

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

Hearing Date/Agenda Number
P.C. 11/28/2007 Item: 3.c.

File Number
CP07-049

Application Type
Conditional Use Permit

Council District
7

Planning Area: Evergreen
SNI: West Evergreen

Assessor's Parcel Number(s)
670-02-026

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Ed Schreiner

Location: West side of King Road 400 feet southerly of Burdette Drive (2569 S. King Road)

Gross Acreage: 3.18

Net Acreage: 3.18

Net Density: n/a

Existing Zoning: CG-Commercial General

Existing Use: Existing shopping center

Proposed Zoning: No change

Proposed Use: 24-hour operation of an existing restaurant

GENERAL PLAN

Completed by: ES

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ES

North: Shopping Center

CG-Commercial General

East: Multi-Family Residential

RM (PD) Planned Development

South: Shopping Center

CN-Commercial Neighborhood

West: Shopping Center

CG-Commercial General

ENVIRONMENTAL STATUS

Completed by: ES

Environmental Impact Report found complete
 Negative Declaration
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: ES

Annexation Title: Hillview No. 50

Date: April 30, 1965

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: *November 15, 2007*

Approved by: *Susan Walton*
 Action
 Recommendation

APPLICANT/DEVELOPER

Lien Yen Huynh, Lee Noodle House
2569 South King Road
San José, CA 95122

OWNER

San Te Properties
Hong Tsu Tsao
2152 Garden Terrace,
Mountain View, CA 94040

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Ed Schreiner

Department of Police

Attached

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

Attached City Council Policy- Evaluation of 24-hour Uses

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

On July 10, 2003, the applicant, San Te Properties, obtained a Conditional Use Permit (File No. CP03-039) to allow extended operating hours of the Lee Noodle House restaurant on South King Road until 2:00 a.m. Since November 30, 1984, the Zoning Ordinance has required that all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

The previously-approved Conditional Use Permit (CUP) provided for a time extension of up to two (2) years beyond the initial two (2) year time limit with the approval of a Permit Adjustment from the Director of Planning. A Permit Adjustment (File No. AD05-480) was approved and extended the term of the CUP until July 10, 2006, and a second Permit Adjustment (File No. AD06-589) extended the term of the CUP until July 10, 2007.

On June 18, 2007, before the CUP's expiration date, the applicant applied for a new Conditional Use Permit to allow 24-hour operation of the existing Lee Noodle House restaurant. After feedback from planning staff, the Police Department, and community members, the applicant has revised their proposal to request late night hours until 3:00 a.m.

The subject restaurant is one tenant among several in an existing neighborhood retail complex that includes a variety of commercial uses, all of which share a central parking lot. The restaurant's tenant space is located at the front of the complex, with its side facing directly onto South King Road. The restaurant does not serve alcoholic beverages and has no outdoor seating. Currently, the hours of operation are limited to between 6:00 a.m. and 12:00 midnight, which are, by right in the CG-Commercial General Zoning District.

Surrounding land uses include commercial to the north, south and west, and multi-family residential to the east across South King Road.

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 15301. Under this section, projects that involve negligible or no expansion to existing facilities qualify for this exemption. In this instance, this project qualifies under this exemption in that no physical expansion of the existing facility is proposed.

GENERAL PLAN CONFORMANCE

The proposed 24-hour operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

Key issues analyzed for the proposed Conditional Use Permit include: 1) consistency with the City's Policy for Evaluation of 24-hour uses, and 2) site location considerations.

Consistency with the Policy for Evaluation of 24-hour Uses

The attached Policy for Evaluation of 24-hour Uses is intended to provide guidelines for the appropriate development of commercial businesses that operate between the hours of 12:00 midnight and 6:00 a.m.

The policy states that, "crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses". The Chief of Police, in a memo dated August 21, 2007 (see attached), has indicated that the subject restaurant is in an area that has crime statistics that are more than 20% higher than the average police beat in the City. The Police Department has indicated they are neutral to a proposed operation to 3:00 a.m., but would not support the use of the restaurant past 3:00 a.m. Furthermore, the memorandum states that the West Evergreen SNI would also be opposed to operation after 3:00 a.m.

