Hearing continued from January 27, 2009

TO: Mayor and City Council
FROM: Michael M. Niblock, Secretary
City Planning Commission


RECOMMENDATION

It is recommended that the City Council adopt a resolution, as follows:

1. Resolution denying the appeal and upholding the Planning Commission's denial of the modification of the conditions of approval of the Use Permits (UP127-71 and UP99-72) which allow the on-sale of general alcoholic beverages and live entertainment in a bar at 2263 East Main Street.

Findings for the above-recommended action have been incorporated into the resolution attached to this staff report.

SUMMARY

The operator of the subject bar (Pepe's Club) has appealed the Planning Commission's denial of a request to modify the conditions of approval for Use Permits (UP127-71 and UP99-72) that allow the on-sale of general alcoholic beverages and live entertainment in a bar at 2263 East Main Street.

DISCUSSION

Background

The Stockton Police Department requested that the Planning Commission consider the modification of the conditions of approval of Use Permits (UP127-71 and UP99-72) for the establishment known as "Pepe's Club". Use Permit No. UP127-71 was approved in 1971 to allow the on-sale of general alcoholic beverages and Use Permit No. UP99-72 was approved the following year to allow dancing and live entertainment in the bar. At the Planning Commission's regularly-scheduled public meeting on August 28, 2008, the Police Department gave a presentation identifying the City's "top ten" problem locations with respect to police problems and calls for service. That list included the bar on the
PUBLIC HEARING: PEPE'S CLUB (UP127-71 AND UP99-72)

(subject site. Specifically, the presentation noted that in the then recently-ended one-
year period alone, there were 55 calls for service, eight reported crimes; and, two
arrests. The arrests were for weapons possession and public intoxication and the
reported crimes were for aggravated assault, robberies, auto theft, and burglary. Based
upon the excessive calls for service and the resulting drain on limited police resources,
as well as the severity of crimes occurring on or near the premises, the Police
Department requested the modification of the conditions of approval of the bar's two
Use Permits. If approved, the request would modify and consolidate the conditions into
the more recently-approved Use Permit: UP99-72.

At its regular meeting of December 11, 2008, the Planning Commission considered the
proposed modification of the conditions of UP127-71 and UP99-72 and denied the
request and directed staff to bring it back to the Planning Commission for a public
hearing to consider revocation of the Use Permits. Actions of the Planning Commission
take effect after ten days if no appeal is filed. On December 19, 2008, the appellant
submitted an appeal of the Commission's decision. Accordingly, the appeal has been
scheduled for consideration and determination by the City Council at a duly-noticed
public hearing. Because no action was taken by the Planning Commission, the Use
Permits remain in effect and the business continues to operate.

Present Situation

Environmental Clearance

The proposal is categorically exempt from the California Environmental Quality Act
(CEQA) (Section 10.1, Class 1 of the City of Stockton Guidelines for the Implementation
of CEQA and Section 15301, Class 1, of the State CEQA Guidelines).

PUBLIC HEARING DISCUSSION

Staff's presentation to the Planning Commission at the December 11, 2008 public
hearing included a Power Point presentation by the Police Department and responses
to questions from the Commission. Staff also noted that the operation had generated a
high rate of calls for service. After staff's presentation, a neighboring property owner
spoke in favor of modifying the conditions of the Use Permits; when asked by a
Commissioner if she would favor closing the bar, she replied in the affirmative. The bar
operator's representative, as well as the property owner, then spoke in favor of the
existing business operation and supported modification of the Use Permits' conditions of
January 27, 2009

PUBLIC HEARING: PEPE'S CLUB (UP127-71 AND UP99-72)

(Page 3)

approval. The business owner did not appear. No one else requested to speak and the public hearing was closed.

PLANNING COMMISSION ACTION

Following the public hearing and the Commission's deliberation, the Planning Commission voted 7 to 0 to deny the modification of the conditions of approval of Use Permit Nos. UP127-71 and UP99-72 which allow the on-sale of general alcoholic beverages and live entertainment in an existing bar at 2263 East Main Street. In their deliberation, the Planning Commission expressed concerns regarding the high rate and nature of calls for service that have been generated by the establishment. The Commissioner asked that the matter be readvertised for consideration of revoking the Use Permits.

PUBLIC NOTIFICATION

Notice in the local newspaper at least one time, ten days prior to the public hearing and notice to owners of record as shown on the last equalized tax roll and addresses within 300 feet of the site at least ten days prior to the public hearing (Stockton Municipal Code Section 16-420). In addition, the property owner and business owner shall be notified of the hearing by certified mail (Stockton Municipal Code Section 16-470.030).

FINANCIAL SUMMARY

There is no financial impact to the City of Stockton.

