

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP08-049

**Submitted:** 5/28/08

**PROJECT DESCRIPTION:**

Conditional Use Permit to allow a drinking establishment and late night use until 2:00 a.m. daily on a 0.08-gross-acre site.

**LOCATION:**

East side of South First Street approximately 200 feet southerly of Santa Clara Street (52 South First Street).

Zoning	DC-Downtown Primary Commercial
2020 General Plan	Core Area
2040 General Plan	Downtown
Council District	3
Annexation Date	March 27, 1850 (Original City)
SNI	N/A
Historic Resource	Yes
Redevelopment Area	Yes
Specific Plan	No

**Aerial Map**

**N**





## **RECOMMENDATION**

Planning staff recommends the Planning Commission approve the proposed Conditional Use Permit on the subject site for the following reasons:

1. The subject Conditional Use Permit is consistent with the San José 2020 General Plan and its goals and policies, specifically:
  - a. The use is consistent with the site's General Plan Land Use/Transportation Diagram designation of Core Area in that commercial uses, such as drinking establishments and nightclubs, are intended uses under this designation.
  - b. The project furthers the Downtown Revitalization Major Strategy by promoting a mix of uses attracting visitors to the downtown.
2. The subject Conditional Use Permit is consistent with the Envision San José 2040 General Plan General Plan and its goals and policies, specifically:
  - a. The use is consistent with the site's Land Use/Transportation Diagram designation of Downtown in that commercial uses, such as drinking establishments and nightclubs, are intended uses under this designation.
  - b. The project supports the Major Strategy Destination Downtown function of Downtown as the City's cultural center for arts, entertainment, culinary and sporting activities, and supports Cultural Attraction Policies for private efforts to achieve a stronger mix of evening and late-night uses in Downtown.
3. The project conforms to Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.
4. The project conforms to City Council Policy, Evaluation of 24-Hour Uses.

## **BACKGROUND & DESCRIPTION**

On May 28, 2008, George Fan, representing Temple Bar and Lounge, applied for a Conditional Use Permit on the subject site to allow for the operation of a drinking establishment and late-night uses until 2:00 a.m., seven days a week. The site is located in the DC-Downtown Primary Commercial Zoning District. This District requires a Conditional Use Permit for a drinking establishment and for late-night use between 12:00 midnight and 6:00 a.m. The DC-Downtown Primary Commercial Zoning District does not require parking for the said use.

The Planning Commission approved a Conditional Use Permit, File No. RCP03-016, on July 9, 2003 for a drinking establishment, nightclub, and entertainment all with late-night uses until 2:00 a.m. seven days a week for a term of five years, with an expiration date of July 9, 2008. Because the subject application, File No. CP08-049, is not a timely application for renewal, as defined by the Zoning Ordinance, which is more than 90 days, and no greater than 180 days, prior to the date of expiration, the application is deemed a new Conditional Use Permit request rather than a renewal. The applicant is not proposing any change in uses from those previously approved by Conditional Use Permit RCP03-016.

Temple Bar and Lounge is located in an existing three-story commercial building (Waterman Building) originally constructed circa 1900 in the Richardsonian Romanesque architectural style. The building is a Historic Resource in the City of San Jose, and is a Contributing Structure to the National Register Historic Downtown District. The bar and nightclub are located in an approximately 3,120-square-foot ground floor tenant space next to Bella Mia restaurant (at 58 South 1<sup>st</sup> Street). No exterior changes are being requested as a

part of this Conditional Use Permit application. Exterior changes would need to be reviewed by the Historic Landmarks Commission.

### **Site and Surrounding Uses**

The subject approximately 0.08-gross-acre parcel, located at the east side of South First Street approximately 200 feet southerly of Santa Clara Street (52 South 1<sup>st</sup> Street), is bordered by commercial retail and office uses including restaurants, bars, nightclubs, and retail shops. The nearest residential development (The Globe) on South 2<sup>nd</sup> Street is approximately 200 feet from the subject site.

### **ANALYSIS**

The proposed Conditional Use Permit is analyzed with respect to: 1) conformance with the San José 2020 General Plan and the Envision San José 2040 General Plan; 2) conformance with City Council Policy 6-27 for the Evaluation of 24-Hour Uses; 3) conformance with City Council Policy 6-23 Guidelines for the Evaluation of Nightclubs and Bars, and 4) conformance with the California Environmental Quality Act (CEQA).