The subject restaurant is a "sit down" type restaurant, which the policy states does not generally exhibit the problems normally associated with "take-out" restaurants because patrons do not remain in their vehicles in the parking lot and food is consumed within the building with appropriate supervision. Litter is not typically a problem, as food is not served in disposable wrappings or containers. Therefore, impacts from littering, loitering, and noise are substantially reduced by the nature of the proposed use. The applicant has submitted a mitigation Management Plan regarding operation of the facility.

Generally, the Policy recommends a 300-foot separation between late night uses and residential properties; however, this requirement may be reduced or increased upon review of the specific circumstances of the project. The proposed project provides physical separation of about 100 feet from the nearest residential use. King Road, a major thoroughfare containing four lanes of moving traffic, separates the restaurant site from the adjacent neighborhood. Non-project related traffic noise from King Road is likely to be louder than noise related to the restaurant operation, including during evening hours. The restaurant proposes no outdoor seating.

In addition, sit-down restaurants, unlike nightclubs and fast-food drive-through restaurant uses, tend to be less problematic when in close proximity to residential uses. Because of these factors, staff believes, it is unlikely that any noise from the proposed use between midnight and 3:00 a.m. will generally be distinguishable from traffic noise from King Road at the closest residential property line.

This property has previously operated with 24 hour/late night use until 2:00 a.m., since October of 2001, when its initial Conditional Use Permit was approved. Since that time, the restaurant has established a good track record, with no major incidents or code violations.

Site Location Considerations

The restaurant tenant space is located near the main project entry to the overall retail complex and is directly adjacent to the street. The site landscaping and restaurant building are well maintained, which gives the site a visually positive appearance. Since the building is located next to heavily-traveled King Road, it is well suited for after midnight operation and provides good opportunities for direct surveillance from the street. The existing parking meets the City's parking requirements for the restaurant use. The City's parking requirements are based on the number of dining seats or dining area. Since there will be no

increase in the dining space or seating, no additional parking will be required. The restaurant shares parking with the other commercial uses in the retail complex. The required parking spaces are located directly in front of the restaurant.

PUBLIC OUTREACH

The applicant has posted a notification sign at the site in conformance with the Public Outreach Council Policy. This project was presented at the West Evergreen SNI NAC meeting on October 22, 2007. Neighbors expressed concerns with additional traffic and noise generated by late night uses, as well as a concern that a business with late night hours could lead to additional criminal activity. The NAC was not supportive of the restaurant being open 24 hours a day, but the majority of attendees supported the restaurant staying open until 3:00 a.m., provided that security was provided on site. The remainder of the attendees favored the restaurant remaining open until just 2:00 am. Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. The Planning Commission's agenda is posted on the City of San José's website along with this staff report. Staff has been available to answer questions and discuss the proposal with members of public.

CONCLUSION

The proposed use has been evaluated based on present conditions and recent crime statistics that were not available when the previously approved Conditional Use Permit (File No. CP01-065) was being reviewed.

The restaurant is located in a police beat that is unduly concentrated with crime. Staff concurs with the Police Department's recommendation that the existing restaurant should not be allowed to operate on a 24-hour basis. However, based on the number and nature of police calls for service, and as the proposed use is generally consistent with City Council Policy 6-27 – Evaluation of 24-Hour Uses, staff and the Police Department recommend that the existing restaurant be allowed to operate until 3:00 a.m., 7 days per week.

Based on a condition of the previously issued Conditional Use Permit and direction from the Police Department, the restaurant will be required to hire one or two security officers between the hours of 12:00 midnight and 3:00 a.m. Staff has included this recommendation as a project condition.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit with conditions as noted in the attached resolution.

Attachments:

- Draft Resolution
- Location Map
- Police Memorandum
- Operation Mitigation Monitoring Plan

RESOLUTION NO. 07-

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing after midnight operation until 3:00 a.m. of an existing restaurant.