VOTES REQUIRED

Five (5) votes of the City Council are necessary to overrule or modify the decision of the Planning Commission denying the modification of the conditions of approval of UP127-71 and UP99-72.
January 27, 2009

PUBLIC HEARING: PEPE'S CLUB (UP127-71 AND UP99-72)

(Page 4)

Respectfully submitted,

APPROVED BY

MICHAEL M. NIBLOCK, SECRETARY
CITY PLANNING COMMISSION

J. GORDON PALMER, JR.
CITY MANAGER

MMN:CVG:fw

Attachments

cc: City Manager w/attachments
    City Attorney w/attachments
    City Clerk w/attachments
    Johnny Ford, Deputy City Manager w/attachments
STAFF REPORT

EXHIBIT 1

STAFF REPORT
P. C. Agenda
December 11, 2008

Item E-1: PUBLIC HEARING – Modification of Use Permit Nos. UP127-71 and UP99-72, Don Pullen, et al.

Data: The Stockton Police Department is requesting that the Planning Commission consider the modification of the conditions of approval of Use Permit Nos. UP127-71, which allows the on-sale of general alcoholic beverages, and UP99-72, which allows dancing and live entertainment, within an existing bar (Pepe's Club) at 2263 East Main Street. The 4,400-square foot suite is located on an approximately 15,100-square foot parcel zoned CG (Commercial, General). The remainder of the building contains various retail uses. The site is bounded by the:

- north across Sonora Street by a single-family residence and a parking lot zoned RM (Residential, Medium Density);
- east by a vacant commercial building zoned CG;
- south across Main Street commercial buildings zoned CG; and
- west by a restaurant zoned CG (see attached exhibits).

General Plan: The General Plan designates this site for Commercial land uses.

Environmental Clearance: This project is categorically exempt under the California Environmental Quality Act (CEQA) (Section 15301, Class 1, of the City of Stockton Guidelines for the Implementation of CEQA and Section 15301, Class 1, of the State CEQA Guidelines).

Discussion: Use Permit No. UP127-71 was approved in 1971 to allow the on-sale of general alcoholic beverages and Use Permit No. UP99-72 was approved the following year to allow dancing and live entertainment in the bar. At the Planning Commission's regularly-scheduled public meeting on August 28, 2008, the Police Department gave a presentation identifying the City's "top ten" problem locations with respect to police problems and calls for service. That list included the bar on the subject site. Specifically, the presentation noted that in the then recently-ended one-year period alone, there were 55 calls for service, eight reported crimes and two arrests. The arrests were for weapons possession and public intoxication and the reported crimes were for aggravated assault, robberies, auto theft and burglary.
Based upon the excessive calls for service and the resulting drain on limited police resources, the Police Department has requested the modification of the conditions of approval of the bar's two Use Permits. If approved, the request would modify and consolidate the conditions into the more recently-approved Use Permit: UP99-72. The proposed modified conditions of approval would be consistent with Use Permit conditions that have recently been approved by the Planning Commission for similar uses. The Police Department has indicated that the intent of its request to modify the conditions is to reduce the calls for service and police problems at the site, not to shut down the business.

The project site is located within the boundaries of Census Tract 18.00. Based upon the population in that geographic area, the State Department of Alcoholic Beverage Control (ABC) has determined that six establishments with the on-sale of alcoholic beverages are allowed in the census tract. There are currently four active and one pending licenses for the on-sale of alcoholic beverages in the census tract. Staff from ABC has indicated that a finding of public convenience or necessity is not required to be made by the Planning Commission in this case, because the business has an existing ABC license and approval of the modification will not increase the number of licenses in the census tract.

In accordance with the Development Code's notification provisions for revocation/modification hearings, certified letters were sent to both the property owner and the operator of the club on November 20, 2008, informing them of the public hearing date to consider the possible modification of the subject Use Permits (UP127-71 and UP99-72).

Various City departments have reviewed the requested modification and, to date, staff has not received any adverse comments from any of the referred agencies. The surrounding neighborhood was also notified of the modification request on November 21, 2008 and no comments were received by the time that the staff report was finalized. Staff is recommending that the Planning Commission modify the two Use Permits, as per the following findings and conditions of approval:

**Recommendation:** Modification of Use Permit No. UP 99-72 and superceding of Use Permit No. UP127-71 based on the following findings:

1. This request is categorically exempt under the California Environmental Quality Act (CEQA) (Section 10.1, Class 1, of the City of Stockton Guidelines for the Implementation of CEQA and Section 15301, Class 1, of the State CEQA Guidelines).

2. The existing use, consisting of both the modified and superceded Use Permits, is allowed within the subject zoning district with the approval of a Use Permit and complies with all other applicable provisions of the
Development Code and the Findings required by SMC Section 16-575.050 are hereby made in the affirmative.

