

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 7/09/03 Item: 4.a.

File Number
CP 03-028

Application Type
Conditional Use Permit

Council District
6

Planning Area
West Valley

Assessor's Parcel Number(s)
277-34-052

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: southeast corner of Stevens Creek Boulevard and South Baywood Avenue

Gross Acreage: 2.1

Net Acreage: 2.1

Net Density: N/A

Existing Zoning: CG –Commercial General

Existing Use: Commercial office building

Proposed Zoning: No change

Proposed Use: Drinking establishment and alternative parking arrangement

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designations:
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Shopping Center (Westfield Valley Fair)

CG Commercial General

East: Commercial and Duplexes

CN Commercial Neighborhood and R-2 Two Family Residential

South: Commercial and Single Family Residential

CG Commercial General

West: Commercial and Single Family Residential

CG Commercial General

ENVIRONMENTAL STATUS

Completed by: ELM

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: Maypark #1

Date: 2/18/1954

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial

Date: _____

Approved by: _____
 Action
 Recommendation

OWNER/DEVELOPER

Stevens Creek Center, Inc.
P.O. Box 28386
San José, CA 95128-4617

CONTACT PERSON

Stan Hatfield
The OutSource Group
8181 Plumeria Avenue
Fair Oaks, CA 95628

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Erin Morris

Department of Public Works
See attached memorandum

Other Departments and Agencies
See attached memorandum from Fire Department

GENERAL CORRESPONDENCE

Richard Cuevas, letter dated July 1, 2003; Dennis Parks, letter dated June 17, 2003; Catherine Dwyer, e-mail dated June 15, 2003; Dennis Parks, e-mail dated June 13, 2003.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Stevens Creek Center Inc., requests a Conditional Use Permit to allow an alternative parking arrangement (valet parking) and a drinking establishment in conjunction with a new restaurant proposed on the site. A Conditional Use Permit is required to allow the drinking establishment, and a Special Use Permit is required to allow an alternative parking arrangement in the CG Commercial General Zoning District. In this case, both the parking arrangement and the drinking establishment are addressed through this Conditional Use Permit process, and the Conditional Use Permit functions as the Special Use Permit for the parking arrangement. This Conditional Use Permit also functions as a Site Development Permit for modifications to the building façade associated with the proposed restaurant and drinking establishment.

The applicant originally proposed two restaurants and drinking establishments and alternating use parking arrangements with alternative parking design, but subsequent to preparation of the public hearing notice, the applicant has revised the application to include only one restaurant and drinking establishment and to eliminate the alternating parking arrangement.

SITE CONDITIONS AND CONTEXT

The existing commercial building is located at 2880 Stevens Creek Boulevard on a 2.1 gross acre site. The building is located on the northern portion of the property and includes a pedestrian plaza adjacent to the Stevens Creek frontage. A three-story parking garage located on the southern portion of the subject property provides a total of 221 parking spaces to serve the commercial building. The building and associated parking garage were approved with a Site Development Permit (File No. H95-038) in 1995 and constructed in 1999. Currently, a portion of the commercial building is occupied by office uses, while a larger portion of the building is vacant.

The site is surrounded with a mixture of commercial and residential uses. The Valley Fair Shopping Center is located to the north on the opposite side of Stevens Creek Boulevard from the subject site. Uses to the east include commercial and professional offices, a day care center, and duplexes. To the west are commercial uses and one single-family residence. To the south is a parking lot for a commercial office building and a single-family residence.

Project Description

The new restaurant, Fleming's Prime Steakhouse and Wine Bar, is proposed to be located in a ground-level tenant space on the corner of Stevens Creek Boulevard and South Baywood Avenue. The restaurant will include a bar area within the floor plan which is considered a drinking establishment pursuant to the Zoning Code. The restaurant and associated drinking establishment will be open from 5:00 p.m. to 10:00 p.m. Sunday through Thursday and from 5:00 p.m. to 11:00 p.m. on Friday and Saturday. The applicant is proposing to provide valet parking in order to accommodate the required amount of parking in an alternative parking design.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property and staff has been available to discuss the project with members of the public. Several letters were received with concerns relative to provision of adequate parking and impacts on the surrounding uses. Staff has worked with the applicant to incorporate permit conditions that address these concerns.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15332 that pertains to infill development projects. This project qualifies for this exemption in that the project involves a new restaurant and drinking establishment with an alternative parking arrangement and is consistent with the following criteria for the use of the above reference exemption. The project: 1) is consistent with applicable general plan designation and policies as well as applicable zoning designation and regulations; 2) occurs within city limits on a project site of less than 5 acres surrounded by urban uses; 3) is on a site with no value as habitat for endangered, rare, or threatened species; 4) would not result in any significant effects relating to traffic, noise, air quality, or water quality, and 5) occurs on a site that is adequately served by all required utilities and public services.