#### **San José 2020 and Envision San José 2040 General Plan Conformance**

The subject Conditional Use Permit application was submitted and deemed complete when the San José 2020 General Plan was in effect, and therefore is considered a pipeline project. The subject site is designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram. The intent of the designation is to support a vibrant 24-hour activity center for the City of San José that serves both as an employment center and as a focal point for cultural and recreational activities. The Core Area designation allows office, service, retail, residential, and entertainment uses. The proposed uses are consistent with the Core Area designation in that commercial uses, such as a drinking establishment and nightclub, are intended uses under this designation. The proposed uses also further the General Plan Downtown Revitalization Major Strategy. This Strategy encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses.

The Envision San José 2040 General Plan reinforces the importance of San José's Downtown as the physical and symbolic center of the City, and as a primary jobs center. The use is consistent with the site's Land Use/Transportation Diagram designation of Downtown in that commercial uses, such drinking establishments and nightclubs, are intended uses under this designation. In addition, the project supports the Major Strategy Destination Downtown function of Downtown as the City's cultural center for arts, entertainment, culinary and sporting activities, and supports Cultural Attraction Policies for private efforts to achieve a stronger mix of evening and late-night uses in Downtown.

#### **City Council Policy 6-27: Evaluation of 24-Hour Uses**

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to drinking establishments, the Policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars, and that if they conform to Council Policy 6-23, then they are in conformance with Council Policy 6-27.

## City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, is intended to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval. The applicable project characteristics required by the policy are inserted in italics below.

1. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications or controls or procedures to increase effective law enforcement.

*The Police Department has stated it is neutral toward this Conditional Use Permit. The Police Department is responsible for monitoring bars and nightclubs and may impose conditions through a subsequent Entertainment Permit if required to discourage nuisance activities as stated above.*

2. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean up occurs within 500 feet of existing residential uses.

*The Draft Resolution contains a condition of approval that requires the operator of the proposed use to clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day. The Property Business Improvement District (PBID) now in effect Downtown provides sidewalk cleaning services for the downtown, so cleaning of the public right-of-way other than immediately adjacent frontage is no longer required.*

3. Amplified sound may be restricted based on potential incompatibility with adjacent uses.

*The subject site should be compatible with the surrounding mix of commercial uses. Any noise generated from the subject use is subject to the general nuisance provisions of the San José Municipal Code. The nearest existing residential site on South 2<sup>nd</sup> Street is located approximately 200 feet away from the subject site to the east. A parking lot and South 2<sup>nd</sup> street are located between the subject site and this residential development.*

## California Environmental Quality Act (CEQA)

Under the provisions of Section 15301 (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be 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, in that no expansion of the existing use is proposed.

## Conclusion

Based on the above analysis, the proposal conforms to the City's specific guidelines for drinking establishments and 24-hour/late-night operating hours. The proposal is for conditional uses that have operated successfully in the Downtown Core with similar uses and contributes to the intended 24-hour

entertainment character of this area in the Downtown Core. Therefore, staff recommends that the Planning Commission approve the proposed Conditional Use Permit as recommended by staff.

**PUBLIC OUTREACH/INTEREST**

The property owners and occupants within a 500-foot radius of the subject site were sent public hearing notices for the Planning Commission hearing. This staff report has been posted on the City's web site. Staff has been available to discuss the proposal with interested members of the public.

**Project Manager:** Jenny Nusbaum

**Approved by:**



**Date:** 02/08/12

<b>Owner/Applicant:</b>	<b>Attachments:</b>
<p><u>Owner:</u> J.B Carlson LLC 56 South First Street San José, CA 95113</p> <p><u>Applicant Contact:</u> George Fan Temple Bar and Lounge 56 South First Street San José, CA 95113</p>	<p>Draft Resolution Police Memo Reduced Plans</p>

## **RESOLUTION NO. \_\_\_\_\_**

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Condition Use Permit to allow operation of a drinking establishment with late night use until 2:00 a.m. daily on a 0.08-gross-acre site on the east side of South First Street approximately 200 feet southerly of Santa Clara Street (52 South 1st Street).