3. The existing use is consistent with all applicable goals, policies and standards for the site’s Commercial General Plan designation.

4. The subject site is physically suitable for the type and intensity of use being proposed.

5. The establishment, maintenance or operation of the existing use would not endanger, jeopardize or otherwise constitute a hazard to public convenience, health, interest, safety and general welfare of persons residing or working in the neighborhood.

6. The design, location, size and operating characteristics of the proposed use are compatible with the existing and future land uses on-site and in the vicinity of the subject property.

7. The approved modification is consistent with the findings for modification contained in SMC Section 16-470.030.B.1, because the excessive calls for service and police problems associated with the use resulted in it becoming detrimental to public safety in the area surrounding the subject site.

Proposed Conditions of UP99-72:

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.

2. In the event the sale of alcoholic beverages or operation of this use proves detrimental to the health, safety, peace or general welfare of the surrounding neighborhood, this Use Permit shall be subject to revocation or modification as provided in the Development Code.

3. The primary entrance to the premises shall be on Main Street.

4. The consumption or carrying of open containers of alcoholic beverages outside the premises shall not be permitted. Signs advising patrons of the aforementioned condition shall be posted at all points of egress.

5. Any pay phones installed shall be inside the business and be restricted to outgoing calls only.

6. “No Loitering” signs shall be posted on the exterior of the business in accordance with the Stockton Municipal Code.
7. Every new employee shall complete L.E.A.D. (Licensee Education on Alcohol and Drugs) training through the local office of the State of California Department of Alcoholic Beverage Control within six months of the employee's hire date. Existing employees shall complete L.E.A.D. training within six months of the effective date of the Use Permit.

8. A minimum of one Police Department-approved, State-licensed, uniformed security officer per every 100 patrons shall be provided during the hours of live entertainment. The security officer(s) shall remain on duty until one hour after live entertainment has ended. Upon the discretion of the Chief of Police, additional security guards may be required on an event-by-event basis.

9. A video surveillance system with at least seven-day continuous recording capability shall be in place and stored for at least 30 days. The video surveillance system shall cover the exterior of the project site, including the entrances/exports to the business.

10. Live entertainment and dancing shall be permitted on Fridays and Saturdays until 1 AM and Sundays until 9 PM.

11. When live entertainment is being provided, an identification scanning device shall be utilized to check identification of all patrons entering the premises to purchase or consume alcohol. This device shall have recording capability with which to capture the patron's identification information. This information will be provided to the Police Department upon request in the event a crime occurs at the establishment.

12. A strict dress code of no gang-affiliated apparel shall be enforced.

13. The establishment owner(s) or an employee of the business shall be present in all areas where alcoholic beverages are being served or consumed.

14. No obstructions shall be attached, fastened or connected to the partitions, ceilings or walls which separate the booths/dining area within the interior space of the establishment.

15. Partitions separating the booths/dining area shall not exceed 52 inches in height.

16. The owner/operator shall not maintain or construct any type of enclosed room intended for use by patrons or customers for any purpose, other than restrooms.
17. No outside speakers shall be permitted on the subject premises.

18. Any noise or music originating from the establishment shall not pose a nuisance to the surrounding area and shall conform to the noise standards for commercial land uses, as specified in the City's General Plan and Development Code.

19. The operator of the establishment shall monitor the area surrounding the bar to prevent patrons from congregating outside the premises and to prevent parking and noise problems.

20. The Use Permit shall be posted in a conspicuous place and be made available immediately to City personnel upon inspection of the premises.

21. All signs (including temporary signs) shall be subject to approval by the Community Development Director or Planning Commission.

22. This Use Permit supersedes the previously-approved Use Permit (UP127-71) for the subject site.

23. This Use Permit shall be subject to review by the Planning Commission within six months and one year of the effective date of this modification. Following those reviews, annual reviews will be conducted by the Community Development Director and the results of said reviews shall be reported to the Planning Commission.

December 3, 2008

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

The staff report was prepared by Associate Planner Carrie VanGorkum.
City of Stockton
UP127-71, UP99-72

STOCKTON CITY PLANNING COMMISSION

PH DATE: 12-11-08
SITE PLAN
City of Stockton
UP127-71, UP99-72

STOCKTON CITY PLANNING COMMISSION
USE PERMIT
STOCKTON CITY PLANNING COMMISSION

This Permit is issued pursuant to the provisions of Section 16-089 of the S.M.C. and other applicable provisions of the Zoning Plan (Part II, Chapter 16, S.M.C.) of the City of Stockton and is subject to

1. Sale or service of any alcoholic beverage at the subject premises is prohibited unless a valid license therefor has been issued by the Dept. of Alcoholic Beverage Control.