FILE NO. CP07-049

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 28, 2007, an application (File No. CP07-049) was filed for a Conditional Use Permit for the purpose of allowing the 24-hour operation of an existing restaurant, on that certain real property (hereinafter referred to as "subject property"), situate in the CG-Commercial General Zoning District, located at the west side of South King Road, approximately 400 feet southerly of Burdette Drive (2569 S. King Road), San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Lee Noodle House Conditional Use permit," dated September 20, 2007. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, 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.
2. The project site is located in the CG-Commercial General Zoning District.

3. Under the provisions of Section 15301 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. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by commercial shopping center uses to the north, south, west, and multi-family attached residential uses to the east.
5. The project consists of a 'sit-down' restaurant containing 99 dining seats.
6. The existing restaurant had previously obtained a Conditional Use Permit for 24-hour operation (File No. CP03-049), but this permit has since expired.
7. Based on the expired Conditional Use Permit as described above, the current restaurant hours are from 6:00 a.m. to 12:00 midnight. The restaurant is proposing to extend its operating hours past midnight.
8. The restaurant has an approximate floor area of 2,680 square feet.
9. The restaurant shares parking with the retail complex.
10. The restaurant tenant space is located directly adjacent to King Road, a four-lane arterial street.
11. The proposed use is located about 100 feet from the closest residential property line.
12. The project is separated from adjacent residential uses by a four lane arterial street.
13. The existing restaurant building and site landscaping are well maintained, and operator has developed a Mitigation Monitoring Plan.
14. The existing restaurant does not serve alcoholic beverages.
15. The existing restaurant does not provide amplified music for entertainment purposes.
16. The Police Department has identified this area as having the crime statistics that are more than 20% higher than the average police beat in the City.
17. The project includes conditions related to the hiring of security officers between the hours of 12:00 Midnight and 3:00 a.m.

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

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
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.
4. The proposed project is consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses.

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.

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, 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.

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.** The proposed 24 hours use shall apply only to Lee Noodle House Restaurant as shown on the approved plans entitled, "Lee Noodle House Conditional Use Permit", dated September 20, 2007, 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. **Landscaping.** Planting and irrigation are to be maintained in accordance with the approved permit (File No. H94-024) with Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be maintained in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
4. **Lighting.** Any new on-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Light levels at 1.5 or greater foot-candles average illuminations at ground surface are discouraged. Lighting in the parking lot directly in front of the restaurant may be other than low-pressure sodium. Electroliers shall not exceed 17 feet above grade.

5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Restroom Facilities.** Restroom facilities shall remain open during late night business hours.
7. **Security Personnel.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug, and other police problems. The applicant shall hire onsite security officer(s) between the hours 12:00 midnight and 3:00 a.m. daily to the satisfaction of the Police Chief. Said requirement shall remain in effect until such time it is determined to be no longer necessary by the Police Chief.
8. **Security Improvements.** The applicant shall provide appropriate security measures if not already provided on site, including but not limited to, alarm system, well-lighted address numbers and signs, no trespassing/loitering signs to the satisfaction of the Police Chief.
9. **Exterior Clean Up.** Exterior clean up and maintenance activities, including garbage pick up, shall not occur later than 10.00 p.m. or prior to 7:00 a.m.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground to the satisfaction of the Director of Planning.
11. **Previous Conditions.** All of the conditions of the previously approved Site Development Permit (File No. H94-024) shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Conditional Use Permit.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
13. **Hours of Operation.** The restaurant use is allowed to operate between the hours of 6:00 a.m. and 3:00 a.m., seven days a week, for service within the interior of the restaurant building. No outdoor waiting or seating areas are approved with this project.
14. **Number of Seats.** The restaurant use shall be limited to a maximum number of seats as approved under the previous Site Development Permit (File no. H94-024) for dining in the restaurant. Any additional seating shall be subject to review and issuance of permits by the Department of Planning, Building, and Code Enforcement.
15. **Amplified Sound.** Amplified sound shall be prohibited for music and entertainment including, but not limited to, singing, dancing, music, and monologues between the hours of 10:00 p.m. and 3:00 a.m. No outdoor loudspeakers are permitted.
16. **Alcoholic Beverages.** Alcoholic beverages may be sold by right under code, offered for sale, or served to patrons for consumption on the premises as an incidental use only to a public eating establishment in conformance with all other applicable legal requirements and with appropriate permits. Drinking establishments including taverns, bars, cocktail lounges, nightclubs, and similar uses are not allowed with this permit and shall require a subsequent Conditional Use Permit. In the event alcoholic beverage service is proposed, the applicant shall obtain all necessary permits from the State Alcoholic Beverage Control Agency. Said permits shall be maintained in good standing.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) 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. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.

2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
3. **Compliance Review.** A Compliance Hearing may be required at the discretion of the Director of Planning at any time during the length of this permit.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar 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.
5. **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.

ADOPTED and issued this 28th day of November 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

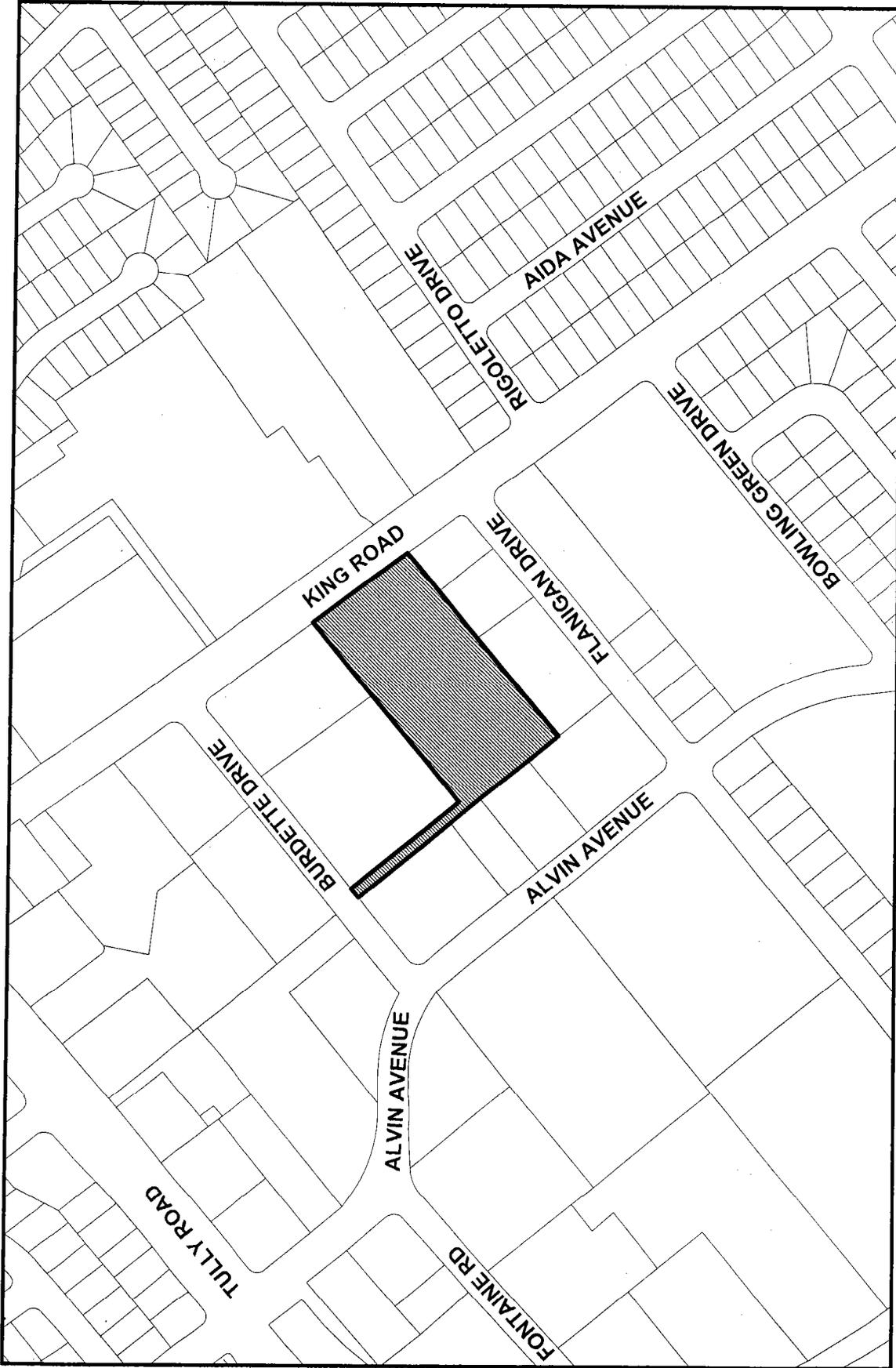
ATTEST:

Joseph Horwedel, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



File No: CP07-049

District: 7

Quad No: 84

Scale: 1"= 300'

Map Created On: 06/18/2007

Noticing Radius: 500'





Memorandum

TO: Rebekah Ross
Planning Department

FROM: Ofc. Jeff Enslin #3408
San Jose Police Vice Unit

SUBJECT: 2569 S King Rd.
Lee's Noodle House

DATE: August 21, 2007

Approved

Date

I have received your request for input regarding Lee's Noodle House, located at 2569 S. King Rd., San Jose, Ca. The location is an existing restaurant. Lee's Noodle House is seeking a Conditional Use Permit to allow extended hours of operation between midnight and 6:00am. The restaurant would like to be open 24 hours and day 7 days per week.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the West Evergreen Strong Neighborhood Initiative.

2569 S. King Rd. is located in San Jose Police Beat P1. The reported crime statistics as defined by B&P Section 23958.4(c) **are** over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
P1 (2006)	509	309	818	Yes
City Average	335	307	642	

Lee's Noodle House does not sell alcoholic beverages.

The San Jose Police Department is **neutral** to the issuance of Conditional Use Permit to allow for the extended hours of operation to 3am only, 7 days per week. If Lee's Noodle House intends to stay open past 3:00am, then the Police Department and the West Evergreen SNI would be **opposed**.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Jeff Enslin #3408
Administrative Officer
Special Investigations/Vice

**Lee Noodle House
Mitigation Management Plan**

The following tasks should be executed by all employees during the store operation.

1. Cleaning in the store
 - a. Remove trash always.
 - b. Clean table right after custom finish the food.
 - c. Keep the restroom clean and in working condition all the time. Report to manger immediately if the fixtures not working or drainage clogged.
 - d. Keep door close, keep flies, insects off the store area.
 - e. Keep trash can capped.

2. Cleaning around store area
 - a. Clean the area outside of store and its neighbor area for any trashes and garbage every four hour during the store hours. Do not use mechanical blower or any noise generating equipment during 10:00PM to 7:00AM.
 - b. Avoid any exterior repair and maintenance activities during 10:00PM to 7:00AM every day.

3. Lighting
 - a. Do not block any public lights by any means. Such as banner, advertisement material.
 - b. Report to Manager if the parking light and soffit light are not working or broken. Manager should inform Landlord to fix immediately.

4. Noise
 - a. Keep store's stereo system volume low (not no heard from outside of store area) during 10:00PM~7:00AM
 - b. If the custom's car stereo and or conversation volume are high, please politely inform them to reduce the volume. If custom does not follow the advice, report to manger immediately.
 - c. Manager should take care of any situation immediately. Report to police if needed.

Manager to be the **LIAISON** with Police Department.

City of San José, California

CITY COUNCIL POLICY

TITLE EVALUATION OF 24-HOUR USES	PAGE 1 of 7	POLICY NUMBER 6-27
	EFFECTIVE DATE 4/26/94	REVISED DATE

APPROVED BY

Council Action - 4/26/94, Item 9k

BACKGROUND

On November 30, 1984, the City Council approved an amendment to the Zoning Ordinance that required all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit. This ordinance change was established to assure compatibility of late night and early morning uses (e.g., bars, nightclubs, gasoline service stations, fast food restaurants, convenience stores and grocery stores) with surrounding land uses.