GENERAL PLAN CONFORMANCE

The existing and proposed use of the commercial building is consistent with the San José General Plan Land Use/Transportation Diagram designation of *General Commercial*.

ANALYSIS

The primary project issues include: 1) conformance with the *City Council Policy for Evaluation of Nightclubs and Bars*; 2) conformance with Zoning Code parking requirements, and; 3) site improvements and signage.

Conformance with City Council Policy for Evaluation of Night Clubs and Bars

The City Council Policy *Guidelines for Evaluation of Night Clubs and Bars* was written to address stand-alone bars and nightclubs (see attached). Since adoption of the Policy, the Zoning Code has been revised so that bars that function as an integral part of a restaurant are now treated the same as stand-alone bars. While some aspects of the Policy provide useful direction, others are less relevant to an integral restaurant and bar.

Key issues identified in the policy that are relevant to this proposal include land use compatibility and noise, and police concerns/public safety.

Land Use Compatibility and Noise

The subject site is surrounded by a mixture of commercial and residential uses. The Policy discourages new bars from locating adjacent to or near existing residential uses or areas planned for residential uses in the adopted General Plan. The area immediately surrounding the proposed drinking establishment is designated for General Commercial in the General Plan and the greater area surrounding the site has been designated for Regional Commercial and is a major retail destination within the City and the surrounding Bay Area. Staff anticipates that the remnant residential uses will eventually be replaced with commercial uses as the area continues to redevelop in conformance with the General Plan.

The proposed bar is located within a full-service restaurant in a portion of the building that is oriented toward Stevens Creek Boulevard. Residential uses are located to the west and east of the parking garage. There are no openings on either the west or east side of the garage, which staff believes will minimize disturbances associated with the valet parking operation or patrons entering or leaving the facility.

Staff does not anticipate that the proposed restaurant and bar will result in noise impacts. The facility is located in a portion of the building that is oriented to Stevens Creek Boulevard, the proposed use does not include entertainment and is not proposed to be operated after 12:00 a.m. midnight (the latest operating hour is 11:00 p.m.) In addition, the valet parking provided to serve patrons of the restaurant and bar will minimize any disturbance associated with evening use of the on-site parking garage.

Based on this analysis, staff concludes that the proposed use is consistent with the intent of the Council Policy in regard to land use compatibility and noise.

Police Concerns/ Public Safety

The Council Policy specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. Although this proposal is not a stand-alone bar, the Police Department has reviewed the proposal and has provided recommendations to enhance on-site security. These recommendations include painting the interior walls of the parking structure a light, highly reflective color to help improve visibility within the garage, securing secluded areas within and adjacent to the garage, and installation of mirrors to enhance visibility within the garage. (See further discussion under *Site Improvements below*). Staff has included these recommendations as project conditions. The Police Department also provided information normally required for evaluation of a Liquor License Exception Permit; however, it was subsequently determined that an Exception Permit is not required for this proposal because the liquor license required for a public eating establishment with an integral bar is not subject to the provisions of the Caldera Bill.

Based on the above analysis, staff concludes that the proposed use is consistent with the Council Policy in regard to police concerns and public safety.

Conformance with Zoning Code Parking Requirements

Required Findings

In approving an alternative parking arrangement, the Zoning Code requires that the Planning Commission make the following findings:

1. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings or uses as specified in Chapter 20.90 of this Title;
2. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
3. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Analysis of Findings

The applicant is proposing a valet parking program which staff believes will provide parking in conformance with Zoning Code requirements that is both convenient and accessible for the life of the restaurant and bar use.

Based on Zoning Code requirements, the proposed restaurant would require 91 parking spaces. Office use of the balance of the building would require an additional 163 spaces, bringing the total amount of required parking to 254 parking spaces. The existing parking garage is designed to accommodate 221 parking spaces. The applicant is proposing to provide valet parking which would allow a more efficient use of the existing parking spaces to provide the 33 additional spaces needed to meet the Zoning Code requirement of 254 spaces.

Staff has included a revised plan condition in the draft permit that requires the submittal of a detailed valet parking plan showing the location and configuration of the proposed valet parking as well as conveniently located spaces reserved for self-park customers on the first floor of the parking garage. Staff has included additional conditions in the draft permit requiring that valet parking be provided during the hours that the restaurant/bar are in operation, that convenient at-grade parking be maintained for self-park customers and that the applicant utilize temporary directional signage to direct restaurant patrons to the Stevens Creek entrance and to advertise the availability of free valet parking between the hours of 5:00 and 6:00 p.m. Staff has also included a condition limiting future use of the remainder of the building to uses no more intense than office use (in terms of required parking) unless conformance with the parking requirements can be demonstrated to the satisfaction of the Director of Planning. These conditions will ensure that parking is not only adequate in terms of number of spaces, but also that valet parking is an attractive option during the 5-6 p.m. hour when the office uses are still in operation and that on-site self-parking remains an option throughout the evening for those patrons who do not desire valet service.