### **FILE NO. CP08-049**

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

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on May 28, 2008, an application (File No. CP08-049) was filed for a Conditional Use Permit for the purpose of allowing operation of a drinking establishment with late night use until 2:00 a.m. daily, on that certain real property (hereinafter referred to as "subject property"), situate in the DC-Downtown Primary Commercial Zoning District, located on the east side of South First Street approximately 200 feet southerly of Santa Clara Street (52 South 1st Street) San Jose, 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 Jose 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, "A Building Renovation for At 52 South First Street, San Jose, CA," dated November 9, 1998. 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 Jose 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. The subject site is located the east side of South First Street approximately 200 feet southerly of Santa Clara Street.
2. The site is zoned DC-Downtown Primary Commercial.
3. This site has a designation of Core Area on the adopted San José 2020 General Plan Land Use/Transportation Diagram and has a designation of Downtown on the Envision San Jose 2040 General Plan Land Use/Transportation Diagram.
4. The Planning Commission approved a Conditional Use Permit (File No. RCP03-016) on the subject property for a public drinking and entertainment establishment (nightclub) with late night use between 12:00 midnight and 2:00 a.m.
5. The originally approved Conditional Use Permit included a term limit of five (5) years.
6. The originally approved Conditional Use Permit had an expiration date of July 9, 2008.
7. On May 28, 2008, the applicant filed the subject Conditional Use Permit to allow the continued use of the facility in accordance with the original approval in 2003.
8. Because the subject application, File No. CP08-049, is not a timely application for renewal, as defined by the Zoning Ordinance, which is more than 90 days, and no greater than 180 days, prior to the date of expiration, the application is deemed a new Conditional Use Permit request rather than a renewal.
9. The applicant is not proposing any change in uses from those previously approved by Conditional Use Permit RCP03-016.
10. The Zoning Ordinance does not require parking for the proposed use in the DC-Downtown Primary Commercial Zoning District.
11. No on-site parking is proposed as part of the project.
12. The site is approximately 0.08 gross acres in size.
13. The uses would occupy an approximately 3,120-square-foot ground floor tenant space in an existing 3-story commercial building (Waterman Building) originally constructed circa 1900 in the Richardsonian Romanesque architectural style.
14. The building is a Historic Resource in the City of San Jose, and is a Contributing Structure to the National Register Historic Downtown District.
15. The site is bordered by commercial retail and office uses including restaurants, bars, nightclubs, and retail shops.
16. The nearest residential development (The Globe) on South 2<sup>nd</sup> Street is approximately 200 feet east from the subject site.
17. No changes to the exterior of the building are proposed under this permit application.

18. The Director of Planning, Building, and Code Enforcement has determined pursuant to Section 15301 of the CEQA Guidelines 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.
19. The proposed project is subject to City Council Policy 6-27: Evaluation of 24-Hour Uses and City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.
20. The location of the proposed project is in an area of the Downtown Core that is identified in the San Jose 2020 General Plan and the Envision San Jose 2040 General Plan as an appropriate area for 24-hour entertainment uses.
21. The Police Department stated that it is neutral regarding the issuance of a Conditional Use Permit to allow operation of a public drinking establishment and late night use until 2:00 a.m. daily.

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.
4. The proposed project, as conditioned, conforms to Council Policy 6-27: Evaluation of 24-Hour Uses.
5. The proposed project, as conditioned, conforms to Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.

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

1. The proposed uses 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 in this title, or as 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 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 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

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 of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **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 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 in accordance with Title 20.
3. **Permit Adjustment Required.** The applicant shall secure and agree to implement a Permit Adjustment within 90 days of approval of this Permit to the satisfaction of the Director of Planning, Fire Chief, and Director of Public Works to provide revisions of floor plans to include seating layout and a consistent graphic scale to the satisfaction of the Director of Planning.
4. **Conformance with Plans.** Operations shall conform to approved development plans as adjusted entitled "A Building Renovation for At 52 South First Street, San Jose, CA," dated November 9, 1998 on file with the Department of Planning, Building and Code Enforcement.
5. **Additional Permits.** The applicant shall secure and/or maintain in good standing, any and all applicable permits from outside agencies and as required per the San José Municipal Code.
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
7. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.

8. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
  - a. Cleaning shall include 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 frontage.
  - b. The operator of the proposed use shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 6:00 a.m. daily.
  - d. The facility operator shall provide adequate ashtrays in areas consistent with other city requirement 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, nor create a nuisance for adjoining businesses.
9. **Hours of Operation.** 6:00 a.m. to 2:00 a.m., seven days a week.
10. **Lighting.** This permit allows no new exterior lighting.
11. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
12. **Security Personnel.** A minimum of two security officers shall be on duty for every 100 patrons using the drinking establishment during its hours of operation to control the patrons coming and going as well as to count the number of persons who have left the premises during nightclub business hours to the satisfaction of the Chief of Police.
13. **Queuing.** The operator shall use stanchions to contain the queuing line for its entire length. The queuing operation for the facility shall not disrupt pedestrian movements on the sidewalk, and shall allow for clear pedestrian movement on the sidewalk at all times. The queuing operation shall utilize the frontage of the subject site before utilizing adjacent business frontage.
14. **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.
15. **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

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**APPROVED** and issued this **22<sup>nd</sup> day of February 2012**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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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.*



# Memorandum

**TO: Jenny Nusbaum**

**FROM: Ofcr. C. Zarate #3165**  
San Jose Police Vice Unit

**SUBJECT: CP08-049**

**DATE: April 1, 2011**

Approved

Date

I have received your request for input regarding Temple, 52 S. First Street, San Jose, Ca 95110. Temple is to renew their Conditional Use Permit for a public drinking establishment with live entertainment and after midnight use until 2:00am.

The location is not currently in a Project Crackdown, or Weed and Seed area

Temple is located in San Jose Police Beat E3. 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
E3 (2010)	354	781	1135	Yes
City Average	314	215	528	

Department of Alcohol Beverage Control (ABC) records indicate the Temple is in census track 5009.01 Pursuant to B&P Section 23958.4 (a)(2) ...the ratio of on-sale retail licenses to population in census tract 5008 **does** exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

### Authorized and Current ABC Licenses in Census Track 5009.01

Census Tracks	Authorized ABC Licenses As of January 2008		Current ABC Licenses As of May 18, 2010		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5009.01	4	3	55/3	5/1	YES	YES

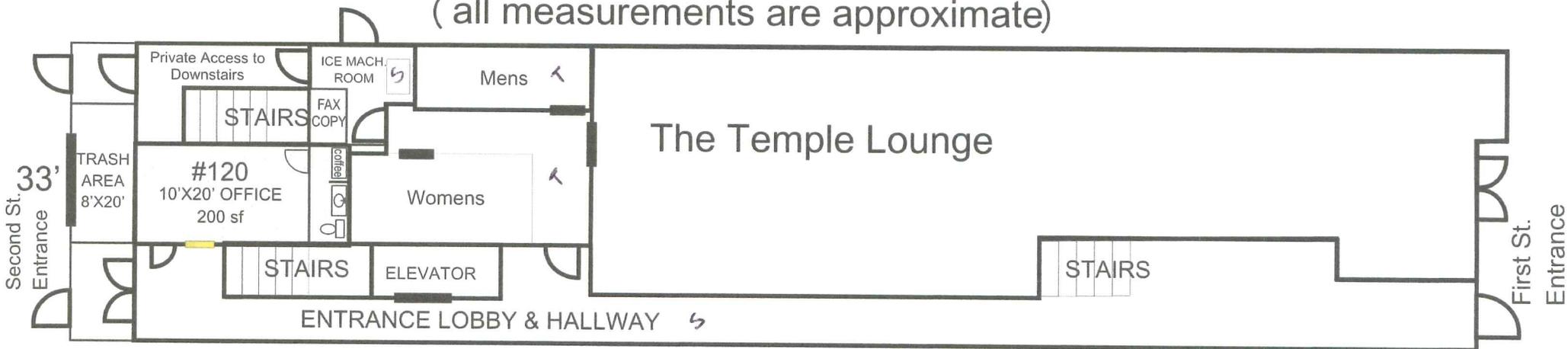
The San Jose Police Department is neutral to the renewal of a Conditional Use Permit for a public drinking establishment with live entertainment and after midnight use until 2:00am.

