamond Pleasanton Enterprise renamed the club Status, and reopened as Club NEO on October 1, 2011. The applicant made the modifications to the interior to increase the maximum occupancy from the 643 to 812 (patrons and employees combined) and added the outdoor patio area with a barrier.

In August 2011, Diamond Pleasanton Enterprise filed an application to further modify the existing CUP to allow activities for patrons under the age of 21 years old (Case P11-0647), however, the processing of this application has been postponed at the request of the applicant.

### Recent Incidents requiring Police Intervention

Several incidents occurred at the end of 2011 and into the first part of 2012 that led staff to bring the CUP to the Planning Commission to consider possible modifications to the existing Conditions of Approval and/or a revocation of the Use Permit. See Attachment 4 for a summary of activity prepared by the Pleasanton Police Department for the Club between October 1, 2011 and March 17, 2012.

Although the overview of Police activity provides a more complete summary of recent incidents requiring police intervention, two incidents stand out. On December 17 & 18, 2011, the Pleasanton Police Department (PPD) encountered a large crowd of people (estimated at 600 to 700 people) loitering in the parking lot and engaging in fights, "sideshow" vehicle activity (i.e. reckless driving in the parking lot), littering of alcohol bottles and other items. The incident resulted in the allocation of all available officers from PPD and PPD had to request mutual aid from surrounding law enforcement agencies (i.e., the City of Dublin Police / Alameda County Sheriff's Department). After law enforcement managed to get patrons to finally leave the parking lot, PPD dispatch received a call that an estimated 100 persons had congregated at the Shell gas station on Hopyard Road near I-580 and were shoplifting items from the convenience store.

On December 20, 2011, the City called a meeting with Ms. Wolfes and her head of security. Members of the Police Department, the Planning Division, and the City Attorney's office attended the meeting to discuss the events of December 17/18 and prior incidents at the Club. The Planning Division discussed the Conditions of Approval for the applicant's Conditional Use Permit and noted the violations of the conditions (See Attachment 5).

On January 14 & 15, 2012, another incident similar to the one that occurred on December 17 & 18, 2011, took place at the establishment, including numerous large fights that started inside the club and that spilled out into the parking lot. Within minutes of the crowd exiting the club, the fights escalated and a shooting occurred with a patron being shot in the leg in front of Kinder's restaurant. The Pleasanton Police Department had to provide 15 police officers at the club that night and call in backup assistance from



Livermore (sent 8 officers), Dublin (sent 6 officers), Alameda County (sent 3 officers), and the California Highway Patrol (sent 7 officers). Additionally, the Livermore Pleasanton Fire Department and an ambulance had to respond to the Club to care for the shooting victim.

Given the melee that erupted and subsequent shooting, on January 20, the City issued a letter automatically suspending the club's conditional use permit. The Club's attorney filed a Temporary Restraining Order (TRO) in federal court to prevent the City from being able to suspend the Club's CUP absent a hearing. The federal court judge ruled in favor of the club, and set aside the City's suspension of the CUP absent a hearing. This ruling does not affect the City's ability to hold a hearing and consider modifying the Conditions of Approval or revoking the club's conditional use permit via a public hearing process. As stated in condition #9 of the original Conditions of Approval, the Director of Community Development may submit the CUP to the Planning Commission for review at a public hearing if the operation of the use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors. Given the incidents detailed above, the Director submitted the CUP to the Planning Commission for consideration at its February 8, 2012 meeting.

#### Planning Commission Hearing

The Planning Commission report outlined options for the Commission's consideration:

1. Revoke the Use Permit,
2. Modify the Conditions of Approval, including limiting the patrons to 250.
3. Modify the Conditions of Approval, including limiting the patrons to 300.
4. Modify the Conditions of Approval, including limiting the patrons to 300, but if there are no incidents (i.e., significant incidents requiring police involvement) over the next 30 days and the club complies with the conditions of approval, planning staff will schedule a meeting for the Planning Commission to consider increasing the number of patrons.

Please see Attachment 5, Planning Commission staff report, for details regarding the various options to modify the Conditions of Approval including limiting the occupancy and imposing other operating requirements related to improving security. During the Planning Commission meeting, the Commissioners took public comment from George Mull (attorney for Club Neo) and Chief Spiller.

With respect to the capacity, Chief Spiller stated that the incidents that occurred were directly related to the numbers of attendees at the club. Chief Spiller stated that an occupancy of around 300 patrons is manageable for the business and for the Pleasanton Police Department (PPD), and is a manageable number of patrons at the end of the evening when the club is cleared out, while also leaving the PPD with the capacity to address other calls in the community.

As stated in the Planning Commission meeting minutes, Chief Spiller stated that *"while nightclubs and businesses like this can impact law enforcement resources, which is not at all unusual, the incidents that occurred when they were in the 500/600/700 capacity*

*actually significantly crippled the Police Department's ability to respond to other calls for service.*" He also restated that the City relied on mutual aid protocols to not only manage Pleasanton's calls for service, but to get appropriate resources to this establishment. Chief Spiller believes, based on his experience, and in having worked very closely with the management staff that has been responsible for this project, that 300 or less patrons is the appropriate number in terms of the City's ability to manage providing standard public safety services to the community and supporting this operation at the same time.

After lengthy discussion regarding the appropriate occupancy to allow, the Planning Commission voted 5 to 0 to limit the occupancy of the business to 300 patrons (not including nightclub staff), but with the possibility of returning to the Commission to increase the maximum number if: 1) there were no incidents requiring police involvement over the next 30 days; 2) the Club complies with all Conditions of Approval; and 3) a positive recommendation is provided by the Chief of Police and the Director of Community Development prior to scheduling a hearing before the Planning Commission.

The Planning Commission also modified the existing Conditions of Approval to strengthen the security aspects of the business. Such conditions include utilization of an ID scanner at the entry, restrictions and protocols for closing the establishment in a manner that transitions the patrons out of the establishment starting at 1:00a.m. with a cleared parking lot by 2:00 a.m., the use of an approved Security Force Plan, and a posting of the club's dress code so patrons could see the dress code prior to waiting in line. The Conditions of Approval also addressed what needed to be included in the club's Security Force Plan, such as the number of security personnel on-site, job assignments, uniform specifications, training/registration/certification requirements, patron screening and entry protocols (e.g. pat-downs, queue staging, and capacity management), specifications for handling patron-removal, requirements for a video surveillance system and communication devices, and expectations for communication of security-related issues between the Pleasanton Police Department and the establishment.

The Planning Commission's meeting minutes can be found in Attachment 3 and the approved Resolution and modified conditions of approval can be found in Attachment 6.

In response to the Planning Commission's action, Mr. Mull, the attorney for the nightclub, filed an appeal of the modified Conditions of Approval. In his appeal, Mull objects to a condition that would limit the patrons to 300 and argues that "there is not a connection between the number of patrons and any problems that occurred with the patrons at closing time." He further argues that the occupancy reduction to 300 patrons "imposes a severe hardship on the operator and causes it to be impractical to continue operating at the location."

## **DISCUSSION**

The Pleasanton Police Department has provided an overview of activity at the nightclub from October 1, 2011 through the weekend of March 17, 2012. (See Attachment 4). The Overview provided by PPD, demonstrates that the nightclub and its security were unable to handle the very large crowds on December 17/18 and then again on January 14/15. Moreover, the fights and shooting from January 14/15 occurred *after* the City had met with the nightclub owner (and her security head) and discussed what steps the club could take to prevent an incident from occurring like the one in December. Although the club was given warning and an opportunity to take steps following the December incidents, it is clear that the nightclub is incapable of handling large size crowds. For this reason, the Chief of Police recommended that the Planning Commission modify the conditions of approval to reduce the patronage to 300. The Commission agreed with the Police Chief and approved a patron limit of 300 but also voted to have staff reschedule a hearing for the Commission to consider increasing the patron number if there were no incidents for the next 30 days, the club complied with its conditions of approval, and the Chief of Police and the Community Development Director could support an increase in numbers. Because the applicant appealed the Planning Commission's decision, this item was required to go to the City Council for consideration. As a result of the appeal, staff could not consider scheduling a hearing for the Planning Commission to consider increasing the number of patrons.

Staff continues to support a condition that limits the patrons to a number considerably lower than what was approved originally, i.e., below the 814 occupancy for patrons and employees combined. As shown in Attachment 4 (PPD's Overview of club activity), there have been no significant incidents at the nightclub in recent weeks that have required extraordinary police presence or involvement. The Chief of Police and planning staff believe that the reason for this is that the nightclub attendance levels have been significantly lower than the nights when the fighting and other criminal activity occurred (Dec 17/18 and Jan 14/15). In recent weeks, the Friday night patronage has been around 100 patrons (or the club has chosen to close several Friday nights) and on Saturday night, patronage has been around 150 patrons. (The Planning Commission's modification of the condition to limit the club's patrons to 300 persons never went into effect as the applicant appealed the decision, thus, the decline in patronage is unrelated to the Planning Commission's decision.)

## **PUBLIC NOTICE**

Notices regarding this appeal and related public hearing were mailed to the surrounding property owners and tenants within a 1,000-foot radius of the project site. At the time this report was prepared staff has not received any additional comments or concerns. Staff has provided the noticing map as Exhibit M for the Council's reference.

### Hacienda Business Park

The Hacienda Business Park Association has not provided any additional comments in regards to the Planning Commission's modified Conditions of Approval. However, the Association has previously stated that the modifications of the Conditions of Approval for the Conditional Use Permit as proposed and approved are, in its opinion, consistent

with or less intensive than the operations that were previously approved by the Association.

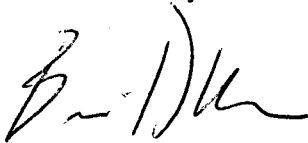
### **ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

### **CONCLUSION**

The applicant filed an appeal to contest the Planning Commission's decision to limit the number of patrons to 300. For the reasons stated above, staff continues to support a condition that limits the patrons to a number considerably lower than what was approved originally, i.e., below the 814 occupancy for patrons and employees combined.

Submitted by:



Brian Dolan  
Director of Community Development

Approved by:



Nelson Fialho  
City Manager

### Attachments:

1. Draft City Council Resolution with Exhibit A, Recommended Conditions of Approval
2. Appeal Statement from Mr. Mull, dated "February 23, 2012"
3. Excerpt of the Planning Commission meeting minutes, dated February 8, 2012
4. Police Activity Overview for Club NEO prepared by Police Lt. Knox for October 1, 2011 through March 17, 2012
5. February 8, 2012, Planning Commission Staff Report with the following:

Exhibit A: Draft Modified Conditions of Approval

Exhibit B: Excerpts of the minutes of the August 25, 2010, Planning Commission Meeting for PCUP-273

Exhibit C: Excerpts of the minutes of the October 10, 1990, Planning Commission Meeting for UP-90-43

Exhibit D: Planning Commission Resolution No. PC-2010-18 approving PCUP-273

Exhibit E: Planning Commission Resolution No. PC-90-93 approving UP-90-43

Exhibit F: Planning Commission staff report for PCUP-273

- Exhibit G: Planning Commission staff report for UP-90-43
  - Exhibit H: Notice of Violation letter dated December 21, 2011, from the Planning Division
  - Exhibit I: Police Activity Overview for Club NEO prepared by Police Lieutenant Knox for October 1, 2011, to January 26, 2012
  - Exhibit J: Previous approvals for Teen Night (Information Packet)
  - Exhibit K: Public Comments
  - Exhibit L: Location Map
  - Exhibit M: Noticing Map
6. Planning Commission Resolution adopted on February 8, 2012

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLEASANTON DENYING THE APPEAL THEREBY UPHOLDING THE PLANNING COMMISSION APPROVAL OF THE MODIFIED CONDITIONS OF APPROVAL FOR CLUB NEO (UP-90-43/PCUP-273).**

**WHEREAS**, the City of Pleasanton initiated the review and consideration of possible modification to, or revocation of, an approved Conditional Use Permit for Club NEO at 4825 Hopyard Avenue.

**WHEREAS**, zoning for the property is PUD-I/C-O (Planned Unit Development-Industrial/Commercial – Office) District; and

**WHEREAS**, modifications to existing use permits are categorically exempt from the requirements of the California Environmental Quality Act (CEQA); and

**WHEREAS**, at its duly noticed public hearing on February 8, 2012, the Planning Commission, after having considered all public testimony, relevant exhibits, and recommendations of City staff concerning this matter, determined that the Conditions of Approval for the nightclub's conditional use permit needed to be modified based on incidents that occurred at the nightclub on December 17/18, 2011 and January 14/15, 2012 which included large crowds of patrons fighting and a patron being shot, and various other illegal activities that required one hundred percent of the Pleasanton Police Department's resources as well as back up law enforcement from other agencies.

**WHEREAS**, within the time specified by the Pleasanton Municipal Code, George Mull, the attorney for the operator, submitted an appeal of the decision of the Planning Commission contesting modification to the condition of approval decreasing the patronage to 300 (not including nightclub staff); and

**WHEREAS**, at its meeting of April 3, 2012, the City Council received a report from the Director of Community Development, together with a copy of the staff report to the Planning Commission, regarding this matter; and

**WHEREAS**, the City Council held a noticed public hearing on April 3, 2012, at which time the appellant and any other members of the public were offered an opportunity to present evidence regarding this appeal; and

**WHEREAS**, after testimony at the public hearing and a review of the materials presented, the City Council determined that a modified conditional use permit is appropriate for the site and is consistent with the zoning regulations for the zoning district of the property.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES RESOLVE, DECLARE, DETERMINE, AND ORDER THE FOLLOWING:**

**SECTION 1.** Denies the appeal, thereby upholding the Planning Commission's decision to modify the conditional use permit for the property at 4825 Hopyard Road, subject to the conditions shown on Exhibit A, attached hereto and made a part of this case by reference.

**SECTION 2.** The appellants shall be given notice of this action and informed that they have 90 days from the date of this resolution in which to file a court challenge

**SECTION 3.** This resolution shall become effective immediately upon its passage and adoption.

I HEREBY CERTIFY THAT THE FOREGOING WAS DULY AND REGULARLY ADOPTED BY THE CITY COUNCIL OF THE CITY OF PLEASANTON, AT A MEETING HELD ON APRIL 3, 2012, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jonathan Lowell, City Attorney

**EXHIBIT A**  
**MODIFIED CONDITIONS OF APPROVAL**  
**UP-90-43/ PCUP-273, Diamond Pleasanton Enterprise**  
**4825 Hopyard Road**  
**February 08, 2012**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If the applicant desires additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, or modifications to these conditions, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. These Conditions of Approval shall supersede all prior Conditions of Approval (Resolutions Nos. PC-2010-18 and PC-90-93).
4. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request by Pleasanton Police Department personnel.
5. The club shall be limited to a maximum of 300 patrons. (This number does not include nightclub employees and/or security staff.) If there are no incidents similar to those that occurred on Dec. 17/18 or Jan 14/15 over the next 30 days, and the Club complies with its Conditions of Approval, and the Chief of Police and Community Development Director recommend increasing the number of patrons, Planning staff will schedule a public hearing for the Planning Commission to consider increasing the maximum number of patrons.
6. The City does not require that the nightclub have a dress code, however, if applicant chooses to have a dress code, then the following shall be required: By March 2, 2012, the operator shall post the dress code on the club's website and via signage on the subject property so that patrons will be able to view the dress code upon arrival and prior to waiting in line to enter the club. The design and location of said



signage shall be submitted for review and approval by the Director of Community Development prior to installation.

7. By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as he/she enters the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.
8. The operator shall stop serving alcohol at 1:00 a.m., and all alcoholic beverages shall be collected by 1:30 a.m. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2:00 a.m.
9. Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club, and all the interior club lights shall be turned on by 1:30 a.m.
10. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs are installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
11. The business owner/operator shall designate a smoking area no less than 20 feet from any door or opening. Said area shall be provided with two (2) portable ashtrays and shall be monitored and kept clean.
12. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
13. If the operation of this Use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director of Community Development, this Conditional Use Permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
14. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use or for the removal of unruly patrons only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the club shall remain closed during all hours of operation shall be placed by all doors.
15. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.

16. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
17. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
18. Prior to operation, the club's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police staff and a recommended security force plan. This plan shall be subject to the review and approval of the Chief of Police and shall minimally include:
  - a. Number of security personnel the operator intends to have on-site in relation to the number of patrons.
  - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where persons are assigned, e.g., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.
  - c. All security staff shall wear a distinctive uniform identifying them as security officers.
  - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the State at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request by Pleasanton Police Department personnel.
  - e. All patrons shall be searched through full pat-down search by gender-appropriate personnel or through use of metal detector.
  - f. A plan for staging of patrons in queue for admission.
  - g. Once the club is filled to capacity, all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
  - h. A patron-removal plan will include the use of rear exit doors when having to deal with unruly patrons.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to ensure that it is working properly, and

the videos shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.

- j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
  - k. All club security staff shall be provided with, be trained in the use of, and utilize state-of-the-art communication devices, such as hand-held radios or headsets.
  - l. The club's security plan shall include language whereby the club commits to maintaining a direct line of communication with the Pleasanton Police Department regarding all security-related issues.
19. Private parties held on the club premises and catering services provided by the club shall be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
20. The limousine associated with the club and provided for its customers as a special service shall not be parked on-site during hours when the club is not open for business to the general public.
21. If patrons of the club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 1107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
22. This Conditional Use Permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
23. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

24. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and the Chief of Police.
25. Within 45 days of the original hire date, employees who serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the club, and re-training shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.
26. All activities shall comply with Chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
27. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

## **II. Standard Conditions:**

### **Planning Division**

28. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
29. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. By 6:00 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square Shopping Center and removed and/or cleaned up any litter, vomit, etc.
30. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify, and hold harmless the City, its City Council, its officers, boards, commissions, employees, and agents from and against any claim (including claims for attorneys' fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

## **III. Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part*

*of this list. The following items are provided for the purpose of highlighting key requirements.*

## **Building Division**

31. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
32. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshal to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

Law Office of  
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February 23, 2012

Karen Diaz, City Clerk  
City of Pleasanton  
123 Main Street  
Pleasanton, CA 94566

Re: Appeal of Planning Commission action to modify Conditional Use Permits UP-90-43 and PCUP-273

Dear Ms. Diaz,

Pursuant to Pleasanton Municipal code section 18.124.090, Diamond Pleasanton Enterprise, Inc. hereby appeals the action of the Planning Commission taken at its meeting of February 8, 2012, modifying the conditions of approval pertaining to Conditional Use Permits (UP-90-43 and PCUP-273) for the operation of Club neo located at 4825 Hopyard Road.

The Planning Commission made several modifications to the Conditional Use Permit. The operator is filing this appeal to contest the provision at paragraph 4 providing that "The club shall be limited to a maximum of 300 patrons."

Club Neo has undergone a change in format that will result in a change in the make-up of its patrons. It is the operator's contention that the problems that were associated with the club for several months have now been addressed and are no longer an issue.

Limiting the maximum number of patrons to 300 imposes a severe hardship on the operator and causes it to be impractical to continue operating at the location. The approved fire code occupancy for the club is 812. Imposing a new maximum occupancy of 300 constitutes a 63% reduction in the number of patrons allowed.

At the appeal, operator requests that it be allowed to present testimony regarding the current club operations. The basis of this appeal is that there is not a connection between the number of patrons and any problems that occurred with the patrons at closing time. The operator contends that it was an abuse of discretion to reduce the allowed number of patrons by 63%,

Operator also contends that the unbridled discretion afforded city staff, the planning commission and the city council render the conditional use permit scheme unconstitutional as it applies to entertainment activities protected by the First Amendment.

Please contact me with any questions and inform me of the date set for hearing on this appeal before the City Council.

Very truly yours,

//s//

George W.M. Mull  
Attorney for Diamond Pleasanton Enterprise, Inc.



**PCUP-273/UP-90-43, Diamond Pleasanton Enterprises**

**Consideration of a possible modification of conditions of approval or revocation of a Conditional Use Permit for the operation of Club Neo located at 4825 Hopyard Road. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.**

Commissioner O'Connor recused himself due to a conflict of interest.

Rosalind Rondash presented the staff report and described the background, scope, and key elements of the subject Conditional Use Permit. She noted that Police Chief Dave Spiller is present to respond to any questions regarding safety; also present are the business owner, Jenny Wolfes; her attorney, George W. M. Mull; building owner Gene Havrilenko of FFHS Associates, and James Paxson, General Manager of Hacienda Owners Association.

Commissioner Blank noted that the condition of approval about the security plan did not specify when that final security plan had to be submitted to the City. He inquired if there was any responsibility by the City for knowing that this club has been open but yet did not have a security plan.

Ms. Rondash replied that it was an oversight in the City's process that there was no language submitted and approved in that regard when the zoning certificate to change the business name was approved.

Chair Pentin stated that he was under the impression that the security plan was supposed to be in place prior to operation. He inquired if that was what was originally stated.

Ms. Rondash replied that was correct.

Commissioner Blank inquired if the City had any idea what was going on in the year or so after the club reopened and was in operation before the fourth quarter, prior to October of 2011 when the first incident occurred.

Ms. Rondash replied that the business owner could speak on the club's business operations at that time.

Commissioner Blank inquired if there were any significant number of incidences that came to attention of the City prior to the fourth quarter of 2011.

Ms. Rondash said no, there was not a significant number of incidences.

Commissioner Narum inquired what the basis was for changing the language of the revised Condition No. 24 regarding requiring the TIPS Training to be within 45 days instead of four weeks.

Ms. Rondash replied that in staff's meetings with the applicant and the Police Department (PD), it was determined that there was a timing problem with the processing of the trainings as well as the issuance of those certificates. She explained that in order to make the Condition more appropriate and attainable for the business owner in relation to the required training, staff had adhered to and respected the timelines that were actually in place for those trainings and those processes.

Commissioner Narum stated that it was her recollection when the Commission approved this Use Permit in October 2010 that there was a condition that there were no in-and-out privileges. She indicated that she could not find this in the revised conditions.

Ms. Rondash replied that Condition No. 1 requires that the operation of the business be as stated in the submitted narrative, which, it was her understanding, was how the operator wanted to run the business.

Commissioner Narum inquired if that was enforced now or is part of what they should be doing prior to tonight's meeting.

Ms. Rondash replied that the same written narrative would still be what is being referenced, and, therefore, it would still be a requirement. She deferred to the Police Chief to indicate whether or not this is actually being done.

Commissioner Blank requested verification that staff did not know and did not have an independent way of knowing whether or not this was enforced prior to the incident or since the incident.

Ms. Rondash replied that Planning staff has not been to the establishment in the evening to observe that; however, police officers who have patrolled the establishment may be able to speak to whether the business is actually allowing in-and-out privileges. She added that this would be something officers who patrol the establishment in the future would be looking at more closely.

Chair Pentin inquired if the narrative Ms. Rondash was referring to is the Status narrative that was received on June 28, 2010.

Ms. Rondash said yes.

Following up on Commissioner Narum's question regarding requiring the TIPS Training within 45 days instead of four weeks, Chair Pentin noted that this refers to new employees and inquired if this would also be required of current employees or if they would just be considered grandfathered in at this point and then be required to receive training after 45 days.

Ms. Rondash replied that it applies to all employees within 45 days of their original hire date, with follow-up training to occur every six months. She clarified that existing employees would also have to undergo training every six months.

Chair Pentin inquired if those who are working there now and have not had TIPS training would be required to have it within 45 days; that starting now, every employee would be considered a new employee with this Conditional Use Permit as the "original hire" date.

Ms. Rondash replied that was correct.

Commissioner Olson inquired if staff knew if the individual who did the shooting was, at some point, inside the Club.

Ms. Rondash replied that the Police Chief could speak to that.

Chief Dave Spiller stated that because a suspect has not been identified at this time, he could not substantively say whether that person was in the Club or not. He noted, however, that some of the PD's intelligence and investigation indicate that it is highly likely that the suspect was inside the Club at some point.

Commissioner Olson indicated that the reason for his inquiry is because this would go back to the security procedures at the Club, if, in fact, a person with a firearm was allowed in the Club.

Ms. Rondash explained that one of the conditions requires a Scanshell 800 ID scanner that would scan the ID of everybody entering the Club; therefore, the person who was shot and the people who were in the Club just prior to, at the time of, or subsequent to the shooting would have had their ID's scanned.

Commissioner Blank stated that he is a security, risk, and fraud analyst and noted that fake ID's are relatively obtainable. He added that short of installing a metal detector, it would be close to impossible to keep firearms out of the Club.

Ms. Stern indicated that Condition No. 17.e. also requires all patrons to be searched with a full pat-down and the use of a metal detector as well.

Ms. Rondash clarified that this would work if the customers were attempting to conceal the weapon but would not really control what happens outside the club.

#### **THE PUBLIC HEARING WAS OPENED.**

George W.M. Mull, Counsel representing Diamond Pleasanton Enterprise, Inc., Business Owner, stated that he appreciated the City's concerns and that they all of this very, very seriously. He clarified for Commissioner Olson that the shooting that took place in January occurred after closing in the parking lot, so there was no indication that there was a firearm ever allowed in the Club. He added that they enforce security pat-downs of every single person by a gender-appropriate person and that they use a metal detector wand and that there is no indication that a weapon was brought into the Club that night. He noted that that these are unfortunate incidences that did happen

and asked for the Commission's understanding that they have the same interests and are on the same page as the City.

Mr. Mull stated that Club Neo is an extremely well-run club with security that is well above and beyond anything that the Conditions of Approval call for, but certain incidences have happened even with that level of security. He noted that on the night of the shooting, there were 29 security officers on duty, patrolling inside the Club as well as in the parking lot, managed by their Security Coordinator, a twenty-year veteran of the San Jose Police Department who was in charge of the San Jose entertainment district and had run security for very large events at the Shoreline Amphitheater. He added that they are using the most sophisticated approach and the most trained persons, but things still happened.

Mr. Mull stated that his client, Ms. Wolfes, was before the Planning Commission in 2010, and based on the conditions that were put in place then and the amount of occupants that were allowed, she decided to move forward and invest in this club and open it with the idea that they would have 812 people. He noted that the club operated through the last quarter of last year without incident, and these incidences in question did not actually occur in most of the last quarter, with the first one taking place toward the end of December, and then another one unfortunately happened in January. He indicated that these incidences had nothing to do with how the club was marketed or with the change in name and reopening as Club Neo in October.

Mr. Mull stated that the club has had an increasingly African-American presence. He added that many times in the nightclub industry, an unfortunate term is used – but one used all the time – that that is when the place started to go dark. He indicated that they have talked to the Police and have had very good relations with Lt. Knox who works that area in the evenings. He noted that the incidences took place anyway, not because of the dance music or the way the club was managed. He stated that both incidents in December and January happened at closing time, after the lights were turned on, and people were being moved out. He added that in the January incident, some fights started inside the club, and their security was on top of it and moved everybody outside the club. He continued that about a half-hour later, there were still people in the parking area and the shooting took place. He indicated that they have been told by their intelligence that it took place while a car was driving by, but they were not exactly sure how that happened.

Mr. Mull stated that their security person is trying very hard to work with Pleasanton Police and the other officers to move people out and do the right thing. He indicated that this is not a thing where they can look and say that there was some shortfall or shortcoming in their security plan; the incident happened, even with the best of security. He noted that the number of security officers that night was three times what is required in the Conditional Use Permit; they were very well-trained and did their job, but still something went wrong.

Mr. Mull stated that what they are positing to the Planning Commission is not to cut down the maximum number to 300. He indicated that he is not sure of the sociology

behind this urban crowd that has, for whatever reason, taken it upon themselves to come to this club. He added that, without coming straight out and talking about racial profiling, what they would like to do is change the nature of the people coming to this place by having a different format as a choice that his client has made. He stated that this is something that they have heard feedback about from Police and from other cities that he believes would be a good idea. He stated that he, as a parent of a 16-year-old, and his girlfriend with her 16-year-old, had a party at their house a couple of years ago and with social networking ended up with 250 children showing up although they had no intention of having more than ten of them there. He added that, for whatever reason, this club, which is in Pleasanton, had certain people on the Internet, with Facebook pages and other means, telling everybody to please come, and out of the blue, their club was hi-jacked.

Mr. Mull indicated that they want to fix this. He stated that they are on the same page as the City and that it is not a good thing to come in here and have the maximum number of customers knocked down to 300. He noted that this is an approximately 10,000- square-foot club, for which they pay a quarter-of-a-million dollars in rent to Hacienda Business Park. He added that this is a very expensive club, and the amount of security they pay for is very expensive as well. He added that cutting it down to 300 patrons does not pencil-out; there is no way to do the calculations on the amount of expense and still have the Club open, and it would be just as much a revocation of this club. He noted that 300 of the wrong crowd is not going to help Pleasanton or the operator; all it took was one bad person shooting another in the parking lot.

Mr. Mull stated that they would like to have 800, the number in the occupancy, of good people, in the same manner that there could be 500 people out in the Hilton. He stated that there is nothing intrinsic about the club that should cause these problems, and what they would like to do is change the crowd. He noted that they have approached the premiere Northern California Latin Music Promoter, a group out of San Jose that does very large events at the Staples Center, at the San Jose Convention Center, at the Shoreline Amphitheater, and works with a major promoter called Live Nation. He further noted that this promoter likes the club's space and would like to work with the club. He added that they will bring an excellent crowd that does not have the same problems as the urban crowd that they have been hi-jacked with these last six weeks. He indicated that in order to make that happen, they would have to make the promoter's expectations in profit come through, and limiting the capacity to 300 will not only kill that but will also leave them with the same 300 people with the same problems.

Mr. Mull stated that he believes the better way to solve this is not by reducing the numbers but to change their formatting. He indicated that when they came forward with a half-million-dollar investment, it was done with the idea that there were the resources, that there was due diligence on the part of the Planning Commission who looked at the conditions and figured that this was something that the Pleasanton PD and staff could deal with. He pointed out that now they are hearing that this is a strain on Pleasanton's resources. He compared it, as far as investment expectations are concerned, to coming to Pleasanton in 2010 with a request to approve an eight-story building, and when a small fire incident occurs on the lower floors, the City then comes back saying that the

ladders on the fire trucks go only to the third floor so the top five floors should not be utilized. He added that knocking 800 down to 300 is equivalent to knocking down their expectations of being able to have a profitable club, assuming it is sustainable.

Mr. Mull stated that they are definitely willing to work with the PD in every way to make sure that the Police's concerns are met and to come up with systems in place to ensure the safety of their patrons. He added that they have just as much, or even more, interest in that as the City. He asked the Commission to allow them to make this shift, and if they have similar problems after the shift, they can then approach a reduction potentially as one way to address these problems. He noted that cutting down to 300 handcuffs them and makes it impossible to make these changes that they think are in the best interests of the club, the City, and the landowner. He added that if this change happens, they will be gone, the landowner will have no rent, and there is probably no one else in this economy that is going to open up a business at this location, which is not appropriate for another restaurant because it does not have frontage on Hopyard Road. He noted that the location will probably be another empty space causing vacancy and blight.

Mr. Mull stated that they have already put in place many of the changes in the conditions that staff has recommended. He added that, as a side note, they would like to be able to serve until 1:30 a.m., which would still give them time to close down the club in an orderly manner before 2:00 a.m. He noted that it is really not a night club if everything turns off at 1:00 a.m.

Commissioner Blank inquired how the club controls the number of people who enter the club and how they know when to cut off at 812.

Mr. Mull replied that they have a clicker. He added that as far as they know, they have never come close to that 812 number; it has always been around 550.

Commissioner Blank noted that Mr. Mull mentioned that they use the most sophisticated approach to maintaining security. He asked Mr. Mull to describe what this is and inquired if every one of their security personnel is equipped with a two-way radio.

Mr. Mull replied that he believes they have about 16 two-way radios.

Commissioner Blank noted that the answer is then "no."

Mr. Mull clarified that the 16 radios for the rovers is a lot. He indicated that the required number of security officers, even if all 800 patrons were there, would be 16.

Commissioner Blank noted that Mr. Mull had stated that the club had 29 security personnel.

Mr. Mull stated that those last evenings, they had concerns so they brought in additional security personnel.

Commissioner Blank inquired what training someone who wanted to be a security officer would go through.

Mr. Mull replied that most of their security personnel have already been working at another club in San Jose, so they have been trained by their already experienced personnel. He added that there are tests that they have to then take with the State to get a Guard Card.

Commissioner Blank requested clarification that there is a certification process that the club requires.

Mr. Mull said that was correct.

Commissioner Blank inquired what that process is called

Mr. Mull replied that it is the Private Security Office Status, from the Department of Consumer Affairs, for the Guard and Security.

Commissioner Blank inquired if the twenty-year veteran in charge of the club's security was at the club the night of the shooting.

Mr. Mull replied that he was.

Commissioner Blank inquired if he carries a firearm.

Mr. Mull replied that he does not.

Commissioner Blank asked Mr. Mull to give some examples of any other sophisticated approaches that are used by the club's security officers.

Mr. Mull replied that basically, security begins with what is called fading of the crowd, when they make sure the persons are in compliance with the dress code. He noted that they have found that people who are dressed in a particular manner are more likely in some situations to cause trouble. He added that they also do not allow large groups to come in buses or limousines because that causes problems as well. He indicated that they try to avoid the problem from the outset by not letting them in the club. He continued that their identifications are then checked with the scanner, and they are then patted down as they come in to make sure they have no weapons.

Commissioner Blank noted that Mr. Mull indicated there is a scanner. He inquired if this was a metal scanner.

Mr. Mull replied that it is a scanner of the patron's driver's license that reports who each person is.

Commissioner Blank inquired if the scanner is hooked up to the California Law Enforcement Telecommunications Systems (CLETS) system, which checks for outstanding warrants or anything similar.

Mr. Mull said no. He explained that there is no way a private individual could do that, and they would go to jail if they did. He added that they are not able to approach that level of sophistication and that it would be a privacy violation anyway. He indicated that inside the club, there is a security guard at each external door and roving security officers within the bar area to make sure people are behaving themselves, and there are roving officers in the parking areas to make sure people move on. He continued that one of the issues they have had and he believes they have addressed well is, when they do fade or cause people not to be allowed in the club who then mill around and loiter, they move these people along. He added that if there is any kind of altercation, rather than throwing fuel onto what may be a volatile situation, there is an immediate reaction to diffuse the situation by separating the persons involved from the rest of the club and taking them into a hallway to a back exit.

Commissioner Blank noted that he did not see and may have missed the condition mentioned by Mr. Mull specifying the required number of security officers.

Mr. Mull replied that he did not see that either but that during the last meeting they had last week, it was reiterated that they were still at the one security person per 50 patrons.

Commissioner Blank inquired if that ratio is per the industry standard.

Mr. Mull replied that the industry standard is actually one person per 100 patrons. He noted that they are willing and very happy to go above that.

Commissioner Blank asked if the ratio on the night of the shooting incident was one per 28.

Mr. Mull replied that was probably correct.

Commissioner Blank inquired if the conclusion was that at least it was sufficient for that evening.

Mr. Mull replied that there were fights that broke out in the club and were immediately dealt with and moved outside the club. He noted, however, that no number of officers could have prevented somebody from driving by and taking a shot at somebody, even if there were one hundred officers. He noted further that there were Pleasanton Police Officers nearby and were there when the incident took place, so it was not necessarily a breakdown in their security staff in any way that led to that unfortunate incident.

Commissioner Pearce noted that Mr. Mull mentioned that a scanner has been used for checking ID's at the club. She inquired how readily available the data from that scanner would be in case there were an incident.



Mr. Mull replied that he believed the data are immediately available with the new scanner that was purchased right after this incident occurred. He stated that in their meeting with the Police Chief, they indicated that they would make that data as well as footage from the video camera system immediately available upon request right then and there. He added, however, that he is not sure if they might have to scroll through 500 different data points to find something.

Commissioner Pearce verified that it is immediately accessible nevertheless should an incident occur.

Mr. Mull said yes.

Olson: Yeah, when I read the staff report, I assumed that the number 300 came from a collaboration between staff and the PD. You're requesting 800 and I have a problem with your statement that you move the fight outside. That's fine, you get it out of the club, but at that point, it's in the community.

Mull: It was still on private property in the parking lot—it wasn't in the community. It was still contained.

Commissioner Olson inquired if the incident was contained outside on private property.

Mr. Mull replied that it was very much so. He indicated that they continued to address the issue until people got into their cars and left. He noted that they find it safer for everyone to get outside of the closed environment, away from those few in the crowd that are causing an altercation. He added that just closing the doors and keep them inside is not a positive thing; it is better to try to disperse the crowd.

Commissioner Olson inquired what the average attendance per night has been over the last six to nine months, and if it was close to 800.

Mr. Mull replied that he did not think it was quite 800. He indicated that he was not the operator and asked Ms. Wolfes if they knew what the average attendance is.

Ms. Wolfes replied that it was anywhere from 415 and up to about 700 or 750.

Commissioner Olson noted that there is quite a bit of room between 300 and 800.

Mr. Mull said yes and added that they are obviously very willing to work with the police on that. He stated that the number he had thrown out before that he thought sounded reasonable was 550.

Commissioner Narum stated that she rode with Lt. Knox and was at the club on Saturday night. She indicated that she recognizes the dress code is not part of this discussion, but inquired if the dress code is readily available for anyone going to the club.

Mr. Mull replied that it is actually posted on the wall before entering the club and that it is also on the club's website. He noted that there are certain things that are just not allowed such as athletic shoes, sagging pants, athletic jerseys, and things that some have said have some relation to gang activities.

Commissioner Narum requested verification that it is posted by the club entrance.

Mr. Mull replied that he believed it was and asked Ms. Wolfes.

Ms. Wolfes replied that there is a sign.

Mr. Mull stated that he has been to the club twice in the evening and that there is an A-frame type of sign in the line that lists the behavior conditions and the dress code. He added that it is also on the website.

Chair Pentin inquired if the sign is also in the lobby or out in the line.

Mr. Mull replied that it is in the line before the patron gets to the lobby.

Chair Pentin stated that he did not see that sign.

Commissioner Narum stated that she did not see it either when they went to the club. She then stated that there is bottle service available in the club. She inquired how they monitor the condition of the people at the table with the bottle service.

Mr. Mull replied that there are waitresses all throughout the bottle service area, and part of their job is to recognize any variation and take the same steps that a bartender would take to cut people off.

Relating to the in-and-out privilege, Commissioner Narum stated that while they were at the club, she noticed at least five to ten people who went out and came back in. She indicated that this gave her a bit of concern considering that this was not allowed but was actually happening while they were standing there with two uniformed Police Officers, and one would think that would be the one time when the club security would not be allowing it. She added that this also gives her a little bit of discomfort with some of the comments Mr. Mull had made as a result of that. She then inquired if there is food service.

Mr. Mull replied that there is minimal food service such as little sandwiches anyone can have.

Commissioner Narum inquired how patrons can order or get them.

Mr. Mull replied that there is a sign listing what food is available, which they can get from the bartender.

Commissioner Blank asked Mr. Mull, to the best of his knowledge, what time the shooting took place.

Mr. Mull replied that he believes it was right around 2:00 a.m. or 2:10 a.m. He noted that the closes at 1:30 a.m.

Chair Pentin recalled Mr. Mull's analogy about the large building and having a fire truck that can only go up three stories and asked Mr. Mull if his position is, when they have a crowd they cannot handle, that even vested in this community as a business and they pay taxes, they expect police support as the amount of fire support that can handle any story fire instead of a three-story. He inquired further, considering the amount of police response to just two of the incidents at the club, if he expects that the City should have that support.