Based on this analysis, staff concludes that the proposed alternative parking arrangement is adequate for the proposed use and consistent with the required findings.

Site Improvements and Signage

As noted above, the existing parking structure requires several minor upgrades in order to improve the safety and security during evening use of the site. The parking structure is set back five feet from the eastern property line and is fully enclosed along that side with no openings. Access to the area between the garage wall and the fenced property line is provided between the door to the fire stairs and the southern property line. The Police Department has requested that a gate be installed on both sides of the five-foot "gap" to prevent access to that area due to concerns about safety and security in that portion of the site. Staff has included a condition of approval requiring that the applicant submit revised plans that include the recommended gates.

An opening in the garage wall along the southern property line was required to be closed with a curb and fence as part of the previously approved Site Development Permit to prevent vehicular and pedestrian access between the

subject site and the adjoining private property to the south. The fence and curb were not installed, and the site is not currently in conformance with the approved plans. The adjoining private property owner has installed metal bollards to prevent the access between the two properties; however, the required curb and fence need to be installed to provide a more appropriate and permanent solution. Staff has included a condition of approval requiring that the curb and a fence be installed prior to implementation of the proposed restaurant and bar use.

On the first floor of the parking garage, the Police Department has requested that a gate be installed to block access to the area under the ramp. The Police Department has also requested a series of other minor improvements to the garage, including painting the interior of the garage a light, highly reflective color, and installation of convex mirrors to eliminate areas of concealment, which have all been included as conditions of approval.

The proposed signage shown in the plans does not conform to the Sign Code in that the monument sign and the signage on the awnings are larger than allowed in the code. Staff has included a condition requiring that the applicant submit revised plans within 60 days of permit approval and prior to recordation for signage that conform to the Sign Code.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is zoned CG Commercial General in the San José Zoning Ordinance.
3. The site is 2.06 gross acres in size.
4. The site consists of a commercial building, three-story parking garage, and surface parking.
5. The Valley Fair Shopping Center is located to the north on the opposite side of Stevens Creek Boulevard from the subject site. Uses to the east include commercial and professional offices, a day care center, and duplexes. To the west are commercial uses and one single-family residence. To the south is a parking lot for a commercial office building and a single-family residence.
6. The area immediately surrounding the site is designated for General Commercial in the General Plan and the greater area surrounding the site has been designated for Regional Commercial and is a major retail destination within the City and the surrounding Bay Area.
7. The building is located on the northern portion of the property and includes a pedestrian plaza adjacent to the Stevens Creek frontage.
8. A three-story parking garage located on the southern portion of the subject property provides a total of 221 parking spaces to serve the commercial building.
9. The building and associated parking garage were approved with a Site Development Permit (File No.

H95-038) in 1995 and constructed in 1999.

10. The proposed project consists of a new restaurant on the ground floor of the existing commercial building, with a new drinking establishment within the proposed restaurant, and an alternative parking arrangement (valet parking). Minor site improvements, including façade, signage, and fencing, are also proposed.
11. A Conditional Use Permit is required to allow the drinking establishment, and a Special Use Permit is required to allow an alternative parking arrangement in the CG Commercial General Zoning District. In this case, both the parking arrangement and the drinking establishment are addressed through this Conditional Use Permit process, and the Conditional Use Permit functions as the Special Use Permit for the parking arrangement and as the Site Development Permit for modifications to the building façade associated with the proposed restaurant and drinking establishment.
12. The applicant is proposing to provide valet parking in order to accommodate the required amount of parking in an alternative parking design.
13. The proposed bar is located within a full-service restaurant in a portion of the building that is oriented toward Stevens Creek Boulevard.
14. Residential uses are located to the west and east of the parking garage. There are no openings on either the west or east side of the garage.
15. The facility is located in a portion of the building that is oriented to Stevens Creek Boulevard, the proposed use does not include entertainment and is not proposed to be operated after 12:00 a.m. midnight (the latest operating hour is 11:00 p.m.)
16. The Council Policy specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. Although this proposal is not a stand-alone bar, the Police Department has reviewed the proposal and has provided recommendations to enhance on-site security.
17. A Liquor License Exception Permit is not required for this proposal because the liquor license required for a public eating establishment with an integral bar is not subject to the provisions of the Caldera Bill.
18. Based on Zoning Code requirements, the proposed restaurant would require 91 parking spaces. Office use of the balance of the building would require an additional 163 spaces, bringing the total amount of required parking to 254 parking spaces.
19. The existing parking garage is designed to accommodate 221 parking spaces.
20. The applicant is proposing to provide valet parking which would allow a more efficient use of the existing parking spaces to provide the 33 additional spaces needed to meet the Zoning Code requirement of 254 spaces.
21. Staff has included a revised plan condition in the draft permit that requires the submittal of a detailed valet parking plan showing the location and configuration of the proposed valet parking as well as conveniently located spaces reserved for self-park customers on the first floor of the parking garage.
22. Staff has included additional conditions in the draft permit requiring that valet parking be provided

during the hours that the restaurant/bar are in operation, that convenient at-grade parking be maintained for self-park customers and that the applicant utilize temporary directional signage to direct restaurant patrons to the Stevens Creek entrance and to advertise the availability of free valet parking between the hours of 5:00 and 6:00 p.m.