Recently, there has been an influx of Conditional Use Permit applications requesting 24-hour operation. As a result, City Staff determined that it would be appropriate to develop measures to assure that these proposals conform to General Plan Policy regarding neighborhood compatibility and urban design, as well as further the policies of the Downtown Strategy Plan. The intended result of these guidelines is balancing the needs of business to respond to market trends while protecting the quality of life in nearby residential neighborhoods.

DEFINITIONS

For the purposes of the following policies, 24-hour uses are defined as any commercial business that operates between the hours of 12:00 midnight and 6:00 a.m.

"Designated Parking Area" is defined as the area encompassed by a fixed radius from the entrance of a 24-hour use which encompasses 10 percent of the required parking spaces for said use or 25 spaces, whichever is greater, but in no event more than the total number of spaces on the site. "Outdoor Use Area" is defined as any area of the 24-hour use site where outdoor uses such as loading, fueling/service, drive-through operations, outdoor seating/dining, etc., occur.

"Take-out restaurant" is a restaurant licensed by the County Health Department where food is served primarily in individual servings, wholly wrapped in or served on disposable materials, which facilitate the removal of prepared food from the restaurant for outside or off-site consumption. Take-out restaurants are designed to accommodate high volumes of customers and exhibit ratios of customer queuing area to actual dining area generally in excess of 25 percent. The ratio of kitchen/support area to dining area is also higher than for sit down restaurants at 60 percent or

TITLE EVALUATION OF 24-HOUR USES	PAGE 2 of 7	POLICY NUMBER 6-27
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more. Take-out restaurants generally require payment prior to food consumption and do not provide table service or regular bussing of tables as food is packaged in disposable containers and self bussing is encouraged by provision of indoor and outdoor customer oriented trash receptacles.

"Sit down restaurant" is a restaurant licensed by the County Health Department where food is served primarily for consumption on the premises and is not specifically designed to accommodate high volumes of customers. Patrons generally order food and are served while seated at tables or are served cafeteria style in non-disposable containers which do not facilitate removal of prepared food from the restaurant. As an incident to the operation of such restaurants, disposable containers may be available, on a customer request basis only, for removal of food from the restaurant.

PURPOSE

While there is a general public need for some late night services, especially for shift workers, there are potentially significant problems with such uses including proximity to residential uses, crime, gang activity, drugs, litter, loitering and noise. This policy is intended to provide guidelines for the appropriate development of establishments that operate on a 24-hour basis in the City of San José while avoiding the problems associated with such operations. However, based on a case-by-case review, specific alternative measures which are demonstrated to meet or exceed the guidelines in this policy may be appropriate.

Existing legal 24-hour uses would not be affected by the policies. New proposals for Conditional Use Permits will be evaluated using the guidelines in this policy. This policy is organized to provide general guidelines and to outline specific uses and situations where alternatives to the guidelines may be appropriate. Existing legal non-conforming 24-hour uses could become subject to the policy only if the Council directed the preparation of a new ordinance for neighborhood nuisances related to 24-hour operation.

POLICY

1. General Guidelines

- a. **Area Use Compatibility.** Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. Users which are largely take-out and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site. Given the potential for problems arising from such uses which may or may not have been anticipated at the time of approval, all such permits should include a condition for a Compliance Review based on written complaints, and all such complaints should be referred to the Planning Commission.
- b. **Use Separation.** Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on the

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intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria. Examples of circumstances which might mitigate the 300-foot separation requirement:

- Separation for residential by a major thoroughfare of at least four moving lanes and a sound wall at the residential property.
 - Complete physical separation from residential by other non-residential buildings.
 - One-hour extensions on Friday and Saturday nights and/or one hour from 5:00 a.m. to 6:00 a.m. daily.
- c. **Outdoor Activities.** Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area. Due to the unique combination of uses in the Downtown Core Area, 24-hour outdoor activities will be evaluated on a case-by-case basis. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 midnight and 6:00 a.m., except for specific development types identified under Policy 2. More restrictive hours and days of operation may be imposed in order to implement policy requirements. Other late night outdoor activities on the site such as truck deliveries, maintenance and garbage collection should be reviewed and may be conditioned to minimize noise impacts.
- d. **Police Issues.** Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.
- e. **Restroom Facilities.** Restroom facilities required by other codes or policies shall remain open and be available during late night business hours. Customer access to restrooms is not required for drive-through facilities when there is no customer access permitted to interior areas. Restrooms that have exterior access will be analyzed from a safety and surveillance aspect and will remain open on a case-by-case basis.
- f. **Noise.** Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. Special attention should be paid to the possibility of noise at late night hours such as car stereos, cars starting and conversations which may not be quantifiable, but can reasonably be expected to occur. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.