Mr. Mull said no, not at all. He admitted that it does go to the analogy, but at the same time, the building owner and they have a responsibility to operate the place in a very safe way. He continued that to the extent that they have come to a conclusion similar to what the Police have that the current element and crowd is causing some inherent problems, they wish to change that. He noted that they have had a Conditional Use Permit at this building since 1990, and the club has been run well in many different ways for over a 22-year period before this element came. He added that there were probably fights and other incidences in the past but they were controlled. He indicated that they do not expect to continue like this, that it is not acceptable to them, and that they are taking a massive step to change to a Spanish rock/salsa type of environment which will completely change the folks coming. He requested the Commission to let them change it rather than knock it down to 300 and make it not possible to have a sustainable business.

Chair Pentin stated that from his point of view, all he can judge anything from is past performance. He added that he can look at whatever they are paying for music and whatever their clientele is, but for him, they are still a business, just like Nordstrom's is a business over at the mall, and he does not really care what music is played there or what the clientele is, as long as it runs its business safely and properly. He addressed Mr. Mull, indicating that he understands what he has presented to the Commission his job to minimize incidences. He pointed out to Mr. Mull, however, that he has really only spoken to two incidences as if there were just two of them in the last period of time, but the nightclub overview from Lt. Knox indicates multiple days and multiple incidences. He added that, for instance, when Mr. Mull mentioned that the fight was taken outside but it was still on private property, there were two others mentioned in the overview that were taken outside on private property. He asked Mr. Mull if that is okay too and if that is controlled.

Mr. Mull said no, it is not okay. He indicated, however, that they finally controlled them. He added that considering the history of the club, this operator has been operating for a year and a half, and the only times being talked about occurred in less than two months.

Chair Pentin stated that for the Commission, the history in the last three months and not just a couple of days, the club has had quite an interaction with the City's PD, and with Lt. Knox in particular.

Mr. Mull replied that he has also read Lt. Knox's report and that it really is only those two weekends; the others are very, very minor.

Chair Pentin indicated that they have a difference of opinion on that.

Mr. Mull stated that it is right there in black and white with Lt. Knox. He added that they do not have a difference of opinion in terms of how important it is to change this. He reiterated that there has been a history of operation at this location for 22 years, and his client has an operational history of a year and a half. He asked the Commission not to let somebody else hijack their business, in which where they have invested half-a-million dollars, and basically shut it down, take a large portion of the Hacienda Business Park and turn it into an empty space, and have 40 or 50 people lose their jobs because some folks came from Oakland without being invited. He indicated that they would like these folks to go away also, and they think the way to do this is to allow the business to switch to a different format rather than reacting as if the club is going to have that same group there for the next year, which they do not want that to happen either.

Commissioner Pearce inquired if her understanding is correct that on the night of the incident in question, the fight broke out in the VIP area where the bottle service is located.

Mr. Mull replied that he thinks it broke out in several areas and not just in that area.

Commissioner Pearce requested verification that it included the bottle service area.

Mr. Mull said yes.

Commissioner Pearce recalled Mr. Mull's earlier statement that if people appear inebriated in the bottle service area, the waitresses cut them off.

Mr. Mull said that was correct.

Commissioner Pearce commented that this goes against all the information she has on bottle service. She asked Mr. Mull to describe how that area works because her understanding is that it is different from the regular bar area.

Mr. Mull stated that the waitresses bring the bottles and the mixtures that are used in those bottles, so they have the opportunity to see whether or not anybody is inebriated. He indicated that they have not had an issue that these incidents happen because of heavy inebriation. He noted that it is a strange thing with this crowd, which is not a heavy drinking crowd, as the club receive monies at the door for cover charges, but the amount of bar sales is really low in comparison to the number of people there.

Commissioner Pearce inquired if it is true that in a bottle service area, entire bottles of alcohol are purchased ahead of time.

Mr. Mull said yes, for groups of ten.

Commissioner Pearce pointed out that it is for groups of ten at a premium price as this is a VIP area.

Mr. Mull confirmed that it is a VIP area, but it is not necessarily based on individual drinks.

Commissioner Pearce indicated that she would like to walk through this with Mr. Mull. She stated that the patrons are purchasing arguably a few bottles of alcohol at one time that they then have access to with the waitress's help. She noted the Mr. Mull is saying that even though the patrons have purchased entire bottles of alcohol, if they appear inebriated, the waitress is going to cut them off and take away the alcohol.

Mr. Mull replied either that or security will have a discussion with them.

Commissioner Pearce indicated that she is just trying to understand the operations of the club.

Mr. Mull stated that the patrons are not left on their own just with bottles, with no one going through and seeing them. He indicated that there is staff in the VIP area, and there are waitresses who are constantly checking to see if they want food or an additional drink.

Commissioner Narum inquired, if there are people at the table with a bottle that they have purchased at a pretty good premium, and if the waitress starts seeing the people at the table inebriated, how do the waitresses cut them off, if the bottle they have purchased is taken away, and what happens if only two or the ten people are inebriated.

Mr. Mull replied that it is difficult, but they have a talk with the patrons and ask them to leave. He indicated that one of their obligations under the ABC rules is to not serve inebriated people, whether through a bottle service or through a bartender. He added that it is important that they comply with that or they put their license at risk.

#### **THE PUBLIC HEARING WAS CLOSED.**

Commissioner Pearce noted that there has been a lot of discussion about capacity. She inquired how the 812-person capacity was initially determined initially at this club, and assuming there is a formula, what the breakdown is.

Ms. Rondash replied that it was part of the applicant's proposal in 2010 to increase the capacity up to 812, based on the assumption of what the space could hold. She indicated that fire codes have a calculation for the fire safety occupancy based on

space. She noted that Planning staff also circulated the request through the Fire and Police Departments, and determined that staff could support it as it had operated historically without incidences, and the operator had a good track record with other clubs.

Commissioner Blank recalled that the Commission had another one of these cases a while ago with a restaurant; it did not result in a shooting, but there were a lot of complaints from the tenants in the area, and the Commission held a revocation hearing for that particular operator. He stated that he looked at Exhibit I, Lt. Knox's report, and after crossing-off meetings, was left with quite a few incidents. He indicated that he is kind of torn on this one and is asking himself if the applicant should be given an opportunity as was the other operator to demonstrate that they can operate the club safely. He added that as a security person, he personally believes that in addition to the security plan, the security officers have to have an earpiece in their ear and know what is going on; otherwise, they cannot react to an incident. He continued that the thought occurred to him, at least in terms of figuring out a way to demonstrate the same fairness that the Commission demonstrated with the other operator, that the Commission consider a combination of things: He noted that one would be reducing the number, but he is uneasy with 300 and finds that it could in fact be so punitive that the club might not be able to function. He added that there is a need to have the same kind of monitoring that occurred with the other operator where the Commission is given regular reports. With respect to security, he noted that making his living in that business, he respectfully disagrees with Mr. Mull that the club uses the most sophisticated approach to security and indicated that security needs to be bolstered.

Commissioner Olson stated that his sense is that 300 is coming from the PD, based on experience, on resource allocation, and the City's budget. He indicated that should he decide not to vote to revoke the Use Permit, he is very reluctant to go much over 300 and that 800 is totally out of the question. He stated that people know him to be as business-friendly as any of the Commissioners, but he is really concerned about this. He noted that this has really shaken this community and that the operators are fortunate that the PD is not arguing for revocation of the Permit. He indicated that he is open to some minimal amount over 300 and would like the PD to weigh in on that number.

Commissioner Pearce stated that she went out to the club with Lt. Knox and had an opportunity to see the club, see the operation, and talk to the police officers out there who were very accommodating and answered all her questions. She indicated that she is not inclined to go over the number recommended by the PD, whose officers have been gracious and very accommodating to the club; in fact, her inclination is to take the action of going to 250 for a period of time, then have the operator come back in a month or two and see how they are doing with that number, and if that seems to be going fine, raise it to 300, and then maybe at a future point, raise it some more. She added that she would put much more stringent guidelines temporarily to see how it goes.

Commissioner Narum generally agreed with Commissioner Pearce. She stated that she would take the 300 limit, which she believes is what the PD is recommending, and put the club on a pretty frequent monitoring. She added that she would be open to

increasing it if the PD is comfortable with it. She indicated that it is just a little bit hard for her, and she can empathize with the business and the landlord and try to figure the rent and the business; but at the same time she is a bit uncomfortable standing outside the club and watching people going in and out being led by security people. She indicated that she would support Option 4 which includes close monitoring, and if things are clean and the police are comfortable, that number can be eased up.

Chair Pentin stated that he agreed with pretty much everything that has just been said and that if he leans towards anything, based from his experience of Saturday night at the club and reading the narrative from Lt. Knox, his first inclination would be to revoke the Permit. He indicated that he is business-friendly; however, he does not see, over a period the last three months, the club really complying with the conditions of approval in the Conditional Use Permit, especially with the amount of work the PD has done with you. He added that he did not see it either on Saturday night, where there was loitering in the parking lot and patrons going in and out. He noted that he was told there were about 230 or 240 people in the club between 12:00 a.m. and 1:00 a.m. on Saturday, and he could see where another 70 people spread out through the club would probably be manageable; but not 500 or 600 or 700 in that same space and with the type of security he observed.

Chair Pentin stated that his bigger concern is what is being required of the City's PD personnel to do if they have to support the club: going to the parking lot to stop a side show or going into the club to stop fights puts them in harm's way and is not appropriate. He noted that that is not what the City wants businesses in Pleasanton to present; it is one thing for the City to provide police services, but it's another thing for them to babysit. Referring back to Mr. Mull's analogy of the eight-story building with a three-story ladder, he stated that he does not believe the PD is responsible for the club's problems and issues, and the club has a history of them. He indicated that his recommendation is, being generous on his part, to move on with Option 4 and then allow for a review by the PD in 30 days or 60 days, whichever the PD thinks is appropriate, on how the club has been able to change its format, change its personnel and improve its security, and so forth.

**Commissioner Blank moved to modify the Conditions of Approval for the operation of Club Neo, per Exhibit A and as outlined in Option 4 of the staff report.**

**Commissioner Narum seconded the motion.**

**Commissioner Blank proposed an amendment to have staff draft a new condition, through a joint effort between the Police Chief and the Director of Community Development, concerning security and communications.**

Commissioner Blank stated he has been involved with securing events, and it is his belief that good security practices include every single person in security is in uniform and every single person in security has a radio, and there be a direct line of communication between the club and the Pleasanton PD.

**Commissioner Narum accepted the proposed amendment.**

Mr. Dolan stated that staff would be happy to do that. He noted that he thinks it might be useful, before the Commission takes a vote, if the Police Chief explains the rationale and number and why staff chose the Option 3. He indicated that staff has had a lot of internal discussion about this with a very thoughtful approach, and he would like to give the Police Chief the opportunity to address the Commission.

Commissioner Narum stated that she has another amendment and would like to present it before the Chief speaks so he can comment on that as well. She noted that when they were at the club, she did not see the A-frame sign on the dress code, and she believes that people standing in line should see and know that before they get to the entrance and not be admitted. **She indicated that she would like to see a condition that requires the operator to have a sign on the dress code both at the site and on the club's website.**

**Commissioner Blank accepted the amendment with a further modification that the sign be subject to the review and approval of the Director of Community Development.**

**Commissioner Narum accepted the additional language.**

Chief Spiller stated that they have had a lot of discussion with the owner/operator, who has been very cooperative with the PD staff, and have been receptive in terms of working through the PD's concerns, including working on modifying the security plan.

With respect to the capacity, Chief Spiller stated that as they have looked at the incidents that have occurred, the density or intensity of attendance at the club is kind of directly related to those problematic events. He continued that in looking at their response capability without significant impact to the community, the number of 300 or less is the number they came up with that's manageable for the area within the business as well as managing the outflow at the end of the evening. He noted that while nightclubs and businesses like this can impact law enforcement resources, which is not at all unusual, the incidents that occurred when they were in the 500/600/700 capacity actually significantly crippled the PD's ability to respond to other calls for service. He added that the City's PD relied on mutual aid protocols throughout the area of the county to not only manage Pleasanton's calls for service, but to get appropriate resources to this establishment. He noted that with his experience and in having worked very closely with his management staff that has been responsible for this project, he is very confident that 300 or less is that number in terms of our ability to manage this operation.

Commissioner Blank stated that he understands that Option 3 is the preferred option, but would like to explain that the reason he made the motion for Option 4. He indicated that Chief Spiller will have noted that all the Commissioners have stated that they do not look at increasing the occupancy lightly and that he would ask that the Chief be brought back to the Commission before the Commission increases that number. He added that



if the owner or operator of the club goes a month or two months or whatever time period decided upon and has a perfect record, then maybe the Commission could let them increase to 350 or some incremental number. He indicated that he does not want to sound too metaphysical, but he believes that people can create positive environments, and he would like to give people a chance to succeed. He emphasized that he just does not want to permanently limit the club to 300 without giving the operator an opportunity and an incentive to maybe increase to 400 or whatever that number might be down the road.

Chief Spiller stated that he totally understands that. He added he thinks the pattern of appropriate operation and effective management of the facility will certainly create the opportunity to increase that number.

Commissioner Pearce thanked Chief Spiller and reiterated that she does not necessarily want to start at the maximum number. She indicated that she likes the idea of monitoring and having them come back in a couple of months. She noted that she heard what the Chief had to say and that 300 is the maximum right now that the PD is recommending. She added that she is not comfortable with starting at the maximum and then considering upping that in a month or two months, but would prefer to start a little bit lower and then with frequent monitoring, see where they are and then have the flexibility to move it up with 300 as the maximum.

**Commissioner Olson proposed an amendment to change the language of the original motion to 250.**

**Commissioner Blank accepted the proposed amendment.**

**Commission Narum indicated that she is not accepting the proposed amendment and withdrew her second.**

Commissioner Blank inquired is 275 is acceptable.

Commissioner Narum commented that they are splitting hairs here.

Chair Pentin stated that he is comfortable with 300, knowing that they have run the club with much larger numbers over its history, just not in the last 90 days or 100 days. He added that he is comfortable with what the Police Chief says that 300 will work. He noted that the Commission is giving an "out" here that it could be dropped back; the Commission can look at it and can say that while the operator has actually adhered to the conditions of approval, it just has not been enough time and the Commission does not want to increase the number. He pointed out, however, that in fairness to the business, they have already indicated that they cannot even do it at 300.

Commissioner Narum emphasized that she would not in any way entertain increasing the number without having the Chief say that the PD is comfortable with the number and believes they have a handle on it.

**Commissioner Blank proposed another amendment that if some incident occurs that may not be reported in the local newspaper or in the media or the incidents continue to occur, staff notify the Commission immediately so that this can be scheduled for the very next meeting with the appropriate notice.**

Commissioner Pearce requested clarification that Option 3, and not Option 4, is the option recommended by the Chief of Police and the Director of Community Development.

Commissioner Blank indicated that he has explained why he chose Option 4.

Commissioner Pearce stated that she does not hear support for starting at 250 and moving it up to 300, but hears support for starting at the maximum number and then moving up.

Commissioner Blank noted that it would be only if a certain set of conditions are met.

Commissioner Pearce said that she hears this, despite the fact that it is a numbers game and what the Chief was saying that the PD does not have the personnel for the larger numbers despite the lack of incidences. She added that she just wants to be fair.

Commissioner Blank asked Commissioner Pearce if she is prepared to say that if this club went two years without a single incident, she would not increase the number above 300.

Commissioner Pearce replied that she is not talking two years but two or three months.

Commissioner Blank stated that he is not suggesting that after two months, the Commission automatically increases the number. He explained that what it says is that within the next 30 days, if the club complies with all the different approvals, the Planning Commission can consider increasing the number. He added that the Commission can still say no.

Chair Pentin added that staff and the Chief of Police will have to come back and say that it's okay to increase the number, and if they do not, then he is not moving off of 300.

Commissioner Olson stated he is not either.

Commissioner Blank agreed.

Commissioner Pearce stated that the Commission ought to be very clear about that then.

Chair Pentin indicated that he thinks it is very clear.

Commissioner Narum indicated that she agrees that if Chief Spiller comes back and says he is not comfortable, there is no way she will vote to increase that number.

Commissioner Pearce noted that in the previous application when the operator came back with a chart and showed there were no incidences, the Commission just approved it.

**Commissioner Blank proposed the following language: "Prior to coming back to the Planning Commission to entertain an increase, the applicant must have the positive recommendation of both the Police Chief and the Director of Community Development."**

**Commissioner Olson withdrew his amendment to bring down the number to 250.**

**Commissioner Narum re-instated her second with the addition of the two proposed amendment.**

The Commissioners unanimously agreed that the proposed language works for them.

Commissioner Narum stated that it was her impression from her conversation with Lt. Knox and Officer Fragomeli that after the club closes down, an officer goes through the parking lot looking for bottles and trash to see if the club has cleaned up or not. She asked Chief Spiller if that really an appropriate use of the police and if there is a reason for that, and if that is not really something that is between the property owner and the club and the tenants in the building.

Chief Spiller replied that as it relates to this particular staff report and reporting back to the conditions imposed on the operator, he did not think it is necessarily inappropriate; however, it falls into the PD's management for calls for service. He indicated that the PD is certainly not going to pin calls or impact its responses to what has been reported in the community; however, at the end of a busy night at a bar, PD might be looking for other things in addition to trash and bottles. He noted that people who are left behind are obviously intoxicated people, and the PD will check for if they are under the influence and drugs and things like that. He concluded that he is not specifically aware of what was offered to Commissioner Narum by the PD staff, but there are a lot of reasons that a police officer might be doing line patrol or area patrol near an establishment like this.

#### **ROLL CALL VOTE:**

**AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin**

**NOES: None**

**ABSTAIN: None**

**RECUSED: Commissioner O'Connor**

**ABSENT: None**

Resolution No. PC-2012-07 approving Option 4 as modified was entered and adopted as motioned.

## Neo Nightclub Overview

On Saturday **October 1<sup>st</sup>, 2011**, Neo nightclub re-opened its doors for business. On that evening, Lt. Jim Knox and Sergeant Tamm went to the club and spoke with the club owner, Jenny Wolfes. Knox introduced himself as the swing shift watch commander Wednesday through Saturday evenings and also as the District 2 commander. Knox told Wolfes at this time that we as a police department would like to work with her to provide resources such as training and assist her in resolving any issues that may arise during their operation. Wolfes was thankful and asked to have a drug and drug influence awareness class provided to their staff. This was arranged and provide to their staff on November 4th.

On the evening of Saturday, **November 26<sup>th</sup>**, a large crowd was in attendance at Neo and required the allocation of 9 officers to assist their security personnel at closing time. After this incident, Lt. Knox met with Wolfes at Club Neo on December 2<sup>nd</sup>. Knox explained the issues which had occurred on the previous Saturday and explained that the police department could not sustain that allocation of that type of resource as a result of her club operations. Knox explained to Wolfes that they must have security personnel monitoring the parking to prevent problems as a result of drug, alcohol and violence issues. Wolfes told Lt. Knox that she would have her security consultant present the following evening to come up with a game plan to eliminate problems. Lt. Knox further reiterated that the police department would work with her and her staff to help find a solution.

*Club Neo was at capacity this evening. They had a live performer, "R.O.D. Live" advertised for this evening. The crowd was largely from out of the area. Early swing shift was held due to the potential for problems. At about 0030 hrs, about 100 unhappy people were turned away. At closing time a very large crowd swarmed the west lot and a "sideshow" type environment appeared to be forming. The 9 officers on scene with the help of 16 Neo security personnel were able to clear the lot with no incidents.*

*DEA called to advise they had 12 units doing surveillance for a gang investigation in the area of NEO. They had no specific information of projected violence at or around the club.*

On Friday, **December 2<sup>nd</sup>**, Lt Knox met with Jenny Wolfes outside Club Neo at approximately 2120 hours. Knox explained to her that the club needed to have security monitoring the parking lots. He explained the prior Saturday Evening and the resources which were allocated because of the attendance at the club. Knox Explained to Wolfes that the department could not sustain that type of service and things would have to change. She told Knox that her security consultant would be at the club the following evening to assess the attendance and make suggestions on how to alleviate the problems. Knox told Wolfes that PPD was willing to work with her and the club and we would like to deal with problems before they happen. She assured Knox they would

take care of it. Wolfes stated she believed max capacity to be in the 850 range but state they try to maintain around 650 people inside.

**Saturday, December 3rd, 2011**

*Club Neo was filled to capacity. The two incidents below occurred as the club was closing.*

**11-53456 242 PC:** A 26 year old male resident of Hayward was found walking in the Club Neo lot with head wounds. The male said he was "Jacked" in the lot. He was unwilling to provide officers with suspect or additional info. He was taken to Eden Hospital with minor scalp lacerations.

**11-53458 647f PC:** Officer Stocking saw an intoxicated male urinating in the p-lot near Club Neo. A 46 year old male resident of Oakland was arrested and booked into SRJ.

On the evening of Thursday **December 8<sup>th</sup>**, Lt. Knox spoke with Wolfes by telephone at 1950 hours. She told Lt. Knox that she was working with her security consultant and would have 22 security staff present on Saturday evening. She said they would have 4 security officers in the parking lot with spot lights and bullhorns. She also mentioned that she was considering having golf carts brought in to provide mobility to the security personnel in the large lot. Wolfes also stated the guest list would be cut off early (10:00 pm) and the cover charge would be raised, all in attempts to "fade" people. This evening turned out to be relatively uneventful.

**Saturday, December 10rd, 2011**

*The Neo Nightclub was again filled to capacity with a large number of patrons waiting to get inside. Besides a couple of public intoxication arrests, the event was orderly.*

On the evening of Friday **December 16<sup>th</sup>**, Lt. Knox spoke with Wolfes at 2050 hours as a follow-up to the previous weekend. Wolfes told Knox that she would have similar staffing and procedures to the previous weekend for that coming Saturday and she had brought in police type barricades to help prevent free flow of patrons in and out of the club. She indicated they would stop letting people into the club at midnight.

On the evening of Saturday **December 17<sup>th</sup>**, the club attendees created similar issues to those on November 26<sup>th</sup> only crimes were committed and due to the volume, they could not be controlled by the 10 PPD officers and 3 Dublin units present. This crowd was estimated to be about 600-700 people and there was an estimated 25-30 crimes committed in the parking lot. Pushing and shoving matches were witnessed, fights occurred, people were threatening each other making shooting type gestures with their hands or tapping their waistbands signaling they had weapons, bottles were being thrown from moving vehicles, people were being bumped with cars and knocked down, they were riding on cars and there were cars spinning their tires and driving

recklessly in the lot. After the patrons left the Neo lot, an estimated 100 people drove to the nearby Shell station and looted the store and took over the parking lot. Officers arrived and were able to disperse this crowd. (PPD Report 11-55619)

On **December 20<sup>th</sup>**, the police department staff met with the city attorney and staff from code enforcement and planning. The conditional use permit for Neo was reviewed and several violations were identified. Lt. Knox called Wolfes and asked for an immediate meeting that afternoon with all the stake holders present. Wolfes agreed and a meeting took place with Wolfes, her security consultant Peter Aguilar and the above mentioned city personnel. Wolfes was told of the previous weekend events and provided a copy of the documentation created as a result. She was told of all the identified conditional use permit violations and told to come into compliance asap. She was further told to provide an amended security plan to the department by the end of business on December 22nd. In addition, a flyer was shared with Ms. Wolfes for an event planned on that Friday evening. It was expressed to Wolfes that there were over 600 people confirmed as "attending and over 500 as "maybes". We expressed to Wolfes that the Pleasanton Police Department did not have the resources available to police an event of that size. Wolfes spontaneously stated that she would simply not open her club on the 23<sup>rd</sup> as she was not advertising the event and did not want problems. The club was in fact closed on the 23<sup>rd</sup>.

Several days passed and Wolfes did not submit the amended security plan as requested. Lt. Laurence contacted Aguilar on **December 27<sup>th</sup>** and only after this contact was he emailed an amended security plan.

On Saturday **December 31<sup>st</sup>**, the department put together an operational order with ancillary staffing to deal with any potential issues related to Club Neo. The department had several officers monitoring the parking lot, who located intoxicated individuals who could not care for themselves. These incidents were documented in reports, as well as some other observations of issues.

*11-57395, warrant arrest: We stopped a male resident of Oakland in the parking lot of Club Neo and cited him out on a warrant.*

*12-00009, 647(f) PC: We located a male resident of Fremont passed out in a vehicle in the Club Neo parking lot. He had vomited on himself, and security officers said they were aware of him and had placed him in the vehicle for his own safety. He was booked at SRJ.*

*12-00013, 647(f) PC: We located a female resident of Oakland arguing with security at the front of Club Neo. She repeatedly refused security's requests to leave the premises. She was arrested and booked at SRJ.*

Lt. Elerick contacted Wolfes on Tuesday **January 3<sup>rd</sup>** and told her he would meet with Lt. Knox upon his return from vacation and review the amended plan with him and get back to her afterward.

On Friday **January 6<sup>th</sup> 2012**, Lt. Elerick and Sergeant Tamm were given a flyer for a planned event on 01/07/12 (Birthday Bash). They contacted Wolfes and notified her that they were concerned by the content of the flyer and felt that the event was going to create issues for the club again. They were seeking information from Wolfes so that they could plan appropriate staffing for the event. Wolfes said she did not have the event scheduled and she did not advertise it.

On Friday **January 6<sup>th</sup>**, about 1820 hours, Lt. Knox spoke with Wolfes to follow-up with her on the event. She informed Knox that she located the individual who was advertising the Birthday Bash and spoke with him, she told him he must relocate the event for the following evening, which he did. I agreed to meet with Wolfes the following night at the club. There were no documented problems related to the club this night.

On Saturday **January 7<sup>th</sup>**, Lt. Knox met with Wolfes and noted the implementation of some of her procedural changes. He also noted another C.U.P violation, as her smoking area was in violation of PMC. Knox had a lengthy conversation with Wolfes regarding procedures for handling incidents such as fights, intoxicated persons and how security staff should interact with patrons. He encouraged her and her staff to call for police assistance at the earliest signs of a problem.

*12-00943 DUI: Officer Kroutil stopped a female (24) from Desoto Texas, after she left Club Neo and traveled S/B on Hopyard Rd. in the N/B lanes. She failed FST's and elected to have a blood draw. Booked at SRJ.*

*12-00945 DUI: Officer Pittl stopped a female (24) out of Stockton after she left Club Neo and made an unsafe turning movement. She failed FST's, registered a .14 BAC and was booked at SRJ*

On Friday **January 13<sup>th</sup>**, at 1910 hours, Lt. Knox spoke with Wolfes by phone to discuss suggestions for security plan changes or amendments and to see where she was with compliance to the previously identified C.U.P. violations. This conversation lasted approximately 30 minutes and included numerous suggestions, including upgrading their ID checker system. Lt. Knox had Officer Tujague go to the Sunshine Saloon to identify what type of ID capture system they utilized and upon receiving the information, called Wolfes back and provided her the Manufacturer information and model number which is used by them. Knox provided Wolfes the website information and looked at the different models while on the phone with Wolfes. Wolfes told Knox she would work on the amended security plan with the suggestions provided to her and resubmit to Knox before or upon his return on Wednesday January 18<sup>th</sup>.

On Saturday **January 14<sup>th</sup>**, a large scale fight broke out inside the club which insighted additional fights including as many as 100-200 patrons. The patrons fled outside the club and the fights continued. During the course of one fight in the north parking lot a 23 year old male was shot in the leg. Outside assistance was summoned and ultimately 39 officers responded to

Neo or to assist with policing the city while officers dealt with the shooting at Neo. Responding agencies included Livermore Police, Dublin Police, Alameda Sheriff's office and California Highway patrol. In addition, fire department personnel from LPFD and paramedics from Paramedics plus also responded to this scene. **PPD case 12-1965**

On Wednesday **January 18<sup>th</sup>**, at 1726 hours, Knox received an amended security plan via email from Wolfes' attorney, George Mull. An acknowledgement email was sent in reply. No other communication has come from Wolfes to Knox.

On Friday **January 20<sup>th</sup>**, the Director of Community Development issued an automatic suspension letter for NEO's conditional use permit. The letter was given to NEO's attorney George Mull. Mull and the city attorney's appeared in Federal Court and argued their points regarding a TRO blocking the automatic suspension of the C.U.P. The judge ruled in NEO's favor and NEO may remain open for business this weekend.

Officer Yee conveyed that one of the security guards for Neo told him that during the fight and shooting, he removed his security shirt and ran off to get away from the situation. I was also informed by Sgt. White of DPS that per an individual he knows that was present, said security started the fight when they struck a female patron in the face.

On Saturday **January 21<sup>st</sup>**, PPD completed an extensive operational order as a contingency plan if similar activities were to occur as previous Saturday weekends. The club was kept to low numbers, 158 per security staff count and NEO was also turning away potential patrons based upon their residence city (e.g., City of Richmond etc.) There were numerous security officers present, 29 stated by Neo management. Attorney George Mull was present at the club along with Wolfes and Aguilar. There were no noted problems and follow-up inspection of the property in the morning showed it was left clean.

On Thursday **January 26<sup>th</sup>**, Lt. Bretzing and Lt. Knox met with Wolfes at 1400 hours at PPD to discuss the security plan and proposed changes moving forward. Wolfes indicated she was going to bring in some new DJ's/performers and she intends to change the club format beginning February 17<sup>th</sup>. She indicated that the format on Friday nights would be salsa\salsa rock and they would be serving tacos during these events. She further indicated she would still be opening just Friday and Saturday nights. She is working on a Saturday format but did not want to comment on it yet as it was unconfirmed. Wolfes indicated she would provide a new business plan Monday or no later than mid-week the following week. She further indicated that her former manager (Sinbad) has been let go and that Pete Aguilar (security consultant) has been hired as the manager and will be present each night the club is open. She indicated that she is going to contract with established promoters to promote the club's new format. She conveyed that she received information that Karma (club in Dublin) may be responsible for the former promotions which she was unaware of and did not authorize. When asked about a commitment to occupancy reduction she stated that she could not commit to that, as that would be up to Randall Weil (the



plastic surgeon who Mull advises us is now the majority owner of the club). When asked if they would be committing to the recommendations sent to Julie Harryman via email by George Mull, she stated that those were intended as temporary fix until we met on January 30<sup>th</sup>. She said she does not welcome party buses but does not believe she can control their drop-offs but feels they will be an issue moving forward with the new format. She stated that she would purchase the new ID checking system which Lt. Knox recommended to her but had not done so as of yet. She stated her count system was based upon ticket sales and a clicker at the exit. She was asked to have two counters at the door (1 entry and 1 exit) so a count could be readily established when requested and she agreed to do so in support of tickets sales. Wolfes provided the name and phone number for her security provider and reiterated that they have been unable to get the video from the night of the shooting.

On Friday **January 27<sup>th</sup>** at 2000 hours, Jenny Wolfes called Lt. Knox and informed him that the club had more tables reserved than the typical Friday night and they would be a little busier than there typical 50-75 patrons. She indicated there would be some 49ers present, a local birthday group (2tables) and 2 tables from San Jose. At about 2330 hours Officer Sarasua met with Aguilar and requested the count. Aguilar estimated the total to be 125-150 patrons in the club. There were no noted problems this night.

On Saturday **January 28<sup>th</sup>** at 2330 hours, the crowd was reported to be 120. There was adequate security present who were visible both in the parking lot and inside the club. There was a party bus located parked in the south parking lot of the club. Sgt Fragomeli indicated that the parking lot was not adequately cleaned up and that a box containing empty "Blue Moon" beer bottles had been located in the lot the following morning and it was still present in the lot the following evening (January 29<sup>th</sup>)

On Monday **January 30<sup>th</sup>** at 1530 hours, City staff, including the City Manager and staff from PPD, Planning, and the City Attorney's Office met with Wolfes, her attorneys and Pete Aguilar and discussed proposed amendments to the operational plan and security plan. Both parties agreed to the majority of items but left several items open for further discussion. These items included occupancy number, hour for the discontinuation of alcoholic beverage service and lighting conditions.

On Friday **February 3<sup>rd</sup>**, officers reported about 15 cars in the parking lot this evening. Neo staff stated there were approximately 60 patrons in the club during the night. There were no documented problems this evening.

On Saturday **February 4<sup>th</sup>**, Lt. Knox and Sgt. Fragomeli conducted a walk-through of the club. Security consultant Aguilar stated there were 238 patrons in attendance during this evening. There were no documented problems this evening.

On Friday **February 10<sup>th</sup>**, Officer Niceley reported Neo staff stated there were 73 patrons in the club that evening at 0030 hours. There were no documented problems this evening.

On Saturday **February 11<sup>th</sup>**, officers reported that at 2320 hours Neo staff reported 133 patrons in the club. There were no problems related to the club documented this evening.

On Friday **February 17<sup>th</sup>**, Lieutenant Knox went to the club at 2345 hours and met with Pete Aguilar. This was the first night of the "new format" as proposed by Wolfes. The club advertised as "Glamour, Pleasanton's Premier Latin Night Club". Aguilar stated the patron count was 210.

**Friday, February 17, 2012**

**12-6699 647(f) PC:** *A female (Hussein) was contacted outside Club Neo after she was detained by security for stealing another customers jacket. The jacket was recovered and the victim didn't desire prosecution. Hussein was arrested for public intoxication and booked at SRJ.*

On Saturday **February 18<sup>th</sup>**, Officers reported at 0030 hrs. Neo reported 243 patrons had entered, 49 left and they were at 194 at that time. At closing, one patron was arrested for public intoxication after he was seen challenging 16-20 security guards to fight in the parking lot. (**12-06882**)

At 0530 hours, Officer Niceley located multiple plastic cups, beer bottles, trash and pile of vomit in the parking lot. Pictures were taken and downloaded into DIMS. **12-06893**

**Saturday, February 18, 2012**

**12-06882 647(f) PC:** *Jabari White was arrested for 647(f) PC after he was seen attempting to challenge approximately 16-20 security guards in the parking lot of Neo. White was also found to have a no-bail 11352(a) H&S warrant for his arrest. Booked at SRJ.*

On Friday **February 24<sup>th</sup>** Officers reported 10 cars in the parking lot and only about 50 people in the club. No formal count was requested and there were no issues related to the club this night.

On Saturday **February 25<sup>th</sup>** Sgt. Fragomeli reported 120 patrons for the night and at 0015 hours there were 90 patrons in the club. There were no reported issues related to the club this night.

On Friday **March 2<sup>nd</sup>** Sgt. Leonardo reported Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 3<sup>rd</sup>** Sgt. Fragomeli reported that the count at Neo this evening around 1230 hours was 268 patrons. There were no incidents at the club, however, 1 DUI arrest was made of a patron who had been at the club.

**Saturday, March 3, 2012**

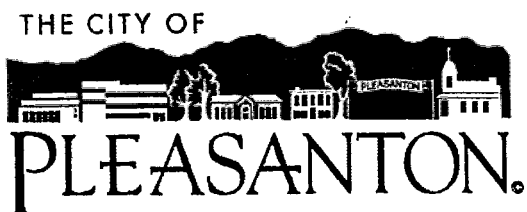
**12-08842 DUI:** At 0116 hours, Officer Yee conducted a traffic stop on a 23 year old female (insert name?). The driver was later arrested for 12500(a) VC and 23152(a) VC (.137 BAC). She stated she was drinking at Club Neo prior to the traffic stop.

On Friday **March 9<sup>th</sup>** Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 10<sup>th</sup>** Sgt. Fragomeli reported Neo was open for business. As of 0045 hours 63 patrons had entered the club and 52 departed. There were no reported problems related to the club this evening.

On Friday **March 16<sup>th</sup>** Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 17<sup>th</sup>** Neo was open for business, at midnight the number of patrons in the business was 75. There were no reported problems related to the club this evening.



## Planning Commission Staff Report

February 8, 2012  
Item 6.a.

**SUBJECT:** UP-90-43/PCUP-273

**APPLICANT:** City of Pleasanton

**PROPERTY OWNER:** FFHA Associates

**BUSINESS OWNER:** Diamond Pleasanton Enterprise

**BUSINESS OPERATOR:** Jennifer Wolfes

**PURPOSE:** Consideration of a possible modification of conditions of approval or revocation of a Conditional Use Permit for the operation of Club NEO

**GENERAL PLAN:** Business Park (Industrial / Commercial and Office) and Mixed Use

**ZONING:** PUD-I/C-O (Planned Unit Development- Industrial/Commercial – Office) District

**LOCATION:** 4825 Hopyard Road, Suite F10

**EXHIBITS:**

- A. Draft Modified Conditions of Approval
- B. Excerpts of the minutes of the August 25, 2010, Planning Commission Meeting for PCUP-273
- C. Excerpts of the minutes of the October 10, 1990, Planning Commission Meeting for UP-90-43
- D. Planning Commission Resolution No. PC-2010-18 approving PCUP-273
- E. Planning Commission Resolution No. PC-90-93 approving UP-90-43
- F. Planning Commission staff report for PCUP-273
- G. Planning Commission staff report for UP-90-43
- H. Notice of Violation letter dated December 21, 2011, from the Planning Division
- I. Police Activity Overview for Club NEO prepared by Police Lieutenant Knox for October 1, 2011, to January 26, 2012

- J. Previous approvals for Teen Night (Information Packet)
  - K. Public Comments
  - L. Location Map
  - M. Noticing Map
- 

## **BACKGROUND**

The 88,589-square-foot Gateway Square Shopping Center was approved by City Council in 1986 (case PUD-81-30-35D). In 1990, the Planning Commission approved a conditional use permit for Sh Boom (case UP-90-43), a 1950's themed dance club with alcohol service, to be operated in a 10,746-square-foot tenant space. The approved hours of operation were from 5:00 p.m. to 2:00 a.m., seven days a week with limited food service for 643 people. The original approval allowed the club to utilize a limousine to drive patrons to and from the club. The original approval also allowed private parties for groups up to 300 patrons and catering services provided by the dance club on weekends only, between the hours of 1:00 p.m. and 5:00 p.m. Between the mid 1990's and 2003 a Teen Night was approved, operated, and discontinued. A request to operate Teen Night again (in 2003) was approved. Teen Night provided a venue for kids ages 14 to 18 to socialize and dance in a controlled environment on specified times during the year and for limited hours. Teen Night was voluntarily discontinued at some point after the 2003 reinstatement and the changes to the floor plan in 2004 rendered the Teen Night approval invalid. Staff has provided an informational packet on the previous approvals for Teen Night for the Planning Commission's reference (Exhibit J).

In 2004, the business underwent cosmetic changes and the name was changed to Aura. While cosmetic changes were made to the facility, it continued to operate as a dance club/bar and no changes were made to the existing use permit. Once granted, Conditional Use Permits (CUP) run with the land and remain valid during changes of ownership.

On August 25, 2010, Diamond Pleasanton Enterprise, represented by Ms. Wolfes, received approval from the Planning Commission for modifications to the existing Use Permit to increase the occupancy and to allow outdoor dining (PCUP-273). Diamond Pleasanton Enterprise renamed the club Status, and recently renamed it again as Club NEO. The applicant made the modifications to the interior to increase the maximum occupancy from the 643 to 812 (patrons and employees combined) and added the outdoor patio area with a barrier.

In August 2011, Diamond Pleasanton Enterprise filed an application to further modify the existing CUP to allow activities for patrons under the age of 21 years old (Case P11-0647), however, the processing of this application has been postponed at the request of the applicant.

### **Recent Incidents requiring Police Intervention**

Several incidents have occurred over the last six weeks that have led staff to bring the CUP to the Planning Commission to consider possible modifications to the existing conditions of approval (Exhibit D) and/or a revocation of the Use Permit. See Exhibit I prepared by the Pleasanton Police Department for a summary of activity at the Club between October 1, 2011 and January 26, 2012.

