



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: October 18, 2004

SUBJECT: SUPPLEMENTAL MEMORANDUM, CP03-010 CONDITIONAL USE PERMIT LOCATED ON THE NORTHEAST CORNER OF MONTEREY ROAD & RANCHO DRIVE (FIESTA NIGHTCLUB).

The proposed project would allow a drinking and entertainment establishment at an existing restaurant (Fiesta Nightclub) on a 2.16-acre site in the CN-Commercial Neighborhood Zoning District. The proposal would also allow the business to stay open until 2:00 a.m. and include an alternating use parking arrangement for shared parking facilities.

This item was last heard before the Planning Commission on September 22, 2004. At that hearing the Commission recommended continuance of the item for 30 days so that staff could prepare a resolution with appropriate conditions for consideration in support of the proposed use. The Director of Planning had previously recommended denial of the proposal.

Testimony at the hearing included comments from George Shirakawa Jr. who represented the applicant. He articulated the social benefits of the proposed club for the Hispanic community which at present are not adequately served in this area. At the hearing, he has submitted a nightclub security plan that included the hiring of two (2) to four (4) security personnel. Further, he agreed to include all elements of the plan in the project if approved. Several members from the public, none of which were residents from the adjacent residential developments, echoed the need for such a facility in this area. No area residents spoke in opposition to the proposal.

The attached resolution for approval includes a number of conditions that staff feels are appropriate in order to minimize any adverse impacts that might result from the proposed use. Included in the resolution are conditions that relate to the following key items or issues noted below (see resolution for complete list of conditions);

- ◆ Construction of an 8' tall soundwall along the property adjacent to residential uses.
- ◆ Installation of upgraded parking lot lighting.
- ◆ Inclusion of requirements to implement measures in the applicant's security plan.
- ◆ Provisions to allow an alternating parking arrangement and related limitations on the occupancy requirements.
- ◆ Limitations on the overall hours of operation (i.e. closure at 2:00 a.m.)
- ◆ Requirements to install and maintain landscaping as proposed.
- ◆ Requirement for a compliance hearing after one (1) year.
- ◆ Limitation on the term of the permit of five (5) years.

Planning Commission

Subject: Supplemental Memorandum, CP03-010, Fiesta Nightclub

October 18, 2004

Page Two

Subsequent to the initial Planning Commission hearing, the applicant's representative indicated to staff that negotiations have taken place to secure off-site parking at the vacant, unimproved commercial parcel to the north. While this adjacent site may be a suitable location for additional parking upon the completion of appropriate improvements (i.e. paving, lighting and landscaping), a final determination regarding the site's appropriateness as an off-site parking facility would be made upon the formal review of a Special Use Permit (SUP). If such a SUP were to be approved, the permit would encumber the adjacent site to provide a long-term obligation for a specific number of parking spaces for the benefit of the Fiesta Nightclub facility. If alternative parking arrangements are secured, the applicant could then apply for a Conditional Use Permit Amendment to modify some of the permit conditions included in this permit related to alternating parking.



Stephen M. Haase, Director
Planning, Building and Code Enforcement



FIESTA BAR & RESTAURANT

NIGHTCLUB SECURITY PLAN

UPDATED
10-20-04

INTERNAL SECURITY

NORTH AMERICAN PROTECTIVE SERVICES
GEORGE AGUILAR
1455 E. FOXWORTHY AVE.
SAN JOSE, CA 95118
PPO # 14678

ASSIGNMENT-5 OFFICERS

Hours: 8:00 P.M. to 2:00 A.M.

STATIONED AT ALL 5 EXIT DOORS INCLUDING FRONT DOOR
MONITOR RESTROOM ENTRANCE(located next to exit on southeast corner)
MONITOR BAR AREA(from southwest exit)
MONITOR REAR AREA/KITCHEN(from all locations)
MONITOR DANCE FLOOR AREA
INTERIOR SECURITY BACK-UP

M&M PRIVATE SECURITY
JOSE MONTERO
1815 ALUM ROCK AVE.
SAN JOSE, CA
PPO # 14776

ASSIGNMENT-5 OFFICERS

Hours: 9:00 P.M. to 2:00 A.M.

**STATION AT FRONT DOOR
MONITOR CASHIER
LINE CONTROL
PATROL INTERIOR AREAS
PARKING LOT BACK-UP
ASSIST WITH CAPACITY COUNTS**

EXTERNAL SECURITY

ATLAS SECURITY & PATROL
MICHAEL MEDLIN
3851 CHARTER PARK DR. #V
SAN JOSE, CA 95136
PA-009573

ASSIGNMENT-3 OFFICERS

Hours: Officer # 1 9:00 P.M. to 2:00 A.M.
 #2 10:00 P.M. to 2:00 A.M.
 #3 10:00 P.M. to 2:00 A.M.

**ALL OFFICERS WILL BE IN A MARKED SECURITY VEHICLE IN ORDER TO HAVE
MOBILE RESPONSE AND FLEXIBILITY**

SEE PLAN #1-ATTACHMENT NEXT PAGE

ADDITIONAL INFO:

Position #1-will ensure businesses across the street are not impacted. Atlas will work with contracted Tow Company to support the security team.

Position #2-will patrol area on Fahren Drive and monitor VTA parking lot.

Position #3-will circulate in the Parking lot and support other positions as well as front door line.

ALEX HAWARI
PROPERTY OWNER
3840 MONTEREY RD.
SAN JOSE, CA 95111

ASSIGNMENT

PROPERTY OWNER WILL HIRE SAN JOSE POLICE "PAY JOB" OFFICERS TO PATROL PARKING LOT, RANCHO DRIVE AND ASSIST IN FRONT LINE CONTROL.

HOURS: 10:00 P.M. TO 2:00 A.M.

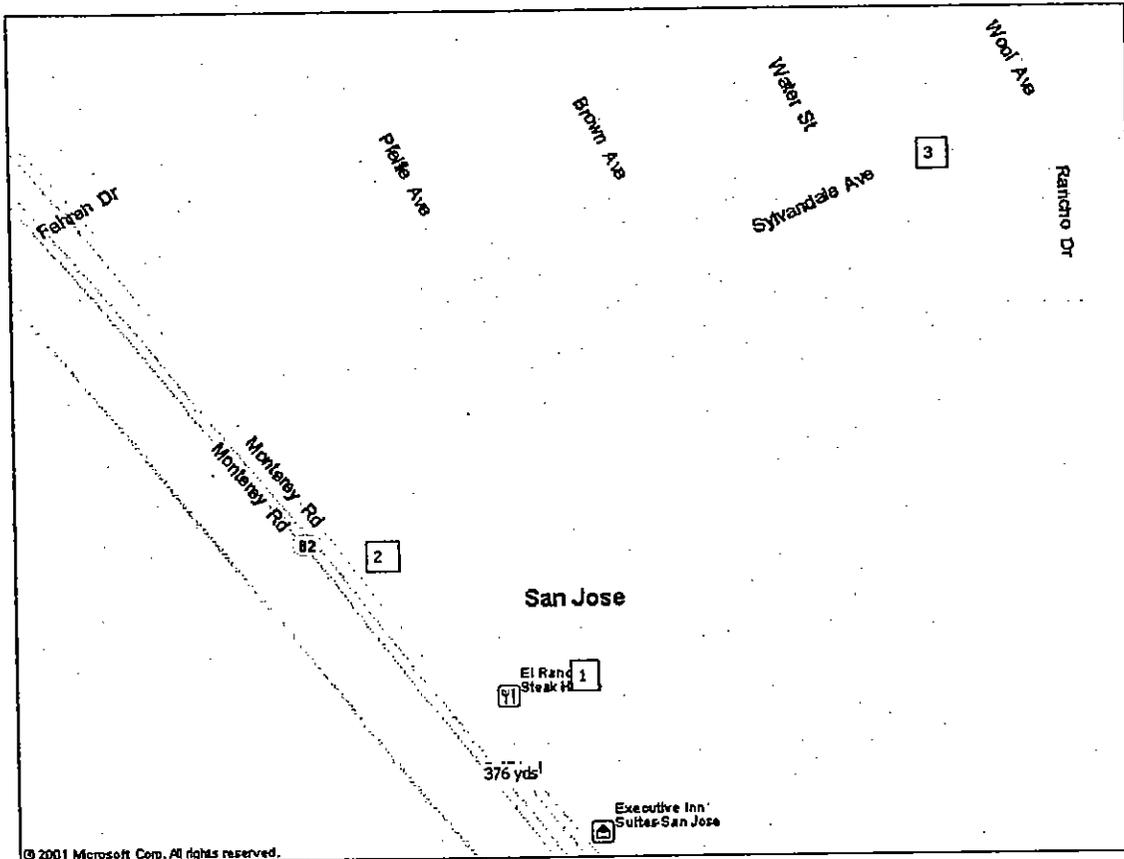
SCHEDULE:

THURSDAY & FRIDAY 2 OFFICERS

SATURDAY & SUNDAY 4 OFFICERS

****NOTE: COUNCIL POLICY PROHIBITS "PAY JOB" OFFICERS FROM WORKING AT NIGHTCLUBS OUTSIDE THE "ENTERTAINMENT ZONE".**

Fiesta Club Parking Control Security Plan 1



Position 1 – One officer to be stationed on the Southeast corner of the property. From this point the officer can discourage patrons from parking on Rancho Dr. and monitor the parking area across the street on the South.

Position 2 – One officer on the Northwest corner of the property will monitor and discourage patrons from parking in residential areas on Fehren Dr.

Position 3 – One officer with a vehicle would monitor the parking areas and maintain a high visual presence around the area.

In addition, 1 of the 3 officers or an additional officer can assist with line management as needed.

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

Hearing Date/Agenda Number
09/22/04 *Item: 4. d.*

File Number
CP 03-010

Application Type
Conditional Use Permit

Council District
7

Planning Area
South

Assessor's Parcel Number(s)
497-07-027

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John W. Baty

Location: Northeast corner of Monterey Road and Rancho Drive (3840 Monterey Road)

Gross Acreage: 2.16

Net Acreage: 2.16

Net Density: N/A

Existing Zoning: CN-Commercial
Neighborhood

Existing Use: Public Eating Establishment

Proposed Zoning: No Change

Proposed Use: Same, Drinking Establishment, Entertainment
Establishment, both with late night use, and an alternating parking
arrangement

GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: Vacant Commercial / Residential

CG-Commercial General / Unincorporated County

East: Multi-family residential

R-M Residence

South: Commercial

CN-Commercial Neighborhood

West: Commercial across Monterey Road

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: JWB

Environmental Impact Report found complete
 Negative Declaration circulated on
 Addendum to Negative Declaration adopted on September 7, 2004

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: JWB

Annexation Title: Franklin No. 21

Date: 7/18/63

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 9-15-04

Approved by: *John Hammett*
 Action
 Recommendation

APPLICANT	OWNER
Miguel Sandoval 3840 Monterey Road San José, CA 95111	Alex Hawari 2702 Sequoia Creek Road San José, CA 95121

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JWB

Department of Public Works

None.

Other Departments and Agencies

See Police Department Memorandum dated July 13, 2004.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Miguel Sandoval, is requesting a Conditional Use Permit to allow a drinking and entertainment establishment at an existing restaurant (Fiesta Nightclub) on a 2.16-acre site in the CN-Commercial Neighborhood Zoning District. The applicant is also requesting to allow the business to stay open until 1:30 a.m. and an alternating use parking arrangement for the shared parking facilities. Entertainment and drinking establishments and late night uses require a Conditional Use Permit in the CN-Commercial Neighborhood Zoning District. Alternating use of parking facilities also requires the issuance of a Conditional Use Permit.

The Zoning Code defines an entertainment establishment as any establishment (indoors or outdoors) where entertainment, either passive or active, is provided for the pleasure of the patrons, either independent or in conjunction with any other use. Such entertainment includes but is not limited to, vocal and instrumental music, dancing, karaoke, comedy, and acting. A drinking establishment is any place where alcohol is sold, offered for sale, or served to patrons independent of any other activity, including but not limited to eating, entertainment, karaoke, etc. A late night use is any establishment that remains open between the hours of 12:00 midnight and 6:00 a.m.

Prior to the adoption of the new Zoning Ordinance, effective February 19, 2001, the site had a zoning designation of C-2 Commercial. Nightclubs were not allowed in the C-2 Commercial Zoning District. Nightclubs were a conditional use in the less restrictive C-3 Commercial Zoning District. On February 12, 1996 the City Council took action to deny a proposed rezoning (File No. C94-053) from C-2 to C-3 Commercial. An associated Conditional Use Permit (File No. CP95-007) to allow nightclub use was filed in January 1995.

In January 1999 an application for a rezoning of the property (File No. C99-002) and a Conditional Use Permit (File No. CP99-003) were filed. The proposed rezoning and Conditional Use Permit along with the previous Conditional Use Permit (File No. CP95-007) were set for hearing with staff's recommendation that the Planning Commission recommend denial of the rezoning and take action to deny the two Conditional Use Permits. The applicant decided to withdraw the rezoning and Conditional Use Permit requests prior to Planning Commission consideration.

The project site, a 2.16-acre parcel, is on the northeast corner of Monterey Road and Rancho Drive. Access to the site is provided from driveways off both Monterey Road and Rancho Drive. The site contains two existing buildings oriented toward Monterey Road. The Fiesta Nightclub restaurant shares the northerly building with Linda's Market while the El Ranchero restaurant occupies the southerly building. Surrounding uses include a commercial lot to the north, a single-family residence to the northeast, apartments to the east, commercial uses to the south and west across Rancho Drive and Monterey Road respectively.

Project Description

As described above, the proposed project is to allow an entertainment and drinking establishment in conjunction with the existing Fiesta Nightclub restaurant. The project also includes a request to allow the entertainment and drinking establishment uses to remain open past midnight and to benefit from an alternating use parking arrangement when Linda's Market and El Ranchero Steakhouse are closed.

Although the focus of the permit is the Fiesta Nightclub use, the project includes overall site improvements to the existing parking, circulation and landscaping. No physical expansion to the existing building is proposed.

ENVIRONMENTAL REVIEW

Despite the denial of the previous applications, the Director of Planning was able to make the necessary findings to grant a Negative Declaration for a previous project (File numbers C94-053 and CP95-007) for a nightclub proposal. The Negative Declaration was protested, however the Planning Commission upheld the Director of Planning's decision to adopt the Negative Declaration. The proposed use is essentially identical to the previous proposal therefore, upon review of additional/supplemental information as identified below, an Addendum to the Negative Declaration was granted.

A noise analysis and subsequent noise analysis verification tests were prepared in 1995 for the previous proposal. The City of San José General Plan noise standards specify an exterior noise exposure limit of 55 dB DNL¹ at property line for residential land uses impacted by commercial uses. The General Plan also includes a 45 dB DNL interior noise quality level. In 2001 the Zoning Ordinance was revised to include performance standards that limit the maximum single-event noise exposure from commercial uses at residential property lines to 55 dBA L_{max}².

¹ DNL (Day/Night Level) is a 24-hour time-weighted average descriptor commonly used to define community noise environments.

² L_{max} represents maximum single-event noise.

A revised noise analysis was prepared on September 1, 2004 to analyze the levels of noise anticipated to be generated by the proposed project which was evaluated in the context of the standards of the City of San José Zoning Ordinance. The noise analysis also includes a revised evaluation of the project based on City of San José General Plan noise standards.

The proposed project will incorporate the recommendation to prohibit the use of rear doors of the facility except for emergency exit purposes, and to prohibit the congregation of patrons near the rear of the facility or in the vicinity of the residential neighbors. In addition a 7-foot tall noise barrier is proposed along the easterly property line.

With the above recommendations the noise exposures and noise levels under normal conditions³ are expected to be 48 dB DNL and 52 dBA L_{max} at property line and the expected interior noise levels of the most affected residences will be 45 dB DNL or lower. Provided that all mitigation measures are properly adhered to, the proposed project is expected to be within the limits of the City of San José General Plan noise standards and Zoning Ordinance Performance Standards for noise.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that this designation is intended to permit and wide variety of commercial uses including nightclubs. The proposal includes substantial landscape improvements, which is consistent with the General Plan Commercial Land Use Policy that encourages upgrading and beautifying of commercial uses.

The proposed use, however, is not consistent with the General Plan Commercial Land Use Policy, which states that commercial uses should be compatible with existing surrounding neighborhoods. Late night uses such as this have often shown to be a nuisance to adjacent or nearby residential uses. See analysis for additional discussion.

ANALYSIS

The key issues relative to this project discussed below are conformance to the: 1) City Council Policy 6-27: *Evaluation of 24-hour Uses*, 2) City Council Policy 6-23: *Evaluation of Nightclubs and Bars*), and 3) Zoning Ordinance.

Conformance to Council Policy 6-27: *Evaluation of 24-hour Uses*

This proposal to allow an entertainment and drinking establishment to operate past 12:00 midnight generally does not conform to the City Council Policy for 24-hour uses. The intent of the policy is to establish guidelines to help avoid potential conflicts that tend to be associated with late night or 24-hour uses.

³ Normal conditions for the proposed project includes noise from the parking lot, patrons walking to and from their cars, and music from within the facility.

Use Separation

The policy recommends that 24-hour uses not be located within 300 feet from any property residentially zoned, planned, or used. The project site shares property lines to the north and east with residential development. However, 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 intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria. Such uses often tend to have amplified music or other noise impacts such as from the vehicles of patrons that potentially cause a nuisance to adjacent residential properties. Given that the subject nightclub would be open past midnight, has rear exit doors and a small portion of its parking lot directly adjacent to residential uses, there remains a high probability that noise could cause an adverse impact to adjacent residents. It may not be reasonable to expect that the management of the nightclub will always be able to control all aspects of the behavior of the patrons to ensure that there are no noise impacts to adjacent residents.

Police Issues

The Chief of Police has provided a written memorandum (see attached) analyzing crime statistics and police safety issues. Based on this information, the Police Department recommends that the requested Conditional Use Permit not be approved. The subject property is located within Police Beat L5, which has an overall crime index slightly lower than the overall City average, however, it is in close proximity to several police beats within the same Police District that have a higher than average crime index. Resources are often redirected to the overload of calls for service in the adjacent areas. Further, the summarized crime statistics noted in the memorandum do not evaluate all types of crime but rather those associated with the most serious crimes such as, but not limited to homicide, rape, robbery and aggravated assault. Other types of crimes that are often more associated with nightclub uses such as drunk in public, disturbances and fights are not reflected in the crime index statistics provided. Such crimes, however, typically utilize a significant amount of Police resources and are thus a cause of concern as it relates to this proposal.

Noise

Although the noise analysis demonstrates that the proposed use will not exceed the City's noise standards under normal operating conditions it is difficult to anticipate the impacts to the surrounding residential properties when the noise exceeds anticipated normal levels. Noise impacts of a less predictable nature may include rear doors left open during business hours contrary to the recommendations in the noise report and/or excessive and late night noise caused on occasion by patrons and/or their vehicles in the parking area. The prevention of these potential impacts may not always be within the direct control of the management of the nightclub.

Site Improvements

The proposal conforms to the guidelines that suggest the physical condition of the site be evaluated and improvements implemented where needed. Substantial site improvements to the parking, circulation and landscaping are being proposed with this project.

Mitigation Management Plan

If the Conditional Use Permit is approved to allow an entertainment/drinking establishment to operate past midnight a mitigation management plan should be required to address control of noise, litter, graffiti, etc. and to provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activity. To date, no such plan has been prepared. Although staff is recommending denial of this proposal, in the event that the Planning Commission (or City Council on appeal) is considering approval of the request, action on the project should be deferred to allow the preparation of such a plan to the satisfaction of the Director of Planning working with the Police Department.

Specific Development Types

The policy identifies additional guidelines applicable to specific development types (i.e. drive-through restaurants, nightclubs, etc). For bars and nightclubs, the policy recommends compliance with City Council Policy 6-23 (Guidelines for the Evaluation of Nightclubs and Bars).

Conformance to Council Policy 6-23: *Evaluation of Nightclubs and Bars*

The intent of this policy is to ensure that nightclubs and/or bars are compatible with the surrounding neighborhood. Many elements and objectives of this policy are similar to those identified in City Council Policy 6-27 (Evaluation of 24 hours uses) as discussed in the previous section. In general, this project does not adequately conform to the key elements of this policy.

A nightclub is defined as an establishment that stays open late at night and provides entertainment, dancing, food and drink and are not ancillary to a full-service restaurant.

Land use compatibility

The policy specifies that nightclubs should be discouraged from locating adjacent to or near any existing residential uses. The project site is located adjacent to a single-family residence to the northeast and apartments to the east with additional residential single and multi-family residential units nearby; therefore, the proposal does not meet the nightclub location policy criteria for separation from residential uses.

It is the responsibility of the Chief of Police to evaluate nightclub proposals to ensure the safety and security of both patrons and citizens. After evaluating the crime statistics for the project site and the surrounding area, it has been determined that the Fiesta Nightclub is located in a high crime Police District of which 4 of the 6 Police beats exceed the 20% crime index. The Police Department does not support the proposed project given its location in a high crime Police District.