2. In the event that persistent police problems are found by the Planning Commission to exist or result from this use, the Use Permit shall be subject to revocation in accordance with the procedures established in Section 16-089 of the Zoning Code.

3. Main entrance to the premises shall be on Main Street.


VANCE WILSON, ASSISTANT DIRECTOR

by

cc: Bldg. Safety Public Works License
Parks & Recreation ABC
USE PERMIT

STOCKTON CITY PLANNING COMMISSION

This Permit is issued pursuant to the provisions of Section 16-083, et seq. S.M.C. and other applicable provisions of the Zoning Plan (Part II, Chapter 16, S.M.C.) of the City of Stockton and is subject to conformance with the conditions agreed upon and stipulated herein, and conformance with any plans or drawings submitted and approved by the City, including corrections or changes noted thereon and incorporated therein. The use of the premises herein described shall be permitted only after a Certificate of Occupancy therefore has been issued by the Superintendent of Building Safety as provided in Section 16-093 of the S.M.C. Use or construction must be commenced and diligently pursued to completion within six (6) months after date of granting; otherwise, this Permit shall be null and void. The Use Permit may be extended by the Planning Commission when written notice stating due cause for such an extension has been filed with the Planning Commission thirty (30) days before the expiration of the six (6) month period.

USE PERMIT NO.: 99-72
DATE OF ISSUANCE: August 25, 1972
ISSUED TO: Bank of America Trustees (for will of Samuel Giovannini)
345 E. Main Street
PROPERTY LOCATED AT: 2263 East Main Street
LEGAL DESCRIPTION: Lot 3, Block 19, Fair Oaks Tract
PROPERTY ZONED: C-2
DESCRIPTION OF USE: Live entertainment and dancing in an existing bar
DATE OF PERMIT EXPIRATION: August 24, 1972
APPROVED PLAN DATED: August 24, 1972

CONDITIONS OF APPROVAL

To permit dancing and live entertainment in an existing bar at 2263 East Main Street in accordance with the plot plan approved August 24, 1972, and subject to the following conditions:

1. All applicable conditions of Use Permit No. 127-71 shall remain in effect.

2. Sale or service of any alcoholic beverage at the subject premises is prohibited unless a valid license therefore has been issued by the Department of Alcoholic Beverage Control, State of California.

3. In the event that persistent police problems are found by the Planning Commission to exist or result directly or indirectly from this use, the Use Permit shall be subject to revocation in accordance with the procedures established in Section 16-090.2 of the Zoning Code.

4. Main entrance to the premises shall be on Main Street.

5. Upon discontinuance, all signs related to the use shall be removed.

6. No outside speakers shall be permitted on the subject premises and no noise or sound generated by this use shall be audible outside of the building.

7. Any addition of new exterior signs, alterations or relocation of approved signs shall not be permitted without the prior written approval of the Planning Director.

8. Live entertainment and dancing will be permitted on Fridays and Saturdays until 1 A.M. and on Sundays until 9 P.M. only. Topless and bottomless dancing shall not be permitted.

Gerald D. Haynes
Director of Planning

[Signature]

[日期]

[许可人姓名]
RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING
COMMISSION'S DENIAL OF THE MODIFICATION OF THE CONDITIONS OF
APPROVAL OF UP127-71 AND UP99-72, WHICH ALLOW THE ON-SALE OF GENERAL
ALCHOLOIC BEVERAGES AND LIVE ENTERTAINMENT, IN AN EXISTING BAR AT 2263
EAST MAIN STREET

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS follows:

The City Council hereby denies the appeal and upholds the decision of the Planning
Commission to deny the modification to the conditions of approval of Use Permit No.
UP127-71 and UP99-72, which allow the on-sale of general alcoholic beverages and live
entertainment in an existing bar at 2263 East Main Street, based on the following findings:

1. The operation of the existing use conflicts with the general findings for Use Permit
applications found in Section 16-575.050.A of the Stockton Municipal Code (SMC);
specifically, endangering and jeopardizing public convenience, health, interest, safety and
general welfare of persons residing or working in the neighborhood of the use;

2. The operation of the existing use conflicts with the "Problem Uses" findings
contained in SMC Section 16-575.050.B; specifically, it is likely to interfere with the
comfortable enjoyment of life or property in the area, encourages deterioration or blight in the
area and is contrary to the conservation, improvement and redevelopment of the area; and

3. The number and types of crimes attributed to this business have created a
compelling public necessity to not grant the modification of the noted Use Permits.

PASSED, APPROVED and ADOPTED ____________________________.

ATTEST: ____________________________

ANN JOHNSTON
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

::OMAIGRPWSECOS.CDD.CDD_Library:73044.1

City Atty Review ____________________________
Date January 21, 2009

110