Although the overview of Police activity (Exhibit I) provides a more complete summary of recent incidents requiring police intervention, two incidents stand out. On December 17 & 18, 2011, the Pleasanton Police Department (PPD) encountered a large crowd of people loitering in the parking lot and engaging in fights, "sideshow" vehicle activity (i.e. reckless driving in the parking lot), littering of alcohol bottles and other items. The incident resulted in the allocation of all available officers from the PPD and PPD had to request mutual aid from surrounding law enforcement agencies (i.e., the City of Dublin Police and the Alameda County Sheriff's Department). After law enforcement managed to get patrons to finally leave the parking lot, PPD dispatch received a call that a large group of persons had congregated at the Shell gas station on Hopyard Road near I-580 and were shoplifting items from the convenience store.

On December 20, 2011, the City called a meeting with Ms. Wolfes and her head of security. Members of the Police Department, the Planning Division, and the City Attorney's office attended the meeting to discuss the events of December 17/18 and prior incidents at the Club. The Planning Division discussed the conditions of approval for the applicant's Conditional Use Permit and noted the following violations of the conditions:

1. *Condition Of Approval [COA] #13: The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.*
  - The Incident Report (2011-00055619) on record indicates that Club NEO failed to use its best efforts, including COA #19, below, resulting in this condition of approval being violated in regards to loitering, and impacts to other businesses.
  - Based on the Police Department's Watch Report, it appears that a portion of the crowd moved from the Club NEO site to:
    - The Shell Gas Station on Hopyard Rd. and proceeded to "mob" that establishment. Officers responded to emergency calls from the Shell Station seeking assistance to vacate the relocated Club NEO crowd from that site.
    - The Kelly Moore Paints parking lot area, where Officers had to intervene to stop physical confrontations.
    - The Eddie Papas parking lot area, where Officers had to intervene to stop additional physical confrontations.

The Police Department's Watch Report described above demonstrates that the situation at the establishment resulted in impacts to the surrounding property owners and business operators. Therefore, this establishment has not been operating in compliance with the intent of this condition of approval for the business to maintain a "good neighbor" relationship.

2. *COA#17: Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.*
  - At the December 20, 2011, meeting, Ms. Wolfes stated that not all of the employees had obtained this training within four weeks of the start of their employment. Therefore, the establishment has not been operating in compliance with this condition of approval.
3. *COA#19: The business owner/operator shall provide security staff during operating hours subject the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.*
  - A Final Security Plan was not submitted to the Chief of Police prior to operation of the business. Therefore, the establishment has not been operating in compliance with this condition of approval inadequate security was a significant contributing factor to the incidents on Dec. 17th. As of the date this report was written, the operator does not have an approved plan; however, the operator has been working with PPD staff to get a plan approved.
4. *COA#20: The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.*
  - As stated above, the operator's security staff has been unable to control the large crowds and fights within the club and in the parking lot. Therefore, the establishment has not been operating in compliance with this condition of approval.
5. *Standard COA#2: The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.*
  - PPD presented photographs at the meeting on December 20, 2011, showing the presence of trash, glass alcohol bottles, and other items that were discarded throughout the site and the Officer reports indicate that the discarding of trash was by the patrons of the establishment and loiterers who

had tried to enter the establishment. Therefore, the establishment has not been operating in compliance with this condition of approval.

The December 20, 2011, meeting was held to discuss the incident, the conditions of approval for the CUP, and to find a resolution. Efforts were made to identify ways to improve security for the establishment and to avoid future problems. Following the meeting, the Planning Division prepared a Notice of Violation (Exhibit H) to memorialize the meeting and to restate which conditions of approval had been violated by the operator. The Notice also clarified the process by which the CUP could be automatically suspended or revoked if there were future incidents or violations of the CUP conditions.

On January 14 & 15, 2012, another incident, similar to the one that occurred on December 17 & 18, 2011, took place at the establishment, including numerous large fights that started inside the club and that spilled out into the parking lot. Within minutes of the crowd exiting the club, the fights escalated and a shooting occurred with a patron being shot in the leg in front of Kinder's restaurant. The Pleasanton Police Department had to provide 15 police officers at the club that night and call in backup assistance from Livermore (sent 8 officers), Dublin (sent 6 officers), Alameda County (sent 3 officers), and the California Highway Patrol (sent 7 officers). Additionally, the Livermore Pleasanton Fire Department and an ambulance had to respond to the Club to care for the shooting victim.

Given the melee that erupted and subsequent shooting, on January 20, the City issued a letter automatically suspending the club's conditional use permit. The Club's attorney filed a Temporary Restraining Order (TRO) in federal court to prevent the City from being able to suspend the Club's CUP absent a hearing. The federal court judge ruled in favor of the club, and set aside the City's suspension of the CUP absent a hearing. This ruling does not affect the City's ability to hold a hearing and consider modifying the conditions of approval or revoking the club's conditional use permit via a public hearing process. As stated in condition #9, the Director of Community Development may submit the CUP to the Planning Commission for review at a public hearing if the operation of the use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors. Given the incidents detailed above, the Director is submitting the CUP to the Planning Commission for consideration.

## **SITE DESCRIPTION**

The subject property is a 9.7-acre parcel, known as Gateway Square, located at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park (HBP). The one-story structure is one of five (5) on-site with a large parking lot (432 spaces) that serves the existing buildings. This is a multi-tenant building with approximately 10,746 square feet of area designated for the existing establishment.

The subject site contains tenants such as: AppleOne, Callahan Tile & Stone, Chili's, City Dry Clean, Diamond Pleasanton Enterprises, Eddie Papa's, Fast Frame, Gateway



Beauty Salon, Gateway Dental Care, Golden Apple Learning Store, Hacienda Park Optometry, Hertz, Huntington Learning Center, Kelly-Moore Paints, Kinder's, La Petite Fleur, Mills, NCAL Computer Source, Professional Nails, Randstad, Round Table Pizza, Tanning Island, The Cheese Steak Shop, The UPS Store, and Ume Sushi. The other uses in the general area are office and hotels. The nearest residential properties are located to the southwest, across Hopyard Road, approximately 600 feet away (Figure 1.1).

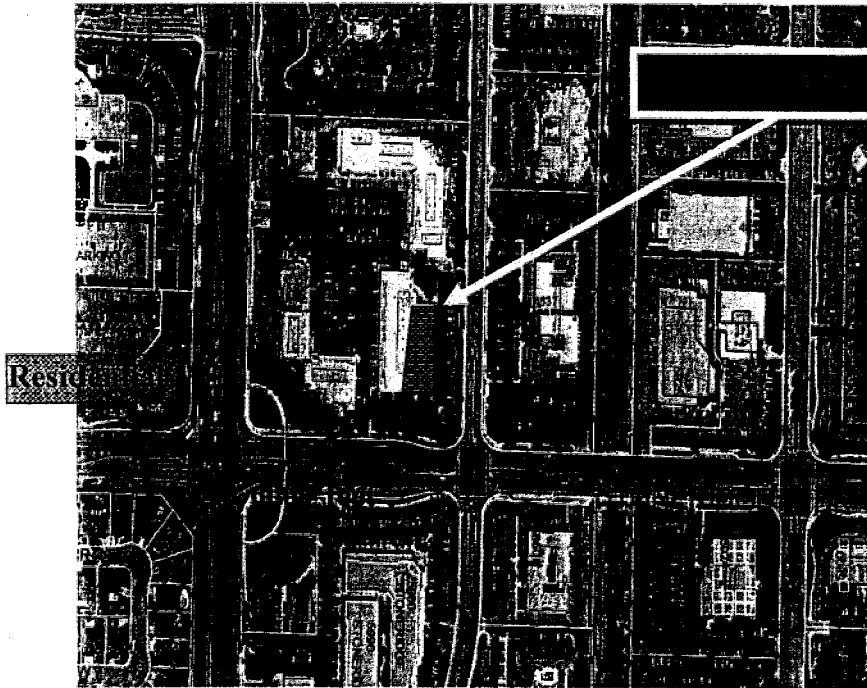


Figure 1.1 – Vicinity Map

Access to the site is provided by four driveway entrances (one off of Hopyard Road, one off of Stoneridge Drive, and two off of Chabot Drive). The existing establishment has direct parking lot access. The front entry of the night club faces Chabot Drive.

## DISCUSSION

The conditions of approval clearly specify the manner in which the business must operate. The meeting with the operator following the first significant incident provided the operator with information on the seriousness of the situation and allowed the City to offer additional support to the operator to ensure that additional incidents would not occur.

Ultimately, on January 14/15, Club NEO was not successful in controlling its patrons which resulted in several public safety and general welfare nuisances, injury to patrons, criminal activity, and increased costs to the City for additional law enforcement staffing, and a general drain on City resources.

The PCUP-273 approval allowed the establishment to modify the interior floor plan to accommodate 812 occupants (patrons and employees combined) (UP-90-43 previously allowed 643 patrons) and allowed the establishment of the outdoor patio area with a barrier (PDR-912) to accommodate up to 80 people standing or 12 people seated.

Staff supported the initial application to increase the number of patrons allowed in the club based on the positive history of dance clubs at this location (under different ownership) and because the new operator's stated experience with other night clubs which indicated that the business would be operated in a well controlled manner.

#### Occupancy

The UP-90-43 staff report noted that the "facility would accommodate a maximum total of 643 people." With the modification to the Use Permit (PCUP-273) to increase the occupancy, the establishment was allowed a maximum occupancy of 812 (patrons and employees combined). The outdoor patio area was allowed a maximum of 80 patrons standing or 12 patrons sitting, but these patrons are already counted at the entry of the facility and, therefore, are not in addition to the maximum allowed occupancy for the business.

### **OPTIONS FOR CONSIDERATION**

The Planning Commission may keep the current conditions of approval, modify the conditions of approval, or may choose to revoke the CUP. In this section of the report, staff discusses various options to modify the conditions of approval including limiting the occupancy and imposing other operating requirements related to improving security.

Staff has met with the Police Department to determine what modifications to the conditions of approval could be recommended to support this establishment continuing its operations. Based on comments from the Police Department staff has prepared draft modified conditions of approval (Exhibit A) if the Commission is inclined to modify the CUP rather than revoke it in its entirety.

#### Options for Consideration

The Planning Commission may wish to consider and/or discuss the following four options:

##### **Option 1:** Revoke the Use Permit.

Should the Planning Commission believe that the business has been given sufficient time and opportunity to rectify the problems and comply with the conditions of approval, the Planning Commission may revoke the CUP per §18.124.130 of the Pleasanton Municipal Code (PMC).

If the Commission is inclined to revoke the CUP, note that a revocation will preclude a future application for a nightclub in the same or substantially the same

site for a period of one year per Pleasanton Municipal code §18.124.140 which states:

***18.124.140 Denial—New application.***

*Following the denial of a use permit application or the revocation of a use permit, no application for a use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the use permit. (Prior code § 2-11.15)*

- Option 2:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 250. (This would require specific modification to condition #4 which addresses patron limits.)
- Option 3:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) Note that Option number 3 is the Option recommended by the Chief of Police and the Community Development Director.
- Option 4:** Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) If there are no incidents over the next 30 days and the Club complies with all of the conditions of approval, planning staff will schedule a meeting for the Planning Commission to consider increasing the number of patrons.

## **PUBLIC NOTICE**

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property.

As of the publication of this staff report, staff received one email pertaining to this application (Exhibit K). Staff has provided the noticing map as Exhibit M for the Commission's reference.

### **Hacienda Business Park**

The Hacienda Business Park Association was contacted by staff in regards to modifying the conditions of approval for the business. The modifications of the conditions of approval for the Conditional Use Permit has been determined by the Hacienda Business Park Association as being consistent with or less intensive than the operations that were previously approved by the Association and, therefore, they have no additional comments.

## **FINDINGS**

The Planning Commission made the required findings prior to granting the original Use Permits. Staff believes that the modified conditions are consistent with the previously approved findings.

## **ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

## **CONCLUSION**

The recent events occurring as a result of the operations of this establishment have had adverse impacts on the public health, safety, and general welfare. The original conditions of approval proved ineffective in mitigating impacts to the immediate neighbors as well as the community as a whole. The outreach that the Police Department and Planning staff has done was not effective in avoiding additional incidents. Staff believes that the conditions of approval related to occupancy and operations of the nightclub must be modified to avoid incidents similar to what we've seen in recent weeks.

Staff believes that Option 3 and the proposed modified conditions of approval (Exhibit A) will provide the appropriate levels of patrons, security staff, security measures, and operating measures necessary for the establishment to operate without incident.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission modify the conditions of approval for UP-90-43 and PCUP-273 per Exhibit A as outlined in Option 3.

Staff Planner: Rosalind Rondash, Associate Planner, (925) 931-5613, [rrondash@ci.pleasanton.ca.us](mailto:rrondash@ci.pleasanton.ca.us)

Redlined Exhibit A  
DRAFT Modified Conditions of Approval  
UP-90-43 and PCUP-273, 4825 Hopyard Road  
Diamond Pleasanton Enterprise  
February 08, 2012

I. Project Specific Conditions:

Planning Division

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If **the applicant desires** additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," (on file in the Planning Division) **or modifications to these conditions**, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. ~~All conditions of Cases UP-90-43 and PCUP-273 shall remain in full force and effect except as otherwise modified by this approval.~~ **These conditions of approval shall supersede all prior conditions of approval (Resolutions PC-2010-18 and PC-90-93).**
4. ~~The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).~~ **The dance club shall be limited to a maximum of 300 patrons. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request of Pleasanton Police Department personnel.**
5. **By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as they enter the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.**

- ~~6. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.~~
7. **The operator shall stop serving alcohol at 1 a.m. and all alcoholic beverages shall be collected by 1:30 a.m. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2 a.m.**
8. **Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club and all the interior club lights shall be turned on by 1:30 a.m.**
9. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
10. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
- a. Said smoking area shall be monitored and kept clean.
11. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
12. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors **violations of these conditions**, at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission **to consider medications to the conditions or revocation** for the subsequent review at a public hearing.
13. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use **or for the removal of unruly patrons** only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. **A sign stating that the outside doors of the dance club shall remain closed during all hours of**

**operation shall be placed by the all doors [rephrased wording of COA #2 of UP-90-43].**

14. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
15. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
16. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
17. **Prior to operation, Club NEO's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police Staff and a recommended security force plan. This plan shall be subject to the review and approval by the Chief of Police and shall minimally include:**
  - a. **Number of security personnel the operator intends to have onsite in relation to the number of patrons.**
  - b. **Specifically articulated job assignments for each security post, i.e., what duties are assigned and where are persons assigned, i.e., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.**
  - c. **All security staff shall wear a distinctive uniform identifying them as security officers.**
  - d. **All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the state at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request of Pleasanton Police Department personnel.**

- e. All patrons shall be searched through full pat down search by gender appropriate personnel or through use of metal detector.
  - f. A plan for staging of patrons in queue for admission.
  - g. Once the club is filled to capacity all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
  - h. A patron removal plan will include the use of rear exit doors when having to deal with unruly patrons.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to assure that it is working properly and shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
  - j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's Security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
18. That private parties held on the dance club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties. [rephrased wording of COA #3 of UP-90-43].
19. The limousine associated with the dance club, and provided for its customers as a special service, shall not be parked on-site during hours when the club is not open for business to the general public. [rephrased wording of COA #4 of UP-90-43].
20. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said



**signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as describe in the CVC. In the event that signs are not posted as required above, this approval shall become null and void. [COA #7 of UP-90-43].**

21. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
22. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
23. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
24. ~~Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.~~ **Within 45 days of the original hire date, employees that serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the club and retraining shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.**
25. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
26. ~~The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.~~  
Covered in COA# 17.j

~~27. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand. Covered in COA# 4.~~

28. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

## II. Standard Conditions:

### Planning Division

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. **By 6 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square shopping center and removed and/or cleaned up any litter, vomit, etc.**
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

## III. Code Requirements:

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

### Building Division

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.

2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

**Exhibit A (Clean)**  
**DRAFT Modified Conditions of Approval**  
**UP-90-43 and PCUP-273, 4825 Hopyard Road**  
**Diamond Pleasanton Enterprise**  
**February 08, 2012**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If the applicant desires additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," (on file in the Planning Division) or modifications to these conditions, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. These conditions of approval shall supersede all prior conditions of approval (Resolutions PC-2010-18 and PC-90-93).
4. The dance club shall be limited to a maximum of 300 patrons. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request of Pleasanton Police Department personnel.
5. By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as they enter the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.
6. The operator shall stop serving alcohol at 1 a.m. and all alcoholic beverages shall be collected by 1:30 am. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2 a.m.

7. Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club and all the interior club lights shall be turned on by 1:30 a.m.
8. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
9. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
  - a. Said smoking area shall be monitored and kept clean.
10. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
11. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
12. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use or for the removal of unruly patrons only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the dance club shall remain closed during all hours of operation shall be placed by the all doors.
13. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
14. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
15. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any

applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.

16. Prior to operation, Club NEO's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police Staff and a recommended security force plan. This plan shall be subject to the review and approval by the Chief of Police and shall minimally include:
- a. Number of security personnel the operator intends to have onsite in relation to the number of patrons.
  - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where are persons assigned, i.e., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.
  - c. All security staff shall wear a distinctive uniform identifying them as security officers.
  - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the state at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request of Pleasanton Police Department personnel.
  - e. All patrons shall be searched through full pat down search by gender appropriate personnel or through use of metal detector.
  - f. A plan for staging of patrons in queue for admission.
  - g. Once the club is filled to capacity all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
  - h. A patron removal plan will include the use of rear exit doors when having to deal with unruly patrons.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to assure that it is working properly and shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
  - j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's Security staff shall not allow loitering,

littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.

17. That private parties held on the dance club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
18. The limousine associated with the dance club, and provided for its customers as a special service, shall not be parked on-site during hours when the club is not open for business to the general public.
19. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as describe in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
20. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
21. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
22. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
23. Within 45 days of the original hire date, employees that serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in

good standing for the duration of their employment with the club and retraining shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.

24. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.

25. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

**II. Standard Conditions:**

**Planning Division**

26. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.

27. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. By 6 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square shopping center and removed and/or cleaned up any litter, vomit, etc.

28. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

**III. Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

**Building Division**

29. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain



a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.

30. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

**PCUP-273, Diamond Pleasanton Enterprise**

Application to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial, Commercial, and Office) District.

Commissioner Narum moved to make the conditional use findings as described in the staff report and to approve PCUP-273, Diamond Pleasanton Enterprise, subject to the conditions of approval as listed in Exhibit A of the staff report and the additional condition in the staff memo, dated August 25, 2010. Commissioner Blank seconded the motion.

**ROLL CALL VOTE:**

**AYES:** Commissioners Blank, Narum, Olson, Pearce, and Pentin.  
**NOES:** None.  
**ABSTAIN:** None.  
**RECUSED:** None.  
**ABSENT:** None.

Resolution No. PC-2010-18 approving PCUP-273, Diamond Pleasanton Enterprise was entered and adopted as motioned.

UP-90-43, Porter A. Hurt, Sh Boom II, Inc.

Application for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00 pm at a facility proposed to be located at 4825 Hopyard Road. Zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Office District (CPD).

Mr. Swift presented the staff report recommending approval of Case UP-90-43 subject to the conditions of the staff report. Mr. Swift added that the applicant has requested that they be allowed to open on weekends in the afternoon for private parties. He noted that parking might be a concern if the groups become too large; staff is recommending that the applicant start slow and that private parties before 5 pm be limited to 100 persons. This should eliminate any parking concerns.

Chairman Mahern asked if the entire building is vacant. Mr. Swift said the building is not vacant, but that they are filling the back side of the building. The building is located near Chili's, Amelia's Deli, and the California Federal Bank.

Chairman Mahern asked if everyone in the complex was notified of the proposed dance club. Mr. Swift said it is customary to notify those people within 300 feet of a project.

Commissioner McGuirk asked the vacancy rate of the building. Mr. Swift responded that 25 percent or more is vacant.

Commissioner Horan asked Mr. Swift what he means by having the applicant start slow. Mr. Swift explained staff feels they should start with a limitation of 100 people; the applicant would like to start at 300 people.

Commissioner Hovingh felt this type of function would be more appropriate to the downtown area. Mr. Swift said that may be true, however, there is no vacant building large enough downtown to address their needs.

THE PUBLIC HEARING WAS OPENED.

Lisa Cortese, represented the application and said she is representing the manager of Gateway Square and spoke in favor of the project. She said that Gateway Square business is dependent on Hacienda Business Park patrons; weekends and evenings are practically empty. She said the nearest tenants are Chili's, an office shop, and a deli. She said they would welcome a business that would generate evening and weekend use, and felt that the dance club was very compatible with existing businesses. She did not see that weekend private parties as described by the applicant would be a problem, but would be an asset. She felt that 300 people would be a more reasonable amount of people that

would attend an event like a wedding. She felt that most of the people attending a private party would be three or four in a car; hence, there should be no parking problem. She reiterated that she completely supports the applicant in his request for the desired 300 people limitation for private parties.

Chairman Mahern asked Ms. Cortese if the deli and Chili's serve alcohol. Ms. Cortese said they serve only beer and wine.

Porter Hurt, owner of Sh-Boom, also represented the application. He explained that most of the private parties would be for weddings and bar mitzvahs. He said that originally staff had been opposed to any private parties; then agreed to a limit of 100 people. Mr. Hurt thought that a 100 limitation was too small and would not be economically feasible. He felt a better figure might be at least 200, but preferred 300. He said parking in the complex should not be a problem in the evenings and weekends. He felt the community needs a club such as his for private parties, as the price is about one-half the fee of the Castlewood Country Club.

In response to Commissioner Horan's question, Mr. Hurt described his dance club in Cupertino. He said they do plan to prepare food at the Pleasanton club.

Commissioner Horan asked if people can bring their own D.J. for private parties. Mr. Hurt said they could do this.

In response to Commissioners Michelotti and Mahern, Mr. Hurt said they will serve food every day from 5 to 8 pm; no lunches are served at the present time.

Commissioner McGuirk discussed the location of the front door with Mr. Hurt. Mr. Hurt said they intend to enlarge the present entryway. Commissioner McGuirk expressed concern about the location of the exits. He said most exits seem to be near the kitchen and mechanical equipment. He saw only the front door exit on the drawing. Mr. Hurt said they are planning to upgrade the building as far as fire protection is concerned and are well within the City's firecode regulations.

Commissioner Michelotti said she felt that a total of 100 people for a private party might be too limiting, even though parking did have to be considered. She felt that number might be increased as the neighboring businesses had been notified and no one had registered any complaints.

Mr. Hurt said the building could be further soundproofed and the doors would remain closed.

Commissioner Hovingh asked the reason for the limo. Mr. Hurt said the limo is for public relation reasons or in the case where someone might need a ride home if they had too much to drink.

Commissioner Horan asked the minimum age that would be allowed in the club. Mr. Hurt said that age is 23, not 21 as in most clubs. He said that 72% of fatalities are 22 year olds and under. The club will cater to the 25 to 50 year olds.

Commissioner Horan said he could support a maximum of 300 people for a private party, as he felt that was about an average number of guests for a large occasion like a wedding. He said it is difficult to find party locations in Pleasanton that would accommodate such a number of guests.

Commissioner Michelotti suggested that between 150 and 200 people be allowed for private parties. Commissioner Horan responded that the 300 figure could be reduced if it became a problem.

Further discussion ensued as to the number of people to be allowed for a private party.

Mr. Hurt said he would be willing to accept having parties two weekends a month. Mr. Swift responded that if one weekend a month causes no problems in the complex, then all weekends should be appropriate.

THE PUBLIC HEARING WAS CLOSED.

A motion was made by Commissioner Michelotti, seconded by Commissioner Hovingh, and approving the Negative Declaration prepared for Case UP-90-43 as approval would not have a significant adverse effect on the environment.

ROLL CALL VOTE

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti  
and Chairman Mahern  
NOES: None  
ABSENT: None  
ABSTAIN: None

Resolution No. PC-90-92 was entered and adopted approving the Negative Declaration prepared for Case UP-90-43 as motioned.

A motion was made by Commissioner Michelotti, seconded by Commissioner Hovingh, making the required findings, and approving Case UP-90-43 subject to the conditions of the staff report with the following modifications:

- \* That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.
  
- \* That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00pm through 5:00pm, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subject to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.

ROLL CALL VOTE

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti,  
and Chairman Mahern  
NOES: None  
ABSENT: None  
ABSTAIN: None

Resolution No. PC-90-93 was entered and adopted approving Case No. UP-90-43 as motioned.

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2010-18

RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR  
DIAMOND PLEASANTON ENTERPRISE AS FILED UNDER CASE PCUP-273

WHEREAS, Diamond Pleasanton Enterprise has applied to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility; and

WHEREAS, zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District; and

WHEREAS, at its duly noticed public hearing of August 25, 2010, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this application; and

WHEREAS, this project is categorically exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities, and Class 1, which allows the operation of permitted or conditionally permitted uses within an existing building; and

WHEREAS, the Planning Commission made the following findings:

1. The proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

The objectives of the zoning ordinance include fostering a harmonious, convenient, workable relationship among land uses, protecting land uses from inharmonious influences and harmful intrusions, and ensuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, the proposed modifications to the existing establishment would be consistent with these objectives. The dance club establishment has been a compatible use with the surrounding businesses, and the expansion of the subject site would also be consistent with the existing business operations.

The site is located within the Hacienda Business Park's CPD (Retail/Commercial/Financial Planned District), which permits the uses of the City's C-C (Central Commercial) and C-F (Freeway Commercial) Districts. Bars, including entertainment and dancing, are conditionally permitted uses in the C-C and C-F Districts and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The proposed conditions of approval for the project give the City appropriate controls to ensure that the use does not have any negative impacts on surrounding businesses and properties. The modification to the Use Permit is, therefore, in accordance with the objectives of the zoning district in which the site is located; therefore, this finding can be made.

2. The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

As conditioned, the proposal will not have a detrimental impact on the public health, safety, or welfare, or be materially injurious to the properties or improvements in the vicinity. In particular, conditions require adherence to hours of operation and parking to mitigate for possible impacts to adjacent uses. The new business owner has assured staff that he will work proactively to ensure that all patrons behave in an orderly manner. The outdoor patio area will enable the establishment to control noise, loitering, or other nuisances that would otherwise occur within the parking lot. Further, if a conflict arises with the operation of the business, a condition of approval provides that the proposal may return to the Planning commission for further consideration or additional mitigation measures. The existing dance club establishment has provided a social benefit to the community. Therefore, this finding can be made.

3. The proposed conditional use will comply with each of the applicable provisions of the Zoning Ordinance.

The Pleasanton Municipal Code states that because of the unusual or uncharacteristic nature of some proposed land uses, conditional uses require special consideration so that they may be located properly with respect to their effects on the surrounding properties. The proposed use has conditions of approval to ensure that the applicable provisions of the Pleasanton Municipal Code are met and that adjacent businesses and residences will not be adversely impacted. Therefore, this finding may be made.



WHEREAS, the Planning Commission determined that the proposed modification to the operation of the night club would be compatible with the existing uses in the area.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

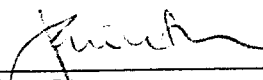
Section 1. Approves Case PCUP-273, the application of Diamond Pleasanton Enterprise to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/ standing area and to increase the maximum occupancy at the facility, subject to the conditions shown in Exhibit A, attached hereto and made part of this case by reference.


Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 25<sup>TH</sup> DAY OF AUGUST 2010 BY THE FOLLOWING VOTE:

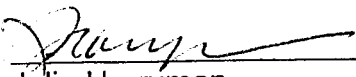
AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin.  
NOES: None.  
ABSTAIN: None.  
RECUSED: None.  
ABSENT: None.

ATTEST:

  
\_\_\_\_\_  
Janice Stern  
Secretary, Planning Commission

  
\_\_\_\_\_  
Arne Olson  
Chair

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Julie Harryman  
Assistant City Attorney

**EXHIBIT A  
CONDITIONS OF APPROVAL**

**PCUP-273, Diamond Pleasanton Enterprise  
4825 Hopyard Road  
August 25, 2010**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor patio area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.

7. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
  - a. Said smoking area shall be monitored and kept clean.
8. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
9. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
10. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
11. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
12. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
13. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
14. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
15. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business

owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

16. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
17. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
18. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
19. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
  - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
20. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
21. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
22. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

**II. Standard Conditions:**

**Planning Division**

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

**III. Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

**Building Division**

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-90-93

RESOLUTION APPROVING A CONDITIONAL USE PERMIT AS FILED UNDER CASE UP-90-43 FOR SH BOOM II, INC., PORTER A HURT, FOR A DANCE CLUB

- WHEREAS, SH Boom II, Inc., (Porter A. Hurt) has applied for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road; and
- WHEREAS, zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Offices District; and
- WHEREAS, at their duly noticed public hearing of October 10, 1990, the Planning Commission considered all public testimony, relevant exhibits and recommendations of the City staff concerning this application; and
- WHEREAS, after considering all public testimony, relevant exhibits, and recommendations of the City staff, the Planning Commission approved a negative declaration for Case UP-90-43; and
- WHEREAS, the Planning Commission made the following findings:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) District. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C District and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- c. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00pm is consistent with the City's ability to regulate zoning as listed in the Municipal Code Section 18.124.

**WHEREAS,** the proposed use is consistent with the zoning designation and General Plan policies of the City of Pleasanton.

**NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:**

Section 1. Approves Case UP-90-43, the application of Sh boom, Inc., (Porter A. Hurt) for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road subject to the conditions shown on Exhibit "A" attached hereto and made part of this case by reference.

Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

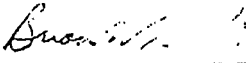
Resolution No. PC-90-93  
Page 3

THIS RESOLUTION ADOPTED THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 10TH DAY OF OCTOBER 1990 BY THE FOLLOWING VOTE:

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti and  
Chairman Mahern  
NOES: None  
ABSENT: None  
ABSTAIN: None

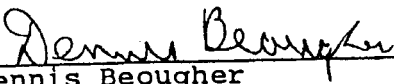
DATE: October 10, 1990

ATTEST:

  
\_\_\_\_\_  
Brian W. Swift  
Secretary

  
\_\_\_\_\_  
Marcelline Mahern  
Chairman

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Dennis Beougher  
Assistant City Attorney

pc9093/sm



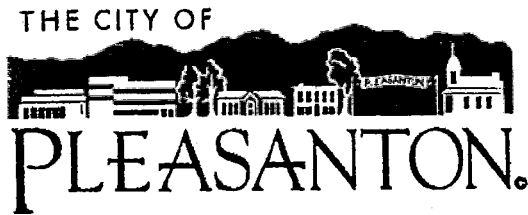
**EXHIBIT B**  
**CONDITIONS OF APPROVAL**  
**UP-90-43**

1. That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of the operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.
2. That the outside doors of the dance club shall remain closed during all hours of operation. A sign to that effect shall be placed by the entry doors.
3. That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
4. That the limousine associated with the dance club, and provided for its customers as a special service, not be parked on-site during hours when the club is not open for business to the general public.
5. That the applicant obtain all necessary permits from the State and County prior to beginning the operation of the establishment.
6. That if, at any time in the future, the activities of the operation deviate from the above description or the

the dance club encourages loud noise, litter, traffic problems, drunkenness, etc., to the detriment of the surrounding uses or to the City in general, the Planning Commission may review and, if necessary, revoke the subject conditional use permit per Municipal Code Section 18.124.130.

7. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to the Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
8. That the applicant shall apply for and obtain all applicable City permits for the dance club establishment prior to the commencement of business.
9. That the operation shall comply with all applicable Fire, Building, and Public Health codes, to the satisfaction of the Fire Marshall, the Chief Building Inspector and representatives of the County Health Department. Non-compliance with said codes may result in a Planning Commission review and, if necessary, revocation of the subject conditional use permit per Municipal Code Section 18.124.130.
10. That the owner/manager of the dance club apply for sign review approval for the dance club. If the signs proposed are not consistent with the comprehensive sign program of the Gateway Square shopping center, then the applicant shall apply for Design Review approval of the proposed sign program.

(up9043ca.pc)kjl  
October 4, 1990



**Planning Commission  
Staff Report**

August 25, 2010  
Item 5.a.

**SUBJECT:** PCUP-273

**APPLICANT:** Diamond Pleasanton Enterprise

**PROPERTY OWNER:** FFHA Associates

**PURPOSE:** To modify the approved conditional use permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility.

**GENERAL PLAN:** Business Park (Industrial / Commercial and Office) and Mixed Use

**ZONING:** PUD-I/C-O (Planned Unit Development-Industrial/Commercial – Office) District

**LOCATION:** 4825 Hopyard Road

**ATTACHMENTS:** Exhibit A, Draft Conditions of Approval  
Exhibit B, Site Plan/Seating Plan and Narrative  
Exhibit C, Outdoor Seating Plan, Table, Chairs, and Barrier Specifications  
Exhibit D, Hacienda Business Park Letter of Approval  
Exhibit E, Conditions of Approval for UP-90-43  
Exhibit F, Security and Training Plan  
Exhibit G, Sample Food Menu  
Exhibit H, Location Map  
Exhibit I, Noticing Map

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**BACKGROUND**

The 88,589-square-foot Gateway Square Shopping Center was approved by City Council in 1986 (case PUD-81-30-35D). In 1990, the Planning Commission approved a conditional use permit for Sh Boom (case UP-90-43), a 1950's theme dance club with alcohol service, to be operated out of a 10,746-square-foot tenant space. The approved

hours of operation were from 5:00pm to 2:00am, seven days a week with limited food service.

In 2004, the business underwent cosmetic changes to update its look and the name of the business was changed to Aura. While cosmetic changes were made to the facility, it continued to operate as a dance club/bar and no changes were made to the existing use permit. Once granted, Conditional Use Permits run with the land and remain valid during change of ownerships.

Diamond Pleasanton Enterprise, the applicant, is acquiring the existing dance club (Aura, to be renamed to Status) and is proposing to make minor interior modifications that increase the maximum occupancy, add an outdoor patio area with a barrier (case PDR-912, which will be reviewed by staff), and modify condition number 2 of UP-90-43 to allow the side doors to be used for access to the outdoor patio area during business operations. Accordingly, the applicant has applied for a Conditional Use Permit to modify the existing approval to allow the proposed expansions. Conditional Use Permits and modifications of existing Conditional Use Permits require review and action by the Planning Commission and, therefore, this application is before the Planning Commission for its consideration.

### SITE DESCRIPTION

The subject property is a 9.7-acre parcel, known as Gateway Square, located at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park (HBP). The one-story structure is one of five (5) on-site with a large parking lot (432 spaces) that serves the existing buildings. This is a multi-tenant building with approximately 10,746 square feet of area designated for the existing establishment.

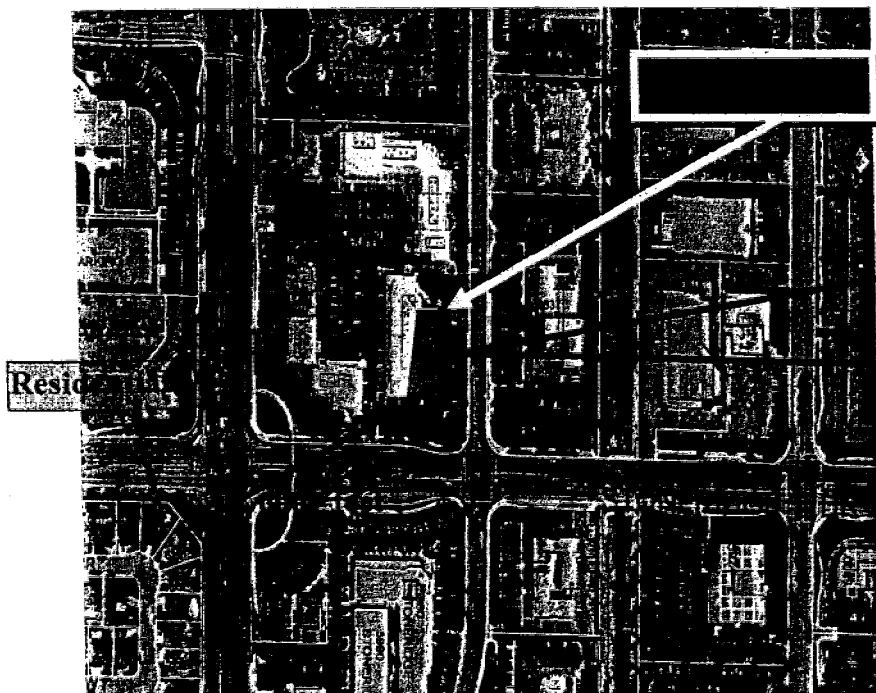


Figure 1.1 – Vicinity Map

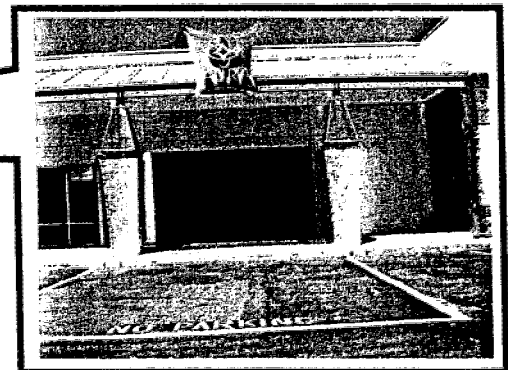


Figure 2.1 – Entry Doors

The subject site contains tenants such as: AppleOne, Callahan Tile & Stone, Chili's, City Dry Clean, Diamond Pleasanton Enterprises, Eddie Papa's, Fast Frame, Gateway Beauty Salon, Gateway Dental Care, Golden Apple Learning Store, Hacienda Park Optometry, Hertz, Huntington Learning Center, Kelly-Moore Paints, Kinder's, La Petite Fleur, Mills, NCAL Computer Source, Professional Nails, Randstad, Round Table Pizza, Tanning Island, The Cheese Steak Shop, The UPS Store, and Ume Sushi. The other uses in the general area are office and hotels. The nearest residential properties are located to the southwest, across Hopyard Road, approximately 600 feet away (Figure 1.1).

Access to the site is provided by four (4) driveway entrances (one (1) off of Hopyard Road, one (1) off of Stoneridge Drive, and two (2) off of Chabot Drive). The existing establishment has direct parking lot access. The front entry of the existing establishment faces Chabot Drive (Figure 2.1).

### PROJECT DESCRIPTION

The applicant proposes to modify the interior floor plan to accommodate 812 occupants (which is a modification of the approval for UP-90-43 that allowed 643 patrons), establish an outdoor patio area with a barrier (PDR-912) that will accommodate up to 80 people standing (as determined by an architectural calculation) or 12 people seated (Figure 3.1, 4.1, 4.2, and Exhibit C), and to utilize the doors on the southeast portion of the building for



Figure 3.1

access to the outdoor patio (which is a modification of condition number 2 of UP-90-43). The outdoor patio area would be utilized for patrons to consume beverages and/or food if they desired. The outdoor furniture would be removed nightly at 10pm to allow for standing room only.

The proposed outdoor patio area with barrier will be required to meet the requirements of the Americans with Disabilities Act (ADA), including a four-foot unobstructed sidewalk clearance around the barrier and Alcohol Beverage Control (ABC) requirements for beverage service in this area. The barrier is subject to staff-level design review approval and will require a building permit from the Building and Safety Division. The Planning Commission will be notified of staff's action on the barrier on a future Zoning Administrator Action Report.