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

Officer Christine Zarate #3165  
Administrative Officer  
Special Investigations/Vice

Carlson Building  
52 S. First Street  
(Downtown) San Jose CA 95008  
Leasing info- Bill 408-202-5410

(all measurements are approximate)

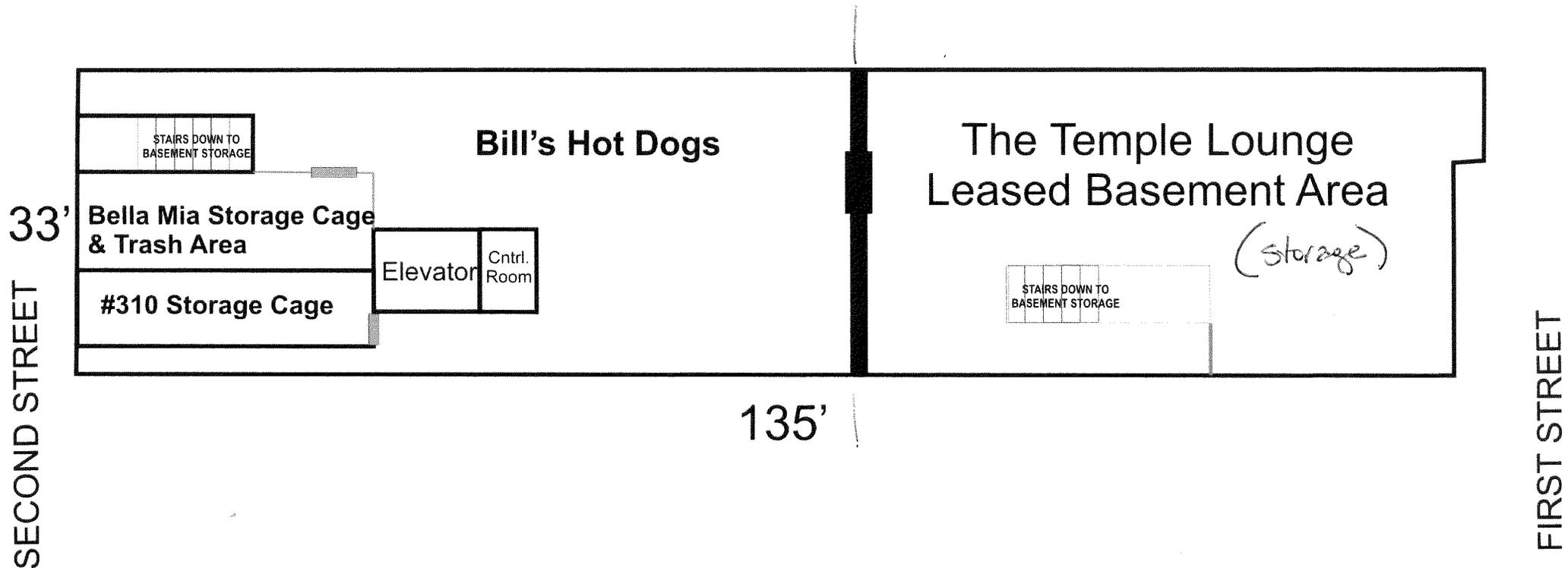


135'

