

CITY OF SAN JOSE, CALIFORNIA  
 Redevelopment Agency of the City of San Jose  
 50 W. San Fernando Street, Suite 900  
 San Jose, California 95110

## STAFF REPORT

Hearing Date/Agenda Number

P.C.: 8-14-02                      Item: 3.f.

File Number:

RCP 02-07-009

Application Type:

Conditional Use Permit

Council District:

3

Planning Area:

Central

Assessors Parcel Number(s):

467-22-003

**PROJECT DESCRIPTION**

Completed by: Amie Glaser

Location: 30 South First Street

Gross Acreage: 0.14

Net Acreage: N/A

Net Density: N/A

Existing Zoning: CG

Existing Use: Nightclub and Bar

Proposed Zoning: No Change

Proposed Use: Continued Operation of a Nightclub and Bar with Live Entertainment

**GENERAL PLAN**

Completed by: AG

Core Area

Project Conformance:

Yes     No

See Analysis and Recommendations

**SURROUNDING LAND USES AND ZONING**

Completed by: AG

North: Parking Lot

Commercial General (CG)

East: Parking Lot

Commercial General (CG)

South: Commercial Retail

Commercial General (CG)

West: Commercial Retail

Commercial General (CG)

**ENVIRONMENTAL STATUS**

Completed by: AG

Reuse of Downtown Supplemental EIR, Certified 04/27/99

Exempt

Environmental Impact Report complete on:

Environmental Review Incomplete

Negative Declaration circulated on:

Negative Declaration adopted on:

**FILE HISTORY**

Completed by: AG

Annexation Title: Original City

Date: N/A

**HISTORIC STATUS: N/A**

Completed by: AG

**REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION**

Approval

Action

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Conditional Approval

Recommendation

Denial

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Uphold Director's Decision

**OWNER**

Lin & Lin Company  
 11645 Dawson Dr.

**APPLICANT**

Suzanne Nga Lai  
 30 South First Street

---



---

<b>PUBLIC AGENCY COMMENTS RECEIVED</b>	<b>Completed by: AG</b>
No comments received	

---



---

<b>GENERAL CORRESPONDENCE</b>
No comments received

---



---

**ANALYSIS AND RECOMMENDATIONS**

---

**BACKGROUND**

The applicant is requesting this Conditional Use Permit (CUP) to continue operating a drinking and entertainment establishment (Lido Nightclub) at the project site, located at 30 South First Street, within the Downtown Core area. The site is located in the Commercial General (CG) and Ground Floor Retail (DG) Zoning Districts; a CUP is required for the operation of a bar/nightclub with live entertainment and the operation of any non-office, commercial facility between the hours of 12:00AM and 6:00AM. The club has been operating since 1992 when they received their original CUP to begin operations. Eating establishments are permitted within the CG district and do not require conditional approval.

The 0.14-acre project site is developed with a two-story commercial building. Through this CUP, the existing structure will continue to be used for a nightclub with live entertainment. The proposed hours of operation of the facility are 12:00 PM to 2:00 AM, daily. The project site is adjacent to surface-level parking lots to the north and east. There are commercial retail establishments (jewelry stores) to the south and to the west, across Second Street. Lido has been in operation since 1992. The facility was originally approved by the Planning Commission through a CUP (RCP92-07-018, see Attachment A), that expired on September 9, 1997, so a new CUP is required.

**ENVIRONMENTAL REVIEW**

Environmental clearance has been granted for this project through the Final Supplemental Environmental Impact Report (EIR) entitled, *Downtown Strategy Plan*, certified by City Council Resolution No. 68839 on April 27, 1999 in that the City has determined that the project does not involve any new significant environmental impacts beyond those previously analyzed in the EIR.

## **SAN JOSE GENERAL PLAN CONFORMANCE**

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as bars and nightclubs, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

## **ANALYSIS**

The following issues address the project’s operational compatibility within its surroundings.

### **Compliance with City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars**

The Lido Nightclub’s CUP renewal for continued operations would be limited to no later than 2:00 AM. Such a provision is consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars, where after- midnight uses are encouraged to locate within the Downtown. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The Lido Nightclub’s location (amid adjacent retail, restaurant, and office uses) and proposed hours of operation are compatible with surrounding land uses as required by Council Policy for after midnight uses.

### **Land Use Compatibility**

Lido is surrounded by commercial uses in all directions. The Lido Nightclub, located in the Downtown Core, is adjacent to similar uses with similar hours of operation. Lido Nightclub’s operations are compatible with existing nearby entertainment and dining establishments such as the Voodoo Lounge and E&O Trading Company. There are no residences within 300 feet of the property and continued operations at the Lido Nightclub will not negatively impact the surrounding residential or commercial land uses. In addition, police reports for Toon’s show a minimal number of service calls and reported incidents. The Police Department has confirmed that Toon’s present operations are acceptable and that they support the recommendation for approval of the proposed CUP, including the hours of operation.

### **Compliance with Zining Code Parking Requirements**

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs. The site, which is fully developed with the existing building, does not include any off-street parking; however, nearby parking facilities (i.e., public garage, on-street parking) are able to serve patrons and employees of the facility.

## **CONCLUSION**

The proposed project conforms to all applicable City goals and policies. Renewal of the Conditional Use Permit is consistent with the requirements of the Zoning Ordinance and General Plan.

## RECOMMENDATION

Staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution.

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

1. This is a Conditional Use Permit to the continued operation of an existing drinking establishment with after-midnight operations.
2. The project site is approximately 0.14 acres and is located in the Commercial General (CG) and Ground Floor (DG) Zoning Districts.
3. A Conditional Use Permit is required for the operation of a drinking establishment in the CG Zoning District.
4. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
5. The San Jose 2020 General Plan provides that restaurants, bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
6. The City's 24-hour Use Policy requires that all commercial that operate between the hours of 12:00 midnight and 6:00 AM obtain a Conditional Use Permit.
7. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
8. The subject site is surrounded by commercial and office uses.
9. The San Jose Police Department reports that there has not been a history of disturbances or criminal activity during the project's operation, beginning in 1992.
10. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for the proposed uses.

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

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) Zoning District in that the operation of a drinking establishment requires the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan in that it proposes the operation of a drinking and eating establishment within the downtown Core Area and is located away from residential development, or other sensitive uses.
3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in that it proposes the continued operation of a drinking establishment, with after midnight use, in an area of downtown predominately developed with commercial and office land uses.
4. This property is appropriately located for the subject activities due to its location in the downtown Core Area, its distance from existing or planned residential uses, and its operational history as determined by the Police Department.
5. The project conforms to the California Environmental Quality Act in that is does create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
6. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

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

1. The proposed use at the location will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the existing and continued operation of the entertainment and drinking establishment is consistent with the similar commercial uses of the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site because the continuation of the nightclub/bar use with live entertainment will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
  - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the uses which are compatible with the uses in the surrounding area; 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 quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
  - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes 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 the following 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 requirements of the below enumerated precedent conditions all 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. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

### **CONCURRENT CONDITIONS**

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

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.

3. Exterior Improvements. No exterior modifications are approved with this Permit. Any exterior improvements are subject to approval by the Executive Director of the Redevelopment Agency and the issuance of appropriate City permits, as required.
4. Hours of Operation. The facility and any live musical entertainment shall be limited to 12:00 PM to 2 AM, daily. Alcohol service shall cease at until 1:30 AM.
5. Security. A minimum of two security officers shall be on duty for every 100 patrons using the facility during its hours of operation; or as otherwise required by the Police Department.
6. Noise and Acoustics.
  - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
  - b. Noise emission shall comply with the policies identified in the Noise Element of the San Jose 2020 General Plan.
7. Games. Pool or billiard tables, coin-operated games, or other games regulated by the City, shall not be permitted in excess of the number specified in Title 20 of the Municipal Code.
8. Trash, Refuse, Garbage and Litter.
  - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
  - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
  - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
  - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.
9. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
10. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
11. Age of Admittance. Admittance to bars and nightclubs shall be restricted to patrons 21 years of age or older.

**CONDITIONS SUBSEQUENT**

1. Building Permit. If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms 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, of the Chapter 20.44, of Title 20, of the San Jose Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was 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 presently conducted creates a nuisance.
3. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
4. Time Limit. This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. A Compliance Hearing at the discretion of the Planning Commission may be required at any time during the term of this Permit.
5. Renewal. The Permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than 90 days, but less than 180 days, prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.