The following illustrations show the approximate location of the barrier to be installed (Figure 4.1 and 4.2) and a detail of the barrier design and furniture specifications are attached for additional reference (Exhibit C). The barrier will be painted to match the metal elements (brown) on the building and the applicant has stated that two (2) security personnel will be employed to monitor the outdoor seating area.

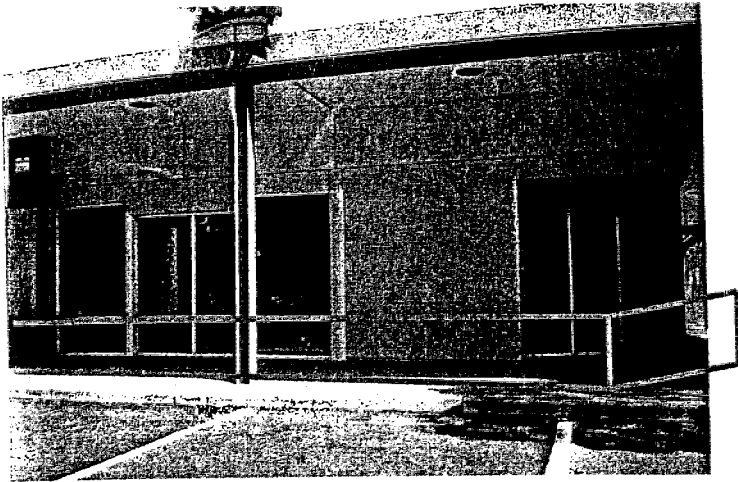


Figure 4.1

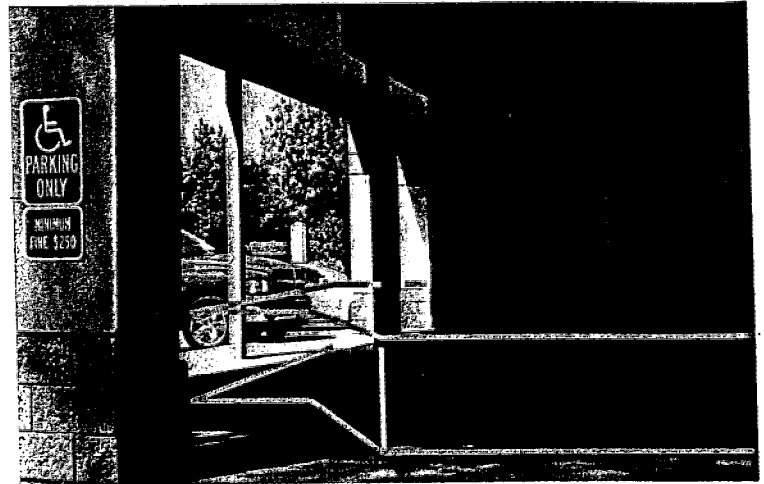


Figure 4.2

All other criteria of the existing Conditional Use permit would be complied with. Please refer to the applicant's written narrative and floor plan for a detailed description of the facility and its layout (Exhibit B).

## ANALYSIS

Conditional uses are uses that, by their nature, require individual review to ensure that impacts associated with their use will be minimal. Conditional Use Permits may be subject to appropriate conditions to ensure that any potential adverse impacts associated with the use will be mitigated. Additionally, the conditions of approval for this application have been composed to address possible conflicts with surrounding land uses. These conditions aim to balance the request of the applicant with the public health, safety, and welfare of the neighboring area.

The discussion below provides an analysis of the proposed modifications of the existing Conditional Use permit.

### Land Use

The existing use is located in a PUD (Planned Unit Development) that allows this type of use subject to a Conditional Use Permit. The existing dance club has been in operation since 1990. According to the Police Department, this establishment has generated calls for service commensurate with the combination of large numbers of people, alcohol service, and late hours. When the existing Conditional Use Permit (UP-90-43) was granted in October of 1990 there were only a limited number of conditions placed on the project and only a few of those conditions dealt with issues of safety and

security. With this Conditional Use Permit application, the Planning Division and Police Department have taken the opportunity to fine tune and add recommended conditioning to ensure that peace and order are achieved at this location. Therefore, staff has recommended conditions of approval that address employee training, security, music selection, and beverage pricing. Additionally, the new owner has stated that they will operate the establishment in a responsible manner.

One of the primary questions in reviewing a modification to a Conditional Use Permit application is what effect the proposed changes will have on the surrounding uses. The surrounding uses include office, retail, and restaurant uses. There are unlikely to be any conflicts with the surrounding retail uses because the hours of operation do not overlap with the proposed use. Additionally, the existing dance club and restaurants have operated as complimentary uses with many patrons opting to enjoy their dinner at the neighboring restaurants before entering the dance club for the evening. Therefore, staff believes that the existing use with the proposed modifications will not create any adverse impacts on the surrounding uses. Furthermore, the subject site does not immediately abut residential property, reducing potential noise impacts on the residences. Therefore, from a land use perspective, staff finds the proposed modifications to the existing use to be acceptable, as conditioned.

#### Occupancy

The UP-90-43 staff report noted that the "facility would accommodate a maximum total of 643 people." The applicant stated that the existing layout accommodates approximately 742 people and staff has confirmed this information by reviewing improvement plans that were approved by the Building and Safety Division. With the modifications to the interior seating, the establishment would be able to accommodate 812 occupants (patrons and employees) and the outdoor patio area would accommodate 80 patrons standing or 12 patrons sitting. Though the outdoor patio area accommodates additional patrons, these patrons are already accounted for at the entry of the facility and, therefore, are not considered in the total calculation of the maximum allowed occupancy.

The applicant has indicated that the occupancy of the establishment will be monitored closely. The counting method is based on a system of providing numbered tickets at the time of entry with exiting patrons being counted by a manually operated "clicker." The applicant has stated that the occupancy of the facility at any given time can be obtained within a matter of a few minutes.

Staff believes that, as conditioned, the proposed modification will not produced any conflicts with the surrounding uses.

#### Noise

The proposed modifications to the existing Conditional Use permit must be in accord with the objectives of the Zoning Ordinance. One of those objectives is to "promote the

stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions." As proposed, staff believes that noise from the dance club would be minimal and would not negatively impact uses located adjacent to the subject site.

The Police Department has indicated that the music selection is one of the main factors in the amount of noise (and public disturbance) complaints that are typically received for this type of establishment. The current music selection is Top 40 mainstream mix. The applicant has stated that they will continue the current music genre and will not be playing Hip Hop as a main music selection.

Furthermore, the entry doors and the doors to the outdoor patio area will be the only access points to the building during business hours. The existing doors already operate with self-closing mechanisms. The other doors will remain closed during business hours and are for emergency exit use only, further limiting potential noise impacts to surrounding tenants and properties. There will not be any music provided in the outdoor patio area. The use will be required to comply with the City's noise regulations that are designed to protect the peace, health, safety, and welfare of the citizens. Additionally, staff has recommended conditions of approval that will require the applicant to be responsible to ensure that patrons are orderly and quiet in the patio area and when arriving/departing the building and parking areas. Therefore, staff does not expect the proposed modifications would be disruptive to adjacent properties.

### Parking

There are a total of 432 on-site parking spaces in Gateway Square Shopping Center. The overall parking ratio for the center is 1 parking space for every 205 square feet of floor area. Applying this parking ratio to the applicant's 10,746-square-foot tenant space, 53 parking spaces would theoretically be allocated to the tenant space. However, there are no assigned parking spaces in this development.

The Municipal Code does not have a parking standard that precisely calculates the parking demand for this use which contains a relatively low number of seats (66) and a high occupancy (812). The Municipal Code parking standards for bars requires one parking space per 200 square feet of gross floor area or one space for every three seats, whichever is greater. Based on this standard, 54 spaces would be required using the size of the tenant space (only 22 spaces would be required based on the number of seats). The Municipal Code parking standard for dance halls is calculated at a one parking space per 50 square feet of floor area used for dancing. The proposed use would only require 35 spaces based on the 1,823 square feet of dance floor in the establishment. In addition, the Hacienda Design Guidelines require one parking space per 200 square feet of gross floor area for commercial/retail uses, which is what was used to determine the parking requirements when this shopping center was built.

With a maximum occupancy of 812 occupants, staff believes that the parking demand for the use would be much higher than the Municipal Code and Hacienda parking



requirements calculated above. However, staff believes that parking demand would be alleviated by many factors, including patrons carpooling to the facility. While it is difficult to determine the exact parking demand created by the facility, staff believes the maximum parking demand would be around 270-400 spaces, depending on the number of people carpooling to the site (approximately 270 parking spaces would be used if there were three persons per vehicle and approximately 400 spaces would be used if there were two persons per vehicle). Staff notes that these are maximum parking demand estimates and that the maximum number of patrons is unlikely to be present on a consistent basis and would most likely be limited to weekends.

Due to the shortfall in allotted parking spaces compared to the estimated peak demand for this use, staff considered other factors, such as the parking demands of the other uses, the hours of operation, and multiple designation vehicle trip.

The dance club would experience peak parking demands at 10:00pm. Since the majority of the other uses in the complex are closed by 6:00pm, staff does not believe that there will be any parking conflicts with the adjacent tenants. The parking lot provides ample parking to serve the dance club and the existing restaurants that are open until 10:00pm. It is also conceivable that a single vehicle could be used to transport patrons to the restaurant for dinner and then those same patrons could then go to the dance club for their evening entertainment (i.e. one parking space would be serving two uses).

Additionally, staff has talked to James Paxson, General Manager of Hacienda Owners Association, regarding the parking situation for the current dance club and he has indicated that there have been no parking conflicts with the existing establishment and he does not foresee any conflicts with the business expansion. Staff is recommending a condition of approval requiring the applicant to encourage club staff to utilize the areas of the parking lot that are less used by the patrons. This would allow patrons to park as close the dance club as possible, thereby reducing the potential for parking conflicts with patrons of the restaurants.

Therefore, based on the parking demands of the other uses, the hours of operation, and the historic parking situation, staff believes that the parking availability is sufficient to accommodate the proposed use and the surrounding uses in the complex. However, should parking-related problems occur, staff has included a condition of approval which allows the Director of Community Development to refer the use permit back to the Planning Commission for possible mitigation measures.

#### Outdoor Patio Area

The outdoor patio area has been reviewed by the Building and Safety Division and the Police Department. Both reviewing parties are working with the applicant to ensure that all applicable codes will be met. The area enables the operator to offer a controlled area for the patrons to get fresh air or to talk without exiting the facility and loitering in the parking lot area. Given the proximity to the doors, no smoking would be allowed in

the patio area per the City's Smoking Ordinance; the applicant has been made aware of this restriction.

## **PUBLIC NOTICE**

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property. As of the publication of this staff report, staff has not received comments pertaining to this application. Staff has provided the noticing map as Exhibit I for the Commissions reference.

## **HACIENDA OWNERS ASSOCIATION**

James Paxson, General Manager of Hacienda Owners Association, has reviewed the application for the proposed use and found that it is in substantial compliance with Hacienda's guidelines set forth in the CC&Rs (Exhibit D). James Paxson has stated to staff that based on the space allocation and business practice, the association believes that the use, parking, and traffic are compatible with the current approved uses within the subject area and, thereby, approved the proposed use.

## **FINDINGS**

The Planning Commission must make the following findings prior to granting the use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinances and the purpose of the district in which the site is located.**

The zoning ordinance endeavors to foster a harmonious, convenient, and workable relationship among land uses, while protecting land uses from inharmonious influences and harmful intrusions; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff believes the proposed modifications to the existing establishment would be consistent with these objectives. The dance club establishment has been a compatible use with the surrounding businesses and staff believes that the expansion to the subject site would also be consistent with the existing business operations.

The site of the subject use is located within the Hacienda Business Parks' CPD (Retail/Commercial/Financial Planned District), which permits the uses of the City's C-C (Central Commercial) and C-F (Freeway Commercial) districts. Bars, including entertainment and dancing, are conditionally permitted uses in the C-C and C-F districts and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The proposed conditions of approval for the project give the City appropriate controls to ensure that the use does not have any negative impacts on surrounding businesses and properties. The

modification to the use permit is, therefore, in accordance with the objectives of the zoning district in which the site is located, and staff believes this finding can be made.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

As conditioned, staff finds that the proposal will not have a detrimental impact to the public health, safety, or welfare, or be materially injurious to the properties or improvements in the vicinity. In particular, conditions require adherence to hours of operation and parking to mitigate for possible impacts to adjacent uses. The new business owner has assured staff that they will work proactively to ensure that all patrons behave in an orderly manner. Staff also believes the outdoor patio area will enable the establishment to control noise, loitering, or other nuisances that would otherwise occur within the parking lot. Further, if a conflict arises with the operation of the business, a condition of approval allows the Director of Community Development to determine if the proposal needs to return to the Planning Commission for further consideration or additional mitigation measures. The existing dance club establishment has provided a social benefit to the community. Therefore, staff believes that this finding can be made.

- C. That the proposed conditional use will comply with each of the applicable provisions of the Municipal Code which apply to Conditional Uses.**

The Pleasanton Municipal Code states that because of the unusual or uncharacteristic nature of some proposed land uses, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties. The proposed use has conditions of approval to ensure that the applicable provisions of the Pleasanton Municipal Code are met and that adjacent businesses and residences will not be adversely impacted. Therefore, staff believes that this finding can be made.

## **ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

## **CONCLUSION**

Based on the analysis of this staff report, staff believes that the required findings for the proposal can be met. Additionally, staff believes that the proposed use, as conditioned, will be compatible with the surrounding uses. The recommended conditions of approval have been carefully considered and constructed to address potential conflicts with

adjacent land uses and to maintain the safety and general welfare of the surrounding area.

### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve PCUP-273 by taking the following actions:

1. Make the required conditional use findings as described in the staff report; and
2. Approve PCUP-273 subject to the conditions listed in Exhibit A.

Staff Planner: Rosalind Rondash, Assistant Planner, (925) 931-5613, [rrondash@ci.pleasanton.ca.us](mailto:rrondash@ci.pleasanton.ca.us)

**Exhibit A**  
**DRAFT Conditions of Approval**  
**PCUP-273, 4825 Hopyard Road**  
**Diamond Pleasanton Enterprise**  
**August 25, 2010**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The applicant acknowledges that its music selection, Top 40 mainstream mix, is specifically being accepted and conditioned as provided herein based on the City's experience with similar business establishments with this type of music. If changes to the music selection are desired, prior City review and approval is required. Applicant must submit to the City in writing the proposed new music selections. The Director of Community Development or his or her designee shall have five (5) business days to review the proposal, and either approve, approve subject to conditions, or disapprove, in writing. Decisions of the Director of Community Development may be appealed to the Planning Commission and be heard at their next regular meeting, which appeal will stay the Director's decision. This requirement for prior City approval of a change in music selection is based on the City's experience, and that of other local communities, with

significant negative secondary effects (fighting, loitering, littering, etc.) with other business establishments with different music selections.

6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
7. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
8. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
9. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
10. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
11. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
12. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
13. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.

14. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
15. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
16. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
17. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
18. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
  - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
19. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
20. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
21. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

**II. Standard Conditions:**

### Planning Division

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

### III. **Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

### Building Division

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.



4225 HOPKARD ROAD  
GATEWAY SHOPPING CENTER  
PLEASANTON, CA

STATUS

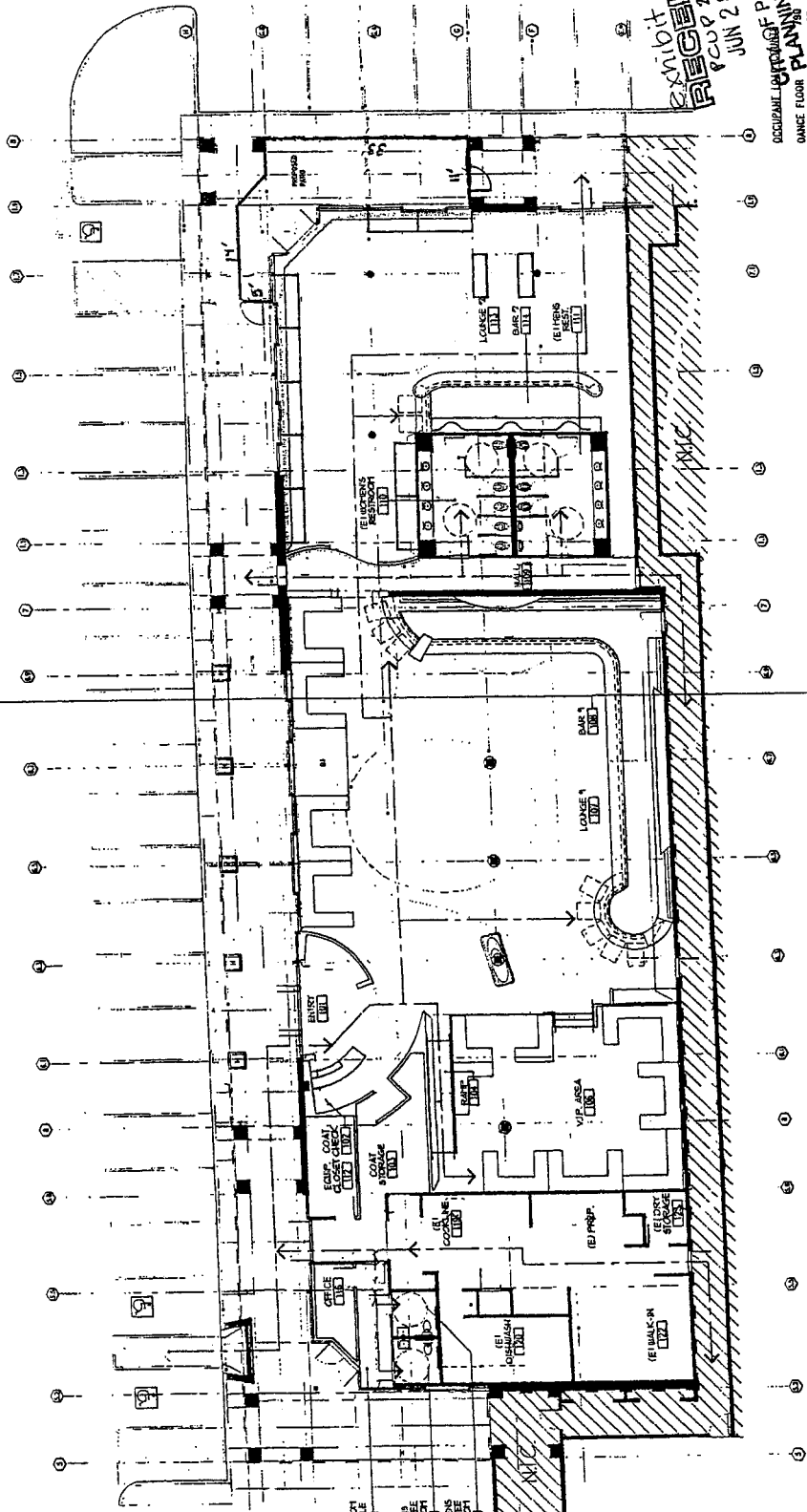
RECEIVED  
EXHIBIT #2  
JUN 28 2010  
COURT REPORTING PLAN

OFFICE OF PLEASANTON  
PLANNING DIVISION

1/8" = 1'-0"

DANCE FLOOR 22  
RESTROOM / KITCHEN 22  
TOTAL INTERIOR 812

80  
PARK (\$3804#)



RESTROOM  
KITCHEN  
DANCE FLOOR

LOUNGE

RESTROOM

RESTROOM

RESTROOM

RESTROOM

RESTROOM

RESTROOM

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RESTROOM

RESTROOM

**RECEIVED**

PCUP-273

JUN 28 2010

**CITY OF PLEASANTON  
PLANNING DIVISION**

STATUS

Diamond Pleasanton Ent.

Project Narrative.

The purpose of this application is to amend the existing CUP for the nightclub formally known as Aura, located at 4825 Hopyard Road. The CUP amendment would include the following:

1. Install a removable gate,
2. Establish a outdoor patio area, and
3. Increase the maximum occupancy

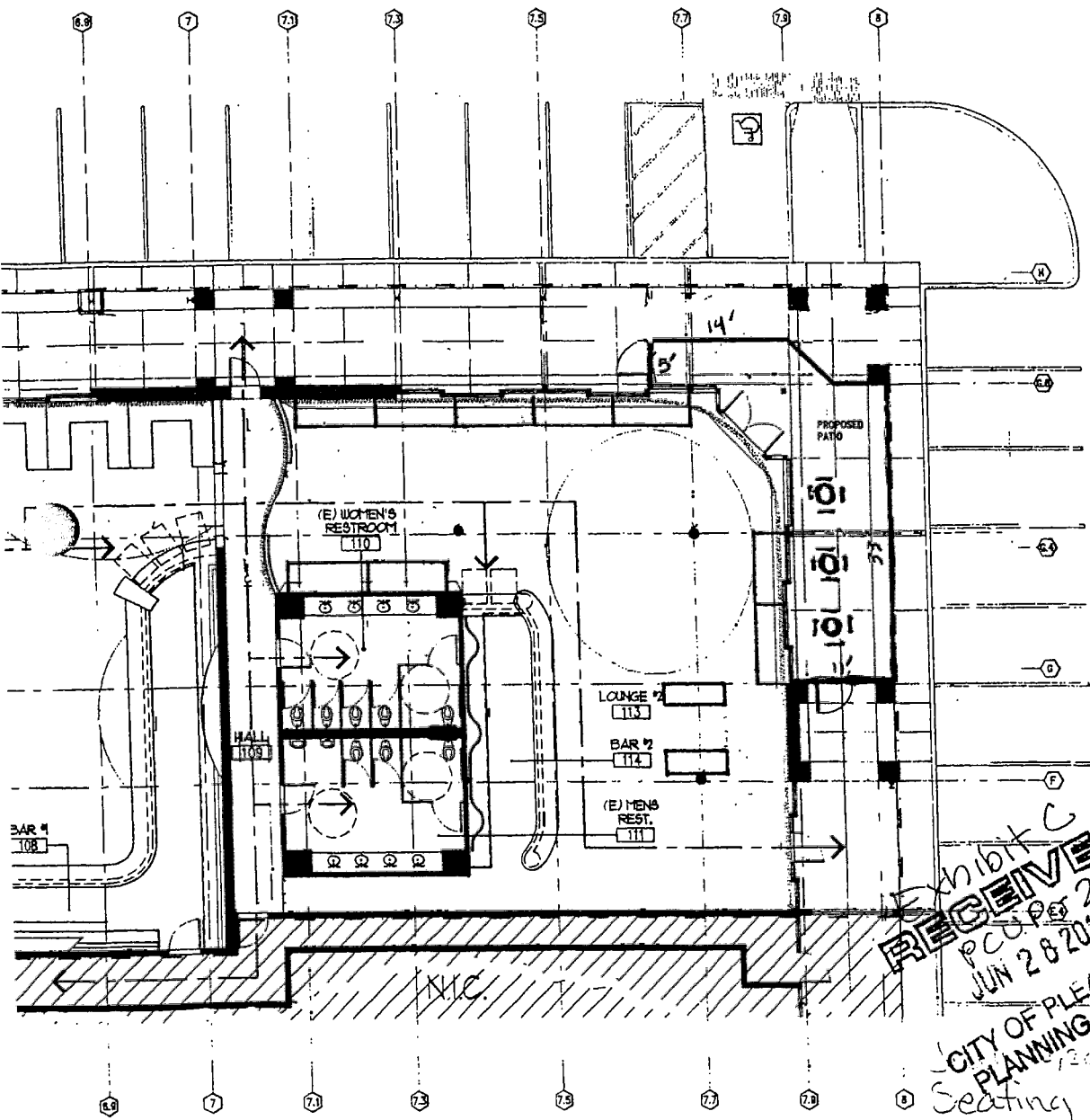
The removable gate and outdoor patio area would be located on the south east corner of the subject site. The attached drawings show the gate dimensions and height at approximately 4.5 feet tall. The gate will be a free-standing, metal gate with proper emergency exiting features.

Once customers enter the club they are not allow to exit and re-enter. The outdoor patio enables the operators to fully monitor all customers and provide top security. The outdoor patio area will enable us to provide our customers with the ability to go out doors for fresh air without leaving the establishment and loitering in the parking lot. The patio area will have its own security and the tables and chairs will be removed at 10:00pm nightly and the area will then become a standing room only. Security will be positioned outside the gate as to not allow anyone in or out of the designated area unlawfully.

We have surveyed the surrounding area to assess the noise issues. Because there are no residential developments nearby and the surrounding businesses are closed by 10:00pm, we feel that noise will not be an issue.

There will be approximately 15 employees to operate the dance club, including 1 to 2 food service staff. Security will be employed on a projection basis. On slow nights, there will be approximately 6 security staff on-site. Busy nights would be staffed with up to 16 security staff on-site. We will be offering an upscale night time entertainment option for adults (21 years and older) that includes live and DJ music for dancing. The music selection will be Top 40 mainstream variety. We will be offering limited food service, with such items as shown on the food menu provided.

Music will be played, dancing will be allowed, and food service (limited on slow nights) will be offered during our business hours (Monday through Sunday, 5:00pm to 2:00am). The space may also be used for office gatherings, special events, and private parties as allowed by UP-90-43. Additionally, the office operations of the business may occur Monday through Sunday, 11:00am to 2:00am, when ordering, inventory, etc. type of duties are conducted.



OUTDOOR Seating Plan

STATUS  
 4825 HOPYARD ROAD  
 GATEWAY SHOPPING CENTER  
 PLEASANTON, CA

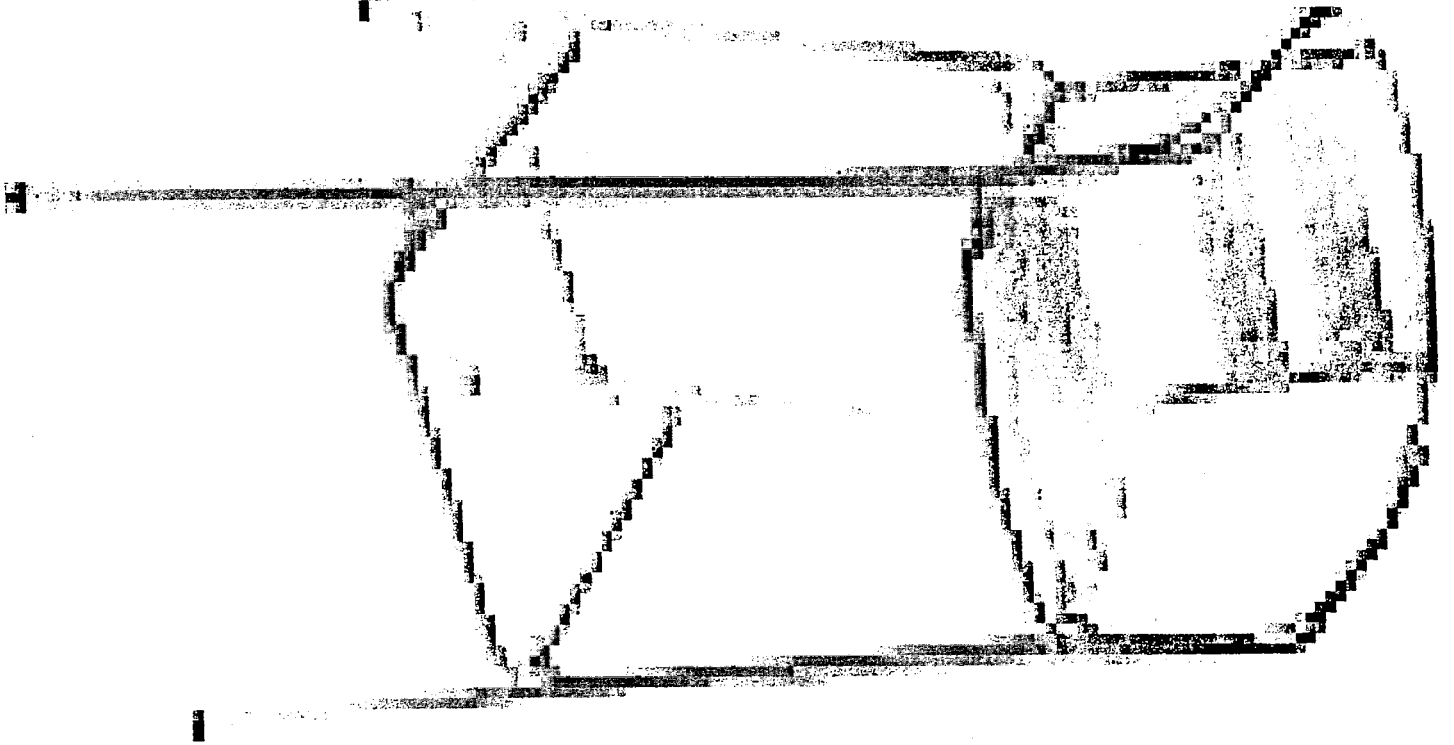
EXHIBIT C  
**RECEIVED**  
 PCUP 273  
 JUN 28 2010  
 CITY OF PLEASANTON  
 PLANNING DIVISION

OCCUPANT LOAD COUNTS

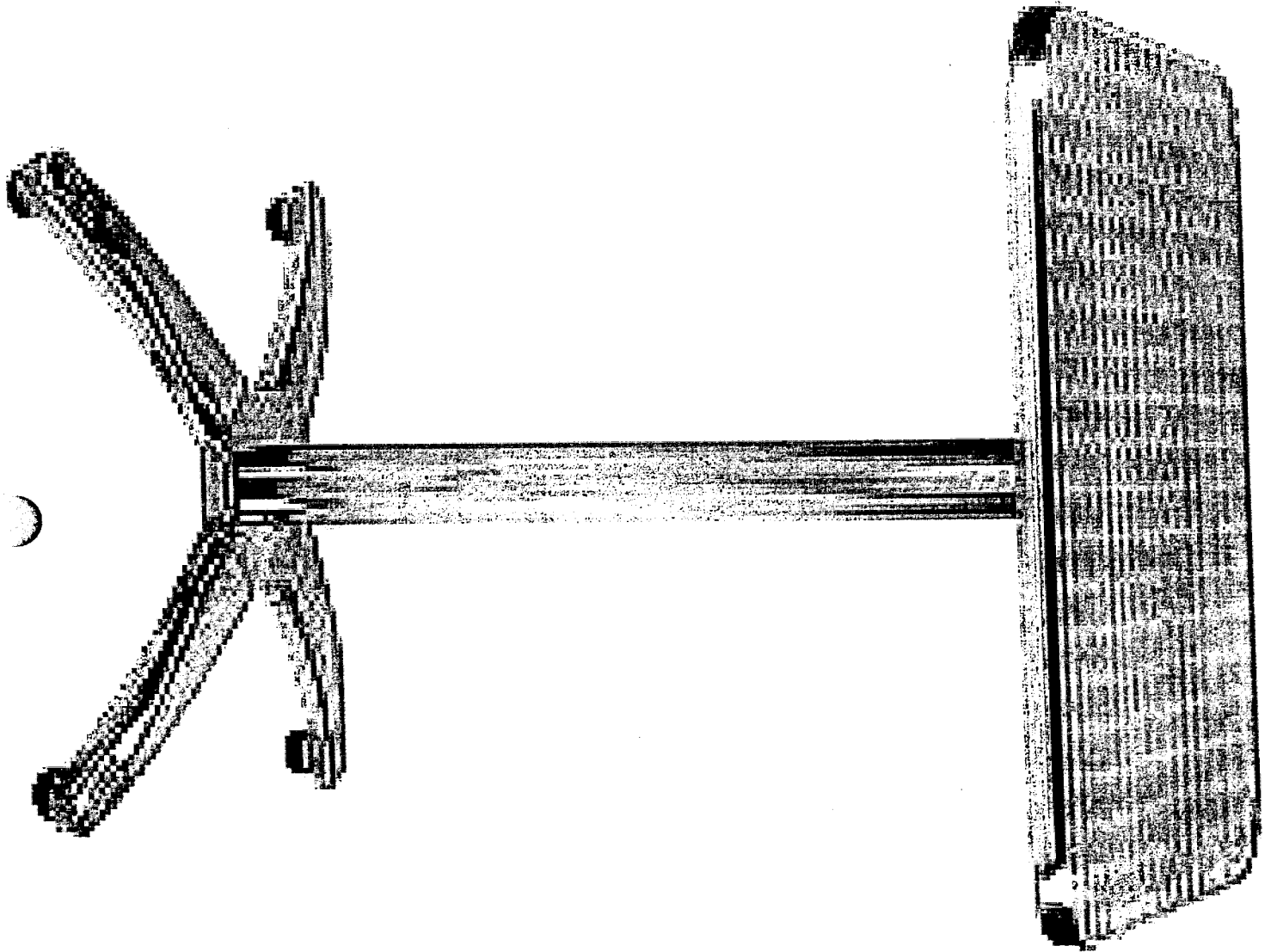
DANCE FLOOR	790
RESTROOM / KITCHEN	22
TOTAL INTERIOR	812
PATIO (4380 #)	80

SEATING PLAN

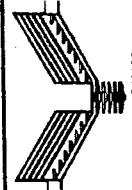
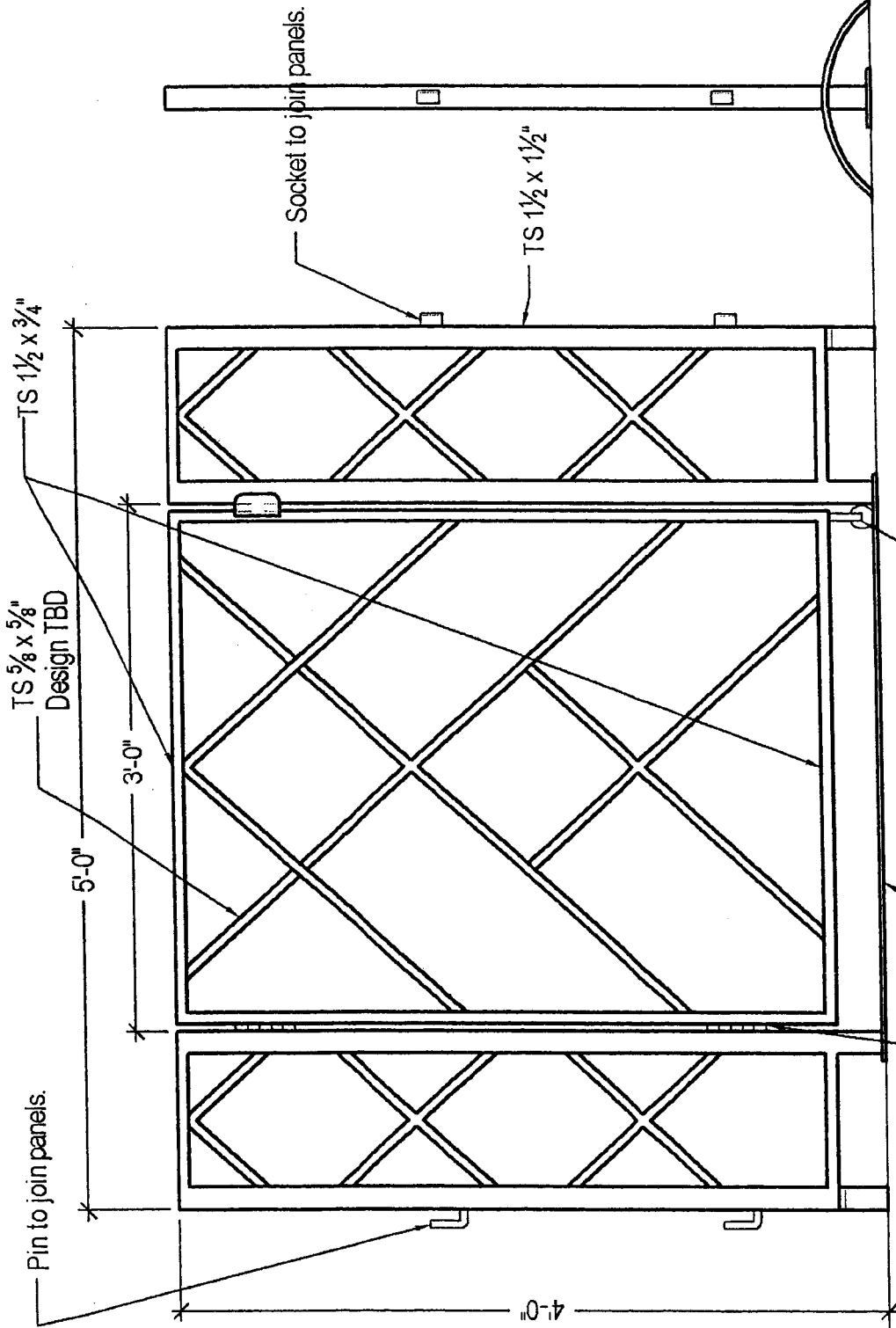
1/8" = 1'-0"



July 15, 1990



15/2010



**F&F STEEL AND STAIRWAY INC.**  
 1775 Monterey Road, Bldg. 46A, San Jose Ca. 95112  
 Phone (408)279-6558  
 Fax (408)280-5747

Project:	Status	Date:
Contractor:	Movable Patio Rail Gate Panel	Drawn by:
		DWG #:

**RECEIVED**  
 JUN 28 2010  
 CITY OF PLEASANTON  
 PLANNING DIVISION



July 6, 2010

Ms. Janice Stern  
Planning Manager  
City of Pleasanton  
200 Bernal Avenue  
Pleasanton, CA 94566

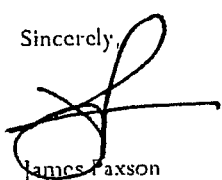
Re: Outdoor Seating  
Diamond Pleasanton Enterprise  
Site 1D, Gateway Square

Dear Janice:

This letter is being provided in accordance with the Declaration of Covenants, Conditions and Restrictions for Hacienda, Article III, Section 3.2, Paragraph 3.2.3, Plan Changes and Plans for Changes to Improvements. The Design Review Committee for the Hacienda Owners Association has reviewed the application for outdoor seating. This application was submitted by MGR Assets, Inc., on behalf of FFHS Gateway L.P., Site 1D, dated June 25, 2010. This modification is in substantial compliance with the guidelines set forth in the Design Guidelines and Covenants, Conditions and Restrictions.

The modification consists of the creation of an outdoor seating area at the south east corner of the building located at 4825 Hopyard Road. This modification is being requested to address the desire of Diamond Pleasanton Enterprises to provide an outdoor seating, standing and smoking area for its customers. A removable fence will be used to enclose a portion of the walk adjacent to the building entrance. The fence will be composed of removable aluminum sections approximately 4.5 feet in height by 4.5 feet in width which will be installed during business hours. The fence will be taken down upon closing and all tables and chairs will be removed from the area nightly at 10:00 pm. Diamond Pleasanton Enterprise will be responsible for keeping the area clean and safe at all times. The design and description for this modification are included on the attached plan sheets.

This application is hereby approved by the Hacienda Owners Association and may be processed for necessary approvals by the City of Pleasanton. Please feel free to contact me at the Association's office if I can be of any assistance in this matter.

Sincerely,  
  
James Paxson  
General Manager, HBPOA

cc: Gene Havrilenko  
Jennifer Wolfes

to: DDD\_email@hacienda.org  
cc: DEVELOP/OPER/DESIGN/APPLIC/MOD

## PLANNING COMMISSION CITY OF PLEASANTON

RECEIVED

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-90-93

JUN 26 2010

RESOLUTION APPROVING A CONDITIONAL USE PERMIT AS FILED UNDER  
 CASE UP-90-43 FOR SH BOOM II, INC., PORTER A HURT, FOR CITY OF PLEASANTON  
 CLUB PLANNING DIVISION

- WHEREAS, SH Boom II, Inc., (Porter A. Hurt) has applied for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road; and
- WHEREAS, zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Offices District; and
- WHEREAS, at their duly noticed public hearing of October 10, 1990, the Planning Commission considered all public testimony, relevant exhibits and recommendations of the City staff concerning this application; and
- WHEREAS, after considering all public testimony, relevant exhibits, and recommendations of the City staff, the Planning Commission approved a negative declaration for Case UP-90-43; and
- WHEREAS, the Planning Commission made the following findings:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) District. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C District and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.