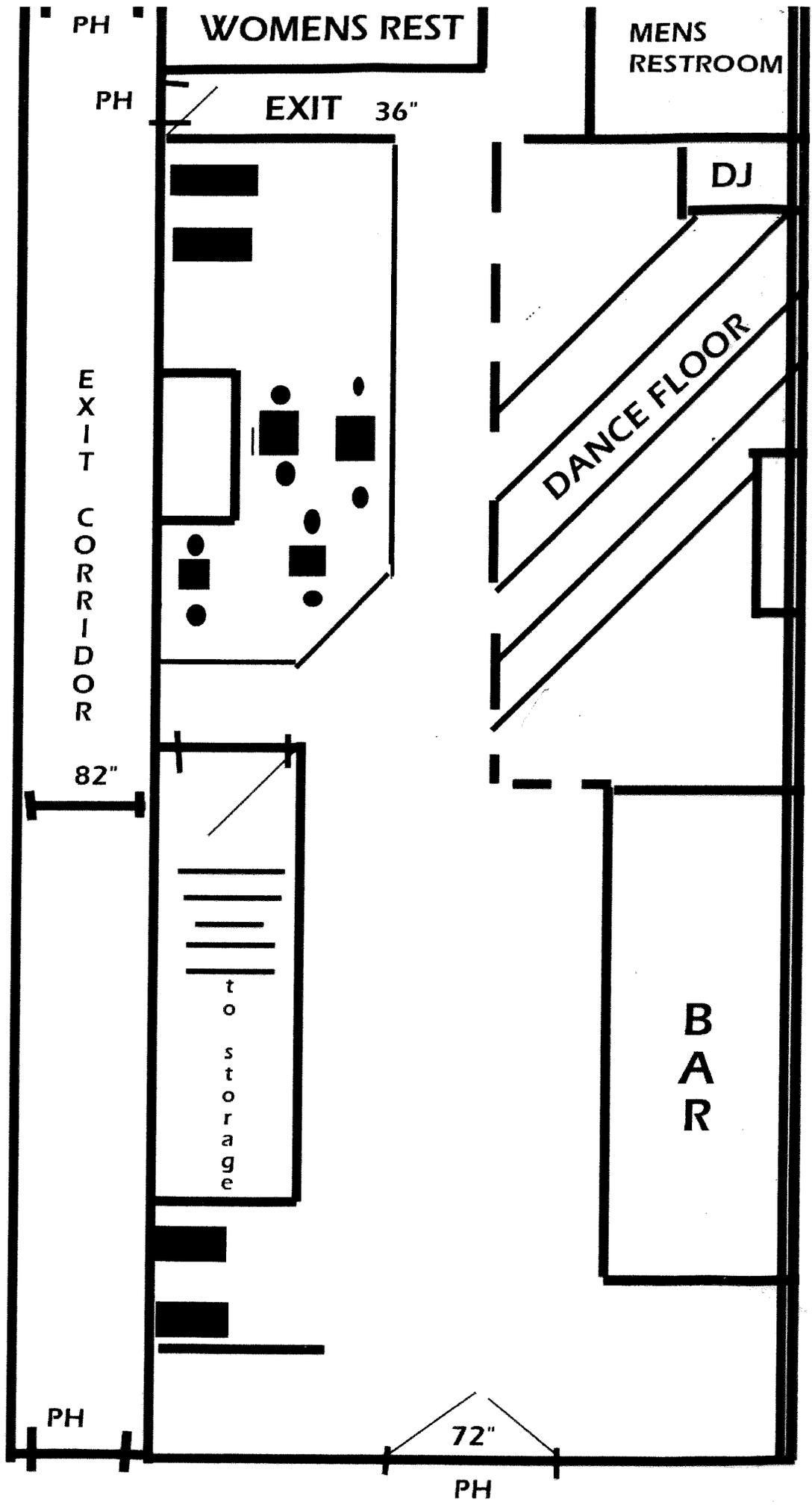
FIRST FLOOR TENANTS

# BASEMENT 52 S. First Street

(all measurements are approximate and not to scale)