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- g. **Lighting.** Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Typically, light levels of 1.5 or greater footcandles average illumination at ground surface are encouraged. Twenty-four-hour uses may be required to install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium. Higher lighting levels may be required for 24-hour uses in the Downtown Core Area on a case-by-case basis.
 - h. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on- and off-site litter may be required on a case-by-case basis.
 - i. **Site Improvements.** As a function of the review process for 24-hour uses, the physical condition of the site should be considered. Aesthetic improvements and maintenance conditions may be required to prevent blight.
 - j. **Mitigation Management Plan.** A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.
- **Conditions of Approval.** The applicant shall provide a management plan and revised plans as necessary for the following items.
 - *Litter Control.* The applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.
 - *Parking.* The applicant shall ensure that the parking lot for drive-through restaurants is not utilized by patrons between 12:00 midnight and 6:00 a.m.
 - *Police Issues.* The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.
 - *Lighting.* The applicant shall provide enhanced lighting of the designated parking and use areas and related areas of the site to the satisfaction of the Director of Planning.
 - *Exterior Clean Up.* Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses.

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2. Specific Development Types

a. **Restaurants.** "Sit down restaurants" and "take-out restaurants" are defined in the Definition Section of this Policy. The following policy guidelines apply to each type based on potential problems associated with their late night operation.

- (1) "Take-out restaurants" exhibit the most potential problems in this category, specifically:
 - Gang activity and loitering, including gang-related violence, in and around the sites.
 - Criminal activity, including nongang-related violence, harassment, robbery, assault, and drug trafficking focused in and around such facilities.
 - Higher traffic volumes due to quick turn-over of seating and high percentage of take-out service.
 - Take-out service facilitates some vehicular occupants remaining in the vehicle running or not with radios on or engaged in other disruptive activities.
 - Take-out service facilitates the consumption of food in vehicles while parked on-site with the above problems.
 - Consumption of food in the parking lot allows the legal congregation of people and loitering at late night hours without the benefit of supervision afforded to patrons inside the building.
 - The consumption of individual servings of food in vehicles whether on or off the site results in large quantities of litter which tend to be discarded in the general area under cover of darkness and lacking public exposure.
 - The lack of table service and bussing of tables at take-out restaurants results in less interaction, surveillance, and supervision of customers by employees resulting in a greater potential for disturbances between customers.
 - The provision of numerous outside customer trash receptacles in the parking lots of take-out restaurants acknowledges the frequent use of the parking lot for food consumption and even encourages such use. Due to the late night hour darkness and lack of public presence to discourage litter tendencies, littering during the night time hours is heightened.

- (2) "Sit down restaurants" generally do not exhibit the above mentioned problems with "take-out restaurants" because the patrons do not remain in vehicles in the parking lot, food is consumed within the building with appropriate supervision, litter is generally not a problem as food is not served in disposable wrappings or containers, impacts of loitering on and off the site are substantially reduced by the lack of valid reasons to be outside the restaurant for prolonged periods of time, greater surveillance and supervision of customers is afforded by table service and/or regular bussing of tables, and the parking lot is not recommended for use by customers evidenced by the lack of customer trash receptacles.

In view of the above considerations, the 24-hour operation of all restaurants should be reviewed on a case-by-case basis and may be approved with conditions.