The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00pm is consistent with the City's ability to regulate zoning as listed in the Municipal Code Section 18.124.

WHEREAS, the proposed use is consistent with the zoning designation and General Plan policies of the City of Pleasanton.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Approves Case UP-90-43, the application of Sh boom, Inc., (Porter A. Hurt) for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road subject to the conditions shown on Exhibit "A" attached hereto and made part of this case by reference.

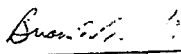
Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 10TH DAY OF OCTOBER 1990 BY THE FOLLOWING VOTE:

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti and  
Chairman Mahern  
NOES: None  
ABSENT: None  
ABSTAIN: None

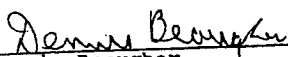
DATE: October 10, 1990

ATTEST:

  
\_\_\_\_\_  
Brian W. Swift  
Secretary

  
\_\_\_\_\_  
Marcelline Mahern  
Chairman

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Dennis Beougher  
Assistant City Attorney

pc9093/sm

EXHIBIT B  
CONDITIONS OF APPROVAL  
UP-90-43

1. That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of the operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.
2. That the outside doors of the dance club shall remain closed during all hours of operation. A sign to that effect shall be placed by the entry doors.
3. That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
4. That the limousine associated with the dance club, and provided for its customers as a special service, not be parked on-site during hours when the club is not open for business to the general public.
5. That the applicant obtain all necessary permits from the State and County prior to beginning the operation of the establishment.
6. That if, at any time in the future, the activities of the operation deviate from the above description or the

the dance club encourages loud noise, litter, traffic problems, drunkenness, etc., to the detriment of the surrounding uses or to the City in general, the Planning Commission may review and, if necessary, revoke the subject conditional use permit per Municipal Code Section 18.124.130.

7. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to the Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
8. That the applicant shall apply for and obtain all applicable City permits for the dance club establishment prior to the commencement of business.
9. That the operation shall comply with all applicable Fire, Building, and Public Health codes, to the satisfaction of the Fire Marshall, the Chief Building Inspector and representatives of the County Health Department. Non-compliance with said codes may result in a Planning Commission review and, if necessary, revocation of the subject conditional use permit per Municipal Code Section 18.124.130.
10. That the owner/manager of the dance club apply for sign review approval for the dance club. If the signs proposed are not consistent with the comprehensive sign program of the Gateway Square shopping center, then the applicant shall apply for Design Review approval of the proposed sign program.

(up9043ca.pc)kjlw  
October 4, 1990

RECEIVED

JUN 28 2010  
CITY OF PASADENA  
PLANNING DIVISION

# STATUS NIGHTCLUB SECURITY AND TRAINING PLAN

- 1) Proper ID checks to insure that the proper age group attends any event. Guests must have in their possession a valid California Driver license, Passport, Military ID or a California ID card with proper backup no exceptions.
- 2) Guests must wait in line for proper identification check and search before entering the venue. ID will be scanned thru picture ID checker , which records everyone entering venue. To ensure everyone is over 21
- 3) Searches prior to entrance for inappropriate substances and weapons. We do not anticipate this with the crowd we are catering to but it is just a precaution
- 4) Security cameras will be in place at all doors and exits, along with taking pictures of ID's
- 5) Proper line management and attitude checks. People who are obviously under some sort of influence (drugs & alcohol), people who do not meet the dress code, and those who are disrespectful of others: are not allowed in the venue that night.
- 6) A dress code will be enforced
- 7) During peak periods (usually 11:00pm to 1:00am) customers arrive faster than ID's can be checked, searched, and collect cover charge. When this happens a line forms. Our outside staff is primarily composed of our most experienced security hosts.
- 8) Stanchions, hand-held video cameras, proper customer relations, adequate staffing, dress code enforcement, and a process called fading are all utilized to keep customers outside under control.
- 9) A line can only be (2) persons wide and may not exceed the edge of the property. Stanchions will be used to control the line and to maintain passage for pedestrians.
- 10) If the lines are longer than the edge of the property, then a count shall be taken of the line and those exceed the legal occupancy must be informed that we are at capacity and that they may not get in regardless of the wait. In this case, individuals will be encouraged to come earlier next time or to try another night.
- 11) There will be at least 2 security patrolling the back gate area and two doing checks of the lot on a nightly bases so people are not lingering in the lots.
- 12) Hours are strictly enforced. No one admitted after 1:30a.m... At 1:30 a.m. "Last Call" starts. At 1:45 a.m. termination of alcohol service. From 1:50a.m. To 2:00am. "Alcoholic Drink Sweep"- Alcoholic drinks swept from club areas. Security staff sweeps parking lot from approximately 1:45 a.m. until customers have left. Last dance varies with each event no later than 1:45am
- 13) If a guest is waiting for another guest to leave the venue he or she must wait on the sidewalk.
- 14) If a guest leaves their coat at coat check after hours, a staff member will collect the claim ticket and bring the guest their belongings at the front entrance. Guests shall not be allowed inside after hours.
- 15) Our security staff will have one or two posts in the parking lot; our front door staff has a constant view of the parking lot, and we will perform two sweeps nightly. Insuring that our customers get to their cars safely is crucial to our success.
- 16) There will be a security presence both in and outside of the building, including on the streets and parking lots around the shopping center.
- 17) After venue is emptied there will be a 2<sup>nd</sup> parking lot sweep lot sweep which will clear the remaining patrons out of the lot.
- 18) All lots will be checked for any litter that was created ,cleaned and removed

To assure an excellent staff, a quality training-program is essential. Training consists of three basic components:

- 1) Initial training: management conducts this training. It features training in company policies and procedures, basic security skills, alcohol awareness training, community relations, and basic emergency procedures.
- 2) Third Party Training: From time to time, outside parties are bought in to conduct supplemental training. Examples of outside parties are police, ABC, independent consultant and emergency medical personnel
- 3) Follow-up/ On-going Training: Formal training ends after the initial sessions are completed. Security staff meets nightly to promote staff development. Management also works with the staff throughout each shift, to continually polish skills.

#### Staff conducts

The staff is managed according to the highest ethical and legal standards.

- 1) Use of disrespectful or overly familiar language, manners, or demeanor towards customers and other employees is never condoned. Remarks made to a customer or another employee of a racist, religious, color, national origin, sexist/sexual, physical or mental handicap are not permitted.
- 2) Employees must focus on our customer by giving them our full attention and service. Employees must perform their duties in a friendly, courteous and satisfactory manner at all times.
- 3) Employees must follow all local, State and Federal laws at all times in both their personal life and in the performance of their job duties in such a manner as not to bring discredit to the operation or themselves.
- 4) A well- groomed properly dressed employee symbolizes the foundation of this company and its image and facilitates communication between customers and staff. All employees will be issued shirts and jackets, which shall be worn while on duty. Security hosts will say Security on back.

#### Alcoholic Beverage Security

When the California State Alcoholic Beverage control Board issues a business one of its privileged licenses, a set of responsibilities come with it. The following are general obligations that our security will help meet:

- 1) Insure patrons are over 21: ID scanners and proper examination, as well as entrance / exit staffing are used to insure that all patrons are over 21. The sale of alcohol to minors is a serious criminal offense and, employees will be held responsible to ensure that there is no violation.
- 2) Over- serving: Our entire staff is trained to look for customers who have had too much alcohol. Once identified, security will notify staff then handle the situation in a manner that will prevent any further consumption, and insure a safe trip home for the individual. This may mean allowing the person to remain on property until time and activity have helped them sober-up, insuring a friend drives them home, or arranging for a cab.
- 3) Employees will be trained thru ABC lead training program.

#### Relations with police and Security

Security must be conducted with an ongoing relationship with local law-enforcement and officials. It is important that we maintain a cooperative relationship to achieve our goals:

- 1) There will be a security host for approximately every 75 customers.
- 2) Uniforms shall be clearly identifying security hosts.
- 3) Security staff will always cooperate with police in every way.
- 4) We will initiate quarterly meetings with a police representative, to discuss relevant issues.
- 5) We will request that the Police department provide occasional supplemental training sessions to our staff.
- 6) We will coordinate with other security in our neighborhood.
- 7) We will cooperate with other governmental agencies that relate to security issues(e.g. ABC)
- 8) We have an open door policy to discuss relevant security issues.
- 9) No weapons defined by Section 12020 of the California Penal Code (including firearms, blackjacks, daggers, and
- 10) All security will be ABC lead trained
- 11) All security will have a livescan and submitted application to the State of California for a PSO card before working

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JUN 28 2010

CITY OF PLEASANTON  
PLANNING DIVISION

## STARTERS

### **Chicken Tenders** \$8.95

Tender white meat, breaded and deep fried until golden brown.

### **Buffalo Wings** \$9.95

Thick, meaty chicken wings, celery and carrots. Served with Ranch or bleu cheese for dipping.

### **Burger Sliders** \$4.95

Two tender juicy mini-burgers, with dill Pickles and cheese

### **Chicken Sliders** \$7.95

Grilled Chicken, Crispy bacon, and Cheddar Cheese

### **Fried Calamari** \$7.95

Lightly breaded, served with a house special Cajun ranch dip.

### **Cheese Sticks** \$6.95

Breaded mozzarella cheese sticks served with Ranch dip or marinara sauce.

## SALADS

### **California Cobb Salad** \$10.50

Iceberg lettuce, Grilled Chicken breast, tomatoe, bacon, Avocado, egg, crumbled blue cheese

### **Chicken Tender Salad** \$9.95

Mixed salad greens topped with pieces of breaded chicken tenders, diced tomatoes, cheddar cheese and croutons with your choice of dressing.

### **Caesar Salad** \$6.95

This classic consists of romaine lettuce tossed with caesar dressing, parmesan cheese and croutons.

*Add Chicken : \$3*

### **Oriental Salad** \$6.95

Mixed salad greens tossed with oriental dressing, topped with sesame seeds and wontons.

*Add Chicken: \$3*

## WRAP

### **Caesar Wrap** \$5.95

Romaine lettuce, caesar dressing, and parmesan cheese wrapped in a homemade 12" flour tortilla.

*Add Chicken : \$3*

### **Spicy Chicken Wrap** \$6.95

Salad mix, spicy chicken, tomatoes, cheddar cheese and our own spicy ranch dressing wrapped in a homemade 12" flour tortilla.

### **Oriental Wrap** \$5.95

Salad mix, wontons and oriental dressing wrapped in a homemade 12" flour tortilla.

*Add Chicken: \$3*

**GRILLED CHICKEN SANDWICH \$8.95**

Grilled chicken breast, lettuce, and tomatoe served with French fries

**Teriyaki Pineapple Chicken Sandwich \$8.95**

A tender chicken breast glazed with teriyaki sauce and topped with a slice of pineapple served on a sesame seed bun. Served with French fries

**Chicken Club \$9.50**

Chicken breast sandwich with bacon, lettuce, tomato, onion, mayo and swiss cheese served on a sesame seed bun.

**BBQ Chicken Sandwich \$9.50**

Chicken breast, crispy bacon, cheddar cheese, Served on a sesame seed bun.

Served with French fries

**Buffalo Chicken Sandwich \$7.95**

A breaded chicken patty covered in our hot buffalo wing sauce, topped with melted pepper jack cheese served on a sesame seed bun. cheese on grilled bread of your choice.

Served with French fries

**BLT \$7.95**

Bacon, lettuce, and tomato sandwich with mayo served on your choice of bread.

Served with French fries

**BURGERS**

**Status Burgers \$9.95**

Sirlion with dill pickle chips, lettuce, tomatoe, red onions

Served with French fries.

**BBQ Bacon \$9.95**

Crispy bacon, cheddar cheese, and barbraque sauce,

Served with French fries

**Teriyaki Burger \$9.95**

This "*sweet little thing*" is a burger glazed with teriyaki sauce and topped with a slice of pineapple and served on a sesame seed bun with lettuce and tomato. Served with French fries

**Big, Hot and Spicy Burger \$9.95**

Covered with our hot wing sauce, layered with jalapeños and topped with melted pepper jack cheese, this burger is hot. Served on a sesame bun with French fries.

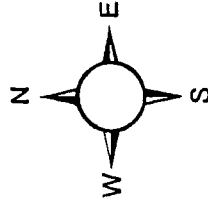


Diamond Pleasanton Ent./ STAT  
PCUP-273, 4825 Hopyard Road

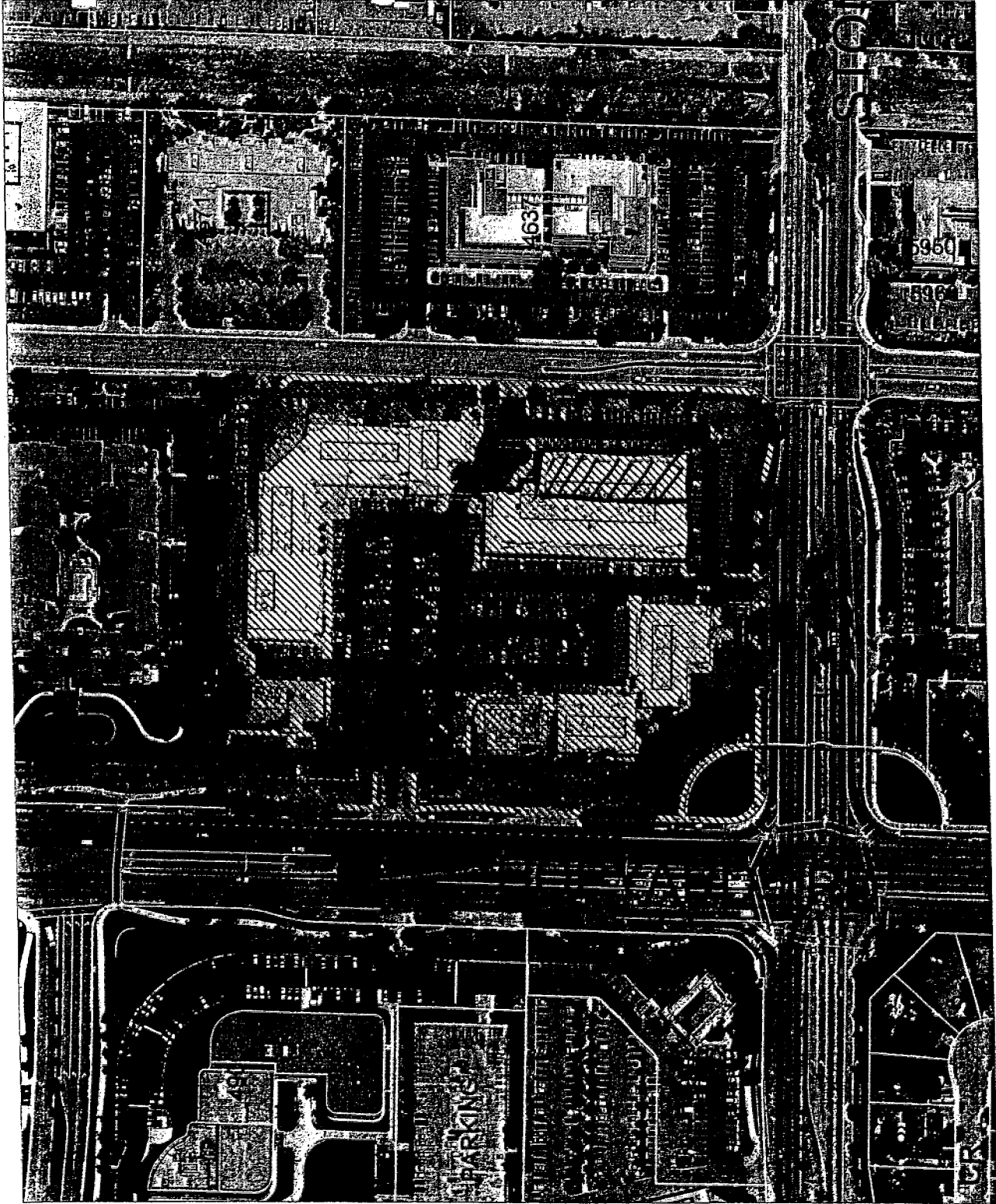
# City of Pleasanton

GIS

Department



Printed 7/27/2010



PCUP-273 PDR-912

City of Pleasanton

GIS

Department

4825 HOPYARD (1000)

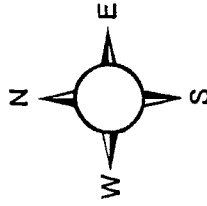
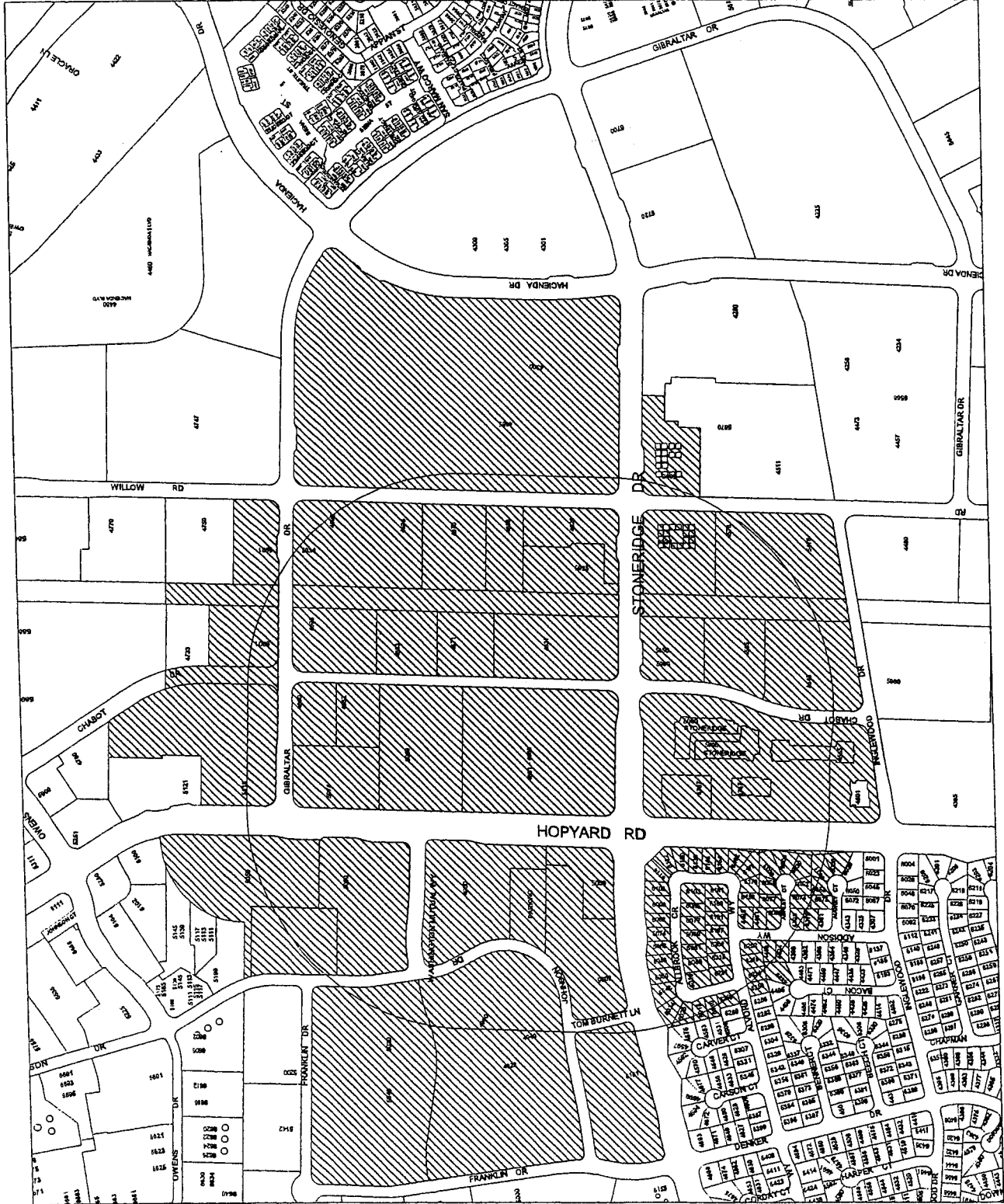


EXHIBIT I

Printed 8/9/2010



Item 6f  
Staff Report  
**PLANNING COMMISSION**  
October 10, 1990

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**SUBJECT:** UP-90-43

**APPLICANT:** Sh Boom II, Inc., Porter A. Hurt

**PURPOSE:** Application for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00 PM at a facility proposed to be located at 4825 Hopyard Road. Zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Office District (CPD).

**ATTACHMENTS:**

1. Location Map
2. Exhibit A (Site Plan and Floor Plans)
3. Exhibit B (Conditions of Approval)
4. Letter from Hacienda Business Park Owners Association
5. Letters from Applicant
6. Negative Declaration

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#### **BACKGROUND**

The design for Gateway Square, a 104,00 square foot retail commercial center at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park, was approved by the City Council in October 1986 (Case PUD-81-35D). The proposed dance club is to be located in a 10,000 square foot portion of Building F of the center. The applicant, Sh Boom II Inc., is intending to serve alcoholic beverages after 10:00 PM and the use is, therefore, designated as a bar under Municipal Code section 18.08.028. Bars are a conditionally permitted use in the CPD in Hacienda Business Park.

#### **PROJECT DESCRIPTION**

The applicant is proposing to operate a 1950's/1960's era dance club which would operate between the hours of 5:00 PM and 2:00 AM, five to seven days per week. Sh Boom II proposes to provide buffet service between 5:00 and 8:00 PM, and offers music and dancing throughout the evening. The club is intending to purchase a limousine to provide driving service to and from the club for

its patrons. In addition, the facility may be rented for private parties during the days or evenings when the dance club is not regularly scheduled to operate.

The applicant proposes a staff of approximately 35 persons, supplemented by an assistant manager, a hostess, door man and two or three observers. The owner also will be in attendance for at least five days a week during selected hours of operation. The facility will accommodate a maximum total of 643 people, with seating provided for 440. Bar stool seating accounts for 196 seats, with booth seating at 88 and table seating at 156. The remainder of the occupant load ostensibly will be carried by the dance floor.

Currently, the 10,000 square foot area of Building F is an unimproved tenant lease space, with a series of full-view glass storefronts and entry doors. The applicant will be making all the interior tenant improvements to suit the needs of the proposed use. These improvements include office space, restroom facilities, two bar areas, a dance floor and disc jockey booth, raised seating areas, a kitchen and an employee lounge. Exterior improvements are minimal and entail removing and relocating some of the existing full view glass doors and replacing them with fixed glass. A minimal amount of glass block will be added to the exterior of the building at the main front door entry.

#### **ANALYSIS**

The site, Gateway Square shopping center, currently contains three other businesses which have applied for and received a conditional use permit to serve alcoholic beverages after 10:00 PM. These uses operate in conjunction with a full-service restaurant and are Chili's, Round Table Pizza and Lyons Restaurant. Sh Boom II is a different type of use in that it would provide entertainment services to its patrons, and serve beverages, but not in conjunction with a restaurant. Food service at Sh Boom II would be limited, so in this respect the proposed facility would not compete with the existing restaurants on-site.

The site has 473 parking spaces. The CPD District of Hacienda Business Park requires free-standing restaurants to provide one parking space for every fifty square feet of floor area. Under these guidelines, Sh Boom II would require 200 parking spaces and the other three restaurants a combined total of 270. As these facilities would experience their peak evening hours of operation during hours when other businesses in the center are not open - i.e., after 6:00 PM - there should be sufficient parking. (These restaurants probably also experience peak hours during lunch-time, when Sh Boom II would not be operating.) In order to attempt to ensure that the dance club creates as little impact on parking facilities for the other restaurants, staff would suggest

that the owner/manager encourage the employees to park in areas of the parking lot that would be little-used by patrons. This would encourage patrons to park as close to the dance club as possible, thereby reducing potential parking conflicts with the patrons of the restaurants, who, no doubt, will want to park as close to the restaurant as possible.

Staff is somewhat concerned about the possibility that the management may rent the Sh Boom II facility for private parties during the day. One of the reasons that staff feels it can support the project is that the dance club is a nighttime use and would not create a parking conflict with the business tenants in the shopping center. The need for parking is not a major issue in the evening, when a large share of the other tenants are not open for business. However, operating the facility during the day, even for private parties which might not generate as many people on-site as the night use, could severely impact the availability of parking spaces provided for patrons of the other tenants.

After the written description of the operation had been filed, and staff had expressed its concerns with the daytime parties, the applicant suggested that he would be willing to limit these private parties to two per month, and hold them only on weekends. He proposes limiting the duration of such parties to four hours, and starting after 1:00 PM. In addition, the applicant would be willing to limit the size of the party to 300 people.

Staff is of the opinion that this is a more workable solution for the issue. However, staff still has concerns about the size of the party. Staff notes that if this tenant space were used as a regular retail space, the parking required (at 1 space per 200 square feet), would be only 50 parking spaces. Staff feels that 300 party patrons during an afternoon weekend still could have an adverse impact on parking and hence, on other retail businesses in the center. Therefore, staff recommends that such parties be limited to 100 patrons. Assuming two persons per car, staff feels that this number is appropriate for the 50 parking spaces which would be used by a typical retail tenant. Staff realizes that it will be difficult to monitor and enforce a limitation on the number of people present at a private party. But, if staff receives complaints from other tenants due to the private party use of this facility, the Use Permit can be reviewed by the Planning Commission and revised if necessary. Staff has added a recommended condition of approval which limits the use of the facility by private parties to two times per month, to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 100 people.

Sh Boom II proposes keeping a limousine on-site during its business hours for special client services. Staff has added a condition of approval which limits the hours that the limousine is kept on-site to the hours of operation. This is primarily due

to the fact that the limousine will utilize several parking spaces which could be used by patrons of the day-time businesses and eliminates the potential of unattended storage of the vehicle on-site.

Another concern that might arise is that of noise and associated nuisances generated by the late-night dance-club use. The proposed dance club is located far from the residences at the southwest corner of Hopyard Road and Stoneridge Drive. The club is located at the rear of Building F, situated towards the Chabot Road entrance to the Gateway Square site. Any potential noise generated by the proposed use should not effect residents. However, the applicant is providing acoustical baffling (acoustical ceiling tiles, three-and-a-half inch sound batts in the party walls) and the soffit at the dance floor is designed to house the music system speakers to limit noise within the club. Double doors are proposed in the vestibule to further limit noise outside of the bar and dance area and prevent noise spillover into the parking lot. The dance club also must adhere to the City's noise ordinance (Municipal Code Section 9.04.040), which limits noise levels for commercial properties to 70 dBA at the property line. Staff has added a condition of approval requiring that the club doors remain closed during hours of operation, to help eliminate noise spillover into the parking lot.

The Conditional Use Permit provides the Planning Commission with the opportunity to review and revoke the permit if the owner or management is unable to control the activities of its patrons, and the use becomes a nuisance to the City or surrounding properties. However, the City of San Jose has had no record of noise or nuisance complaints filed against the existing club there.

#### **FINDINGS**

Your Commission needs to make the following findings prior to the granting of a use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) district. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C district and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding

areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- C. That the proposed conditional use will comply with each of the applicable provisions of this chapter.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00 PM is consistent with the City's ability to regulate zoning as listed in Municipal Code section 18.124. The subject application complies with the applicable sections of 18.124.

#### CONCLUSION

Staff is of the opinion that the proposed dance club and bar use is almost ideally situated to provide a safe and nuisance-free environment for patrons and adjacent property owners and uses. The retail shopping center in which the dance club and bar would be located has plenty of parking and few after-hours businesses which would be impacted by noise or competition for patron parking. In addition, the shopping center itself is part of a large industrial park complex. Residences are located far from the site, and are separated from the club by parking lots, other buildings and a major arterial street. The streets providing

service to the site are properly signalized for safe entry and exit. In addition, Sh Boom II is proposing to provide a special limousine service for its patrons, which would help to eliminate possible traffic accidents.

Staff feels that the proposed dance club use will fill an existing need for a social, night entertainment spot for Pleasanton residents. It may bring additional dinner businesses to nearby restaurants. The proposed operation of the dance club seems to ensure that the club is maintained in an orderly and safe manner. That no complaints have been received about the club in its existing San Jose location encourages staff to believe that the management is responsible and sensitive to the local environment.

#### **ENVIRONMENTAL ASSESSMENT**

A draft Negative Declaration accompanies this report. Based on an initial study, staff believes that approval of Case UP-90-43 would not have any significant adverse effects on the environment. If your Commission concurs with this environmental assessment, you must make the finding that the Negative Declaration is appropriate prior to taking action on the project.

#### **STAFF RECOMMENDATION**

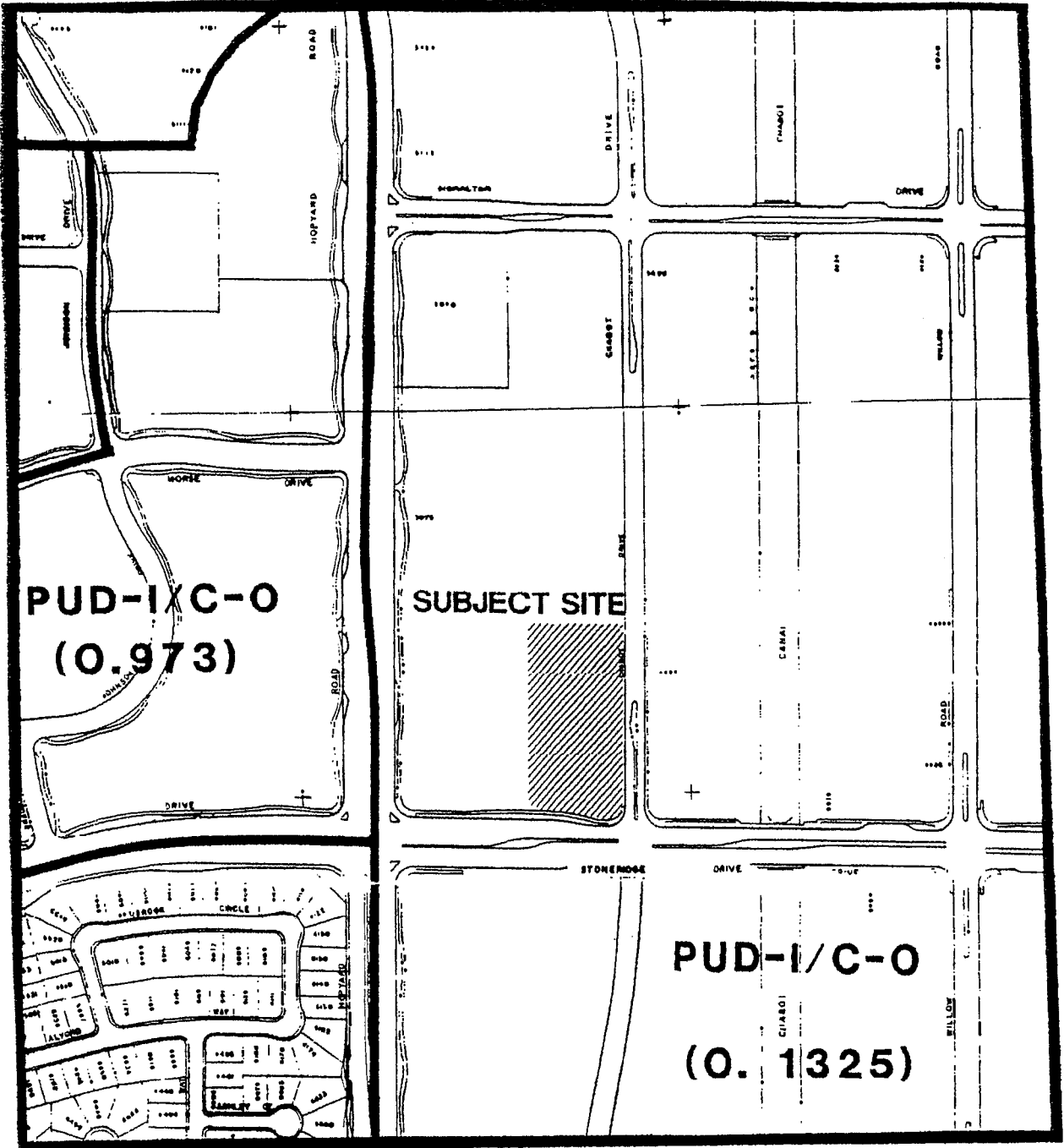
Staff recommends that your Commission approve Case UP-90-43 by taking the following actions:

- 1) Make the Conditional Use Permit findings as listed in the staff report;
- 2) Find that the project would not have a significant effect on the environment and adopt a resolution approving the attached draft Negative Declaration; and
- 3) Approve Case UP-90-43 subject to the conditions listed in Exhibit B.

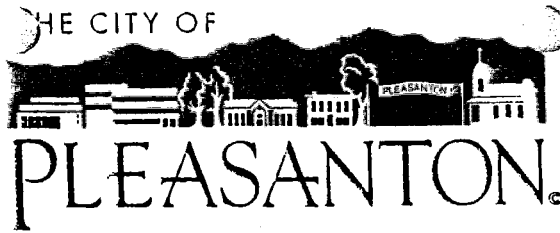
(up9043.pc)kjl  
October 5, 1990



# LOCATION MAP



**UP-90-43 4825 HOPYARD RD.**



December 21, 2011

Jenny Wolfes  
4825 Hopyard Road, Unit F10  
Pleasanton, CA 94588

Dear Ms. Wolfes:

**Re: PCUP-273, NOTICE OF VIOLATION for Club NEO (formally known as Club STATUS) at 4825 Hopyard Road**

This letter is to memorialize the meeting of December 20, 2011, to provide written notice of the violations of the Conditional Use Permit (PCUP-273), and to provide information regarding the current application to modify the Conditional Use Permit to allow events for patrons under the age of 21 (P11-0647).

The Planning Division was made aware of incidents occurring on December 17 & 18, 2011, in which an uncontrolled crowd of people were loitering in the parking lot of your establishment, numerous law infractions and potential misdemeanors were witnessed by law enforcement, a report of litter being around the site, and an assessment of lack of establishment security personnel and lack of security measures. The event in question on the 17<sup>th</sup> resulted in the allocation of all available officers of the Pleasanton Police Department responding to the site as well as a request for Mutual Aid from surrounding Law Enforcement agencies (City of Dublin and the Alameda County Sheriff's Department).

A meeting on December 20, 2011, was held with members of the Police Department, staff from the Planning Division, yourself, and the Head of Security for Club Neo, Peter Aguilar, to discuss the events as specified above. The Planning Division reviewed your Conditional Use Permit's conditions of approval. The following are the violations that were verbally indentified at the meeting on December 20, 2011:

1. *Condition Of Approval [COA] #13: The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.*
  - The Incident Report (2011-00055619) on record indicates that Club Neo failed to use its best efforts, including COA #19, below, resulting in this

**COMMUNITY DEVELOPMENT**

**P. O. BOX 520, Pleasanton, CA 94566-0802**

Planning	Building & Safety	Engineering	Traffic	Inspection
200 Old Bernal Ave. (925) 931-5600 Fax: 931-5483	200 Old Bernal Ave. (925) 931-5300 Fax: 931-5478	200 Old Bernal Ave. (925) 931-5650 Fax: 931-5479	200 Old Bernal Ave. (925) 931-5650 Fax: 931-5479	157 Main Street (925) 931-5680 Fax: 931-5484

condition of approval being violated in regards to loitering, and impacts to other businesses.

- Based on the Police Department's Watch Report, it appears that a portion of the crowd moved from the Club Neo site to:
  - The Shell Gas Station on Hopyard Rd. and proceeded to "Mob" that establishment. Officers responded to emergency calls from the Shell Station seeking assistance to vacate the relocated Club Neo crowd from that site.
  - The Kelly Moore Paints parking lot area, where Officers had to intervene to stop physical confrontations.
  - The Eddie Papas parking lot area, where Officers had to intervene to stop additional physical confrontations.

The Police Department's Watch Report items described above also demonstrates that the situation at the establishment resulted in impacts to the surrounding property owners and business operators. Therefore, this establishment is not operating in compliance with the intent of this condition of approval for the business to maintain a "good neighbor" relationship.

2. *COA#17: Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.*

- At the December 20, 2011 meeting, you, Ms. Wolfes, stated that not all of your employees have obtained this training within four weeks of the start of their employment. Therefore, the establishment is not operating in compliance with this condition of approval.

3. *COA#19: The business owner/operator shall provide security staff during operating hours subject the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.*

- A search of our records indicates that a Final Security Plan was not submitted to the Chief of Police prior to operation of the business. Therefore, the establishment is not operating in compliance with this condition of approval, and as was discussed at our meeting, inadequate security was a significant contributing factor to the incidents on Dec. 17th.

4. *COA#20: The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.*

- Based on the content of the December 20, 2011 meeting, it was stated that Peter Aguilar, Head of Security (designated representative noted above) was aware of the large group of people congregating in the parking lot, the confrontation between patrons/loiters in the parking lot, the presence of Police Officers on-site, and the later presence of Law Enforcement Officers from other agencies on-site attempting to control the crowds in the parking lot. The initial situations in the parking lot were not resolved by the establishment, nor were the escalated events that followed. Therefore, the establishment is not operating in compliance with this condition of approval.

5. *Standard COA#2: The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.*

- Based on photos presented at the meeting on December 20, 2011, the presence of trash, glass alcohol bottles, and other alcohol containers were discarded throughout the site and the Officer reports indicate that the discarding of trash was by the patrons of the establishment and loiters who had tried to enter the establishment. Therefore, the establishment is not operating in compliance with this condition of approval.

Future violations of your establishment's Conditional Use Permit's conditions of approval could result in the automatic suspension of the Conditional Use Permit approval per Pleasanton Municipal Code section 18.124.130. Suspension requires that Club Neo immediately stop all operations. Following a suspension, the case would be taken to a Planning Commission hearing. The Planning Commission would be asked to consider modifying/tightening the current conditions (e.g., the number of occupants allowed, additional security measures, etc.) or a full revocation of the approval, thus resulting in the full discontinuance of the use.

Given the situation outlined above, staff cannot provide a positive recommendation to the Planning Commission on your application to modify the current Conditional Use Permit to allow the operation of events for patrons under the age of 21 (P11-0647). Staff would be recommending denial of the request if you choose to proceed to a hearing at this time.

Furthermore, the current application is a modification of the current use permit and the staff report prepared by staff to the Planning Commission would contain all relevant information of the operations of the establishment, including calls for service, incidence reports, etc. The Planning Commission, upon reviewing the staff report, could deny the request for the additional operations and modify any portion of the approval for the establishment's existing operations or even direct staff to proceed with revocation of the current Conditional Use Permit in its entirety.

If you would like to request a delay in scheduling of the P11-0647 application, please provide a written request to staff by January 4, 2012.