Noise

Noise generated from the proposed use should not impact the surrounding area. According to the noise analysis, as described in the environmental review section above, under normal operating conditions the project should meet the City's noise standards. The project proposes to maintain the rear and side facing doors as emergency exit only. To the extent that the rear doors, in fact

remain closed at all times, noise emanating from the building should not be a problem. Given the close proximity of the adjacent residential uses, in the event that the doors do not remain closed during operating hours, noise would most likely be a nuisance.

The area behind the Fiesta Nightclub building is proposed for employee parking only to better limit the level of activity and vehicle turnover in this area. A 7-foot tall noise barrier is proposed along the property line to help mitigate the noise generated by parking lot activity. Employees that leave the premises after closing hours (after 2:00 a.m.) from the parking area nearest the adjacent residential uses may cause some minor noise impacts to the adjacent residents. These impacts could be compounded to more problematic levels if the employees engage in conversations or play their car stereos within this area as they prepare to leave.

Conformance to the Zoning Ordinance

The current zoning of the site CN-Commercial Neighborhood allows for entertainment and drinking establishments with the issuance of a Conditional Use Permit. However, the intent of this zoning district is to provide for neighborhood serving commercial uses while minimizing adverse impacts to neighboring residents. While the existing restaurants and market serve the neighborhood with minimal impacts, the size and scale of the proposed late night entertainment and drinking establishment would serve a larger regional market and increase the potential for adverse impacts to the neighborhood.

Parking

The subject property will have 156 parking spaces to be shared between the three businesses on the site including Fiesta Nightclub, Linda's Market and El Ranchero Steak House. El Ranchero Steak House requires 42 parking spaces and Linda's Market requires 11 parking spaces. The remaining 103 parking spaces are available for the Fiesta Nightclub. With 103 parking spaces the Fiesta Nightclub would be limited to 4,100 square feet of area open to the public or 257 seats. This limitation would be difficult to enforce given that the Fiesta Nightclub can physically accommodate 6,222 square feet of floor area open to the public.

The applicant proposes an alternating use of the common parking facilities for the hours when the Fiesta Nightclub is open and Linda's Market and El Ranchero Steak House are closed (9:00 p.m. and 1:30 a.m. Thursday through Sunday). Under this parking arrangement the Fiesta Nightclub would have access to all 156 parking spaces. The Zoning Ordinance parking requirement for entertainment establishments with any food or alcohol service is 1 parking space per 40 square feet of floor area open to the public. Based on this standard, the Fiesta Nightclub would need to provide 155 parking spaces for the entire 6,222 square feet of floor area open to the public, one less than available through the alternating use parking arrangement proposed.

The concept of an alternating parking arrangement is generally acceptable for the combination of uses that presently exist on the site. In the event that this project was to be considered for approval, Linda's Market and El Ranchero Steak House, or any subsequent businesses, would be required to close at 9:00 p.m. Since businesses are generally allowed by right to operate until 12:00 midnight, this could be seen as an undue economic burden on the business owners of those uses that occupy the site with the Fiesta Nightclub. Limitations on the occupancy of the Fiesta Nightclub could also be imposed during the time periods that all three businesses on the overall site are in concurrent operation. Keeping in mind though the difficulty enforcing such a use of

space limitation, interior alterations would need to be made to the building to create a physical separation of the interior space so it can be closed off to use and easily enforced by Code Enforcement of the Police.

Conclusion

The City Council has adopted policies relative to the evaluation of 24-hour uses and nightclubs in order to help ensure that the uses conform to City requirements and are compatible with their surrounding neighborhood. The policies include specific guidelines that address land use compatibility, noise, parking, and other operational topics such as providing adequate lighting, and garbage and litter removal and control.

The proposal to allow an entertainment and drinking establishment with operation past 12:00 midnight can meet noise and parking standards and can be adequately conditioned to meet typical operational requirements. However, meeting these standards may not always be achievable. As noted in the policies used to evaluate such projects, nightclubs in close proximity to residential uses are inherently incompatible. Given this incompatibility, the location in a high crime Police District, and the questionable effectiveness of conditions, staff is recommending denial of this Conditional Use Permit request.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

A community meeting was held in March, 2004. Some of the community concerns that were raised by the community included parking overflowing into the neighborhood, intoxicated drivers, noise, security, and the need for site improvements.

Approximately 190 area residents signed a petition circulated by the applicant in support of the proposed project.

RECOMMENDATION

Planning staff recommends that the Planning Commission **deny** the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

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

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposal includes substantial landscape improvements, which is consistent with the General Plan Commercial Land Use Policy that encourages upgrading and beautifying of commercial uses.

3. The proposal is not consistent with the General Plan Commercial Land Use Policy, which states that commercial uses should be compatible with existing surrounding neighborhoods.
4. The proposal is subject to City Council Policy 6-27: *Evaluation of 24-hour Uses* and City Council Policy 6-23: *Evaluation of Nightclubs and Bars*.
5. The project site is located on a 2.16-gross-acre parcel in the CN-Commercial Neighborhood zoning district.
6. The site was annexed to the City of San José on July 18, 1963.
7. The use of the site was retail/commercial at the time of annexation.
8. The project site is currently developed with two buildings. One building includes a restaurant (Fiesta Nightclub) and a convenience store (Linda's Market). The other building is a restaurant (El Ranchero Steak House).
9. The current hours of operation for Linda's Market are Monday through Friday 9:00 a.m. to 9:00 p.m. Permissible hours of operation are 6:00 a.m. to midnight.
10. The current hours of operation for El Ranchero Steak House are Monday through Friday 7:00 a.m. to 9:00 p.m. Permissible hours of operation are 6:00 a.m. to midnight.
11. The portion of the building that is currently the Fiesta Nightclub was converted to restaurant use after annexation.
12. The applicant is requesting that the existing restaurant (Fiesta Nightclub) be allowed to expand their use to include an entertainment establishment and a drinking establishment.
13. The applicant is requesting that the entertainment and drinking establishment be allowed to remain open until 1:30 a.m. Thursday through Sunday.
14. The proposed hours of operation for the Fiesta Nightclub restaurant use are 10:00 a.m. to 12:00 midnight Monday, Tuesday and Wednesday with no entertainment. On Thursday, Friday, Saturday and Sunday the restaurant will operate between 10:00 a.m. and 9:00 p.m.; from 9:00 p.m. to 1:30 a.m. the entertainment and drinking establishment uses would occur.
15. Drinking and entertainment establishments and late night use are conditional uses in the CN-Commercial Neighborhood zoning district.
16. The project includes landscaping and parking lot improvements.
17. The project proposes 156 parking spaces to be shared between the three uses.
18. El Ranchero Steak House requires 42 parking spaces.
19. Linda's Market requires 11 parking spaces.
20. The Fiesta Nightclub restaurant use, which has hours of operation that overlap with El

Ranchero Steak House and Linda's Market, is allocated the 103 remaining spaces.

21. To conform to the City's parking requirements the Fiesta Nightclub dining and bar area open to the public would need to be limited to 4,100 square feet or 257 seats.
22. The Fiesta Nightclub entertainment and drinking establishment is open when El Ranchero Steak House and Linda's Market are closed therefore all 156 parking spaces are available for use by the Fiesta Nightclub.
23. The project site backs up to an existing apartment complex to the east, a single-family house to the northeast, a commercial lot to the north, commercial uses across Rancho Drive to the south, and commercial to the west across Monterey Road.
24. The project site is located more than 500-feet away from an existing school.
25. Since 1998 there have been no new Code Enforcement cases related to Zoning or Building Code violations.
26. The Police Department has recommended against the proposed proposal.
27. The Police Department has indicated that the project is located within a Police District (comprised of 6 police beats) with a combined overall higher than average crime index.
28. According to crime statistics, between January 1, 2003 and June 15, 2004 there were a total of 27 reported incidents and calls for service that occurred at 3840 Monterey Road.
29. Between January 1, 2003 and June 15, 2004 there was a total of 1110 reported incidents and calls for service that occurred within 1000 feet of 3840 Monterey Road.

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

1. The proposed use is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.
2. The proposed site improvements to the parking, circulation and landscaping are consistent with the General Plan Commercial Land Use Policy that encourages upgrading and beautifying of commercial uses.
3. The proposed use is **not** consistent with the General Plan Commercial Land Use Policy that states that commercial development should be compatible with existing surrounding neighborhoods.
4. The proposed project complies with the Zoning Ordinance development standards for the CN-Commercial Neighborhood Zoning District.
5. The proposed project does **not** comply with the applicable criteria of City Council Policy 6-27: *Evaluation of 24-hour Uses*.

6. The proposed project does **not** comply with the applicable criteria of City Council Policy 6-23: *Evaluation of Nightclubs and Bars*.
7. The proposed project is in compliance with the California Environmental Quality Act (CEQA).

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**:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; and
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; and
 - c. Be detrimental to public health, safety or general welfare.
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 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; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

This permit application is therefore **DENIED**.

Attachments

cc:

ADDENDUM TO A NEGATIVE DECLARATION

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to a Negative Declaration (ND) adopted for a previous project. Because minor changes made to the project described below do not raise important new issues about the effects on the environment, this project is adequately covered by this Addendum to the Negative Declaration from the previous project.

PROJECT DESCRIPTION AND LOCATION

CP03-010. Conditional Use Permit for a project located at the northeast corner of Monterey Road and Rancho Drive on a 2.16-gross-acre site in the CN-Commercial Neighborhood Zoning District to allow an entertainment/drinking establishment and operation after midnight. Council District 7. County Assessor's Parcel Number 497-07-027

CERTIFICATION

The environmental impacts of this project were addressed by an Initial Study and documented by a Negative Declaration for Conditional Use Permits, File Nos. C94-053 and CP95-007, and certified as final on November 15, 1995. Specifically, the following impacts were reviewed and found to be adequately considered by the ND:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Traffic and Circulation | <input type="checkbox"/> Soils and Geology | <input checked="" type="checkbox"/> Noise |
| <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Hazardous Materials | <input checked="" type="checkbox"/> Land Use |
| <input type="checkbox"/> Urban Services | <input checked="" type="checkbox"/> Biotics | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Airport Considerations | <input type="checkbox"/> Microclimate |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Relocation Issues | <input type="checkbox"/> Construction Period Impacts |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Utilities | <input type="checkbox"/> Facilities and Services |
| <input type="checkbox"/> Water Quality | <input checked="" type="checkbox"/> Flooding | <input type="checkbox"/> |

ANALYSIS:

A noise analysis and subsequent noise analysis verification tests were prepared in 1995 for the previously adopted Negative Declaration.

The City of San José General Plan noise standards specify an exterior noise exposure limit of 55 dB DNL¹ at property line for residential land uses impacted by commercial uses. The General Plan also includes a 45 dB DNL interior noise quality level. In 2001 the Zoning Ordinance was revised to include performance standards that limit the maximum instantaneous noise exposure from commercial uses at residential property lines to 55 dBA L_{max}².