TEMPLE BAR  
&  
LOUNGE  
52 S. FIRST ST

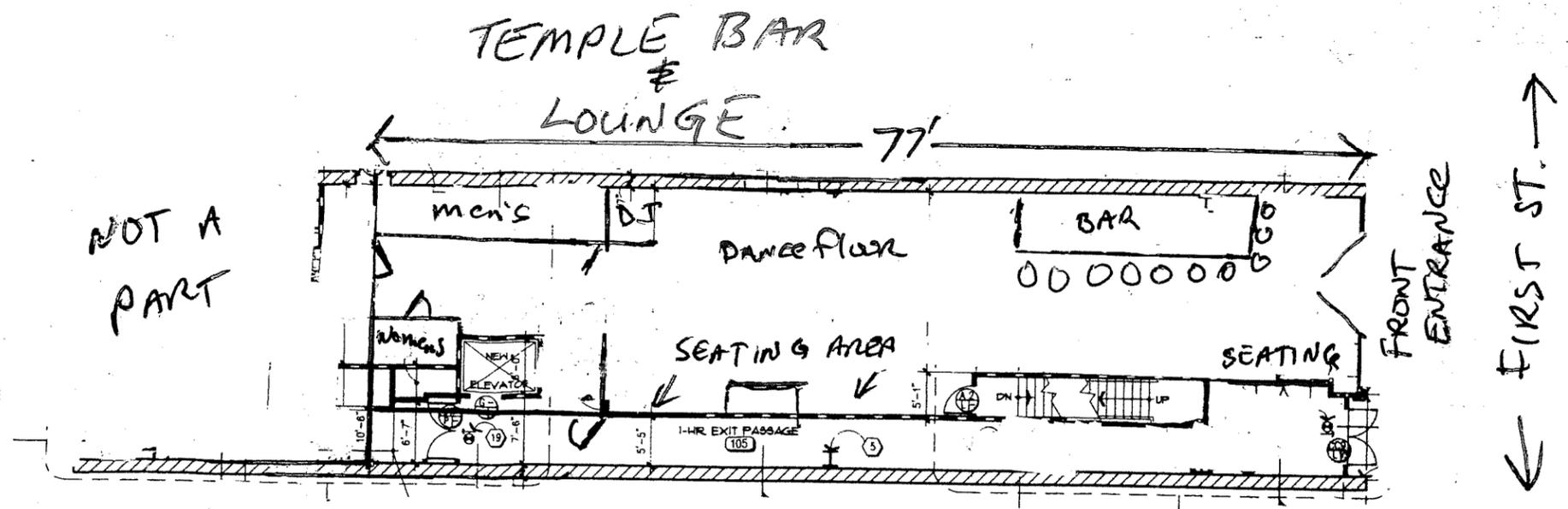




52 N 1st St, San Jose, CA 95113

SITE

**SITE PLAN**  
CONDITIONAL USE PERMIT  
RENEWAL  
THE TEMPLE  
ON SALE GENERAL TYPE 48  
52 S FIRST ST. S.J.

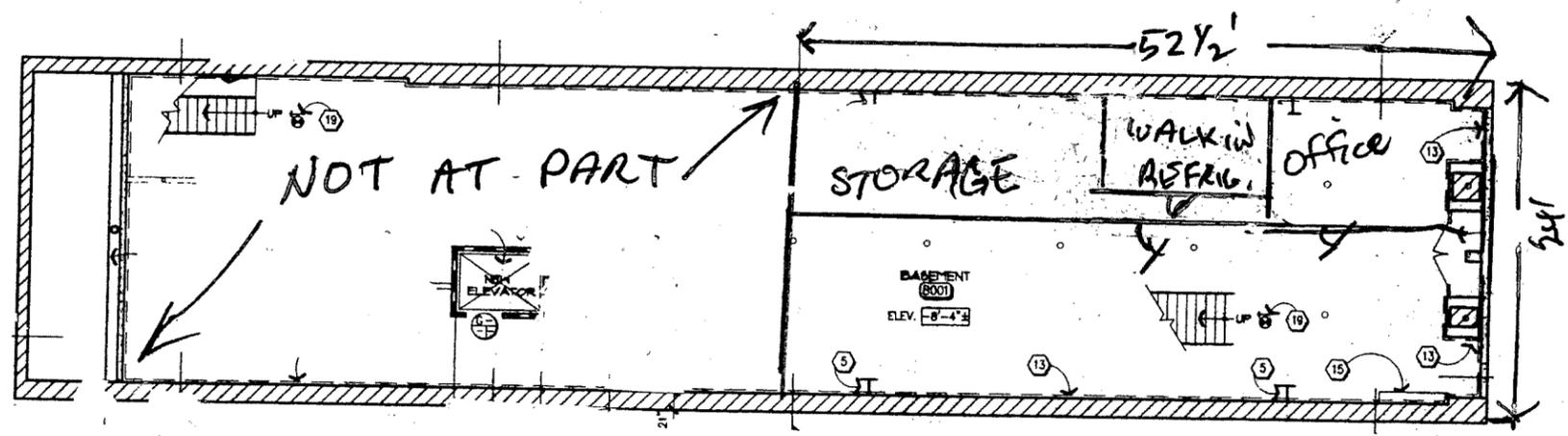
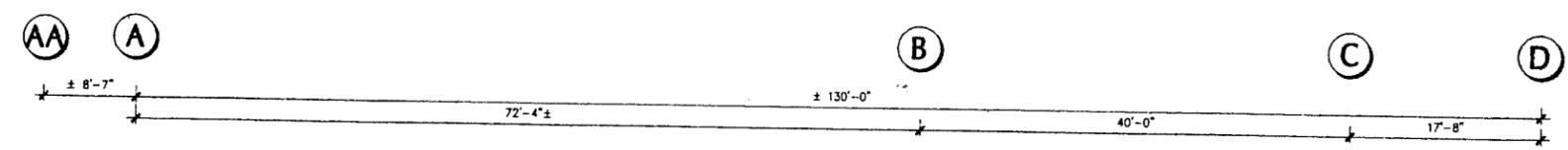


FIRST FLOOR PLAN

SCALE: 1/8"=1'-0"



52 S. FIRST ST. SAN JOSE, CA 95113



BASEMENT FLOOR PLAN

SCALE: 1/8"=1'-0"