Finally, I understand that you have retained an attorney, Mr. George Mull, who has contacted Julie Harryman, Assistant City Attorney for the City of Pleasanton. Unless you advise that communications should be through your attorney, I will continue to communicate directly with you regarding the recent incidents as well as your current application

Sincerely,



Rosalind Rondash

Attachment:

Approval letter for PCUP-273, dated August 30, 2010

CC:

Peter Aguilar, 1177 Branham Lane #410, San Jose, CA. 95118

James Paxson, Hacienda Owners Association, 4473 Willow Road, Suite 105, Pleasanton, CA 94588

Chief Spiller, Pleasanton Police Department

Capt. Finn, Pleasanton Police Department

Nelson Fialho, City Manager

City Attorney's Office, City of Pleasanton

Brian Dolan, Director of Community Development

Janice Stern, Planning Manager

Steve Otto, Senior Planner

P11-0647 File

PCUP-273 File



August 30, 2010

Jennifer Wolfes  
Diamond Pleasanton Enterprise  
4825 Hopyard Road  
Pleasanton, CA 94588

Dear Ms. Wolfes:

**SUBJECT: PCUP-273, Diamond Pleasanton Enterprises**

At its meeting of August 25, 2010, the Planning Commission approved Case PCUP-273, your application to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) located at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility. Approval was granted subject to the Conditions of Approval of the staff report as shown in the attached Exhibit A.

In accordance with Section 18.144.010 of the Pleasanton Municipal Code, the City Council may elect to review this action within 15 business days of the date of approval (September 9, 2010) or at its next regular meeting (September 7, 2010), whichever is later. Therefore, approval of the Conditional Use Permit will become effective on September 10, 2010, unless appealed prior to that time. The Planning Commission's decision may be appealed to the City Council by submitting an application for appeal with a letter stating the basis for the appeal, along with a fee in the amount of \$25.00, to the City Clerk's Office at 123 Main Street, Pleasanton, prior to the expiration date of the appeal (September 9, 2010).

If you have any questions concerning this matter, please feel free to call.

Sincerely,

Janice Stern  
Planning Manager

c: Gene Havrilenko, FFHS Associates – Gateway LLP, 395 Railroad Ave., Suite 9, Pittsburg, 94565  
Karen Diaz, City Clerk

**COMMUNITY DEVELOPMENT**

**P. O. BOX 520, Pleasanton, CA 94566-0802**

<b>Planning</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Building &amp; Safety</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Engineering</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Traffic</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Inspection</b> 123 Main Street 925-931-7600 Fax: 925-931-7600
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**EXHIBIT A  
CONDITIONS OF APPROVAL**

**PCUP-273, Diamond Pleasanton Enterprise  
1825 Hopyard Road  
August 25, 2010**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor patio area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.

7. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
  - a. Said smoking area shall be monitored and kept clean.
8. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
9. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
10. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
11. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
12. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
13. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
14. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
15. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business



owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

16. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
17. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
18. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
19. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
  - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
20. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
21. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
22. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

ii. **Standard Conditions:**

**Planning Division**

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

iii. **Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

**Building Division**

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

## Neo Nightclub Overview

On **October 1<sup>st</sup>, 2011**, Neo nightclub re-opened its doors for business. On that evening, Lt. Jim Knox and Sergeant Tamm went to the club and spoke with the club owner, Jenny Wolfes. Knox introduced himself as the swing shift watch commander Wednesday through Saturday evenings and also as the District 2 commander. Knox told Wolfes at this time that we as a police department would like to work with her to provide resources such as training and assist her in resolving any issues that may arise during their operation. Wolfes was thankful and asked to have a drug and drug influence awareness class provided to their staff. This was arranged and provide to their staff on November 4th.

On the evening of Saturday, **November 26<sup>th</sup>**, a large crowd was in attendance at Neo and required the allocation of 9 officers to assist their security personnel at closing time. After this incident, Lt. Knox met with Wolfes at Club Neo on December 2<sup>nd</sup>. Knox explained the issues which had occurred on the previous Saturday and explained that the police department could not sustain that allocation of that type of resource as a result of her club operations. Knox explained to Wolfes that they must have security personnel monitoring the parking to prevent problems as a result of drug, alcohol and violence issues. Wolfes told Lt. Knox that she would have her security consultant present the following evening to come up with a game plan to eliminate problems. Lt. Knox further reiterated that the police department would work with her and her staff to help find a solution.

*Club Neo was at capacity this evening. They had a live performer, "R.O.D. Live" advertised for this evening. The crowd was largely from out of the area. Early swing shift was held due to the potential for problems. At about 0030 hrs, about 100 unhappy people were turned away. At closing time a very large crowd swarmed the west lot and a "sideshow" type environment appeared to be forming. The 9 officers on scene with the help of 16 Neo security personnel were able to clear the lot with no incidents.*

*DEA called to advise they had 12 units doing surveillance for a gang investigation in the area of NEO. They had no specific information of projected violence at or around the club.*

On **December 2<sup>nd</sup>**, Lt Knox met with Jenny Wolfes outside Club Neo at approximately 2120 hours. Knox explained to her that the club needed to have security monitoring the parking lots. He explained the prior Saturday Evening and the resources which were allocated because of the attendance at the club. Knox Explained to Wolfes that the department could not sustain that type of service and things would have to change. She told Knox that her security consultant would be at the club the following evening to assess the attendance and make suggestions on how to alleviate the problems. Knox told Wolfes that PPD was willing to work with her and the club and we would like to deal with problems before they happen. She assured Knox they would take

care of it. Wolfes stated she believed max capacity to be in the 850 range but state they try to maintain around 650 people inside.

**Saturday, December 3rd, 2011**

*Club Neo was filled to capacity. The two incidents below occurred as the club was closing.*

**11-53456 242 PC:** A 26 year old male resident of Hayward was found walking in the Club Neo lot with head wounds. The male said he was "Jacked" in the lot. He was unwilling to provide officers with suspect or additional info. He was taken to Eden Hospital with minor scalp lacerations.

**11-53458 647f PC:** Officer Stocking saw an intoxicated male urinating in the p-lot near Club Neo. A 46 year old male resident of Oakland was arrested and booked into SRJ.

On the evening of **December 8<sup>th</sup>**, Lt. Knox spoke with Wolfes by telephone at 1950 hours. She told Lt. Knox that she was working with her security consultant and would have 22 security staff present on Saturday evening. She said they would have 4 security officers in the parking lot with spot lights and bullhorns. She also mentioned that she was considering having golf carts brought in to provide mobility to the security personnel in the large lot. Wolfes also stated the guest list would be cut off early (10:00 pm) and the cover charge would be raised, all in attempts to "fade" people. This evening turned out to be relatively uneventful.

**Saturday, December 10rd, 2011**

*The Neo Nightclub was again filled to capacity with a large number of patrons waiting to get inside. Besides a couple of public intoxication arrests, the event was orderly.*

On the evening of **December 17<sup>th</sup>**, Lt. Knox spoke with Wolfes at 2050 hours as a follow-up to the previous weekend. Wolfes told Knox that she would have similar staffing and procedures to the previous weekend for that coming Saturday and she had brought in police type barricades to help prevent free flow of patrons in and out of the club. She indicated they would stop letting people into the club at midnight.

On the evening of **December 18<sup>th</sup>**, the club attendees created similar issues to those on November 26<sup>th</sup> only crimes were committed and due to the volume, they could not be controlled by the 10 PPD officers and 3 Dublin units present. This crowd was estimated to be about 600-700 people and there was an estimated 25-30 crimes committed in the parking lot. Pushing and shoving matches were witnessed, fights occurred, people were threatening each other making shooting type gestures with their hands or tapping their waistbands signaling they had weapons, bottles were being thrown from moving vehicles, people were being bumped with cars and knocked down, they were riding on cars and there were cars spinning their tires and driving

recklessly in the lot. After the patrons left the Neo lot, an estimated 100 people drove to the nearby Shell station and looted the store and took over the parking lot. Officers arrived and were able to disperse this crowd. (PPD Report 11-55619)

On **December 20<sup>th</sup>**, the police department staff met with the city attorney and staff from code enforcement and planning. The conditional use permit for Neo was reviewed and several violations were identified. Lt. Knox called Wolfes and asked for an immediate meeting that afternoon with all the stake holders present. Wolfes agreed and a meeting took place with Wolfes, her security consultant Peter Aguilar and the above mentioned city personnel. Wolfes was told of the previous weekend events and provided a copy of the documentation created as a result. She was told of all the identified conditional use permit violations and told to come into compliance asap. She was further told to provide an amended security plan to the department by the end of business on December 22nd. In addition, a flyer was shared with Ms. Wolfes for an event planned on that Friday evening. It was expressed to Wolfes that there were over 600 people confirmed as "attending and over 500 as "maybes". We expressed to Wolfes that the Pleasanton Police Department did not have the resources available to police an event of that size. Wolfes spontaneously stated that she would simply not open her club on the 23<sup>rd</sup> as she was not advertising the event and did not want problems. The club was in fact closed on the 23<sup>rd</sup>.

Several days passed and Wolfes did not submit the amended security plan as requested. Lt. Laurence contacted Aguilar on **December 27<sup>th</sup>** and only after this contact was he emailed an amended security plan.

On **December 31<sup>st</sup>**, the department put together an operational order with ancillary staffing to deal with any potential issues related to Club Neo. The department had several officers monitoring the parking lot, who located intoxicated individuals who could not care for themselves. These incidents were documented in reports, as well as some other observations of issues.

**11-57395, warrant arrest:** *We stopped a male resident of Oakland in the parking lot of Club Neo and cited him out on a warrant.*

**12-00009, 647(f) PC:** *We located a male resident of Fremont passed out in a vehicle in the Club Neo parking lot. He had vomited on himself, and security officers said they were aware of him and had placed him in the vehicle for his own safety. He was booked at SRJ.*

**12-00013, 647(f) PC:** *We located a female resident of Oakland arguing with security at the front of Club Neo. She repeatedly refused security's requests to leave the premises. She was arrested and booked at SRJ.*

Lt. Elerick contacted Wolfes on **January 3<sup>rd</sup>** and told her he would meet with Lt. Knox upon his return from vacation and review the amended plan with him and get back to her afterward.

**On January 6<sup>th</sup> 2012**, Lt. Elerick and Sergeant Tamm were given a flyer for a planned event on 01/07/12 (Birthday Bash). They contacted Wolfes and notified her that they were concerned by the content of the flyer and felt that the event was going to create issues for the club again. They were seeking information from Wolfes so that they could plan appropriate staffing for the event. Wolfes said she did not have the event scheduled and she did not advertise it.

**On January 6<sup>th</sup>**, about 1820 hours, Lt. Knox spoke with Wolfes to follow-up with her on the event. She informed Knox that she located the individual who was advertising the Birthday Bash and spoke with him, she told him he must relocate the event for the following evening, which he did. I agreed to meet with Wolfes the following night at the club.

**On Saturday January 7<sup>th</sup>**, Lt. Knox met with Wolfes and noted the implementation of some of her procedural changes. He also noted another C.U.P violation, as her smoking area was in violation of PMC. Knox had a lengthy conversation with Wolfes regarding procedures for handling incidents such as fights, intoxicated persons and how security staff should interact with patrons. He encouraged her and her staff to call for police assistance at the earliest signs of a problem.

*12-00943 DUI: Officer Kroutil stopped a female (24) from Desoto Texas, after she left Club Neo and traveled S/B on Hopyard Rd. in the N/B lanes. She failed FST's and elected to have a blood draw. Booked at SRJ.*

*12-00945 DUI: Officer Pittl stopped a female (24) out of Stockton after she left Club Neo and made an unsafe turning movement. She failed FST's, registered a .14 BAC and was booked at SRJ*

**On January 13<sup>th</sup>**, at 1910 hours, Lt. Knox spoke with Wolfes by phone to discuss suggestions for security plan changes or amendments and to see where she was with compliance to the previously identified C.U.P. violations. This conversation lasted approximately 30 minutes and included numerous suggestions, including upgrading their ID checker system. Lt. Knox had Officer Tujague go to the Sunshine Saloon to identify what type of ID capture system they utilized and upon receiving the information, called Wolfes back and provided her the Manufacturer information and model number which is used by them. Knox provided Wolfes the website information and looked at the different models while on the phone with Wolfes. Wolfes told Knox she would work on the amended security plan with the suggestions provided to her and resubmit to Knox before or upon his return on Wednesday January 18<sup>th</sup>.

**On January 14<sup>th</sup>**, a large scale fight broke out inside the club which insighted additional fights including as many as 100-200 patrons. The patrons fled outside the club and the fights continued. During the course of one fight in the north parking lot a 23 year old male was shot in the leg. Outside assistance was summoned and ultimately 39 officers responded to Neo or to assist with policing the city while officers dealt with the shooting at Neo. Responding agencies included Livermore Police, Dublin Police, Alameda Sheriff's office and California Highway

patrol. In addition, fire department personnel from LPFD and paramedics from Paramedics plus also responded to this scene. PPD case 12-1965

**On January 18<sup>th</sup>**, at 1726 hours, Knox received an amended security plan via email from Wolfes' attorney, George Mull. An acknowledgement email was sent in reply. No other communication has come from Wolfes to Knox.

**On January 20<sup>th</sup>**, the Director of Community Development issued an automatic suspension letter for NEO's conditional use permit. The letter was given to NEO's attorney George Mull. a Mull and the city attorney's appeared in Federal Court and argued their points regarding a TRO blocking the automatic suspension of the C.U.P. The judge ruled in NEO's favor and NEO may remain open for business this weekend.

Officer Yee conveyed that one of the security guards for Neo told him that during the fight and shooting, he removed his security shirt and ran off to get away from the situation. I was also informed by Sgt. White of DPS that per an individual he knows that was present, security started the fight when they struck a female patron in the face.

**On January 21<sup>st</sup>**, PPD completed an extensive operational order as a contingency plan if similar activities were to occur as previous Saturday weekends. The club was kept to low numbers, 158 per security staff count and NEO was also turning away potential patrons based upon their residence city (e.g., City of Richmond etc.) There were numerous security officers present, 29 stated by Neo management. Attorney George Mull was present at the club along with Wolfes and Aguilar. There were no noted problems and follow-up inspection of the property in the morning showed it was left clean.

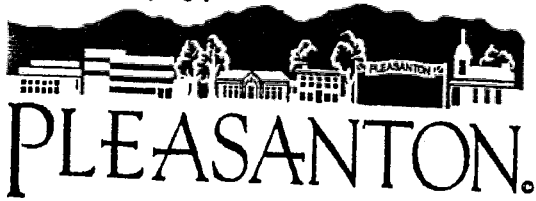
**On January 26<sup>th</sup>**, Lt. Bretzing and Lt. Knox met with Wolfes at 1400 hours at PPD to discuss the security plan and proposed changes moving forward. Wolfes indicated she was going to bring in some new DJ's\performers and she intends to change the club format beginning February 17<sup>th</sup>. She indicated that the format on Friday nights would be salsa\salsa rock and they would be serving tacos during these events. She further indicated she would still be opening just Friday and Saturday nights. She is working on a Saturday format but did not want to comment on it yet as it was unconfirmed. Wolfes indicated she would provide a new business plan Monday or no later than mid-week the following week. She further indicated that her former manager (Sinbad) has been let go and that Pete Aguilar (security consultant) has been hired as the manager and will be present each night the club is open. She indicated that she is going to contract with established promoters to promote the club's new format. She conveyed that she received information that Karma (club in Dublin) may be responsible for the former promotions which she was unaware of and did not authorize. When asked about a commitment to occupancy reduction she stated that she could not commit to that, as that would be up to Randall Weil (the plastic surgeon who Mull advises us is now the majority owner of the club). When asked if they would be committing to the recommendations sent to Julie Harryman via email by George Mull,

she stated that those were intended as temporary fix until we met on January 30<sup>th</sup>. She said she does not welcome party buses but does not believe she can control their drop-offs but feels they will be an issue moving forward with the new format. She stated that she would purchase the new ID checking system which Lt. Knox recommended to her but had not done so as of yet. She stated her count system was based upon ticket sales and a clicker at the exit. She was asked to have two counters at the door (1 entry and 1 exit) so a count could be readily established when requested and she agreed to do so in support of tickets sales. Wolfes provided the name and phone number for her security provider and reiterated that they have been unable to get the video from the night of the shooting.



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Previous approvals for Teen Night  
Information Packet



**SUBJECT:** PCUP-85

**APPLICANT:** Sh-Boom Night Club

**PROPERTY OWNER:** FFHS Associates Gateway

**PURPOSE:** Application for a conditional use permit to allow teen dances from 7:00 p.m. to 12:00 midnight on Sunday and Tuesday nights during the summer months beginning in June and ending in September, and on Sunday nights on three-day weekends during the school year.

**GENERAL PLAN:** Business Park (Industrial/Commercial and Office)

**ZONING:** PUD (Planned Unit Development) – I/C-O (Industrial/Commercial-Office) District

**LOCATION:** 4825 Hopyard Road in the Gateway Square shopping center.

**ATTACHMENTS:**

1. Location Map.
2. Exhibit "A" dated, "Received May 2, 2003" with the applicant's narrative.
3. Exhibit "B", Draft Conditions of Approval, dated June 25, 2003.
4. Staff report, resolution, and public hearing minutes of the Pleasanton Youth Commission, dated June 11, 2003, pertaining to the Sh-Boom teen dance.
5. Chapter 6.44 – Teen-Age Dances – of Title 6 – Specific Business Regulations – of the Pleasanton Municipal Code.
6. Overall site plan of the Gateway Square shopping center.
7. Sh-Boom floor plan.
8. Letter from James Paxson, General Manager of the Hacienda Owners Association to Jerry Iserson, dated May 8, 2003, supporting the Sh-Boom teen dance nights.

## BACKGROUND

The Sh-Boom Night Club requests the Planning Commission's approval of a conditional use permit to allow teen dances on Sunday and Tuesday nights during the summer months and holiday weekends. The proposed teen dances would be conducted in addition to Sh-Boom's regular business: night club and restaurant. On April 23, 2003 the Planning Commission approved PCUP-78, the conditional use permit permitting teen dances at Masses Sports Café and Night Club near the Stoneridge Mall.

On October 10, 1990 the Planning Commission approved Case UP-90-43, the conditional use permit (CUP) permitting Sh-Boom's operations at this location. On June 28, 1996 the Zoning Administrator approved Sh-Boom's request to hold teen dances. On June 24, 2002 the Zoning Administrator re-instated the previous teen dance approval, for a limited time during the year 2002, finding that its operation was in substantial conformance to Sh-Boom's approved CUP.

However, the dances became problematic with respect to the behavior of some of the dance attendees. The Sh-Boom management then ceased operating the teen dances on its own initiative. Sh-Boom attributes the problems of the previous teen dances to a previous operator that had advertised the dances outside of the Tri-Valley area, resulting in long lines at the door and potential dance patrons roaming the nearby areas. Sh-Boom has now retained a new operator, would advertise its teen dances primarily to the high school students of Pleasanton, Dublin, and Livermore areas, and would increase its door personnel to more quickly process dance patrons through this security checkpoint.

The Sh-Boom Night Club occupies a 10,830 square foot tenant space in the Gateway Square shopping center. Gateway Square was approved by the City Council on October, 1986 under Case PUD-81-35D. Sh-Boom is surrounded on all sides by the commercial/office uses of the Gateway Square center and the Hacienda Park. The closest residential uses are the single-family homes of the Val Vista neighborhood, located on the southwest quadrant of Stoneridge Drive and Hopyard Road approximately 600 feet from Sh-Booms. Figure One is a photograph of the south side of the Sh-Boom Nightclub and entrance facing Stoneridge Drive.



Figure 1: Main entrance to the Sh-Boom Nightclub facing Stoneridge Drive.

## PROJECT DESCRIPTION

Sh-Boom has submitted a narrative describing its proposed operation. This document, along with a site plan and a floor plan of Sh-Boom, is attached. Based upon the narrative, supplemented with discussion between staff and the applicant, Sh-Boom would operate the proposed teen dances as follows:

- The dance patrons would be limited to high school students age 14 through 18 holding a valid student identification card. Parents and the legal guardians of the dance patrons would also be permitted to attend the dance. All dance patrons will be "carded" at the door, verifying student identification before being allowed to attend the dance. There will be a cover charge: \$5.00 with a discount flyer from 7:00 p.m. to 8:00 p.m. and \$15.00 after 8:00 p.m.
- The teen dances would only take place on Sunday and Tuesday evenings from 7:00 p.m. to 12:00 midnight during the summer months or during the rest of the year, on the Sunday evening of a three-day holiday when regular school classes are not being held. Sh-Boom is normally closed Sunday through Tuesday. As stated to staff by the owners/operators of Sh-Booms, no other event of any type would be held on the day of the teen dance, thereby separating Sh-Boom's adult oriented activities from the operation of the teen dances.
- Even though adults may be present during the dance, no alcoholic beverages would be sold, consumed, or permitted. Admission to the dance would be denied to any person showing evidence of having consumed any alcoholic beverage, under the influence of a controlled substance or in the possession of an alcoholic beverage, controlled substance, pornographic materials, etc.
- Soft drinks and snack foods would be provided during the entire event.
- No dance patron would be permitted to leave and thereafter reenter Sh-Booms during the course of the dance.
- The dance would be advertised primarily to the high school students of Pleasanton, Livermore, and Dublin via bulletin boards, posters, handbills, etc. There would be no radio advertising.
- Sh-Boom would be required to provide security personnel during the operation of the teen dance covering the interior and outdoor areas of Sh-Boom including the restroom and parking areas. As stated to staff by Sh-Boom, anyone found to be loitering, soliciting illegal activity, etc., in Sh-Booms or in the parking areas will be asked to leave immediately. The number and duty-time of the on-site security would be reviewed by the Police Chief before the issuance of a dance permit. At least two security personnel are required

to be certified/licensed by the State of California, uniformed, and supervising the parking areas.

Each of these items is reflected as a requirement in the draft conditions of approval.

## **PLEASANTON YOUTH COMMISSION**

On June 11, 2003, the Pleasanton Youth Commission reviewed the Sh-Boom proposal. Copies of the staff report id attached. Copies of the meeting minutes will be distributed to the Planning Commission at the public hearing. According to Andy Jorgensen, Community Services Manager of the City's Department of Parks and Community Services, the Youth Commission supported the Sh-Boom proposal. Copies of the Planning Commission report have been provided to the members of the Youth Commission.

## **ANALYSIS**

Conditional uses are those uses, which by their nature, require special consideration so that they may be located properly with respect to the objectives of the Pleasanton Municipal Code and with respect to their effects on surrounding uses and properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for use permits.

Staff notes that the City's past experience with the Marquis, formerly located in the Crossroads Center, has heightened the City's sensitivity and care regarding these types of uses especially where teens and young adults are involved, and especially for this location nearby the homes that were previously impacted by the Marquis. However, this sensitivity is balanced by the City's desire to create appropriate, safe venues for a variety of teen activities, especially activities during the summer months when regular school events are not held. Additionally, Sh-Boom is an established operator having a good reputation and standing in the community and a good working rapport with the City. As explained further, staff believes that the Sunday and Tuesday night teen dances at Sh-Booms, as proposed and conditioned, would be compatible with the surrounding area and would be operated in a safe, controlled manner.

## **Land Use**

The Sh-Boom Night Club occupies a tenant space in the Gateway Square shopping center and is surrounded on all sides by office and commercial developments which are mostly closed on the evenings when the teen dances would be held. The exceptions would be the Bamboo Island, Round Table Pizza, Chile's, and Hasegaewa's restaurants. As previously stated, the closest residential uses are located approximately 600 feet to the southwest of Sh-Booms, on the southwest quadrant of Stoneridge Drive and Hopyard Road, and are separated from Sh-Booms by a combination of the commercial buildings on the Gateway Square shopping center site, major public streets including Hopyard Road and Stoneridge Drive, and the sound walls facing Hopyard Road and Stoneridge Drive. Hence, staff believes that the residences to the southwest

would not be significantly impacted from the teen dance due to these factors and, therefore, that the proposed teen dances on Sunday and Tuesday nights would be compatible with the nearby uses. Figures Two through Three on the following page are photographs of the Val Vista neighborhood taken from the Gateway Square shopping center, and the Gateway Square building located between Sh-Booms and the Hopyard Road/Stone-ridge Drive intersection taken from the Val Vista neighborhood.

### Pleasanton Municipal Code

Chapter 6.44 (Teen-Age Dances) of the Pleasanton Municipal Code permits teen dances in conformance to specified criteria. Copies of this chapter are attached. A discussion of the relevant sections of Chapter 6.44 as they pertain to Sh-Boom' proposal follows:

Section 6.44.020 – Permit required.

As conditioned, Sh-Boom is required to obtain a permit from the Police Chief for the entire dance season. This permit is in addition to the conditional use permit now before the Planning Commission. As conditioned, if a particular dance were to become unruly, as determined on-site by the Police Chief or his/her designee, the dance can be closed immediately with a written report of the closure forwarded to the Planning Director. A single closure would not affect the other teen dances held during the season nor would it affect the other weekly activities being conducted at Sh-Boom. As conditioned, however, the Police Chief can revoke the dance permit for the entire season. If this were to occur, it would then be within the capacity of the Planning Commission to revoke the conditional use permit for the teen dance at a public hearing.

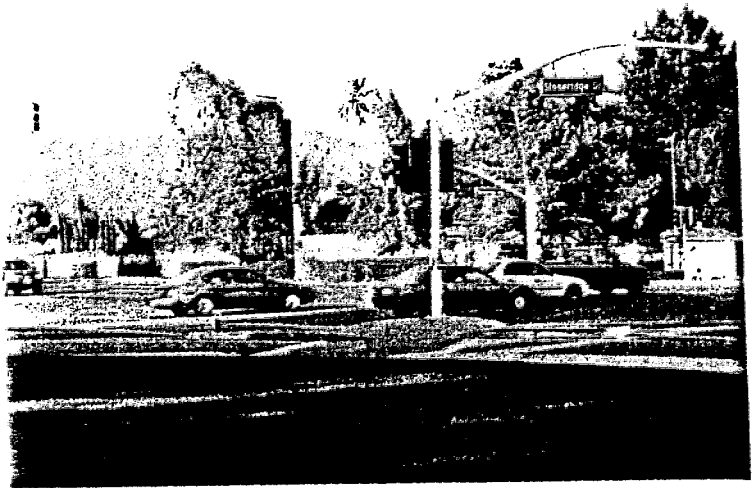


Figure 2: The rear property line sound walls of the Val Vista neighborhood from the corner of Hopyard Road/Stoneridge Drive.

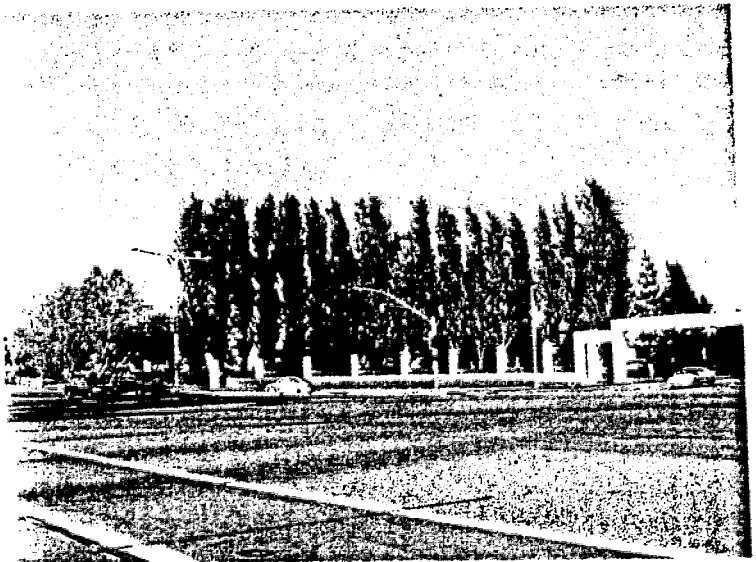


Figure 3: Gateway Square building facing the northeast corner of Hopyard Road and Stoneridge Drive taken from the Val Vista neighborhood.

Section 6.44.040 – Attendance.

As proposed and conditioned, the dance attendees may not leave and, thereafter, reenter Sh-Booms during the dance. Additionally, Sh-Boom would be required to monitor the number of attendees so that total attendance does not exceed the 500 person maximum capacity of the Sh-Boom Night Club. The previous teen dance approval required the at-the-door security personnel to consistently monitor the number of attendees.

Section 6.44.050 – Alcoholic beverages prohibited.

As conditioned, no alcoholic beverages may be sold, consumed, or be available on or in Sh-Booms during the dance. Admission to the dance shall be denied to any person showing evidence of having consumed any alcoholic beverage, under the influence of a controlled substance, or in the possession of an alcoholic or controlled substance.

Section 6.44.060 – Time limit.

The Municipal Code would allow a teen dance to operate to 1:00 a.m. with special permission; otherwise, the dances would have to end at 12:00 midnight. However, as proposed and conditioned, the teen dances would end at 12:00 midnight.

Section 6.44.070 – Participation of adults.

The Municipal Code sets a maximum 20 year age for dance attendees. As proposed and conditioned, the maximum age for dance attendees would be 18 years, and the attendees would be required to have a current student identification card. As worded, this condition would allow the presence of parents. To prevent the possible participation of adults who are not the parents of the dance attendees, no other activity would be allowed on the Sundays and Tuesdays when the teen dances would be held. Sh-Boom would also be required to post the teen dance schedule on its premises.

Section 6.44.080 – Loitering prohibited.

Loitering would also be prohibited by a condition of approval. Staff notes that there are “No Loitering” signs posted predominantly under the covered walkways surrounding the Sh-Boom Night Club.

Section 6.44.090 – Permit revocation.

The Pleasanton Municipal Code gives to the Police Chief the ability to revoke a dance permit. As previously stated, the Police Chief has the authority to close a specific dance at any time and, as conditioned, can revoke the dance permit for the entire season. The Planning Commission can revoke the use permit approval for the teen dances at a public hearing by making the appropriate findings.

## Section 6.44.100 – Supervision by police.

The Pleasanton Municipal Code allows the Police Chief to require dance supervisors, e.g., security personnel, during the dance. As conditioned, Sh-Boom is required to provide security personnel during the operation of the teen dance covering the interior and outdoor areas. At least two security personnel are required to be certified/licensed by the State of California, uniformed, and supervising the parking areas. The remaining security personnel could include members of Sh-Boom's staff. The total number and locations of the security personnel would be determined by the Police Chief in conjunction with the issuance of a teen dance permit.

### Timing of the Conditional Use Permit

Staff has proposed a condition of approval for a one year time limit for the conditional use permit for the teen dances, at which time staff will review the experience with the Sh-Boom' teen dances. Absent any problems, staff will allow the teen dances to continue. If problems have occurred, staff will evaluate the problems and, if necessary, bring the use permit back to the Planning Commission for its review and action.

### Parking

Gateway Square was approved with 473 parking spaces distributed throughout the shopping center. The majority of this parking is centrally located on the shopping center site. There is some perimeter parking located on the south and east sides of the Sh-Boom Night Club. Of this total, the Sh-Boom Night Club would require 72 parking spaces based upon the Hacienda Park restaurant standard of one parking space per 150 square feet of floor area. However, Sh-Boom's hours occur after 6:00 p.m. when the majority of the retail/office tenants is Gateway Square are closed. The Bamboo Island, Chile's, and Hasegawa's restaurants are the only major restaurants open



Figure 4: The main parking area of the Gateway Square shopping center.

during this time and would require a total of 110 parking spaces based upon the Hacienda Park standard. Other restaurants, e.g., Ameilia's Deli and Round Table pizza, would be closed at this time or doing a predominantly take-out business. Figure Four is a photograph of the main parking area of the Gateway Square shopping center.

The maximum occupancy for Sh-Boom is limited to 500 people. Staff believes that the number of parking spaces in the Gateway Square shopping center would be sufficient for the operation



of the teen dances on Sunday and Tuesday nights: nearby commercial/office tenants, as previously stated, are closed on the evenings when the dances are being held; a portion of the dance patrons – those younger than 16 years of age – would, in all likelihood, be driven by their parents to the dance; and a portion would drive to the dances with their friends.



Figure 5: Photograph of the parking area on the east side of Sh-Boom facing Chabot Drive.

Staff had discussed with the applicants the feasibility of limiting the teen dance attendees to the parking area on the east side of Sh-Boom facing Chabot Drive. Figure Five is a photograph of this parking area. Staff felt that restricting the teen dance parking to this area would serve to further protect the Val Vista neighborhood from parking lot noise. The applicants, however, believe that implementing this requirement would be infeasible. As previously stated, the parking areas serving Sh-Booms are well-separated and buffered from the Val Vista neighborhood. Although staff does not foresee potential parking problems resulting from the teen dance night, a proposed condition of approval would give to the City the appropriate controls to rectify parking problems if they should arise.

### **Noise**

In order to minimize any noise impacts to the apartment residents, staff has incorporated a condition requiring that Sh-Boom's entrance/exit doors remain closed but not locked during the operation of the teen dance. The noise inside Sh-Boom generated by the teen dance night would consist primarily of pre-recorded music. Reflecting the Planning Commission's approvals of similar uses including martial arts studios, dance studios, etc., Sh-Boom is required to keep its entrance/exit doors closed at all times during the operation of the teen dances.

The noise generated outside the building would most likely consist of conversation in the parking lot, opening and closing of car doors, starting vehicles, and, perhaps, car stereos. Given the separation between Sh-Booms and the Val Vista neighborhood to the southwest and the building and soundwalls located between Sh-Booms and Val Vista, staff considers it unlikely that the residents would be impacted by the noise generated by this use. As previously stated, Sh-Boom would provide private security in the parking areas to prevent loitering, rowdy behavior, etc.

### **Hacienda Park Owners Association**

Representatives of the Hacienda Park Owners Association have reviewed and endorsed Sh-Boom's proposed teen dance. The approval letter is attached. James Paxson, General Manager

of the owners association clarified that the approval also included the dances on Sunday nights on three-day weekends during the school year. Mr. Paxson may be present at the public hearing.

### **Pleasanton Police Department**

Sh-Boom's proposal has been reviewed and supported by representatives of the Pleasanton Police Department.

### **Public Notice**

Notice of the proposed use was sent to the surrounding property owners and tenants located within 1,000 feet of the Sh-Boom Night Club, and to the Val Vista owners living in an area defined by Denker Drive, Stoneridge Drive, Hopyard Road, and Inglewood Drive. Because of the problems created by the Marquis to the Val Vista neighborhood, staff had also sent a preliminary notice to the Val Vista owners previously defined.

Staff was contacted by Yoichi Kubota (6104 Allbrook Circle) by telephone regarding his concerns pertaining to possible parking lot noise problems resulting from the teen dance. After reviewing the draft conditions with Mr. Kubota, he appeared to be satisfied that the teen dance would not be a problem. Mr. Kubota may be present at the public hearing. As of the writing of this report, staff has not received any additional concerns or comments from the adjacent owners/tenants.

### **CONDITIONAL USE PERMIT FINDINGS**

The Planning Commission needs to make the following findings prior to the granting of a use permit:

- 1. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

The site of the proposed use is zoned PUD – I/C-O, which conditionally permits Night Clubs. Sh-Boom would provide a controlled, supervised venue for teen dances that would be available to Pleasanton residents and to residents of the Tri-Valley area, and that would further the City's objectives of providing for safe, secure teen activities. The Sh-Boom facility is located within the Gateway Square shopping center which is well-separated and buffered from residential uses. The conditions of approval proposed for this project and the regulations of the Pleasanton Municipal Code pertaining to teen dances would give to the City the appropriate controls to ensure that this proposal would not have a negative impact on the nearby apartments and businesses. Therefore, staff believes that the first finding can be made.

2. **That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties of improvements in the vicinity.**

The operation of the teen dance night on Sunday and Tuesday evenings would not generate any unusual demands on the existing parking facilities available to Sh-Booms and to the Gateway Square shopping center. The proposed use would be operated entirely indoors and, for this reason, the activities would not interfere with nearby office/commercial uses. There would be an adequate number of parking spaces available for the teen dance patrons as well as for the other patrons of businesses in the shopping center. A condition has been included that would require the applicant to provide parking lot security, thereby controlling activities in the parking lot and to mitigate any future nuisances that may arise from the proposed use. As conditioned, staff feels that the proposed use will not be detrimental to the public health, safety, and welfare, nor will it pose a threat to surrounding properties or improvements. Therefore, staff believes that the second finding can be made.

3. **That the proposed conditional use will comply with each of the applicable provisions of this chapter.**

The site's PUD zoning designation conditionally permits night club type activities, which is interpreted to include the proposed teen dance nights. The proposed use also complies with all relevant sections of the Pleasanton Municipal Code including Chapter 6.44 (Teen-Age Dances). It has been reviewed and endorsed by representatives of the Pleasanton Police Department and by representatives of the Hacienda Park Owners Association. Therefore, staff believes that the third finding can be made.

## **ENVIRONMENTAL ASSESSMENT**

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA). Therefore, no further environmental assessment is required.

## **CONCLUSION**

As proposed and conditioned, the operation of the teen dances at Sh-Booms would be, in staff's opinion, safe, secure, and compatible with the existing uses in the area. The proposal has been endorsed by representatives of the Pleasanton Police Department, the Pleasanton Youth Commission, and by representatives of the Hacienda Park Owners Association. Therefore, staff believes that Sh-Boom's request merits a favorable action by the Planning Commission.

## STAFF RECOMMENDATION

Staff recommends the Planning Commission approve Case PCUP-85 by taking the following actions:

1. Make the Conditional Use Permit findings as listed in the staff report; and,
2. Approve Case PCUP-85 subject to the draft conditions of approval listed in Exhibit "B".

*Staff Planner: Marion Pavan (925) 931-5610*

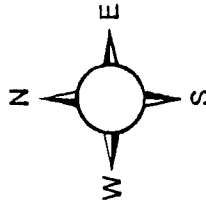
PCUP-85

City of Pleasanton

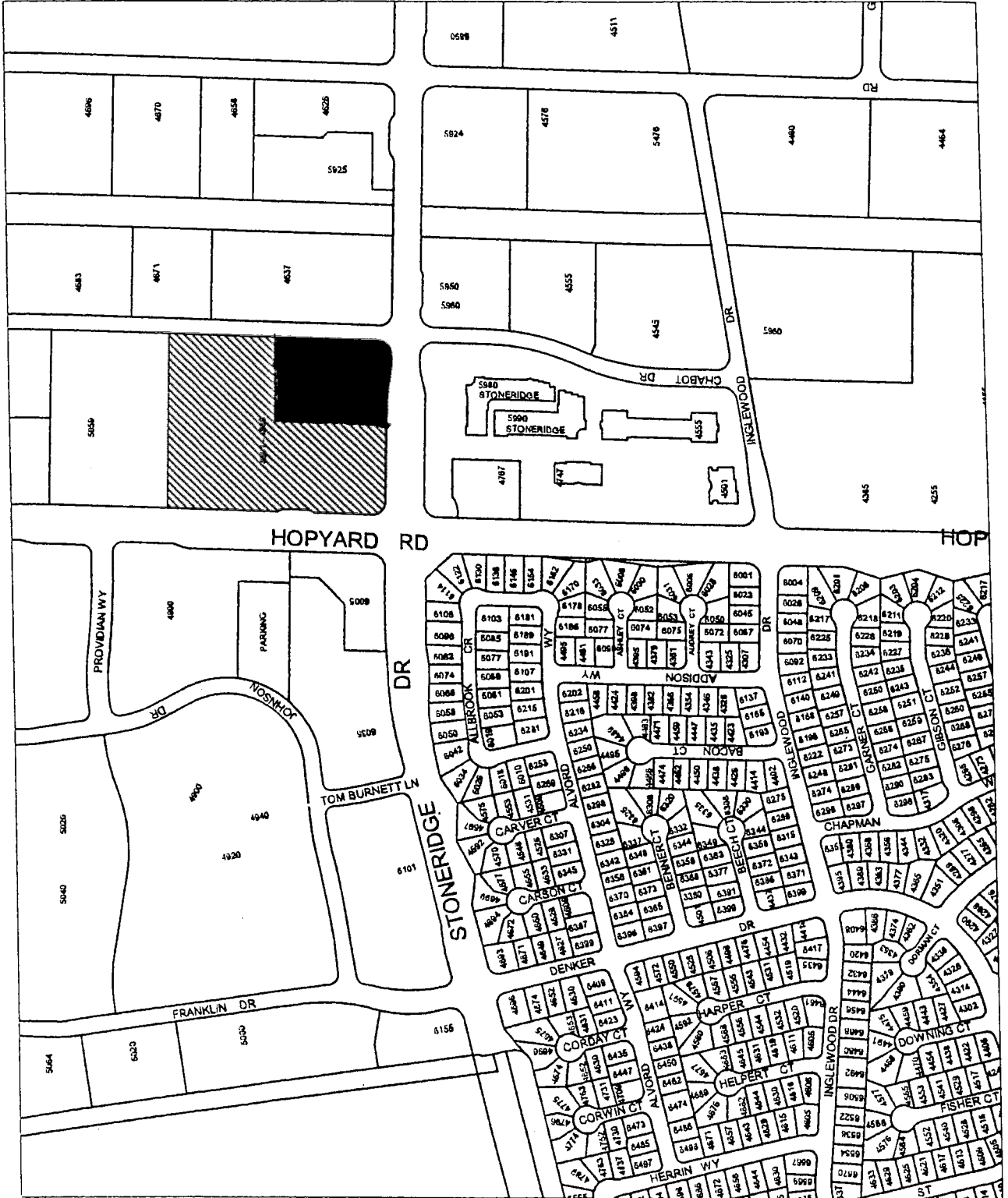
GIS

Department

Sh-Boom



Printed 6/20/2003



CITY OF PLEASANTON  
PLANNING AND CONTINUITY DEVELOPMENT  
APPLICATION FOR DEVELOPMENT REVIEW  
MAY 1, 2003

II. GENERAL DATA REQUIRED:

I. DESCRIPTION OF PROPOSAL:

Inner Circle Entertainment III, LLC d/b/a Sh Boom located at 4825 Hopyard Road Pleasanton, CA 94566 respectively requests approval and permission to schedule and to operate teen events night throughout the summer months typically when the teens are off from school at the foregoing premises.