¹ DNL (Day/Night Level) is a 24-hour time-weighted average descriptor commonly used to define community noise environments.

² L_{max} represents maximum instantaneous noise (single-event noise).

A revised noise analysis was prepared on September 1, 2004 to analyze the levels of noise generated by the proposed project against the standards of the City of San José Zoning Ordinance. The noise analysis also includes a revised evaluation of the project based on City of San José General Plan noise standards.

The proposed project will incorporate the recommendation to prohibit the use of rear doors of the facility except for emergency exit purposes, and to prohibit the congregation of patrons near the rear of the facility or in the vicinity of the residential neighbors. In addition a 7-foot tall noise barrier will be installed along the easterly property line.

With the above recommendations the noise exposures and noise levels under normal conditions³ are expected to be 48 dB DNL and 52 dBA L_{max} at property line and the expected interior noise levels of the most affected residences will be 45 dB DNL or lower. Therefore the proposed project is expected to be within the limits of the City of San José General Plan noise standards and Zoning Ordinance Performance Standards for noise.

John W. Baty
Project Manager

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

September 7, 2004
Date

Atari Smidgen
Deputy

³ Normal conditions for the proposed project includes noise from the parking lot, patrons walking to and from their cars, and music from within the facility.



RECEIVED
JUL 15 2004
CITY OF SAN JOSE
PLANNING DEPARTMENT

Memorandum

TO: John Baty
Planning Department

FROM: David Kirkendall #1749
Investigator

SUBJECT: CP 03-010/V04-005

DATE: July 13, 2004

Approved

Date

SUMMARY

On June 29, 2004 you requested the San Jose Police Department to update its March 28, 2003 memo reference the Fiesta Restaurant application to have live entertainment Thursday through Sunday with operation until 1:30 a.m.

The Fiesta Restaurant (Previously known as Cowtown) is located at 3840 Monterey Road, San Jose, CA. It is located near the northeast corner of Monterey Road and Rancho Drive. The primary owner according to ABC records is the L. G. Group Inc. The L. G. Group Inc was issued Conditional Alcohol Beverage Control (ABC) License 260362 on July 21, 1991 for the location. The license issued was a type 47 On-Sale General Eating-Place that authorizes the sale of beer, wine and distilled spirits for consumption on the licensed premises. It also authorizes the sale of beer and wine for consumption off the premises. The business must operate and maintain the premises as a bona fied-eating establishment.

The Conditions for the ABC License are as follows:

1. At all times during the normal meal hours, during which the licensee is exercising the privileges of the applied for license, said licensee shall offer meals consistent with what is customarily offered during said meal period. Normal meals are considered to be at least, but not limited to; Breakfast, 6:00 AM to 9:00 AM, Lunch, 11:00 AM to 2:00 PM, Dinner, 6:00 PM to 9:00 PM.
2. During normal meal hours, at least 50% of the premises seating shall be designed and used for and must possess the necessary utensils, table service and condiment dispensers with which to serve meals to the public.
3. The premises shall be equipped and maintained in good faith and shall possess, in operative condition such convenience for cooking foods as stove, ovens, broilers, or other devices as well as pots, pans, or containers which can be used for cooking or heating foods on the type heating device employed.
4. The licensee shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledges that incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned code section.

5. The Licensee(s) shall make actual and substantial sales of meals to guests for compensation and the quarterly gross sales of alcoholic beverages shall not exceed the gross sales of meals during the same period.

The Fiesta Restaurant is not located in a Project Crackdown, Weed and Seed or Strong Neighborhood Initiative Area.

Department of Alcohol Beverage Control (ABC) records indicate, the Fiesta Restaurant, 3840 Monterey Road is in census track 5120.17, which is incorrect. It is actually in census track 5032.04. Pursuant to B&P Section 23958.4 (a)(2) ...the ratio of on-sale retail licenses to population in census tract 5032.04 does not exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located. See table below and attached map of Census Tracks.

Authorized and Current ABC Licenses in Census Track 5032.04 and Ajoining Census Tracks

Census Tracks	Authorized ABC Licenses As of January 2003		Current ABC Licenses As of June 2, 2004		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5032.04	10	5	3	3/1	NO	NO
5031.15	4	2	1	0	NO	NO
5032.14	8	4	3	3	NO	NO
5032.13	7	3	4	6	NO	YES
5032.17	7	4	0	1	NO	NO
5032.18	6	3	2	1	NO	NO

Business and Professions Code Section 23958.4(c)(1) defines a reporting district as a geographical area within the boundaries of a single government entity (city or the unincorporated area of the county), that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests. In the City of San Jose that geographical area is a police beat.

Business and Professions Code Section 23958.4(c)(2) defines reported crimes as the most recent yearly compilation by the local law enforcement agency of reported offences of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations. These crimes are often referred to as Part 1 or Index Crimes, which are the more serious crimes, tracked.

The Fiesta Restaurant is located in the City of San Jose Police Beat L5. The reported crime statistics as defined by B&P Section 23958.4(c)(2) are not over the 20% crime index thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1). See table below and attached map of District L Police Beats.

2003 Crime Statistics For District L and Ajoining District X Beats

Beat	Index Crimes	Arrests	Total	20% Above Average
L1	262	760	1022	YES
L2	409	578	987	YES
L3	517	501	1018	YES

L4	338	501	839	YES
L5	246	404	650	NO
L6	334	386	720	NO
X1	517	482	999	YES
X2	249	311	560	NO
X3	399	568	967	YES
City Average (2003))	298	379	677	NO
Average + 20% (2003)	358	455	813	YES

While Police Beat L5 is not over the average arrest rate for the city, its proximity to the significantly impacted Police Beats L1, L2, L3, L4, X1 and X3 is a concern. Resources are often redirected to handle the over load of calls in those impacted Police Beats. These heavy arrest rates in relation to their low index crime numbers indicate that there is a significant number of non-indexed crime arrests and even more contacts that do not result in arrests.

The reported crime statistics as defined by B&P Section 23958.4(c)(2) only takes into account the seven major reported Index Crimes and does not reflect the multitude of other reported crimes that actually are received in any given reporting district. Reported crimes such as drunk in public, disturbances, crowd control, fights, traffic control and many others actually take up a significant amount of police resources and time. These are typical types of crimes associated with entertainment establishments. Granted some of these crimes would be reflected in the arrest statistics but in a majority of these types of crimes no arrest are made so they would not be reflected in the Index Crimes figures. A more accurate gage of the activity would be an in depth crime analysis of all reported incidents, calls for service and self initiated events.

Between January 1, 2003 and June 15, 2004 there was a total of 27 Reported Incidents and Calls for Service that occurred at 3840 Monterey Road. Between January 1, 2003 and June 15, 2004 there was a total of 1110 Reported Incidents and Calls for Service that occurred within 1000 feet of 3840 Monterey Road. See the attached Crime Analysis Memo for maps plotting the events, a breakdown of the events by day of week and time of day and a summary count of crime type.

HISTORY

On November 12, 1992 the City of San Jose Planning Department advised the L.G. Group that the City annexed the site on July 18, 1963 with a C-2 Commercial Zoning District designation. The site was converted to restaurant/bar use and has legal non-conforming status to remain open until 2:00 a.m. Nightclubs are operations where entertainment is the primary use and not complimentary for the patrons but rather paid for via a "cover charge". Nightclubs are conditional uses in the C-3 Commercial Zoning District. (Nightclubs not allowed in C-2)

A September 8, 1993 memo in the Vice Unit File indicates that security at the Fiesta Nightclub was collecting a cover charge at the back door.

On November 22, 1994 the San Jose Police Department Vice Unit notified the Fiesta Nightclub that due to several violent incidents at the club they were increasing the required security for the business.

On February 15, 1995 the San Jose Police Department Vice Unit notified the San Jose Police Department Crime Prevention Unit that they were concerned about any modifications to the current restrictions placed on the Fiesta Nightclub. There had been incidents involving fights, stabbing, drunk and drunk driver arrests, charging a cover charge, minors in the bar and citations.

The Crime Prevention Unit had contacted the Vice Unit for comment on a Conditional Use Permit (CUP) application filed by the Fiesta Nightclub.

On August 23, 1995 the San Jose Police Department Vice Unit forwarded a Memo to the Planning Department no longer objecting to the CUP because of recent improvements at the business. This was based on the belief that the business was operating within their prescribed zoning requirements and within the City Dance Permit regulations. The club had let their dance permit expire on June 23, 1995.

On June 4, 1996 the City Attorney wrote an informational memo to the Mayor and City Council advising that on May 31, 1996, Superior Court Judge Read Ambler granted a temporary restraining order closing the Fiesta Nightclub at 12:30 a.m. nightly. The nightclub is not a permitted use in C-2 Zone.

On November 12, 1996 the City of San Jose sought an injunction against El Rancho Properties, Gerald Smith, L.G.Group Inc. d.b.a. Fiesta Nightclub, Yvonne Esquer and Does 1-10.

On June 25, 1997 the Vice Unit advised the Fiesta Nightclub that its entertainment permit had expired.

On October 13, 1999 the City of San Jose case against the Fiesta Club was finalized when Santa Clara County Superior Court issued a Stipulated Settlement and Order in case CV 758372. That settlement and stipulation order confirms that the location is a restaurant and not a bar or nightclub. Entertainment incidental to the restaurant use was allowed. No other entertainment or dancing was allowed.

On September 26, 2000 the Vice Unit was advised that there had been several calls for service at the Fiesta Club in the last few months. Patrol officers complained about fights on weekends and officers responding got bottles thrown at them.

On September 21, 2001 the local office of ABC sent an official notice to the Fiesta Club advising them that it has been brought to their attention that various disturbances, assaults, drunken behavior and other criminal activities had occurred at their premises. As a result of those activities the public safety was being compromised. The Club was advised that failure to take reasonable steps to correct the objectionable conditions could result in disciplinary action being taken against their ABC license.

In November 2001 Vice officers did a spot inspection of the business and it appeared to be operating as a restaurant.

March 6, 2002 the Vice Unit was advised by the City Attorneys Office that Council District 7 George Shirakawa's Office had advised them that they had received complaints about activity at the Fiesta Restaurant.

Recently the Vice Unit received a complaint of minors (Under 21) being served alcohol at the business.

On July 1, 2004 two minor decoys were sent into the business and were served beer. The bartender did not ask the age of the minors nor was identification requested. The bartender was criminally cited for the violation. Police Report 04-183-0867.

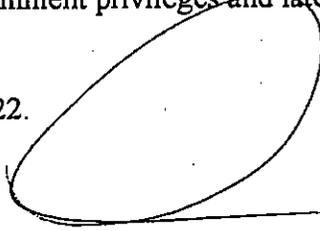
CONCLUSION

The ABC License indicates that the owners of the Fiesta Nightclub have not changed and are subject to the Stipulated Settlement and Order issued by the Superior Court in 1999.