23. Staff has also included a condition limiting future use of the remainder of the building to uses no more intense than office use (in terms of required parking) unless conformance with the parking requirements can be demonstrated to the satisfaction of the Director of Planning.
24. The existing parking structure requires several minor upgrades in order to improve the safety and security during evening use of the site.
25. Staff has included a condition of approval requiring that the applicant submit revised plans that include the recommended gates.
26. An opening in the garage wall along the southern property line was required to be closed with a curb and fence as part of the previously approved Site Development Permit to prevent vehicular and pedestrian access between the subject site and the adjoining private property to the south. The fence and curb were not installed, and the site is not currently in conformance with the approved plans.
27. Staff has included a condition of approval requiring that the curb and a fence be installed prior to implementation of the proposed use.
28. On the first floor of the parking garage, the Police Department has requested that a gate be installed to block access to the area under the ramp. The Police Department has also requested a series of other minor improvements to the garage, including painting the interior of the garage a light, highly reflective color, and installation of convex mirrors to eliminate areas of concealment, which have all been included as conditions of approval.
29. The proposed signage shown in the plans does not conform to the Sign Code in that the monument sign and the signage on the awnings are larger than allowed. Staff has included a condition requiring that the applicant submit revised plans within 60 days of permit approval and prior to recordation for signage that conforms to the Sign Code.
30. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
4. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in Chapter 20.90 of the Zoning Ordinance;
5. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
6. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance

Form.

2. **Plan Revisions.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. Provide plans for attached and freestanding signage that conforms to the requirements of the Sign Ordinance;
 - b. Revise the plans to provide a black vinyl clad chain link fence between the eastern and southern property lines and the garage wall, and to provide a similar fence on the ground level of the parking garage to restrict access to the alcove adjacent to the utility area.
 - c. Provide details of the curb and fence along the southern property line. The new fence should match the existing fence along that property line in color, design, and materials.
 - d. Provide details of the proposed lighting fixtures that conform to the City's Zoning Ordinance and Outdoor Lighting Policy.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Stevens Creek Center –Fleming's Prime Steakhouse" dated July 1, 2003, as revised by Precedent Condition #2, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Valet Parking.** Valet parking shall be provided during all hours of restaurant operation. The valet parking configuration should be consistent with the approved plans.
4. **Lighting.** All new lighting shall conform to the Zoning Ordinance and the City Council Policy for Outdoor Lighting.
5. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 03-028, shall be printed on all construction plans submitted to the Building Division.
6. **Installation of Improvements.** All site improvements, including fencing, curb, and parking garage safety improvements, shall be installed prior to commencement of the operation of the restaurant. No less than seven days prior to occupancy of the restaurant, the applicant shall submit a report verifying conformance with the requirements of this condition to the satisfaction of the Director of Planning.

The report shall reference the file number CP 03-028.

7. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
9. **Anti Litter.** The site and surrounding area within 200 feet of all property lines shall be maintained free of litter, refuse, and debris.
10. **Directional Signs.** Directional signage in conformance with the Sign Code to direct patrons to on-site parking facilities shall be provided during all hours of restaurant operation. Temporary signage shall be removed and stored in an enclosed area on-site when the restaurant is not in operation.
11. **Hours of Operation.** No commercial uses shall operate on the site between the hours of 12:00 a.m. and 6:00 a.m. except as approved through a Conditional Use Permit.
12. **Use Limitations.** Future use of the remainder of the building (excluding the restaurant/bar addressed in this permit) shall be limited to uses with a parking requirement no greater than that of office use unless conformance with the parking requirements of the Zoning Code can be demonstrated to the satisfaction of the Director of Planning.
13. **Noise.** The sound level generated on this site shall not exceed 55 dba DNL at any property line adjacent to a property used for residential purposes and shall not exceed 60 dba DNL at any adjacent property line of property used for commercial purposes.
14. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-03652) to the satisfaction of the Director of Public Works:
 - a. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
15. **Compliance Review.** A Compliance Review is required in response to written complaints filed with the Director of Planning. A Compliance Review is also scheduled one year from the start of restaurant operation and as needed thereafter. Violations of this Permit or any nuisance activity shall be subject to an Order to Show Cause why the Permit shall not be revoked or modified.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit.

The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance