

PLANNING COMMISSION CITY OF PLEASANTON

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-2012-07

RESOLUTION MODIFYING THE CONDITIONS OF APPROVAL FOR THE
OPERATION OF CLUB NEO, AS FILED UNDER CASE UP-90-43/PCUP-273

WHEREAS, at its meeting of February 8, 2012, the Planning Commission considered a possible modification of the Conditions of Approval or a revocation of a Conditional Use Permit for the operation of Club Neo located at 4825 Hopyard Road, Suite F10; and

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

WHEREAS, at its duly noticed public hearing of February 8, 2012, the Planning Commission considered all public testimony, relevant exhibits, and recommendations of the City staff concerning this matter; and

WHEREAS, projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 – Existing Facilities; and

WHEREAS, the Planning Commission made the required Conditional Use Findings prior to granting the original Use Permits on October 10, 1990 (UP-90-43) and August 10, 2010 (PCUP-273), and the proposed modifications are consistent with the previously approved findings; and

WHEREAS, the Planning Commission determined that the Conditions of Approval for the nightclub's Conditional Use Permit needed to be modified based on incidents that occurred at the nightclub on December 17/18, 2011 and January 14/15, 2012 which included large crowds of patrons fighting and a patron being shot, and various other illegal activities that required one hundred percent of the Pleasanton Police Department's resources as well as back-up law enforcement from other agencies.

WHEREAS, the Planning Commission determined that the conditions of approval for the nightclub needed to be modified or tightened because the nightclub was in violation of several conditions of approval as provided in Exhibits A of the Planning Commission Resolutions Nos. PC-90-93, dated October 10, 1990, and PC-2010-18, dated August 25, 2010.

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

Section 1. Modifies the Conditions of Approval for Club Neo, per Option 4 of the staff report, limiting the maximum number of patrons to 300, with the possibility of returning to the Commission to increase that number if there are no incidents (similar to those on Dec. 17/18 or Jan 14/15) over the next 30 days, and the Club complies with its Conditions of Approval, and the Chief of Police and Community Development Director recommend increasing the number of patrons.

Section 2. Directs the Director of Community Development and the Police Chief to provide the Planning Commission with reports regarding calls for service to Club Neo; and to notify the Commission immediately of any incident or recurrence of incidents related to Club Neo's activities; and in the event of a significant occurrence which results in public safety concerns, to schedule a hearing for the next Commission meeting possible with appropriate notification.

Section 3. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

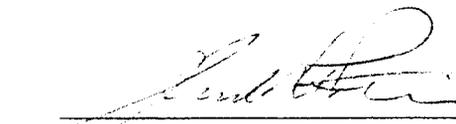
THIS RESOLUTION ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 8TH DAY OF FEBRUARY 2012 BY THE FOLLOWING VOTE:

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

ATTEST:

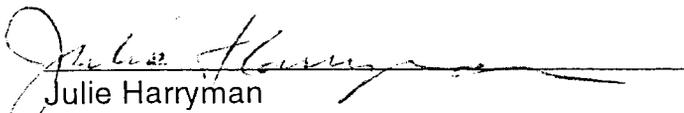


Janice Stern
Secretary, Planning Commission



Jerry Pentin
Chair

APPROVED AS TO FORM:



Julie Harryman
Assistant City Attorney

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

I. Project Specific Conditions:

Planning Division

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

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

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

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

- the videos shall be maintained for a 30-day retention period. Videos shall be made available to Pleasanton Police Department personnel immediately upon request.
- j. The club shall provide routine and ongoing patrol of the exterior areas and parking lots. The club's security staff shall not allow loitering, littering, noise, other disturbances, or criminal activity in the parking lots or near the businesses within the commercial center and on neighboring properties within the Hacienda Business Park.
 - k. All club security staff shall be provided with, be trained in the use of, and utilize state-of-the-art communication devices, such as hand-held radios or headsets.
 - l. The club's security plan shall include language whereby the club commits to maintaining a direct line of communication with the Pleasanton Police Department regarding all security-related issues.
19. Private parties held on the club premises and catering services provided by the club shall be limited to weekends only, to the hours of 1:00 p.m. through 5:00 p.m., and to a maximum of 300 patrons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Director of Community Development may require that the Use Permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
20. The limousine associated with the club and provided for its customers as a special service shall not be parked on-site during hours when the club is not open for business to the general public.
21. If patrons of the club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 1107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
22. This Conditional Use Permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
23. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

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

II. Standard Conditions:

Planning Division

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

III. Code Requirements:

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

Building Division

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

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