The anticipated scheduling of the teen event night will be on every Sunday and Tuesday evening from 7:00 pm up to 12:00 am beginning in the month of June or immediately after recess from school until the week prior to opening of school in late August or early September. Further, throughout the school year, we will schedule Sunday at the same times when three (3) day weekends occur and Monday is the holiday.

Regarding security, in the past we had approximately eight (8) to seventeen (17) security personnel station inside and outside the event center to maintain order and quiet enjoyment. Notwithstanding, we shall plan to position approximately similar amounts of security persons both inside and outside the premises. This includes the parking lot area throughout the Gateway Shopping Center in order to enhance order and to prevent any incidences from occurring through proactive detection relative to illegal alcohol, drug use or possession, and other illegal substances including potential altercations. Further, at the entrance of the facility, we shall improve upon the review, detection, search, and other techniques that will bar under and over aged patrons, hidden drugs, alcohol, and/or illegal substances, pornographic materials, and/or any other items deemed to be undesirable or illegal, and prevent suspected or potential criminal intent of certain patrons.

The male security personnel at the front entrance will require all male teenagers to empty their pockets and carefully patted down. The female security personnel will search female purses and lightly patted down if necessary. Backpacks or any other similar items will be barred from the premises.

Regarding attire, it is our intent to ban sports jerseys, bandanas, headwear, pants that hang off the waist, coordinates that are predominantly red or blue, any known gang colors or identifications, and any and all obscene dress ware.

PCUP-85  
RECEIVED

MAY 02 2003

CITY OF PLEASANTON  
PLANNING DEPT.

Exhibit A

Advertising and promotion will be emphasized mainly at the local high schools and in the general Pleasanton, Dublin, and Livermore areas. This will be accomplished with posters and flyers. If possible and within the scope of the teen commission, we shall coordinate with them our scheduled events. There will be no radio advertising as in the past in order to keep the teen event available for the local teens and to avoid long lines that would allow the local teens to enter at a reasonable time. This would eliminate last year's problem when a number of teens who were unable to get in at a reasonable time or decided to leave due to the long wait. The additional security at the front entrance will create the ability to accelerate entrance for the teens.

Regarding the loss of the discount upon entering after 8:00 while detained in the entrance line that was a previous problem, this would be modified by identifying them in the line just prior to 8:00 in order for them to receive the discount from the cashier. All patrons who arrive before 8:00 pm with a flyer or other discount collateral will pay \$5.00 and after 8:00 pm the cover charge will be \$15.00.

All merchandise that is sold to patrons over the age of 21 will be masked and any other advertising or related materials will be either masked or removed from the premises. We shall temporarily re-characterized the club to give it the perception that it is a teen center. We shall set up stations to provide non-alcoholic beverages for the teen to purchase.

At the conclusion of the evening, we shall make our best effort to stratify the departure of the teens at different times by illuminating the club to its highest level that would be straddled throughout the premises and/or literally shutting down specific areas of the premises at staggered times. This will minimize the egress of the teens in substantially smaller numbers. Concurrently, the security personnel will concentrate their efforts on peaceful departure including close supervision in the parking lot in order to minimize noise, altercations, improve safety with traffic control if necessary.

Any additional information or clarification of the foregoing can be supplied by David Brattmiller, General Manager, at 925-416-0777 or 408-205-876.

The Management

**PCUP-85**  
**Exhibit "B", Draft Conditions of Approval**

June 25, 2003

1. The operation of the teen dance night at the Sh-Boom Night Club shall substantially conform to Exhibit "A", dated "Received February 14, 2003" on file with the Planning Department, except as modified by the following:
  - a. The dance patrons shall be limited to high school students from the ages of 14 years through 18 years. This requirement does not prohibit the attendance by the legal parents and/or guardians of the dance patrons. Dance patrons shall not be admitted unless they have a valid, current school identification in their possession.
  - b. The dances shall only take place on Sunday and Tuesday evenings from the hours of 7:00 p.m. to 12:00 midnight during the summer months or during holidays when regular school classes are not being held. No dance shall take place on a school night.
  - c. The applicants shall not be allowed to hold another event on the day of the teen dance.
  - d. No dance patron admitted to the dance shall be permitted to leave and thereafter reenter the Sh-Boom Night Club during the course of the dance. The owner/operator shall implement measures, e.g., an indelible hand stamp, to ensure that there is no reentry during the operation of the teen dance. These measures shall be detailed at the time of the issuance of the dance permit.
  - e. No alcoholic beverages may be sold, consumed, or be available on or in the Sh-Boom Night Club during the operation of the teen dance. Admission to the dance shall be denied to any person showing evidence of having consumed any alcoholic beverage, under the influence of a controlled substance, or in the possession of an alcoholic beverage or controlled substance.
  - f. The applicants shall provide security personnel during the operation of the teen dance supervising both the interior and outdoor areas of the Sh-Boom Night Club including the surrounding parking areas. At least two of the security personnel shall be certified/licensed by the State of California, shall be uniformed, and shall supervise the surrounding parking areas. The other security personnel shall wear matching shirts. The Chief of Police shall determine the number of security personnel prior to issuance of the dance permit.
  - g. The teen dance shall not be advertised on radio or television programs.



2. The use permit shall be effective for one year from the date approval by the Planning Commission, at which time staff will review the operations of the teen dances. Absent issues including, but not limited to, conflicts pertaining to parking, noise, consumption and/or possession of alcoholic beverages or controlled substances, loitering, vandalism, unruly behavior, vehicle code violations on nearby public streets, etc., the Planning Director may determine that the teen dances may continue without a public hearing before the Planning Commission. Otherwise, the Planning Director may refer the use permit back to the Planning Commission for further review including new conditions of approval and, if necessary, revocation of the use permit approval.
3. Before commencement of the dance season, the applicants shall provide to the Planning Director and to the Police Chief the entire season's dance schedule and a description of operations for review and approval. The season's schedule shall be prominently displayed inside the Sh-Boom Night Club at all times along with a notice that no adult events will be held on the days of the teen dances.
4. At no time shall balloons, banners, pennants, searchlights, or other attention-getting devices be utilized on the site before and/or during the operation of the teen dance.
5. Before the first dance, the applicants shall secure a permit from the Chief of Police for the dance season. The permit shall incorporate the requirements of this conditional use permit approval and any additional requirements determined to be necessary by the Police Chief. The applicants shall adhere to the conditions and requirements of said permit at all times.
6. In the event that nuisances are created through the operation of the teen dances, either by the dance patrons themselves within the Sh-Boom Night Club or by the patrons in the vicinity of the Sh-Boom Night Club, including, but not limited to, conflicts pertaining to parking, noise, unruly behavior, vandalism, vehicle code violations on nearby public streets, etc., the Planning Director may refer the conditional use permit to the Planning Commission for review at a public hearing. If necessary, the Planning Commission may add additional conditions of approval or may revoke the conditional use permit.
7. All entry/exit doors to the Sh-Boom Night Club shall be required to be kept closed but not locked during the operation of the teen dances.
8. The applicants shall maintain the area surrounding Sh-Booms, including the nearby parking areas, in a clean and orderly manner at all times.
9. At no time shall the dance patrons be allowed to congregate or to loiter in the parking areas of the Gateway Square shopping center.
10. The applicants shall meet all requirements of the Pleasanton Fire Code (Pleasanton Municipal Code, Chapter 20.24) for the operation of this use. Prior to the first teen dance,

the applicants shall meet with representatives of the Livermore-Pleasanton Fire Department to verify that these requirements are being met.

11. The applicants shall keep the premises free of fire hazards at all times.
12. The maximum building occupancy shall be 500 people. Occupancy shall be prominently displayed inside the Sh-Boom Night Club and shall be strictly adhered to.
13. All portions of the building covered by this approval shall have installed and operating, fire extinguishers with a minimum 2-A:10-B:C rating. The fire extinguishers shall be located within a 75-foot radius of each other.
14. If, in the opinion of the Chief of Police or his/her designee, any dance becomes unruly or unsafe, the dance shall be stopped and the venue shall be closed immediately. A police report shall be written on the closure and shall be forwarded to the Planning Director for review. At the discretion of the Planning Director, the report can be forwarded to the Planning Commission. The Police Chief has the discretion to suspend the operation of a single dance or all dances for the season.
15. Any changes to the Sh-Boom facility, including signage, shall be subject to City review and approval including issuance of all required permits before construction and/or installation.
16. Members of the Pleasanton Youth Commission are encouraged to attend the teen dances and to then provide feedback to the Planning Commission at the end of the summer dance season.

< End >



**SUBJECT:** Review and Discussion of Proposed Youth Oriented Activities at Sh-Boom

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**BACKGROUND**

Sh-Boom is interested in offering teen-oriented activities at its facility, located at 4825 Hopyard Road, Pleasanton. Facilities for dancing, visiting, games etc., would be available to youth ages 14-18 on Sunday evenings during holiday periods when there would be no school the following day. The club is seeking approval from the City's Planning and Police departments to amend its Conditional Use Permit (CUP) for such activities, and desires general support from the Youth Commission.

Sh-Boom's General Manager David Brattmiller will be in attendance at tonight's meeting to provide an overview of the proposed program to the Commission.

**STAFF RECOMMENDATION**

That the Commission review and discuss Sh-Boom's proposal for teen activities at its Pleasanton facility, and take appropriate action regarding conceptual support of the concept.

Respectfully submitted,

Hiram Berhel  
Recreation Supervisor, Youth Services

**Chapter 6.44**

**TEEN-AGE DANCES**

**Sections:**

- 6.44.010** Definitions.
- 6.44.020** Permit – Required.
- 6.44.030** Action by Police Chief.
- 6.44.040** Attendance restrictions.
- 6.44.050** Alcoholic beverages prohibited.
- 6.44.060** Time limit.
- 6.44.070** Participation of adults.
- 6.44.080** Loitering prohibited.
- 6.44.090** Permit – Revocation.
- 6.44.100** Supervision of police.

**6.44.010. Definitions.**

As used in this Chapter:

A. "Adult sponsor" means any individual or organization which assumes full and complete responsibility for the direction of a teen-age dance.

B. "Teen-age dance" means a dance held or conducted exclusively for teenagers and to which no persons twenty (20) years of age or older are admitted as participants.

C. "Teen-ager" means any person over the age of thirteen (13) and under the age of twenty (20) years. Prior Code § 4-1.38)

**6.44.020 Permit – Required.**

A. No person shall conduct or sponsor any teen-age dance without a written permit from the Chief of Police.

B. No person may secure a permit to conduct or sponsor any teen-age dance except an adult sponsoring group or adult individual which has been approved by the Chief of Police and which has assumed full and complete responsibility for the event, its direction and supervision.

C. The authority to issue or deny permits under this provision is delegated to the Chief of Police. In his consideration of each application therefor he shall consider the following:

1. Compliance with all other applicable provisions of City ordinances;
2. The character, reputation and moral fitness of the applicant;
3. Effect upon the public health, peace, morals, safety and welfare of the community;
4. Attitude and general disposition of the applicant relative to authority of the law;
5. The findings of the Building Inspector and Fire Chief after reference of said application to each of such as the Chief of Police shall determine;
6. Adequate arrangements for adult supervision. (Prior Code § 4-1.39)

**6.44.030 Action by Police Chief.**

The Chief of Police shall either grant or deny a permit for each applicant within ten (10) days after receipt thereof, and in the event that a permit is denied, the applicant may request that the matter be reviewed by the City Council. (Prior Code § 4-1.40)

6.44.040

**6.44.040 Attendance.**

No minor admitted to a teen-age dance shall be permitted to leave and thereafter re-enter the dancing premises during the course of the event, and no pass-out checks shall be issued unless required by the physical arrangement of the premises. (Prior Code § 4-1.41)

**6.44.050 Alcoholic beverages prohibited.**

No alcoholic beverages shall be sold, consumed or be available on the premises in or about which any teen-age dance is held. Admission to a teen-age dance shall be denied to any person showing evidence of drinking any alcoholic beverage or who has any alcoholic beverage on his person. (Prior code § 4-1.42)

**6.44.060 Time limit.**

No dancing at any teen-age dance shall be permitted after the hour of 12:00 midnight. On special occasions permission may be requested to extend the time of a dance for an additional hour. (Prior code § 4-1.43)

**6.44.070 Participation of adults.**

A person twenty years of age or over shall not attend any teen-age dance as a participant. This does not prohibit the attendance of chaperones or sponsors. (Prior code § 4-1.44)

**6.44.080 Loitering prohibited.**

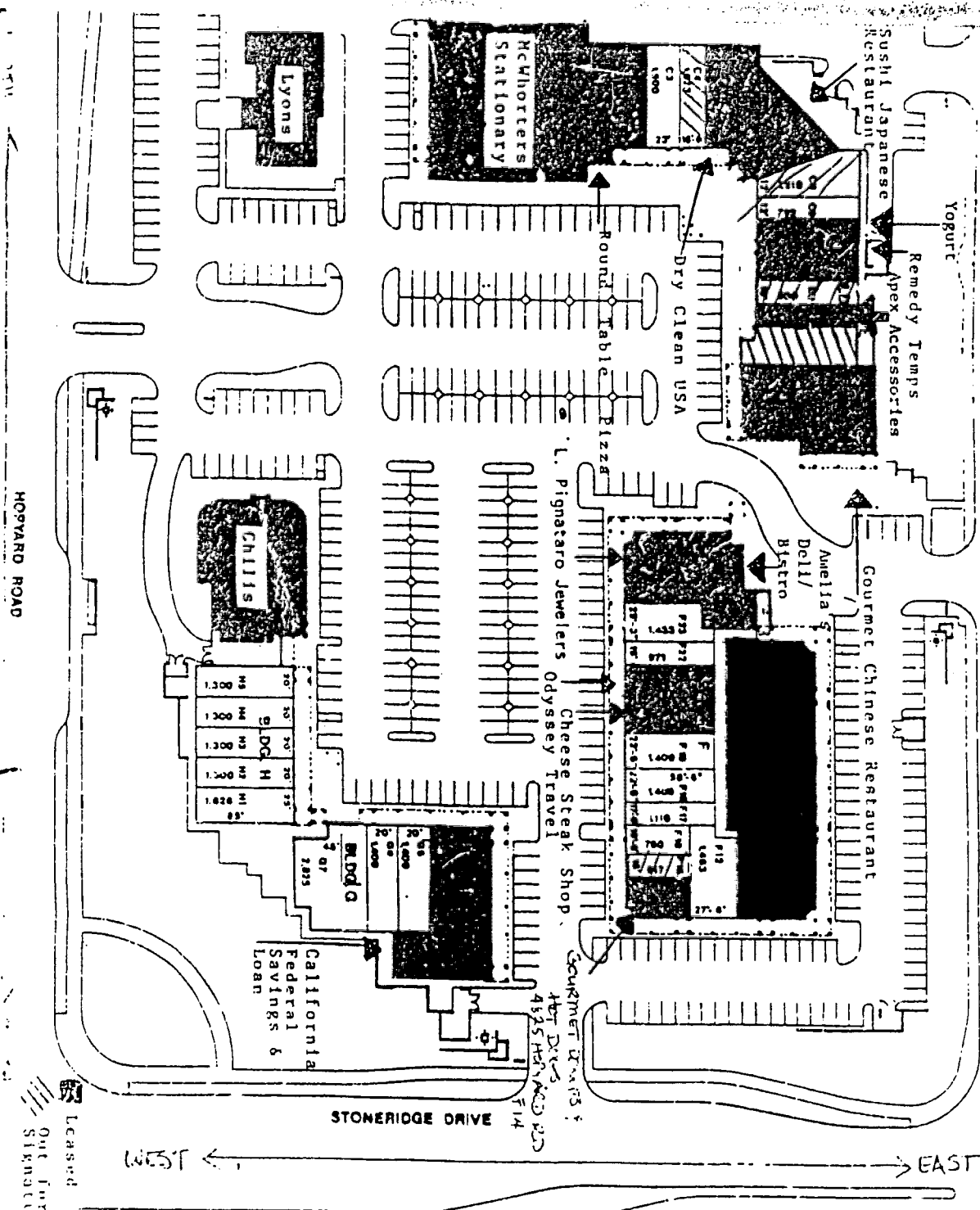
Any person who loiters around or about the premises at which a teen-age dance is being conducted is guilty of a misdemeanor. (Prior code § 4-1.45)

**6.44.090 Permit—Revocation.**

The chief of police shall have the right to forthwith revoke any permit granted under the terms of this chapter and close the premises wherein dancing is conducted in the event that any of the provisions of this chapter are violated during the conduct of a dance held under a permit granted therefor. (Prior code § 4-1.46)

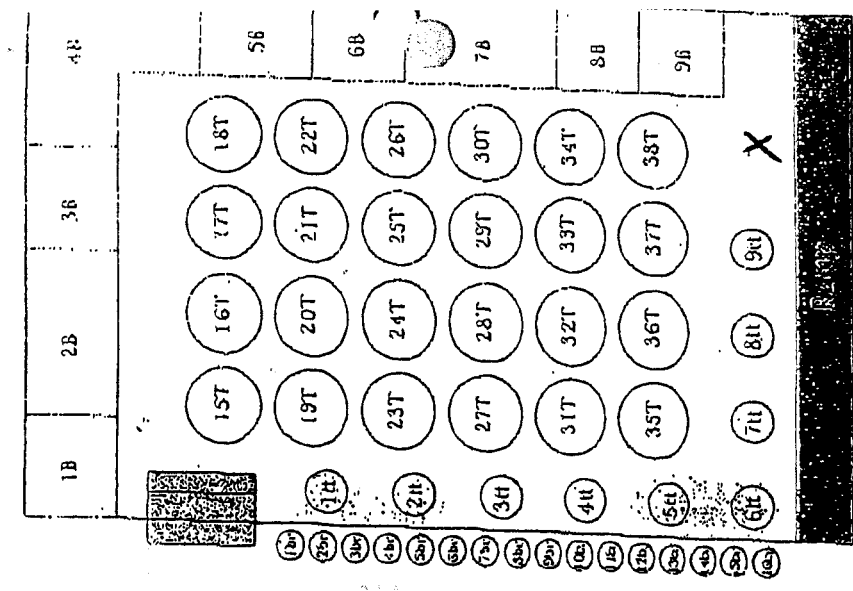
**6.44.100 Supervision by police.**

If, in the discretion of the chief of police the circumstances connected with the granting of the permit warrant, the sponsor may be required to provide a dance supervisor or supervisors, as he shall determine, who shall be a person or persons assigned by the police department and paid by the sponsor of the dance. (Prior code § 4-1.47)



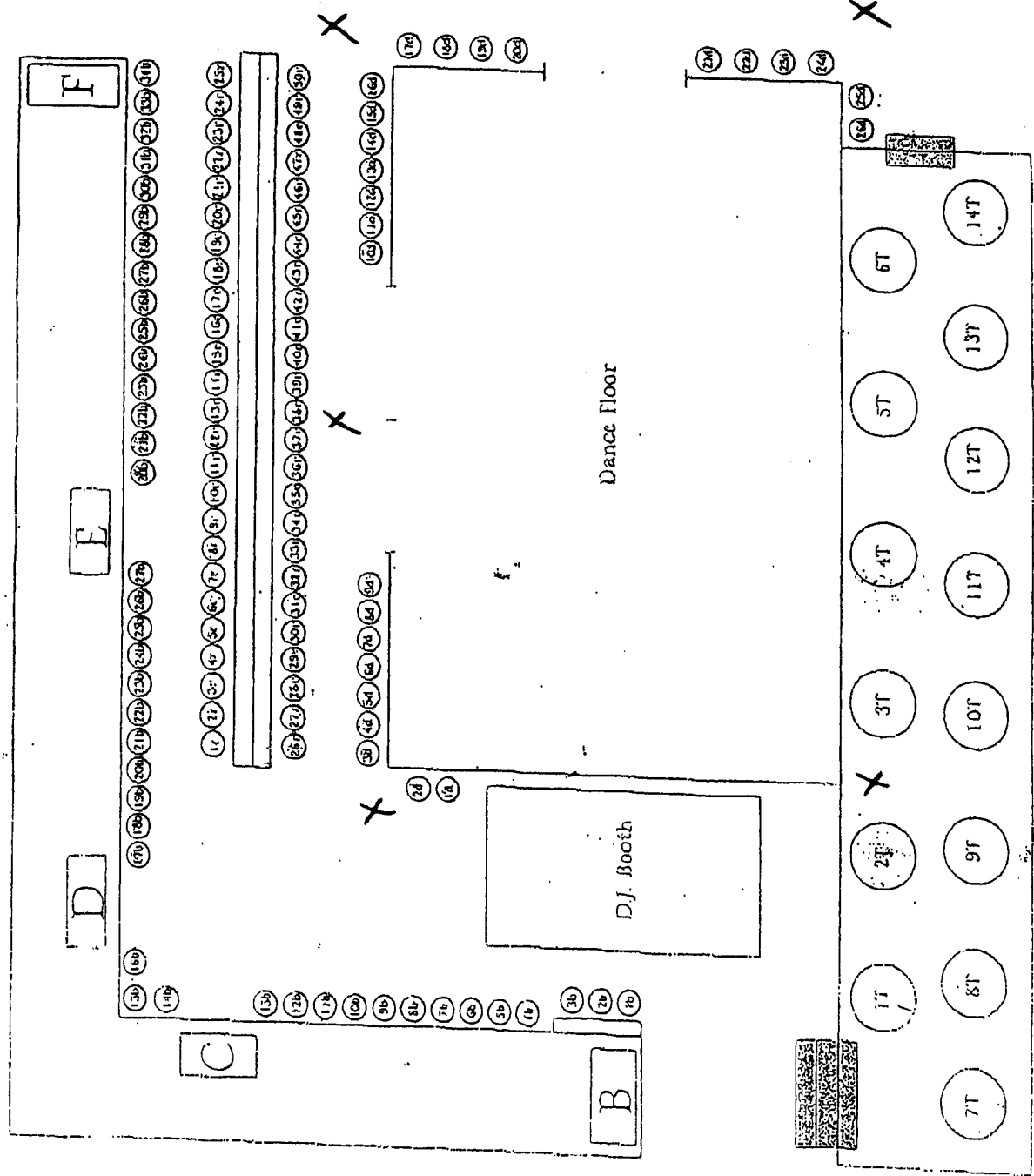
BUILDING INSPECTOR  
 CITY OF PLAZA  
 APPROVED  
 4-27-76  
 BY: [Signature]

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ATTACHMENT #7

Buffer Table



7 inside

3 up front

X Security Stations

more will be added



**PCUP-85, Sh-Boom**

**Application for a conditional use permit to allow dances for teens from 7:00 p.m. to 12:00 midnight on Sunday and Tuesday nights during the summer months beginning in June and ending in September, and on three-day weekends during the school year. The dances would be held at Sh-Boom located at 4825 Hopyard Road in the Gateway Square shopping center. The subject property is zoned PUD (Planned Unit Development) - I/C - O (Industrial/Commercial and Office) District.**

Mr. Iserson summarized the staff report. He described the previous history of this use, and noted that following discussion with staff, Sh-Boom would operate the proposed teen dances as follows:

1. Patrons would be limited to high school students age 14 through 18, holding a valid student identification card. Parents and the legal guardians of the patrons would be permitted to attend the dance;
2. Dances would take place on Sunday and Tuesday evenings from 7:00 p.m. to 12:00 midnight, when the adult portion of the nightclub is normally closed;
3. No alcoholic beverages would be sold, consumed, or permitted. Any person under the influence of alcohol would be permitted to enter;
4. Soft drinks and snacks would be provided during the entire event;
5. No one would be permitted to leave and re-enter the dance;
6. The dance would be advertised primarily to high school students in the Tri-Valley area, and there would be no radio advertising;
7. Sh-Boom would provide uniformed security personnel during the dance, both inside and outside the facility. The security plan would be reviewed by the Pleasanton Police Department.

Mr. Iserson noted that this application was reviewed and supported by the Pleasanton Youth Commission on June 11, 2003. Staff believed that from a land use point of view, the use would fit in well with the surrounding area. The dances would be held when most of the other businesses in the shopping center are closed, and there is adequate separation between Sh-Boom and the residential area of Hopyard and Stoneridge Drive. Staff would review this use after one year, and it would be brought back to the Commission if there were any problems. If no problems were experienced, staff would extend the conditional use permit administratively.

Mr. Iserson discussed parking and noise; staff believed these would not be an issue. The Police Department has supported this application subject to the conditions of approval. Notice of the proposed use was sent to surrounding property owners and tenants located within 1,000 of Sh-Boom, and to the Val Vista owners. He noted that one communication was received by a neighbor, who, after speaking with staff, was satisfied that the dances would not be a problem.

Staff believed the teen dances would be safe and secure, compatible with the area, and that the impacts would be mitigated. In addition, the dances would provide an important activity for teens, especially during the summer months.

Commissioner Kameny complimented staff on an excellent and thorough staff report.

In response to an inquiry by Chairperson Arkin, Mr. Iserson confirmed that the 1996 approvals were made on a staff level. Because of the previous problems, the applicants and staff decided that a fresh review should be made to specifically determine whether a teen dance would be viable and to add the necessary conditions. He noted that because of the sensitivity caused by the Marque, the neighbors were already concerned and wanted to be sure that the same impacts did not occur.

In response to an inquiry by Commissioner Roberts, Mr. Iserson confirmed that the previous teen dances had been advertised on the radio, and teens from outside the area attended the dances.

#### **THE PUBLIC HEARING WAS OPENED.**

Mr. David Bratmiller, General Manager, Sh-Boom, noted that he would be available to answer questions.

#### **THE PUBLIC HEARING WAS CLOSED.**

A discussion of various forms of identification for the teens ensued.

Commissioner Maas suggested requiring a valid proof of age ID to gain admission to the dance.

Chairperson Arkin noted that the requirements for Masses and Sh-Boom should be the same.

**Commissioner Kameny moved to approve PCUP-85, with the modification in Condition 1.a., which would be clarified to ensure that the patrons will have a valid current ID or proof of age ID in their possession.**

**Commissioner Maas seconded the motion.**

#### **ROLL CALL VOTE**

AYES: Commissioners Arkin, Kameny, Maas, and Roberts  
NOES: None  
ABSTAIN: None  
ABSENT: Commissioner Sullivan

Resolution No. PC-2003-25 was entered and adopted as motioned.

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2003-25

RESOLUTION APPROVING THE APPLICATION OF SH-BOOM NIGHT CLUB FOR CONDITIONAL USE PERMIT APPROVAL, AS FILED UNDER CASE PCUP-85

WHEREAS, Sh-Boom Night Club has applied for a conditional use permit to allow teen dances from 7:00 p.m. to 12:00 midnight on Sunday and Tuesday nights during the summer months and on Sunday nights on three-day weekends during the school year at 4825 Hopyard Road in the Gateway Square Shopping Center; and

WHEREAS, zoning for the property is PUD (Planned Unit Development) – I/C-O (Industrial/Commercial-Office) District; and

WHEREAS, at its duly noticed public hearing of June 25, 2003, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this application; and

WHEREAS, projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission made the following findings:

1. The proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

The site of the proposed use is zoned PUD – I/C-O, which conditionally permits nightclubs. Sh-Boom would provide a controlled, supervised venue for teen dances. The Sh-Boom facility is located within the Gateway Square shopping Center which is well-separated and buffered from residential uses. The conditions of approval proposed for this project and the regulations of the Municipal Code pertaining to teen dances would give to the City the appropriate controls to ensure that this proposal would not have a negative impact on the nearby apartments and businesses.

2. The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The operation of the teen dance night on Sunday and Tuesday evenings would not generate any unusual demands on the existing parking facilities available to Sh-Booms and to the Gateway Square shopping center. The proposed use would be operated entirely indoors and, for this reason, the activities would not interfere with nearby office/commercial uses. A condition has been included that would require the applicant to provide parking lot security, thereby controlling activities in the parking lot, and to mitigate any future nuisances that may arise from the proposed use.

3. The proposed conditional use will comply with each of the applicable provisions of the Zoning Ordinance.

The site's PUD zoning designation conditionally permits nightclub type activities, which is interpreted to include the proposed teen dance nights. The proposed use also complies with all relevant sections of the Pleasanton Municipal Code including Chapter 6.44 (Teen-Age Dances).

WHEREAS, the Planning Commission determined that the proposed conditional use would be compatible with the existing uses in the area.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Approves Case PCUP-78, the application of Sh-Boom Night Club for a conditional use permit to allow teen dances from 7:00 p.m. to 12:00 midnight on Sunday and Tuesday nights during the summer months and on Sunday nights on three-day weekends during the school year at 4825 Hopyard Road in the Gateway Square Shopping Center, subject to the conditions shown in Exhibit "B," attached hereto and made part of this case by reference.


Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 25TH DAY OF JUNE 2003 BY THE FOLLOWING VOTE:

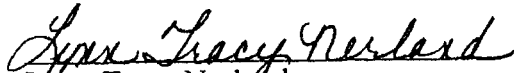
AYES: Commissioners Arkin, Kameny, Maas, and Roberts  
NOES: None  
ABSENT: Commissioner Sullivan  
ABSTAIN: None

ATTEST:

  
Peggy Ezidre  
City Clerk

  
Brian Arkin  
Chairperson

APPROVED AS TO FORM:

  
Lynn Tracy Nerland  
Assistant City Attorney

**PCUP-85**  
**Exhibit "B", Final Conditions of Approval**  
**per Planning Commission**

June 25, 2003

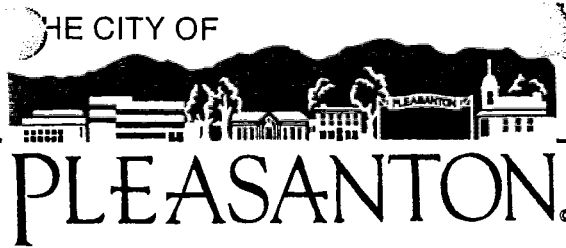
1. The operation of the teen dance night at the Sh-Boom Night Club shall substantially conform to Exhibit "A", dated "Received February 14, 2003" on file with the Planning Department, except as modified by the following:
  - a. The dance patrons shall be limited to high school students from the ages of 14 years through 18 years. This requirement does not prohibit the attendance by the legal parents and/or guardians of the dance patrons. Dance patrons shall not be admitted unless they have a valid current identification or proof of age identification in their possession.
  - b. The dances shall only take place on Sunday and Tuesday evenings from the hours of 7:00 p.m. to 12:00 midnight during the summer months or during holidays when regular school classes are not being held. No dance shall take place on a school night.
  - c. The applicants shall not be allowed to hold another event on the day of the teen dance.
  - d. No dance patron admitted to the dance shall be permitted to leave and thereafter reenter the Sh-Boom Night Club during the course of the dance. The owner/operator shall implement measures, e.g., an indelible hand stamp, to ensure that there is no reentry during the operation of the teen dance. These measures shall be detailed at the time of the issuance of the dance permit.
  - e. No alcoholic beverages may be sold, consumed, or be available on or in the Sh-Boom Night Club during the operation of the teen dance. Admission to the dance shall be denied to any person showing evidence of having consumed any alcoholic beverage, under the influence of a controlled substance, or in the possession of an alcoholic beverage or controlled substance.
  - f. The applicants shall provide security personnel during the operation of the teen dance supervising both the interior and outdoor areas of the Sh-Boom Night Club including the surrounding parking areas. At least two of the security personnel shall be certified/licensed by the State of California, shall be uniformed, and shall supervise the surrounding parking areas. The other security personnel shall wear matching shirts. The Chief of Police shall determine the number of security personnel prior to issuance of the dance permit.

- g. The teen dance shall not be advertised on radio or television programs.
2. The use permit shall be effective for one year from the date approval by the Planning Commission, at which time staff will review the operations of the teen dances. Absent issues including, but not limited to, conflicts pertaining to parking, noise, consumption and/or possession of alcoholic beverages or controlled substances, loitering, vandalism, unruly behavior, vehicle code violations on nearby public streets, etc., the Planning Director may determine that the teen dances may continue without a public hearing before the Planning Commission. Otherwise, the Planning Director may refer the use permit back to the Planning Commission for further review including new conditions of approval and, if necessary, revocation of the use permit approval.
  3. Before commencement of the dance season, the applicants shall provide to the Planning Director and to the Police Chief the entire season's dance schedule and a description of operations for review and approval. The season's schedule shall be prominently displayed inside the Sh-Boom Night Club at all times along with a notice that no adult events will be held on the days of the teen dances.
  4. At no time shall balloons, banners, pennants, searchlights, or other attention-getting devices be utilized on the site before and/or during the operation of the teen dance.
  5. Before the first dance, the applicants shall secure a permit from the Chief of Police for the dance season. The permit shall incorporate the requirements of this conditional use permit approval and any additional requirements determined to be necessary by the Police Chief. The applicants shall adhere to the conditions and requirements of said permit at all times.
  6. In the event that nuisances are created through the operation of the teen dances, either by the dance patrons themselves within the Sh-Boom Night Club or by the patrons in the vicinity of the Sh-Boom Night Club, including, but not limited to, conflicts pertaining to parking, noise, unruly behavior, vandalism, vehicle code violations on nearby public streets, etc., the Planning Director may refer the conditional use permit to the Planning Commission for review at a public hearing. If necessary, the Planning Commission may add additional conditions of approval or may revoke the conditional use permit.
  7. All entry/exit doors to the Sh-Boom Night Club shall be required to be kept closed but not locked during the operation of the teen dances.
  8. The applicants shall maintain the area surrounding Sh-Booms, including the nearby parking areas, in a clean and orderly manner at all times.
  9. At no time shall the dance patrons be allowed to congregate or to loiter in the parking areas of the Gateway Square shopping center.

10. The applicants shall meet all requirements of the Pleasanton Fire Code (Pleasanton Municipal Code, Chapter 20.24) for the operation of this use. Prior to the first teen dance, the applicants shall meet with representatives of the Livermore-Pleasanton Fire Department to verify that these requirements are being met.
11. The applicants shall keep the premises free of fire hazards at all times.
12. The maximum building occupancy shall be 500 people. Occupancy shall be prominently displayed inside the Sh-Boom Night Club and shall be strictly adhered to.
13. All portions of the building covered by this approval shall have installed and operating, fire extinguishers with a minimum 2-A:10-B:C rating. The fire extinguishers shall be located within a 75-foot radius of each other.
14. If, in the opinion of the Chief of Police or his/her designee, any dance becomes unruly or unsafe, the dance shall be stopped and the venue shall be closed immediately. A police report shall be written on the closure and shall be forwarded to the Planning Director for review. At the discretion of the Planning Director, the report can be forwarded to the Planning Commission. The Police Chief has the discretion to suspend the operation of a single dance or all dances for the season.
15. Any changes to the Sh-Boom facility, including signage, shall be subject to City review and approval including issuance of all required permits before construction and/or installation.
16. Members of the Pleasanton Youth Commission are encouraged to attend the teen dances and to then provide feedback to the Planning Commission at the end of the summer dance season.

< End >





June 24, 2002

David Brattmiller, General Manager  
Inner Circle Entertainment III, LLC  
DBA ShBoom  
4825 Hopyard Road, #F-4  
Pleasanton, CA 94588

RE: Re-Instating Teen Nights

Dear Mr. Brattmiller,

The City of Pleasanton Planning Department has received your request to hold summer "teen night" at ShBoom on Sunday during the summer months of 2002. It is staff's understanding from your letter that you will operate this teen night in accordance with the City's approval letter dated June 28, 1996. The Planning Director finds that this activity is in conformance with the use permit approval. Therefore, your request for re-instating the teen night is approved subject to the following conditions.

1. The teen nights shall be held on Sundays during the summer months between the hours of 7:30 p.m. to 12:00 midnight. The Planning Department and the Police Department shall be notified in writing at least two weeks in advance prior to any proposed changes in the day or hours of operation.
2. Any teen nights held in non-summer months will require separate City's approval.
3. Ages of teens attending the teen night shall be 14 – 18, with proper identification (high school ID) required before entering.
4. A dress code shall be enforced (no sports jerseys, bandanas or headwear, or gang attire allowed), and all purses, knapsacks, etc., will be inspected for contraband.
5. A total of seven (7) security personnel, in addition to other employees of the club, shall be on-site at all times. Two of the security personnel shall be uniformed, trained security personnel who shall patrol the parking lot surrounding the site at all times throughout the teen night to dissuade any potentially illegal or nuisance-causing activities. Any disturbances or illegal activities shall be reported immediately to the Police Department. The other security personnel shall wear matching shirts.
6. No adults, other than employees and security staff or management shall be allowed.

P. O. Box 520, Pleasanton, CA 94566-0802

200 Old Bernal Avenue

Planning & Community Development  
(925) 931-5600  
Fax: 931-5483

Building Inspection  
(925) 931-5300  
Fax: 931-5478

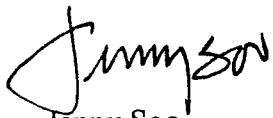
Utility Billing  
(925) 931-5425  
Fax: 931-5481

Business License  
(925) 931-5440  
Fax: 931-5481

7. No persons showing signs of intoxication shall be allowed.
8. No loitering shall be allowed around the exterior of the facility. To this end, ShBoom shall post in a conspicuous place that loitering on or about the premises is a violation of Pleasanton Municipal Code Section 6.44.080.
9. All alcohol bottles, posters, and point of sale items shall be covered or removed for the event.
10. The management shall ensure that the building walls, parking areas, signs, etc, around the exterior of the facility are kept in a clean and orderly manner. After closing of the teen night, the management shall inspect the building walls and area around the facility to ensure that the facility is cleaned and free from graffiti. Any graffiti found after a teen night shall be removed within 24 hours.
11. The maximum capacity shall not exceed 500 people. The two security personnel at the door shall keep an accurate count of the occupancy level at all times.
12. If any elements of the proposed use result in conflicts pertaining to parking, noise, traffic, loitering, or other impacts, at the discretion of the Planning Director, this approval may be submitted to the Planning Commission for subsequent review at a public hearing. If necessary, the Planning Commission may modify or add conditions to mitigate such impacts, or may void the said use permit.