The Fiesta Restaurant is located in a high crime police district, four (4) of the six police beats in the district and two (2) of the three (3) adjoining police district beats exceed the 20% crime index and granting entertainment privileges and the later closing time would only add to problems in the area.

The Police Department does not support the entertainment privileges and later closing times at the location.

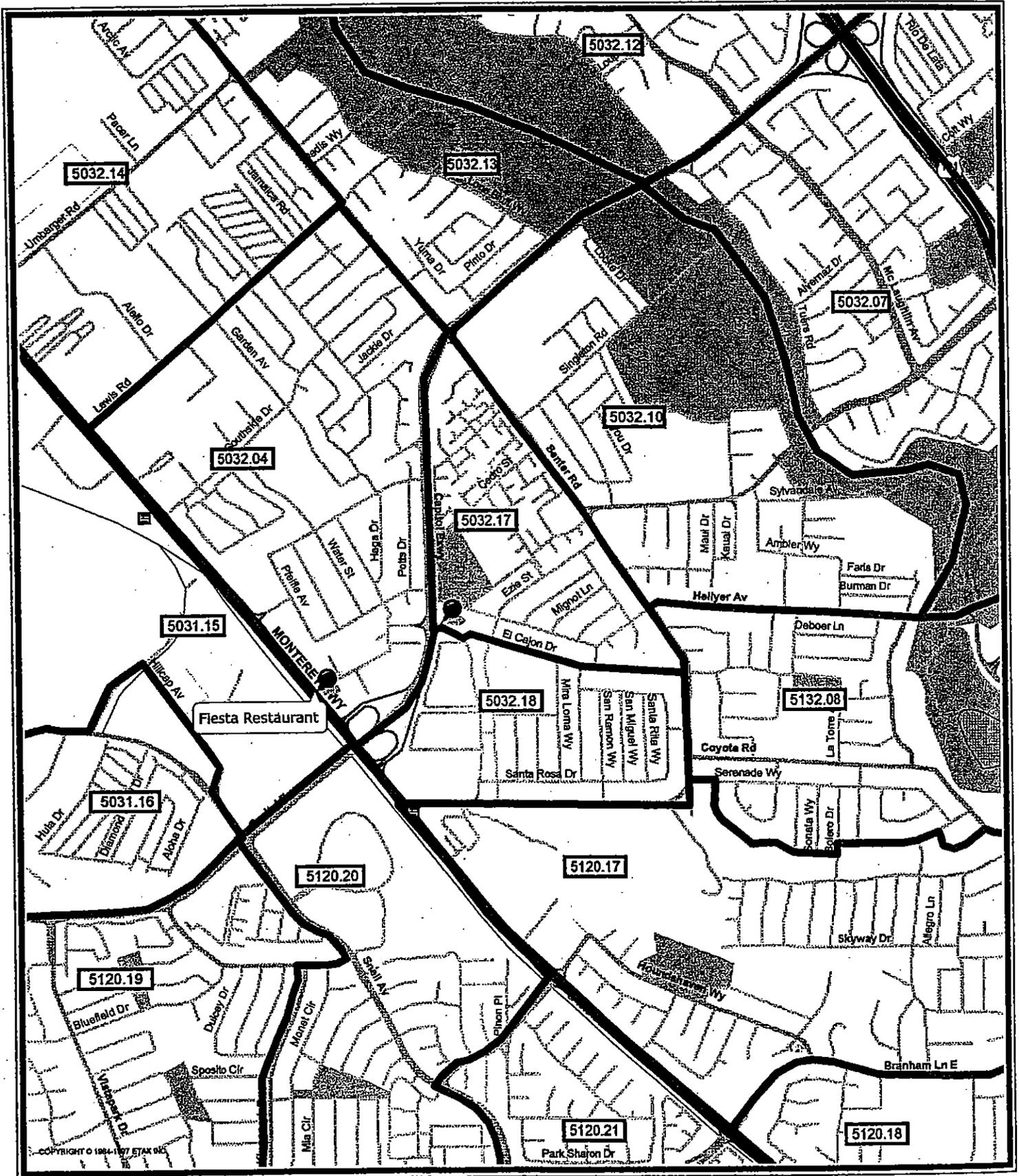
If you have any questions please call me at 277-4322.



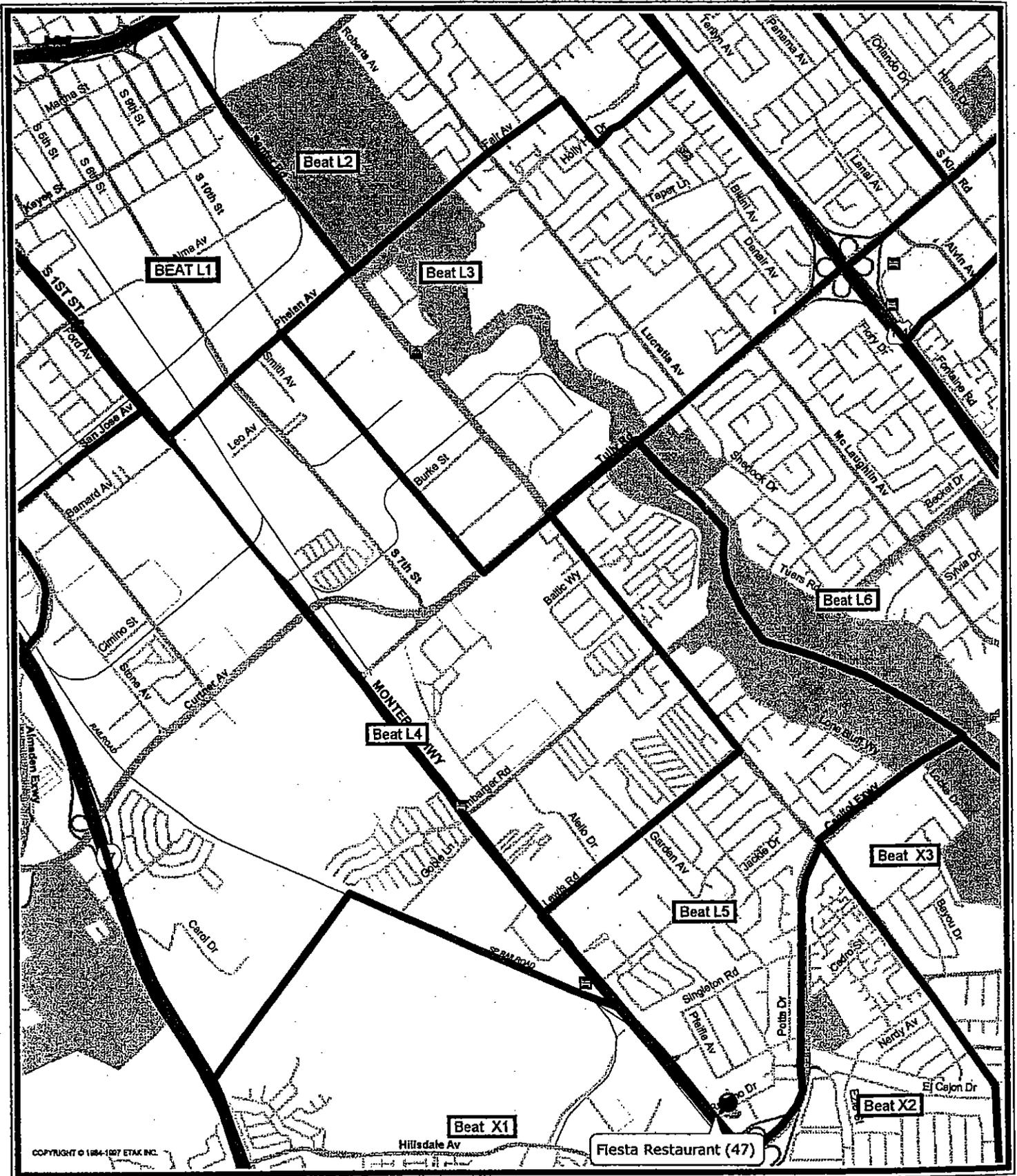
David Kirkendall #1749
Investigator Special Investigations/Vice
San Jose Police Department



Census Tracts



District L Police Beats



C R I M E A N A L Y S I S M E M O

To: David Kirkendall
Vice
Subject: 3840 Monterey Rd

From: Patty Fay
Sr. Crime Data Specialist
Date: July 7, 2004

Reported Incidents and Calls for Service occurring within a 1000 foot radius of the Fiesta restaurant located at 3840 Monterey Road have been researched dating from January 1, 2003.

Reported Incidents:

There were a total of 211 Reported Incidents occurring in the 1000 foot radius between January 1, 2003 and approximately June 10, 2004. Six of these occurred at 3840 Monterey. Attached you will find the following information pertaining to the 211 events:

- ◆ 1 map plotting each event
- ◆ A breakdown by day of week and time of day
- ◆ A summary count by crime type
- ◆ A listing of all events

Calls for Service:

A total of 899 Calls for Service occurred in the given area between January 1, 2003 and approximately June 15, 2004. Of these, 21 occurred at 3840 Monterey Rd. Attached is the following information:

- ◆ 1 map plotting each event
- ◆ A breakdown by day of week and time of day
- ◆ A summary count by final call type (DTYPE)
- ◆ A listing of the 21 events at the restaurant

If you have any questions or need further information, you can reach me at x5013 or x4106.