Drive-through uses associated with take-out restaurants do not exhibit all the attributes associated with this category and should be reviewed on a case-by-case basis. The drive-through portion may be approved if in compliance with the Council policy on drive-through uses and if there are effective measures to restrict the use of the parking lot by customers and other conditions are required as needed. Such restrictions can reduce the potential for loitering on and off site, minimize the time on-site and provide security between employees and

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customers as well as between customers themselves. The remaining issues of litter off-site and loitering in the surrounding area should be reduced by drive-through only service, but further conditions could be implemented through the use of frequent security patrols of the nearby streets, augmenting regular police patrols.

- b. **Gasoline Service Stations.** Gasoline service stations are a type of outdoor retail operation which have difficulty meeting all of the requirements listed in the General Guidelines. Additionally, gas stations only without retail convenience store uses do not exhibit the problems of other late night uses. Specifically, there is generally a reduced frequency of use; the outside customer areas are intensely lighted, much more so than parking lot areas; there are very few, if any, parking spaces for prolonged stay on-site; service is rendered quickly at the fueling stations, customers are discouraged from loitering and blocking service areas; and very little is available on-site which may result in litter problems. For this reason it is appropriate to look at alternative means to meet the intent of the guidelines without unduly restricting service station uses because the sale of gasoline may be necessary for the safe transport of people during the late night and early morning hours.
 - (1) Gasoline service stations shall not provide automotive repair service between the hours of 10:00 p.m. and 7:00 a.m.
 - (2) Gasoline service stations shall not provide car wash service between the hours of 10:00 p.m. and 7:00 a.m.
 - (3) Restroom facilities shall remain open and available during business hours. Measures to assure surveillance and security will be required.

- c. **Large Retail Centers.** Typically, large retail centers include stores of 20,000 square feet or larger that represent chain retail companies which are operating on a 24-hour basis. These types of operations are usually found within neighborhood shopping centers that are located on sites of 8 to 10 acres. It is also common for these sites to be adjacent to residential areas, although the 24-hour use (in particular, activity areas such as the parking and entrance) may, itself, be adequately separated from the residential use. Take-out food service as an incident to the retail use, to the extent that retail use offers such take-out use, may be limited or eliminated during late night operation as a condition of a Conditional Use Permit. Conditions of approval could include, as necessary, the provision of security patrols of the parking lot area to reduce these potential impacts. Restaurant uses proposed within large retail centers shall be reviewed under the Policy guidelines found under the restaurant development type section of this Policy. The provision of appropriate mitigation measures will be required on a case-by-case basis.

- d. **Small Commercial Retail.** There are a number of potential problems associated with the late night operation of small commercial stores such as: drug dealing, loitering, car radios, fights, loud conversations, litter, and other problems caused by late night patrons. These problems, even if anticipated, are generally very difficult to effectively mitigate.

The quick in-out service touted by such small stores combined with the generally low volume of customers at late night hours should mitigate the worst problems associated with loitering of groups leading to fights and other problems. Most of the products sold at such stores are intended for use at home or other locations off site where the packaging would be disposed of and should not, therefore, result in litter at on near the store.

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Additionally, many of the same problems identified for take-out restaurants may arise if, as an incident to the primary retail use, stores offer take-out food service. The current experience with these facilities is, however, that the very limited extent of prepared food service which is generally restricted to soft drinks and self-service microwave heating of cold food is purely incidental to the purchasing of other packaged commodities intended for use off site. These facilities do not provide indoor seating, nor is the service capacity large enough to facilitate multiple customers loitering in the parking lot consuming food in cars. In this case, conditions to effectively control such problems or limit food service should be considered as described for large retail users above.

The main problems with these small commercial retail sites are their size, usually less than one acre, and their close proximity to residential neighborhoods. Loitering is enhanced by the availability of pay phones outside and video games inside the store. As such, the separation from residential uses for these facilities should be carefully evaluated, and may be increased on a case-by-case basis, or special operational limitations and conditions may be imposed to reduce impacts. Restaurant uses proposed within small retail centers shall be reviewed under the Policy guidelines found under the restaurant development type section of this Policy.

- e. **Bar, Nightclubs, and Adult Uses.** Uses under this category should meet the City Council Policy on the Guidelines for the Evaluation of Nightclubs and Bars.