If you have any questions regarding this matter, please call me at (925) 931-5615. If you have any questions for the Pleasanton Police Department, please call (925) 931-5100.

Sincerely,



Jenny Soo  
Assistant Planner

cc: Chief Tim Neal, Pleasanton Police Department  
Darrin Davis, Senior Code Enforcement Officer

Sh-Booms - Under New Ownership



CITY OF PLEASANTON  
Planning and Community Development  
(925) 931-5600

200 Old Bernal Avenue \* P.O. Box 520 \* Pleasanton, CA 94566-0802

APPLICATION FOR DEVELOPMENT REVIEW

Applic. No(s): PREV-271

Date Filed: 6-12-02

I. CHECK TYPE OF APPLICATION(S)

- Design Review (\$50)
- Admin. Design Review (\$25)
- Sign Design Review (\$15)
- Outdoor Display (\$25)
- Outdoor Dining (\$25)
- Non-Residential Satellite Dish (\$50)
- PUD Development Plan (\$2000)
- PUD Major Modification (\$2000)
- PUD Minor Modification (\$100)
- Appeal (of Case \_\_\_\_\_) (25% of orig. fee; max. \$25)
- Preliminary Review
- Variance (\$50)
- FDP (Flood) Variance (\$50)
- Conditional Use Permit (\$150)
- Temporary Use Permit (\$25)
- Animal Use Permit (\$15)
- Home Boutique Use Permit (\$25)
- Specific Plan
- Growth Management (\$200)
- Tentative Map (\$2000 + \$10/lot)
- Minor Subdivision (\$50)
- Lot Line Adjustment (\$50)
- Condominium Conversion (\$50)
- Initial Environmental Assessment (\$25)
- Rezoning (\$250)
- General Plan Amendment (\$250)
- Non-Exempt Home Occupation (\$15)
- Large Family Daycare (\$15)
- Other: Renewal of inactivated permit

II. GENERAL DATA REQUIRED

- A. Name of Applicant: Inner Circle Entertainment III LLC DBA ShBoom
- B. Address or Location of Property: 4825 Hopyard Road #F4
- C. Assessor's Parcel Number(s): 941-2759-28
- D. Site Area (acres/sq ft): 10,300.00
- E. Current Zoning: Commercial F. Proposed Zoning: Commercial
- G. Existing Use of Property: night club
- H. Description of Surrounding Uses: Titt Co., Flower Shop, Deli
- I. Description of Proposal: Reinstate Teen Night - A previously approved modification to UP-90-43.  
Open 7:30pm Close 12:00 AM

(continue on separate sheet if necessary)

J. (Refer to appropriate "Informational Guide" for required site plans, elevations, written narrative, color/material samples, photographs, or other submittals which must accompany your application.)

(continued on reverse)

**III. AUTHORIZATION OF PROPERTY OWNER**

**PROPERTY OWNER:** In signing this application, I, as property owner, have full legal capacity to, and hereby do, authorize the filing of this application. I understand that conditions of approval are binding and agree to be bound by those conditions, subject only to the right to object at the hearings or during the appeal period. I certify that the information and exhibits submitted are true and correct.

Name: George Karpaty Daytime Telephone: (408) 781-0222  
Address: 4825 Hopyard Rd Other Telephone: (408) 241-0777  
Pleasanton, CA 94588  
Signature: George Karpaty Date: 6-12-02

**B. APPLICANT OTHER THAN PROPERTY OWNER:** In signing this application, I, as applicant, represent to have obtained authorization from the property owner to file this application. I agree to be bound by conditions of approval, subject only to the right to object at the hearings on the application or during the appeal period. If this application has not been signed by the property owner, I have attached separate documentation of full legal capacity to file the application. I certify that the information and exhibits submitted are true and correct.

Name: David Brattmiller Daytime Telephone: (408) 205-8076  
Address: 4825 Hopyard Rd Other Telephone: (925) 416-0777  
Pleasanton CA 94588  
Signature: David Brattmiller Date: 6-13-02

**NOTE ANY OTHER PARTY (IES) WHO SHOULD RECEIVE STAFF REPORTS AND NOTICE OF APPLICATION:**

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Telephone: \_\_\_\_\_

**IV. (FOR CITY USE ONLY)**

Application No(s): PREV-271 Amount Received: N/A  
\_\_\_\_\_  
\_\_\_\_\_

CEQA: **TOTAL:** \_\_\_\_\_  
 Exempt (Class: \_\_\_\_\_)  
 Non-Exempt (include applicable fee; attach initial environmental assessment)  
Received By: E.K.  
Date: 6/12/02  
Receipt No(s): N/A



# CITY OF PLEASANTON

P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

June 6, 1997

CITY OFFICES  
123 MAIN STREET

CITY COUNCIL  
484-8001

CITY MANAGER  
484-8008

CITY ATTORNEY  
484-8003

CITY CLERK  
484-8235

FINANCE  
484-8033

PERSONNEL  
484-8012

CITY OFFICES  
200 OLD BERNAL AVE.

PLANNING  
484-8023

ENGINEERING  
484-8041

PLANNING INSPECTION  
484-8015

COMMUNITY SERVICES  
484-8160

WATER - BILLING  
484-8038

FIELD SERVICES  
3333 BUSCH RD.

SUPPORT SERVICES  
484-8067

PARKS  
484-8056

SANITARY SEWER  
484-8066

STREET  
484-8066

WATER  
484-8071

FIRE  
4444 RAILROAD AVE.  
484-8114

POLICE  
4833 BERNAL AVE.  
P.O. BOX 909  
94527

ShBoom  
ATTN: Mr. Porter A. Hurt  
975 Saratoga-Sunnyvale Road  
San Jose, CA 95129

**RE: Re-Instating Teen Night**

The City of Pleasanton has reviewed your request to hold summer "teen night" at ShBoom beginning on Sunday, June 15, 1997. It is staff's understanding from your letter that you will operate this teen night according to the original "teen night" request letter dated June 11, 1996 and according to the City's approval letter dated June 28, 1996 and the modifications to the conditions of approval dated November 5, 1996.

Your statement of operations indicates the following:

- a. Sunday nights, beginning June 15, 1997, from 8:30 pm - 12:30 am;
- b. Ages of teens attending shall be 13-18, with proper identification (high school ID) required before entering;
- c. The number of teens shall not exceed **500**;  
A dress code shall be enforced (no T-shirts, tank tops, hats, or gang attire allowed);
- e. All purses, knapsacks, etc. shall be inspected for contraband;
- f. No smoking shall be allowed in the facility;
- g. There shall be no in-and-out privileges; and
- h. Management personnel shall assist in crowd control within the facility.

The conditions of approval are as follows:

1. The teen nights shall be held on Sundays beginning June 15, 1997 between the hours of 8:30 pm - 12:30 am. The Planning Department and Police Department shall be notified in writing at least one week in advance prior to any proposed changes in the day or hours of operation. In

addition, the above departments shall be contacted if the teen night is not held.

2. A total of seven security personnel, in addition to the other employees, shall be on-site at all times. Two of the security personnel shall be uniformed, trained security personnel who shall patrol the parking lot surrounding the site at all times throughout the hours of teen night to dissuade any potentially illegal or nuisance-causing activities. Any disturbances or illegal activities shall be reported immediately to the Police Department. The other security staff shall wear matching shirts.
3. No adults other than employees, security staff, or management shall be allowed.
4. No persons showing signs of intoxication shall be allowed.
5. No loitering shall be allowed around the exterior of the facility. To this end, ShBoom shall post in a conspicuous place that loitering on or about the premises is a violation of Pleasanton Municipal Code Section 6.44.080.
6. Any and all cigarette vending machines shall be moved off-premises during Teen Nights.
7. The management shall ensure that the building walls, parking areas, signs, etc. around the exterior of the facility are kept in a clean and orderly manner. After closing of the facility after teen night or a teen event, the management shall inspect the building walls and area around the facility to ensure that the area is cleaned and free from graffiti. Any graffiti found after a teen night shall be removed within 24 hours.
8. The two security staff at the door shall keep an accurate account of the occupancy level at all times.

If you have any questions, please feel free to give me a call at (510) 484 - 8027. If you have any questions of the Pleasanton Police Department, please contact Paul Helm at (510) 484 - 8366.

Sincerely,



Kathryn Watt  
Associate Planner

CC: Chief Eastman, Pleasanton Police Department  
Paul Helm, Pleasanton Police Department  
Joe DeTata, Senior Code Enforcement Officer

RECEIVED

MAY 23 1997

CITY OF PLEASANTON  
PLANNING DEPT.



*Dining and Dancing to the Fabulous 50's and 60's*

May 19, 1997

Pleasanton City Planning  
200 Old Bernal Avenue  
Pleasanton, CA. 94566  
Attn: Kerri Watt

Dear Kerri:

Please let this letter serve as our request to reinstate teen night at Sh Boom, beginning Sunday, June 15, 1997.

We will be following the same format as in previous years:

- \* Ages 13-18 years with high school ID required.
- \* Hours of operation are 8:30 p.m. - 12:30 p.m.
- \* Six security personnel on duty during hours of operation.
- \* Dress code will be strictly enforced; no t-shirts, tank tops, hats, or gang attire allowed.
- \* Sodas will be available at a nominal charge.
- \* Cover charge will apply.

Thank you in advance for your consideration. We look forward to your response.

Sincerely,

*Porter A. Hurt, in his absence*

Porter A. Hurt

PAH:rlc



*Dining and Dancing to the Fabulous 50's and 60's*

March 24, 1997

RECEIVED

MAR 25 1997

CITY OF PLEASANTON  
PLANNING DEPT.

City of Pleasanton, Planning Dept.  
200 Old Bernal Avenue  
Pleasanton, CA. 94566  
Attn: Kerri Watt

Dear Ms. Watt:

Please let this letter serve as our notification of intent to cancel the scheduled teen night on Monday, March 31, 1997.

Due to unforeseen circumstances, we have been unable to promote the event in a manner that would guarantee its success.

I truly appreciate all your efforts in granting us the modification to hold the teen night, and hopefully we will be able to reinstate the weekly dances this summer as we have previously done so that our teens will have somewhere safe to go to have fun.

I look forward to speaking with you again soon.

Sincerely,

Porter A. Hurt  
In his absence

PAH:rlc

cc: Angie Claija  
Pleasanton Police Dept., Crime Prevention





**CITY OF PLEASANTON**  
P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

March 21, 1997

CITY OFFICES  
123 MAIN STREET

CITY COUNCIL  
484-8001

CITY MANAGER  
484-8008

CITY ATTORNEY  
484-8003

CITY CLERK  
484-8235

FINANCE  
484-8033

PERSONNEL  
484-8012

CITY OFFICES  
200 OLD BERNAL AVE.

PLANNING  
484-8023

ENGINEERING  
484-8041

BUILDING INSPECTION  
484-8015

COMMUNITY SERVICES  
484-8160

WATER - BILLING  
484-8038

FIELD SERVICES  
3333 BUSCH RD.

SUPPORT SERVICES  
484-8067

PARKS  
484-8056

SANITARY SEWER  
484-8066

STREET  
484-8066

WATER  
484-8071

FIRE  
4444 RAILROAD AVE.  
484-8114

POLICE  
4833 BERNAL AVE.  
P.O. BOX 909  
484-8127

ShBoom  
ATTN: Mr. Porter A. Hurt  
975 Saratoga- Sunnyvale Road  
San Jose, CA 95129

REVISED COPY

RE: Request For Teen Night on March 31, 1997

The City of Pleasanton has reviewed your request to hold a "teen night" at ShBoom on Sunday, March 31, 1997. It is staff's understanding from your letter that you will operate this teen night according to the original "teen night" request letter dated June 11, 1996 and according to the City's approval letter dated June 28, 1996 and the modifications to the conditions of approval dated November 5, 1996.

Your statement of operations indicates the following:

- a. Sunday night, March 31, 1997 from 8:30 pm - 12:30 am;
- b. Ages of teens attending shall be 13-18, with proper identification required before entering;
- c. The number of teens shall not exceed ~~400~~ 500;  
A dress code shall be enforced (~~no T-shirts~~, tank tops, hats, or gang attire allowed);
- e. All purses, knapsacks, etc. shall be inspected for contraband;
- f. No smoking shall be allowed in the facility;
- g. There shall be no in-and-out privileges; and
- h. Management personnel shall assist in crowd control within the facility.

The conditions of approval are as follows:

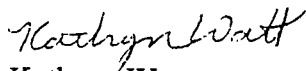
1. The teen night shall be held on Sunday, March 31, 1997 between the hours of 8:30 pm - 12:30 am. The Planning Department and Police Department shall be notified in writing at least one week in advance prior to any proposed changes in the day or hours of operation. In addition, the above departments shall be contacted if the teen night is not held.
2. A total of seven security personnel, in addition to the other employees, shall be on-site at all times. Two of the security personnel shall be

uniformed, trained security personnel who shall patrol the parking lot surrounding the site at all times throughout the hours of teen night to dissuade any potentially illegal or nuisance-causing activities. Any disturbances or illegal activities shall be reported immediately to the Police Department. The other security staff shall wear matching shirts.

3. No adults other than employees, security staff, or management shall be allowed.
4. No persons showing signs of intoxication shall be allowed.
5. No loitering shall be allowed around the exterior of the facility. To this end, ShBoom shall post in a conspicuous place that loitering on or about the premises is a violation of Pleasanton Municipal Code Section 6.44.080.
6. Any and all cigarette vending machines shall be moved off-premises during Teen Nights.
7. The management shall ensure that the building walls, parking areas, signs, etc. around the exterior of the facility are kept in a clean and orderly manner. After closing of the facility after teen night or a teen event, the management shall inspect the building walls and area around the facility to ensure that no the are is cleaned and free from graffiti. Any graffiti found after a teen night shall be removed within 24 hours.
8. The two security staff at the door shall keep an accurate account of the occupancy level at all times.

If you have any questions, please feel free to give me a call at (510) 484 - 8027. If you have any questions of the Pleasanton Police Department, please contact Paul Helm at (510) 484 - 8366.

Sincerely,

  
Kathryn Watt  
Associate Planner

CC: Chief Eastman, Pleasanton Police Department  
Paul Helm, Pleasanton Police Department  
Joe DeTata, Senior Code Enforcement Officer



# CITY OF PLEASANTON

P.O. BOX 520 PLEASANTON, CALIFORNIA 94566-0802

November 5, 1996

CITY OFFICES  
123 MAIN STREET

CITY COUNCIL  
484-8001

CITY MANAGER  
484-8008

CITY ATTORNEY  
484-8003

CITY CLERK  
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484-8071

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4444 RAILROAD AVE.  
484-8114

POLICE  
4833 BERNAL AVE.  
P.O. BOX 909  
94527

Porter A. Hurt  
ShBoom  
975 Saratoga-Sunnyvale Road  
San Jose, California 95129

## RE: Modification to Teen Night Use

Dear Mr. Hurt:

This letter will serve as a follow-up to our recent meeting regarding teen night activities at the ShBoom night club at 4825 Hopyard Road. During this meeting, the continuation of teen night events and what measures would be implemented to address unforeseen impacts were discussed.

As was discussed, staff believes that the teen night events can be allowed to continue provided that the following conditions are met:

- 1.) All conditions contained within Planning Staff's approval of June 28, 1996, as modified herein shall be strictly followed:
- 2.) With the exception of the regularly occurring summer-time teen nights, all teen nights shall receive separate Planning Department approval. You may wish to apply for several teen nights at one time.
- 3.) A total of seven security personnel, in addition to the other employees, shall be on-site at all times. Two of the security personnel shall be uniformed, trained security personnel who shall patrol the parking lot surrounding the site at all times. The other security staff shall wear matching shirts.
- 4.) Staff has discussed the possibility of increasing the occupancy limit to 500 during teen nights with Building and Fire Department personnel. This increase does appear possible. However, prior to final approval, the Building Department needs to review a dimensioned floor plan showing how the teen night activities function within the tenant space. Should you have any questions regarding this requirement, please contact Gary Smith, Chief Building Official, at (510) 484-8015.

Porter A. Hurt  
November 5, 1996  
Page 2 of 2

- 5.) The two security staff at the door shall keep an accurate count of the occupancy level at all times.

Pursuant to our recent meeting, staff believes that the above conditions will ensure that the teen night activities do not create a negative impact on the community. However, if past problems continue to occur, staff may be required to rescind all staff level approvals and request that a formal use permit application be submitted to the Planning Commission for consideration.

Once your have reviewed the aforementioned information, please do not hesitate to contact me at (510) 484-8311 at your convenience should you have any questions.

Sincerely,



Greg Plucker  
Associate Planner

cc: Paul Helm, Pleasanton Police Department  
Kerri Watt, Associate Planner  
Joe DeTata, Senior Code Enforcement Officer

(amipro\docs\ltr\shboom2.sam:gap)

**Rosalind Rondash**

---

**From:** Michael Magnano  
**Sent:** Thursday, February 02, 2012 4:56 PM  
**To:** Rosalind Rondash  
**Subject:** PCUP-273/UP-90-43 - Diamond Pleasanton Enterprises

Hi Rosalind,

I am in receipt of your Notice regarding Club Neo.

It appears the Planning Commission is going to review the Use Permit or revoke it ?

Im not sure if that is correct, but here is my opinion in Club Neo:

Our family has lived in Pleasanton for almost 20 years, I work at Thoratec, across the street from Club Neo.

I do not feel this club fits in with Pleasanton's family atmosphere, the club has constantly brought in people from other cities who bring trouble with them. (note last weeks incident). The patrons of the club leave empty alcohol containers, cigarette butts and food containers all over that parking lot and other businesses have to deal with it or clean it up themselves.

The club brings in a lot of car traffic and hundreds of people, one night I was at Chili's and there was not one space to park in that entire complex because there was some sort of a party at Club Neo with people milling around the parking lot.

That's my opinion, Thank you

**Michael Magnano**

Click [here](#) to report this email as spam.

PCUP-273

City of Pleasanton

GIS

Department

4825 Hopyard Road

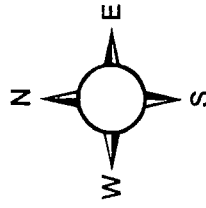
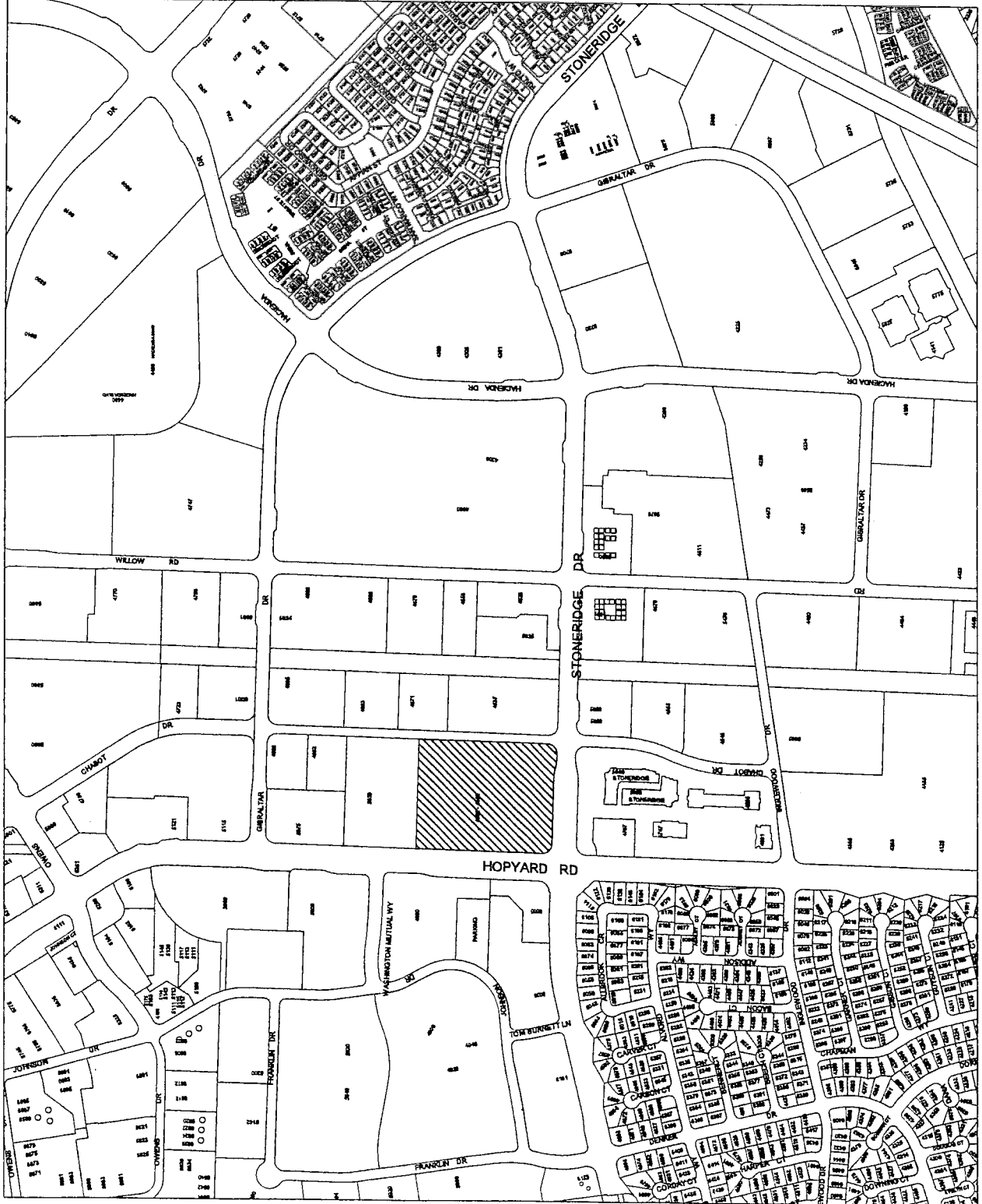


EXHIBIT E-3.5.L



Printed 1/25/2012



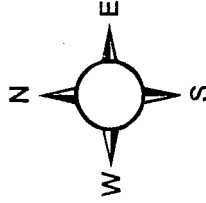
PCUP-273

City of Pleasanton

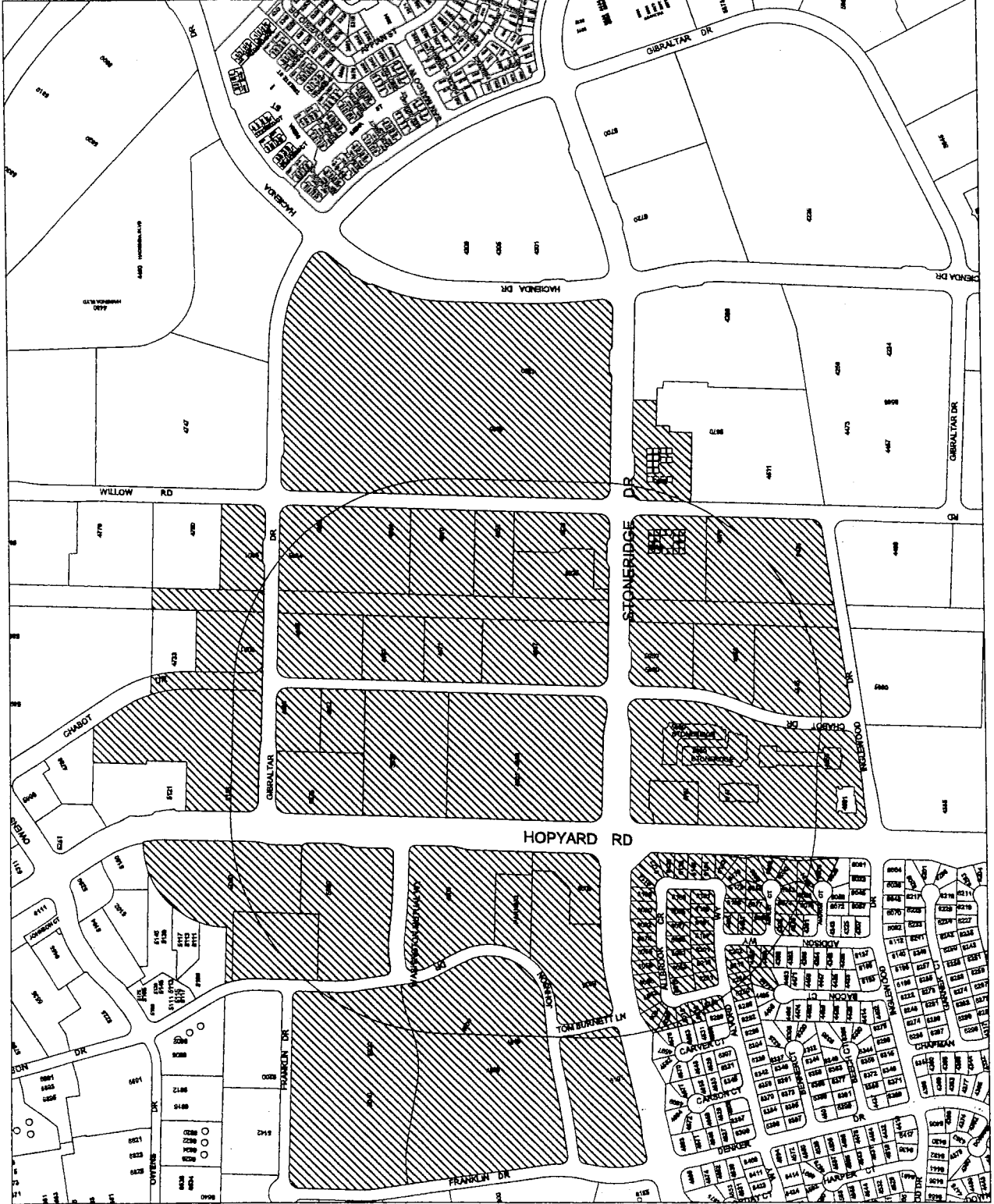
GIS

Department

4825 Hopyard Road



Printed 1/25/2012



PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2012-07

RESOLUTION MODIFYING THE CONDITIONS OF APPROVAL FOR THE  
OPERATION OF CLUB NEO, AS FILED UNDER CASE UP-90-43/PCUP-273

WHEREAS, at its meeting of February 8, 2012, the Planning Commission considered a possible modification of the Conditions of Approval or a revocation of a Conditional Use Permit for the operation of Club Neo located at 4825 Hopyard Road, Suite F10; and

WHEREAS, zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District; and

WHEREAS, at its duly noticed public hearing of February 8, 2012, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this matter; and

WHEREAS, projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 – Existing Facilities; and

WHEREAS, the Planning Commission made the required Conditional Use Findings prior to granting the original Use Permits on October 10, 1990 (UP-90-43) and August 10, 2010 (PCUP-273), and the proposed modifications are consistent with the previously approved findings; and

WHEREAS, the Planning Commission determined that the Conditions of Approval for the nightclub's Conditional Use Permit needed to be modified based on incidents that occurred at the nightclub on December 17/18, 2011 and January 14/15, 2012 which included large crowds of patrons fighting and a patron being shot, and various other illegal activities that required one hundred percent of the Pleasanton Police Department's resources as well as back-up law enforcement from other agencies.

WHEREAS, the Planning Commission determined that the conditions of approval for the nightclub needed to be modified or tightened because the nightclub was in violation of several conditions of approval as provided in Exhibits A of the Planning Commission Resolutions Nos. PC-90-93, dated October 10, 1990, and PC-2010-18, dated August 25, 2010.



NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Modifies the Conditions of Approval for Club Neo, per Option 4 of the staff report, limiting the maximum number of patrons to 300, with the possibility of returning to the Commission to increase that number if there are no incidents (similar to those on Dec. 17/18 or Jan 14/15) over the next 30 days, and the Club complies with its Conditions of Approval, and the Chief of Police and Community Development Director recommend increasing the number of patrons.

Section 2. Directs the Director of Community Development and the Police Chief to provide the Planning Commission with reports regarding calls for service to Club Neo; and to notify the Commission immediately of any incident or recurrence of incidents related to Club Neo's activities; and in the event of a significant occurrence which results in public safety concerns, to schedule a hearing for the next Commission meeting possible with appropriate notification.

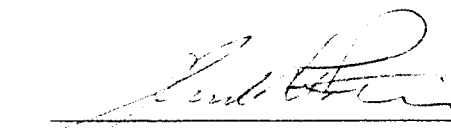
Section 3. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 8<sup>TH</sup> DAY OF FEBRUARY 2012 BY THE FOLLOWING VOTE:

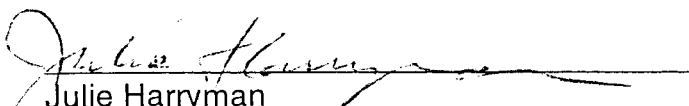
AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin.  
NOES: None.  
ABSTAIN: None.  
RECUSED: Commissioner O'Connor.  
ABSENT: None.

ATTEST:

  
\_\_\_\_\_  
Janice Stern  
Secretary, Planning Commission

  
\_\_\_\_\_  
Jerry Pentin  
Chair

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Julie Harryman  
Assistant City Attorney

**EXHIBIT A**  
**MODIFIED CONDITIONS OF APPROVAL**  
**UP-90-43/ PCUP-273, Diamond Pleasanton Enterprise**  
**4825 Hopyard Road**  
**February 08, 2012**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If the applicant desires additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, or modifications to these conditions, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. These Conditions of Approval shall supersede all prior Conditions of Approval (Resolutions Nos. PC-2010-18 and PC-90-93).
4. The operator shall maintain a system to count the number of patrons who are in the club at any given time. The operator shall provide the number of occupants currently in the club upon request by Pleasanton Police Department personnel.
5. The club shall be limited to a maximum of 300 patrons. (This number does not include nightclub employees and/or security staff.) If there are no incidents similar to those that occurred on Dec. 17/18 or Jan 14/15 over the next 30 days, and the Club complies with its Conditions of Approval, and the Chief of Police and Community Development Director recommend increasing the number of patrons, Planning staff will schedule a public hearing for the Planning Commission to consider increasing the maximum number of patrons.
6. The City does not require that the nightclub have a dress code, however, if applicant chooses to have a dress code, then the following shall be required: By March 2, 2012, the operator shall post the dress code on the club's website and via signage on the subject property so that patrons will be able to view the dress code upon arrival and prior to waiting in line to enter the club. The design and location of said

signage shall be submitted for review and approval by the Director of Community Development prior to installation.

7. By March 2, 2012, the operator shall utilize a "Scanshell 800" ID scanner or similar device capable of copying and recording the identification of each guest as he/she enters the club. The data collected by the scanner shall be made available to Pleasanton Police Department personnel immediately upon request.
8. The operator shall stop serving alcohol at 1:00 a.m., and all alcoholic beverages shall be collected by 1:30 a.m. The operator shall require patrons to leave the club by 1:45 a.m. and the parking lot areas by 2:00 a.m.
9. Beginning at 1:15 a.m., the operator shall start to gradually increase lighting within the club, and all the interior club lights shall be turned on by 1:30 a.m.
10. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs are installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
11. The business owner/operator shall designate a smoking area no less than 20 feet from any door or opening. Said area shall be provided with two (2) portable ashtrays and shall be monitored and kept clean.
12. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
13. If the operation of this Use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or violations of these conditions, at the discretion of the Director of Community Development, this Conditional Use Permit may be submitted to the Planning Commission to consider modifications to the conditions or revocation.
14. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use or for the removal of unruly patrons only. The applicant shall install and maintain self-closing mechanisms on all exterior doors. A sign stating that the outside doors of the club shall remain closed during all hours of operation shall be placed by all doors.
15. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.

16. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
17. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
18. Prior to operation, the club's management shall provide the Chief of Police the name of a Security Manager responsible for ongoing collaboration with Police staff and a recommended security force plan. This plan shall be subject to the review and approval of the Chief of Police and shall minimally include:
  - a. Number of security personnel the operator intends to have on-site in relation to the number of patrons.
  - b. Specifically articulated job assignments for each security post, i.e., what duties are assigned and where persons are assigned, e.g., parking lot, door post, patio, etc. A minimum of two security personnel shall be assigned to monitor the outdoor patio area whenever it is in use.
  - c. All security staff shall wear a distinctive uniform identifying them as security officers.
  - d. All security personnel shall register and maintain valid registration status with the California Department of Consumer Affairs (Bureau of Security and Investigative Services). Such registration shall occur no later than 120 days from the date the security personnel apply for employment with the permittee. To that end, all security personnel must submit the proper application to the State of California Bureau of Security and Investigative Services within three days of employment with the permittee. At no time shall any security personnel register with the State at any level that is less than that of a proprietary private security officer. The operator shall provide proof of registration (or proof of pending registration) upon request by Pleasanton Police Department personnel.
  - e. All patrons shall be searched through full pat-down search by gender-appropriate personnel or through use of metal detector.
  - f. A plan for staging of patrons in queue for admission.
  - g. Once the club is filled to capacity, all persons standing in line to enter shall be advised that the club is at capacity and shall be turned away and directed to immediately leave the property.
  - h. A patron-removal plan will include the use of rear exit doors when having to deal with unruly patrons.
  - i. The operator shall maintain a fully functional security video recording system capable of capturing all areas of the club. This will specifically include the point of entry and exit (including the line for persons waiting to enter the club), the main dance floor, other dance floors, private party rooms, all rear hallways, rear exits, etc. Restrooms will not be recorded. The system shall be tested monthly to ensure that it is working properly, and

- the videos shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
- j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
  - k. All club security staff shall be provided with, be trained in the use of, and utilize state-of-the-art communication devices, such as hand-held radios or headsets.
  - l. The club's security plan shall include language whereby the club commits to maintaining a direct line of communication with the Pleasanton Police Department regarding all security-related issues.
19. Private parties held on the club premises and catering services provided by the club shall be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
  20. The limousine associated with the club and provided for its customers as a special service shall not be parked on-site during hours when the club is not open for business to the general public.
  21. If patrons of the club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 1107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
  22. This Conditional Use Permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
  23. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

24. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and the Chief of Police.
25. Within 45 days of the original hire date, employees who serve alcohol and security personnel shall obtain certification in TIPS or LEADS training related to the service of alcoholic beverages. Said certification shall be maintained in good standing for the duration of their employment with the club, and re-training shall occur every six (6) months from the original training date. The operator shall maintain copies of these certifications and shall make them available for inspection by Pleasanton Police Department personnel upon request.
26. All activities shall comply with Chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
27. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

## **II. Standard Conditions:**

### **Planning Division**

28. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
29. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times. By 6:00 a.m., club staff shall have inspected the parking lots and surrounding businesses within the Gateway Square Shopping Center and removed and/or cleaned up any litter, vomit, etc.
30. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify, and hold harmless the City, its City Council, its officers, boards, commissions, employees, and agents from and against any claim (including claims for attorneys' fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

### **III. Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

#### **Building Division**

31. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
32. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshal to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

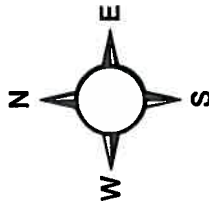
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City of Pleasanton

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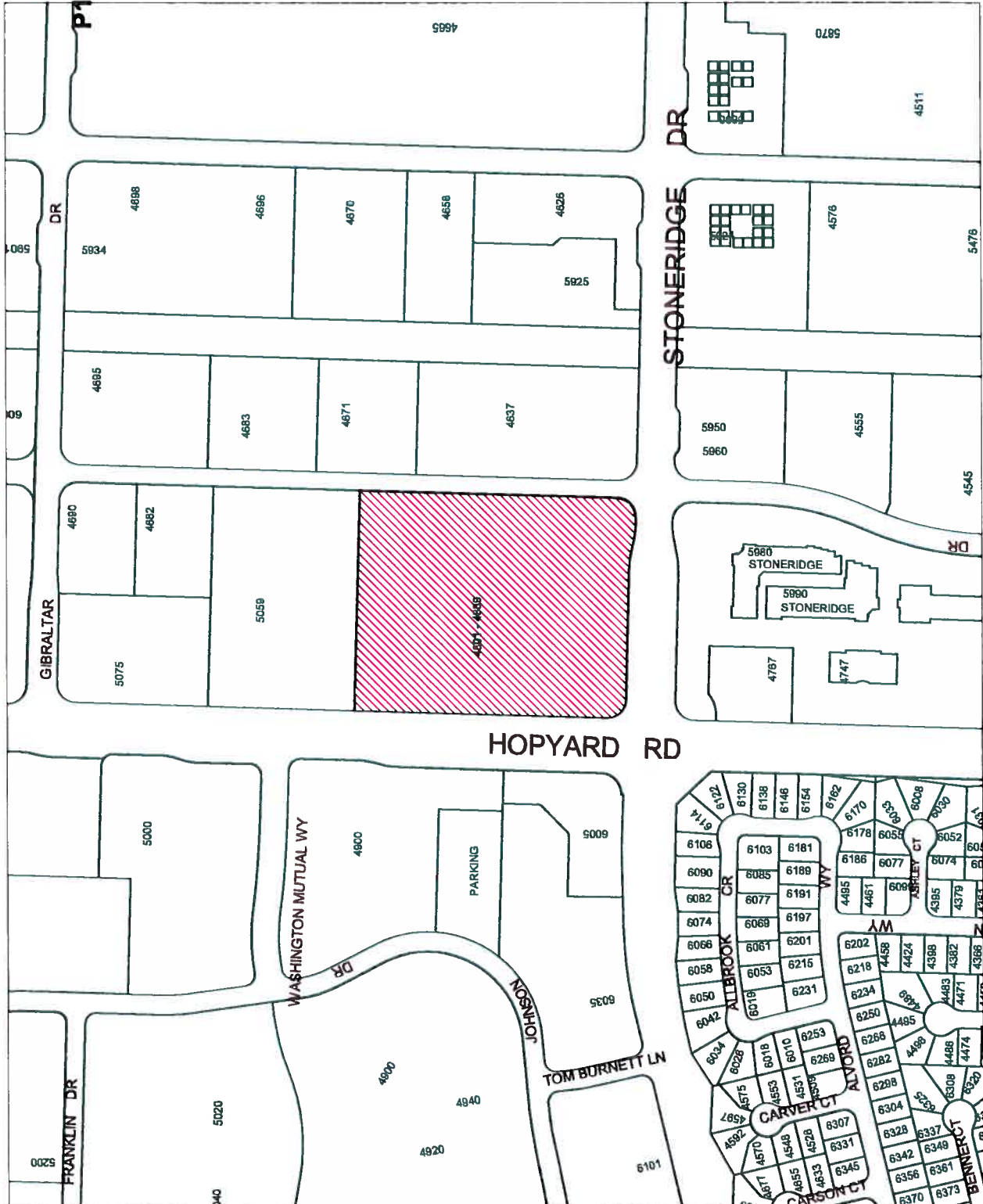
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EXHIBIT F





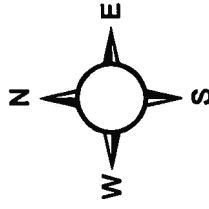
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