CAU #: 04-987



SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT
 CAD INCIDENT REPORT



3840 Monterey Rd - 1.1.2003 - 6.15.2004 (approx)

EVENT NUMBER	DATE	TIME	ORIGINAL CALL	FINAL CALL	DISPO	BEAT	ADDRESS	UNIT
911PAY UNK TYPE 911 CALL FROM PAYPHON COUNT: 7								
041480056	20040527	0110	911PAY	911PAY	H	L5	3840 MONTEREY HY	71L5
033650736	20031231	1728	911PAY	911PAY	N	L5	3840 MONTEREY HY	SJ06
032421340	20030830	2220	911PAY	911PAY	G	L5	3840 MONTEREY HY	71L5
031510679	20030531	1451	911PAY	911PAY	N	L5	3840 MONTEREY HY	61S9
031631258	20030612	2106	911PAY	911PAY	G	L5	3840 MONTEREY HY	61L4
030290480	20030129	1201	911PAY	911PAY	G	L5	3840 MONTEREY HY	51L1
030601213	20030301	2201	911PAY	911PAY	N	L5	3840 MONTEREY HY	62L5
242 BATTERY COUNT: 3								
040040621	20040104	1519	242	242	R	L5	3840 MONTEREY HY	51L5
032080412	20030727	0802	242	242	D	L5	3840 MONTEREY HY	51L4
030041126	20030104	2041	242	242	N	L5	3840 MONTEREY HY	61L6
415 DISTURBANCE COUNT: 2								
040800115	20040320	0141	415	415	G	L5	3840 MONTEREY HY	71S6
033480994	20031214	1941	415	415	G	L5	3840 MONTEREY HY	61L1
UNKCIR UNKNOWN CIRCUMSTANCES COUNT: 2								
041420194	20040521	0431	UNKCIR	UNKCIR	G	L5	3840 MONTEREY HY	71L4
032420435	20030830	0909	UNKCIR	UNKCIR	T	L5	3840 MONTEREY HY	5L-10
10851 STOLEN VEHICLE COUNT: 1								
032291223	20030817	2206	10851	10851	R	L5	3840 MONTEREY HY	71L5

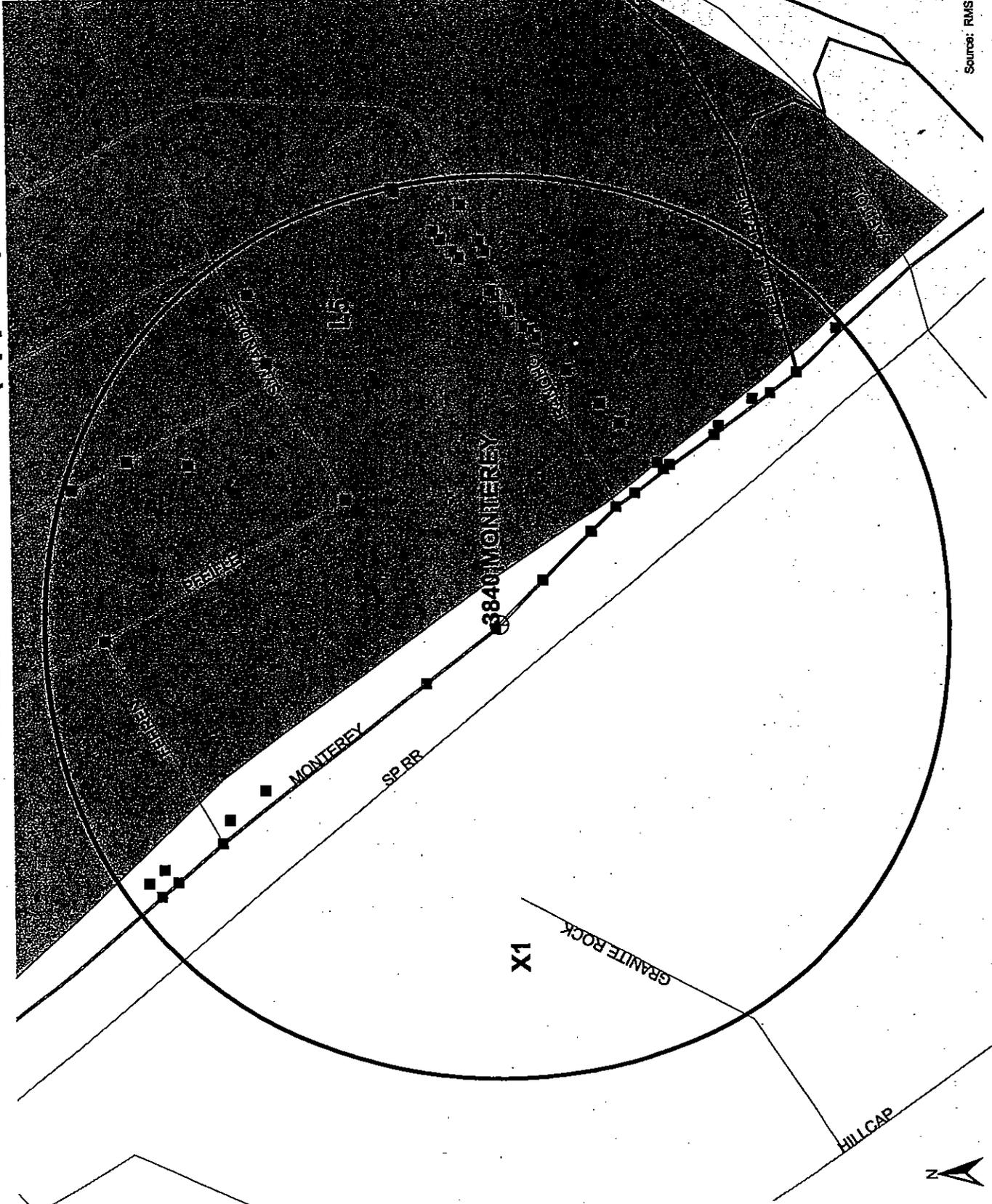
EVENT NUMBER	DATE	TIME	ORIGINAL CALL	FINAL CALL	DISPO	BEAT	ADDRESS	UNIT
12500	UNLICENSED DRIVER		COUNT: 1					
040230679	20040123	1458	1195	12500	C	L5	3840 MONTEREY HY	51L6
415A	DISTURBANCE, FIGHT		COUNT: 1					
040461309	20040215	2252	415A	415A	N	L5	3840 MONTEREY HY	71X1
594	MALICIOUS MISCHIEF		COUNT: 1					
031941279	20030713	2211	594	594	R	L5	3840 MONTEREY HY	66L4
647	VAGRANT		COUNT: 1					
041371141	20040516	2140	647F	647	A	L5	3840 MONTEREY HY	61L5
647F	DRUNK IN PUBLIC		COUNT: 1					
041231699	20040502	2217	415	647F	A	L5	3840 MONTEREY HY	71L4
911BUSN	UNK TYPE 911 CALL FROM BUSN		COUNT: 1					
030610009	20030302	0003	911BUSN	911BUSN	G	L5	3840 MONTEREY HY	71L5

Source: RMS/CAD

Number of Incidents: 21

REPORTED INCIDENTS: 1000 Ft Radius of 3840 Monterey Rd 1.1.2003 - 6.10.2004 (approx)

Total # of Incidents: 211



Top 10 Incident Types

Incident Type	Count
10851 (A) V	16
10851R	15
1195	9
11550 (A) H	9
11377 (A) H	8
22500	8
647 (F) PC	8
CPF	7
459 VEHPC	7
23152 (A) V	7

■ Reported Incidents

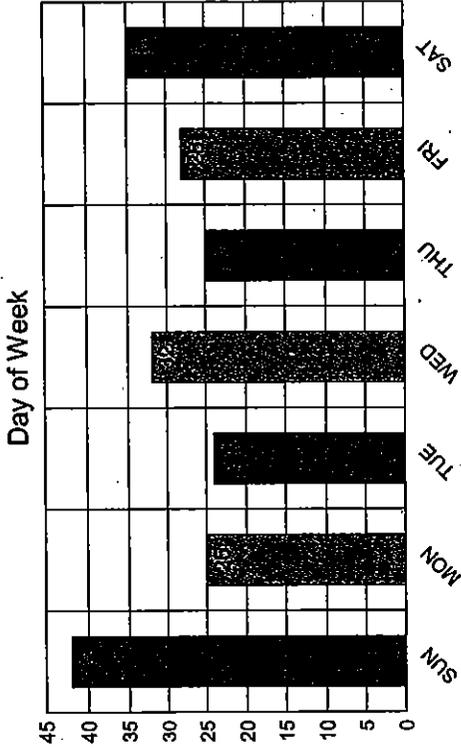
Source: RMS



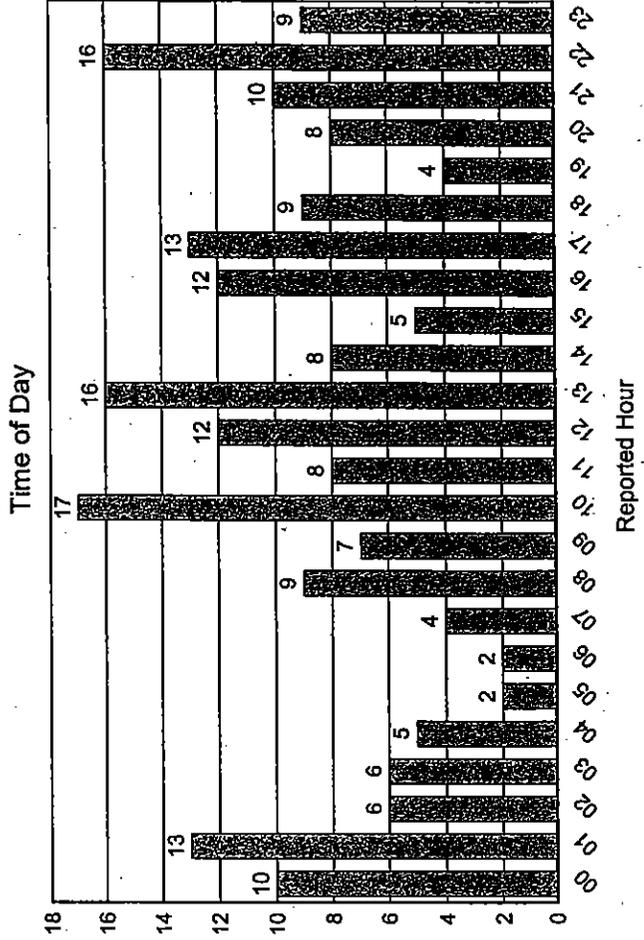
SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT

Breakdown by Day of Week and Time of Day

REPORTED INCIDENTS: 3840 Monterey Rd 1.1.03 - 6.10.04 (approx)



REPORTED HOUR	SUN	MON	TUE	WED	THU	FRI	SAT	Total
00	1	0	1	4	0	1	3	10
01	6	3	1	1	0	0	2	13
02	0	1	4	0	1	0	0	6
03	2	0	0	2	0	0	2	6
04	1	0	0	1	1	0	2	5
05	0	0	0	1	0	0	1	2
06	1	1	0	0	0	0	0	2
07	1	0	1	0	2	0	0	4
08	2	0	0	5	1	0	1	9
09	0	1	0	2	0	2	2	7
10	3	0	4	3	4	1	2	17
11	1	3	1	0	0	2	1	8
12	1	2	0	2	2	3	2	12
13	1	7	3	3	1	1	0	16
14	1	0	1	0	0	5	1	8
15	2	0	1	0	1	1	0	5
16	3	0	2	1	1	5	0	12
17	3	0	0	4	3	1	2	13
18	1	2	0	1	2	1	2	9
19	2	0	0	0	1	1	0	4
20	2	3	0	0	0	0	3	8
21	3	0	2	0	1	1	3	10
22	5	0	2	0	3	1	5	16
23	0	2	1	2	1	2	1	9
Total	42	25	24	32	25	28	35	211





SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT

RMS Summary Report

1000 FT RADIUS OF 3840 MONTEREY RD - 1.1.2003 - 6.10.2004 (approx)

Incident Count	Incident Description
16	10851(A)VC VEHICLE THEFT
15	10851R 10851R
9	11550(A)HS OTHER DRUG:Under Influence
9	1195 VEHICLE STOP
8	11377(A)HS OTHER DRUG:Possession
8	22500 22500
8	647(F) PC DRUNK IN PUBLIC
7	23152(A)VC DUI:Alcohol/Drugs
7	459 VEHPC BURGLARY:Vehicle Under \$400
7	CPF CPF
6	14601 14601
5	SUSCIRC SUSPICIOUS CIRCUMSTANCES
4	10852 VC VANDALISM:Vehicle Tampering
4	1124 TOWED VEHICLE
4	11357(B)HS MARIJUANA:Possession/Under Influence
4	242 PC ASLT:Battery
4	415 PC DIST PEACE
4	S PLATE THEFT:STOLEN PLATE
3	10851ROUT VEHICLE RECOVERY:Outside Agency Stolen
3	1154 SUSPICIOUS VEHICLE
3	1181 ACCIDENT-VEHICLE:Minor Injury
3	1182 ACCIDENT-VEHICLE:Property Damage
3	12500 12500
3	20002 VC HIT AND RUN - Misdemeanor
3	243E PC ASLT:Battery Domestic
2	1065J MISSING JUVENILE
2	11351 HS NARCO:Sale
2	148(A) PC ASLT:Resist Arrest/Delaying
2	273.6(A)PC OMISD:Viol Domestic Violence Order
2	459C PC BURGLARY:Commercial

Incident Count	Incident Description
----------------	----------------------

2	537(A2)PC FRAUD:Defrauding Innkeeper Under \$400
2	ATL ATL
2	CODE6M CODE6M
2	FRD487 PC FRD487 PC
2	PROP FOU PROPERTY FOUND
2	VIN CK VIN CHECK
1	1055 Death/Dead Body
1	1065A MISSING ADULT
1	1095 PERSON STOP
1	11350 HS NARCO:Possession
1	11364.7AH OTHER DRUG:Paraphernalia
1	11378 HS OTHER DRUG:Sale
1	1195X VEHICLE STOP - FEMALE INVOLVED
1	1203 PC PROBATION VIOLATION
1	12031 PC WEAP:Loaded Firearm in Public:Pers/Veh
1	220 PC RAPE:Assault to Commit/Attempt
1	245 245
1	245A1 PC AASL:ADW not Firearm
1	273.5(A)PC AASL:Inflict Corporal Inj Spouse/Cohabit
1	273A(B) PC ASLT:Child Abuse/Endngmnt minor or no Inj
1	2800.1A VC OMISD:Evading Peace Ofc
1	288(A) PC SEX:Lewd & Lascivious Child under 14
1	4000A 4000A
1	415M 415M
1	422 PC AASL:Terrorist Threats
1	451(D)PC ARSON:Property/Vehicle
1	466 PC OMISD:Possession of Burglary Tools
1	484(A)PC THEFT:Petty
1	487 PC THEFT:Grand
1	5150 W&I 72 HOUR HOLD/MENTALLY DISTURBED PERSON
1	529 PC FRAUD:False Personation of Another
1	594(A1)PC VANDALISM:Under \$5000
1	601 WI RUNAWAY
1	646.9(A)PC OMISD:Stalking
1	647F 647F
1	777 WI 777 WI

Incident Count	Incident Description
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1	CODE5 CODE5
1	CODE6F CODE6F
1	COURTESY COURTESY REPORT
1	FLGDWN FLGDWN
1	MUNI MUNI
1	MUNI COD MUNICIPAL CODES-CSJ
1	OUT WRNT OUT OF COUNTY WARRANT
1	PROP LOS PROPERTY LOST
1	TRAFF TRAFFIC VIOLATIONS:Other

211

RECORDS

Source: RMS

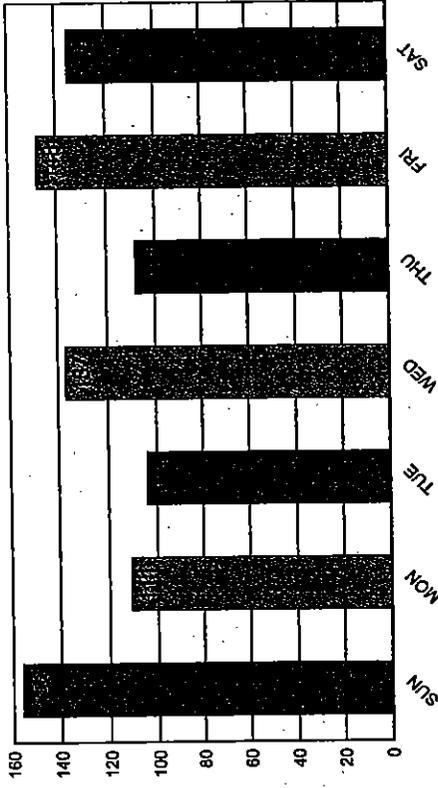


SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT

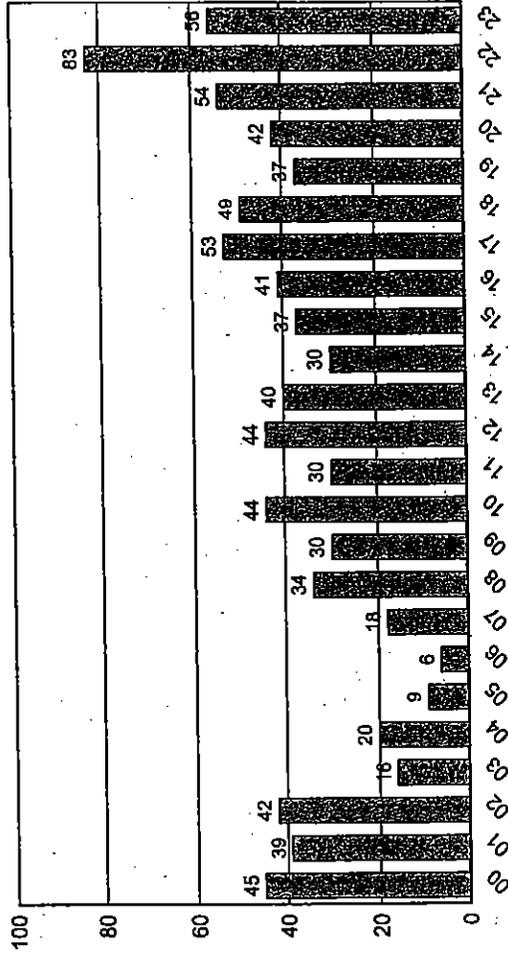
Calls for Service Breakdown by Day of Week and Time of Day

1000 FT RADIUS OF 3840 MONTEREY RD - 1.1.03 - 6.15.04 (approx)

Day of Week



Time of Day



Reported Hour

REPORTED HOUR	SUN	MON	TUE	WED	THU	FRI	SAT	Total
00	12	7	3	4	3	8	8	45
01	9	6	5	3	5	6	5	39
02	8	5	8	7	2	4	8	42
03	2	3	-	2	-	3	6	16
04	1	1	4	-	2	6	6	20
05	-	1	-	3	1	2	2	9
06	1	2	1	-	2	-	-	6
07	2	3	1	1	3	3	5	18
08	5	3	1	9	6	8	2	34
09	5	3	4	6	3	3	6	30
10	8	8	9	5	6	3	5	44
11	3	6	3	4	1	10	3	30
12	3	10	5	7	4	7	8	44
13	9	9	6	3	1	8	4	40
14	5	1	5	7	3	7	2	30
15	8	4	7	4	6	5	3	37
16	5	3	3	8	7	12	3	41
17	7	4	6	14	9	7	6	53
18	10	5	6	8	5	8	7	49
19	5	5	3	9	6	9	-	37
20	11	7	4	6	1	3	10	42
21	9	2	6	11	8	9	9	54
22	20	5	7	9	13	11	18	83
23	8	8	7	7	11	6	9	56
Total	156	111	104	137	108	148	135	899

Source: RMS/CAD
*Only reported hours having data will appear in chart & graph



SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT

CAD CALLS-FOR-SERVICE (PRI 1-4) SUMMARY REPORT

1000 FT RADIUS OF 3840 MONTEREY RD - 1.1.2003 - 6.15.2004 (approx)

INCIDENT COUNT	TYPE OF INCIDENT
121	1195 VEHICLE STOP
79	1095 PEDESTRIAN STOP
61	CPF COMMUNITY POLICING-FOOT PATROL
56	415 DISTURBANCE
31	415F DISTURBANCE, FAMILY
25	FLGDWN FLAG DOWN
24	22500 PARKING VIOLATION
22	10851R RECOVERED VEHICLE
22	415M DISTURBANCE, MUSIC
21	1154 SUSPICIOUS VEHICLE
19	10851 STOLEN VEHICLE
19	911PAY UNK TYPE 911 CALL FROM PAYPHON
16	1195X VEHICLE STOP ON FEMALE
16	SUSCIR SUSPICIOUS CIRCUMSTANCES
13	PRMCK PREMISE CHECK
12	1066 SUSPICIOUS PERSON
12	911RESD UNK TYPE 911 CALL FROM RESD
12	ATL ATTEMPT TO LOCATE
12	WELCK WELFARE CHECK
11	CODE5 STAKEOUT
10	1033A ALARM, AUDIBLE
10	242 BATTERY
10	647F DRUNK IN PUBLIC
10	CODE6M MISDEMEANOR WANT
10	SEU SELECTIVE ENFORCEMENT
9	11550 USE OF CONTROLLED SUBSTANCE
9	CODE6F FELONY WANT
9	CSB CIVIL STANDBY
8	1125 TRAFFIC HAZARD
8	459R BURGLARY REPORT (460)
7	11377 POSSESSION OF NARCOTICS
7	23152 MISDEMEANOR DUI
7	273.5 DOMESTIC VIOLENCE
7	FDAID FIRE DEPARTMENT REQUEST FOR PD

