**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.

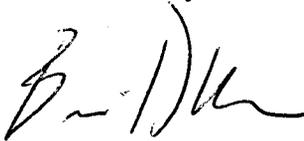
ENVIRONMENTAL ASSESSMENT

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
GEORGE W.M. MULL
1415 L Street, Suite 1000
Sacramento, CA 95814
916-456-0100

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 1st, 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 26th**, 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 2nd. 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 2nd**, 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 8th**, 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 16th**, 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 17th**, the club attendees created similar issues to those on November 26th 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 20th**, 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 23rd as she was not advertising the event and did not want problems. The club was in fact closed on the 23rd.

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

On Saturday **December 31st**, 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 3rd** 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 6th 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 6th**, 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 7th**, 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 13th**, 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 18th.

On Saturday **January 14th**, 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 18th**, 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 20th**, 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 21st**, 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 26th**, 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 17th. 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 30th. 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 27th** 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 28th** 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 29th)

On Monday **January 30th** 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 3rd**, 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 4th**, 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 10th**, 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 11th**, 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 17th**, 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 18th**, 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 24th** 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 25th** 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 2nd** Sgt. Leonardo reported Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 3rd** 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 9th** Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 10th** 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 16th** Neo was closed for business. All lights were off and no club staff were present.

On Saturday **March 17th** 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.