INCIDENT COUNT	TYPE OF INCIDENT
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7	INFO	INFORMATION ONLY EVENT
6	1182	VEH ACCIDENT, PROPERTY DAMAGE
6	14601	DRIVING W/ SUSPENDED LICENSE
6	602PC	TRESPASSING
5	1124	ABANDONED VEHICLE
5	12500	UNLICENSED DRIVER
5	20002	MISDEMEANOR HIT AND RUN
5	415A	DISTURBANCE, FIGHT
5	PATCK	PATROL CHECK
5	UNKCIR	UNKNOWN CIRCUMSTANCES
4	1033S	ALARM, SILENT
4	1062	MEET THE CITIZEN
4	11300	NARCOTICS
4	1179	VEH ACCIDENT, AMB DISPATCHED
4	422	CRIMINAL THREATS
4	459VEH	VEHICLE BURGLARY
3	1095X	PEDESTRIAN STOP ON FEMALE
3	11350	POSSESSION CONTROLLED SUBSTANC
3	23103	RECKLESS DRIVING
3	243	BATTERY ON AN OFFICER
3	415N	DISTURBANCE, NEIGHBOR
3	594	MALICIOUS MISCHIEF
3	7FU	OUT OF SERVICE, FOLLOW-UP
3	AID	PUBLIC SAFETY ASSISTANCE
3	ATC	ATTEMPT TO CONTACT
3	MUNI	MUNICIPAL CODE VIOLATION
2	1053	PERSON DOWN
2	1087	MEET ANOTHER OFFICER
2	11357	POSSESSION OF MARIJUANA
2	1183	VEH ACCIDENT, UNKNOWN INJURIES
2	245	ASSAULT WITH DEADLY WEAPON
2	273.6	VIOLATION OF PROTECTIVE ORDER
2	3056	PAROLE VIOLATION
2	415UNK	DISTURBANCE, UNKNOWN
2	415W	DISTURBANCE, WEAPON
2	459	BURGLARY (460)
2	496	RECEIVE/POSSESS STOLEN PROP
2	5150	MENTALLY DISTURBED PERSON
2	647	VAGRANT
2	911BUSN	UNK TYPE 911 CALL FROM BUSN

INCIDENT COUNT	TYPE OF INCIDENT
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2	ATL6F	ATTEMPT TO LOCATE-FELONY WANT
2	STRAND	STRANDED MOTORIST
1	1034	OPEN DOOR
1	1054	POSSIBLE DEAD BODY
1	1055	CORONERS CASE
1	1058	GARBAGE COMPLAINT
1	1065F	FOUND, MISSING PERSON
1	1065J	MISSING JUVENILE
1	1066P	SUSPICIOUS PACKAGE
1	1067X	FEMALE CALLING FOR HELP
1	1070	PROWLER
1	10852	TAMPERING WITH A VEHICLE
1	1091A	VICIOUS ANIMAL
1	148	RESISTING ARREST
1	211	ROBBERY
1	211PS	PURSE SNATCH ROBBERY
1	215	CARJACKING
1	220	ATTEMPT FELONY SEX CRIME
1	23109	SPEED CONTEST
1	23110	THROWING SUBSTANCES AT VEH
1	261	RAPE
1	4000A	EXPIRED REGISTRATION
1	415J	DISTURBANCE, JUVENILE
1	484	THEFT
1	487	GRAND THEFT
1	537	DEFRAUDING AN INKEEPER
1	597	CRUELTY TO ANIMALS
1	602WI	JUVENILE VIOLATING COURT ORDER
1	653M	OBSCENE OR HARASSING PH CALLS
1	7SA	OOS, SPECIAL ASSIGNMENT
1	CIVIL	CIVIL MATTER
1	CPC	COMMUNITY POLICING-CITZ ASSTS
1	CROWD	CROWD CONTROL
1	FNDPRP	FOUND PROPERTY
1	FTY	FAILURE TO YIELD

899 RECORDS

Source: RMS/CAD



City of San Jose

COUNCIL POLICY

Policy Number: 6-23
Effective Date: June 25, 1991
Revised Date: February 23, 1993

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

BACKGROUND

Throughout its history, San Jose has been a center of cultural and entertainment activities. With the re-emergence of the Downtown, entertainment activities, including nightclubs, have also undergone a resurgence.

To accommodate the growth of entertainment uses, the General Plan was amended in 1987 and again in 1988 to encourage the development of nightlife activities Downtown. The intent of this policy is to avoid a concentration of night time uses in any one area. Entertainment uses may be located throughout, as well as outside, the Downtown if they meet General Plan criteria. Currently there are 22 existing and approved nightclubs in the Downtown area with an authorized total occupancy of over 10,000 persons. The City and Redevelopment Agency have also received numerous inquiries for additional nightclub proposals.

The growth of bars in San Jose over the past decade has been minimal. With the emergence of nightclubs, bars have lost some of their popularity. With the exception of a few new neighborhood bars, most of the existing establishments have been in operation for over 10 years.

DEFINITIONS

Nightclubs are establishments that stay open late at night and provide entertainment, dancing, food and drink and are not ancillary to a full-service restaurant. The operation of a nightclub in the City of San Jose requires an approved Conditional Use Permit. Bars are establishments that serve alcoholic beverages. Bars also require an approved Conditional Use Permit to operate in the City of San Jose.

PURPOSE

The City allows nightclub and bar uses only through the discretionary Conditional Use Permit process to ensure that the use conforms to City requirements and is compatible with its surrounding neighborhood. In making recommendations to the Planning Commission, staff will review proposals on the basis of the following Guidelines for Evaluation of Nightclubs and Bars. Proposals will be examined on a case-by-case basis. To facilitate the evaluation process for individual permit applications, the guidelines identify the project characteristics necessary for approval. Existing nightclubs and bars which are subject to a permit with a time condition are not defined as new uses under this policy.

POLICY

1. Land Use Compatibility
 - a. Nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses provided that they do not adversely impact existing or planned residential uses or conflict with other General Plan Goals and Policies.
 - b. New nightclubs and bars should be discouraged from locating adjacent to or near any existing residential uses or any areas planned for residential uses in the adopted Horizon 2000 General Plan. Nightclubs may be located near areas designated Core Area Commercial with Residential Support for the Core Area overlay and parcels fronting Santa Clara Street. New nightclubs and bars adjacent to hotel uses should minimize the potential

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

negative impacts on the guests of those facilities.

- c. New nightclubs and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street. Basement and upper story nightclubs are exempt from this provision if that the entrance to those facilities is clearly the sole use at the ground level along the street frontage.
- d. New bars outside the Downtown Core should be dispersed and, at a minimum, not located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that they do not adversely affect any nearby residential or school uses.
- e. New nightclubs should include sufficient space to accommodate queuing for patrons. This space should be provided on-site to the greatest extent possible. If the public right-of-way is proposed for queuing, a management plan to control crowds and litter and to ensure adequate pedestrian circulation should be part of the nightclub proposal.
- f. 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 of controls or procedures to increase effective law enforcement.

- g. New nightclubs and bars are discouraged from locating in areas where there have been above-average police calls for service.
 - h. Nightclubs are permitted with the approval of a Conditional Use Permit only in the C-3 Commercial, M-1 Manufacturing and M-4 Manufacturing Zoning Districts.
 - i. Bars as a primary use are permitted with the approval of a Conditional Use Permit only in the C-2 and C-3 Commercial Zoning Districts.
 - j. The most appropriate General Plan Land Use Designation for nightclubs and bars is Commercial, except for Office and Neighborhood/Community Commercial.
2. Noise
- a. Both new construction and renovation of existing structures should meet the City's noise standards as specified in the Horizon 2000 General Plan. Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use.
 - b. Windows and doors should not be open during the operation of the facility where noise impacts the surrounding area. Adequate ventilation should be provided so that openings to the outside can be closed when the bar or club is at full capacity.
 - c. Outdoor areas for entertainment, including areas with roof openings, should not be allowed where noise impacts the surrounding area. Hours of operation and/or amplified should be carefully regulated to ensure compatibility with adjacent uses.

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

Page 3

- d. Interior noise levels or adjacent uses and exterior noise levels should be monitored by a qualified noise consultant contracted by the applicant or operator commencing at the opening of the nightclub or bar facility. Measurements should be taken at least once monthly at two different times and a report submitted to the Planning Commission after one year of operation.

3. Parking

- a. For new nightclubs or bars, an analysis of both day and nighttime parking availability within 1200 feet of the proposed facility should be provided by the project proponent. Parking demand should be calculated at one space for each 40 square feet of usable patron area. Where there are insufficient spaces to meet the demand generated by the proposed bar or nightclub, parking should be provided by the operator at a location convenient and readily accessible to the patrons of the facility. Parking may be supplied by contracting with nearby property owners, offering validation services and/or valet services, or such other means that would not reduce the spaces available for existing uses. This may require the approval of an Off-Site or Alternating Use Parking Arrangement as specified in the San Jose Municipal Code.
- b. When new nightclubs or bars are required to provide additional parking to meet the demand generated by the proposed site, the parking facilities should be well lighted, consistent with applicable City and Redevelopment Agency standards.
- c. All nightclubs and bars are encouraged to identify the need for loading and

unloading zones as means to enhance traffic circulation around the facility.

- d. All nightclubs and bars should be required to identify and publicize the location and availability of parking for its patrons.

4. Garbage and Litter

- a. 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.
- b. 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.

5. Typical Use Restrictions

- a. Admittance to bars and nightclubs will be restricted to patrons 21 years of age and older.
- b. Nightclubs which include an ancillary, non-separated restaurant are not permitted. Nightclubs may be permitted in such facilities provided that the restaurant use does not operate when the nightclub is in operation.
- c. Nightclubs and bars should not operate after 2:00 a.m., daily.
- d. Entertainment uses that serve no alcohol may be open to patrons 18 to 20 years and older.
- e. The maximum occupancy of a nightclub or bar is limited to the number identified by the Fire Marshall, and may be further limited in the Conditional Use Permit based on

GUIDELINES FOR EVALUATION OF NIGHTCLUBS AND BARS

Page 4

parking availability or other land use compatibility issues.

- f. Amplified sound, amusement games and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.
- g. Time limits for Conditional Use Permits for nightclubs and bars should generally be five years, unless there is sufficient evidence to support an alternate limit. Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval.

6. Other Requirements

- a. The Planning Commission, or the City Council on appeal, may impose other appropriate conditions on a project-by-project basis as required to ensure land use compatibility. The guidelines in this policy represent minimum criteria for nightclubs and bars.
- b. The Planning Commission may annually review this policy to determine its adequacy in meeting the changing needs of the City.
- c. The Conditional Use Permit should include standard conditions, such as undergrounding utilities, providing public improvements, screening roof equipment, identifying building colors and materials, etc. necessary for the permit to fulfill the requirements for a Site Development Permit.

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

TITLE EVALUATION OF 24-HOUR USES	PAGE 3 of 7	POLICY NUMBER 6-27
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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.

TITLE EVALUATION OF 24-HOUR USES	PAGE 4 of 7	POLICY NUMBER 6-27
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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.

TITLE EVALUATION OF 24-HOUR USES	PAGE 5 of 7	POLICY NUMBER 6-27
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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

TITLE EVALUATION OF 24-HOUR USES	PAGE 6 of 7	POLICY NUMBER 6-27
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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.

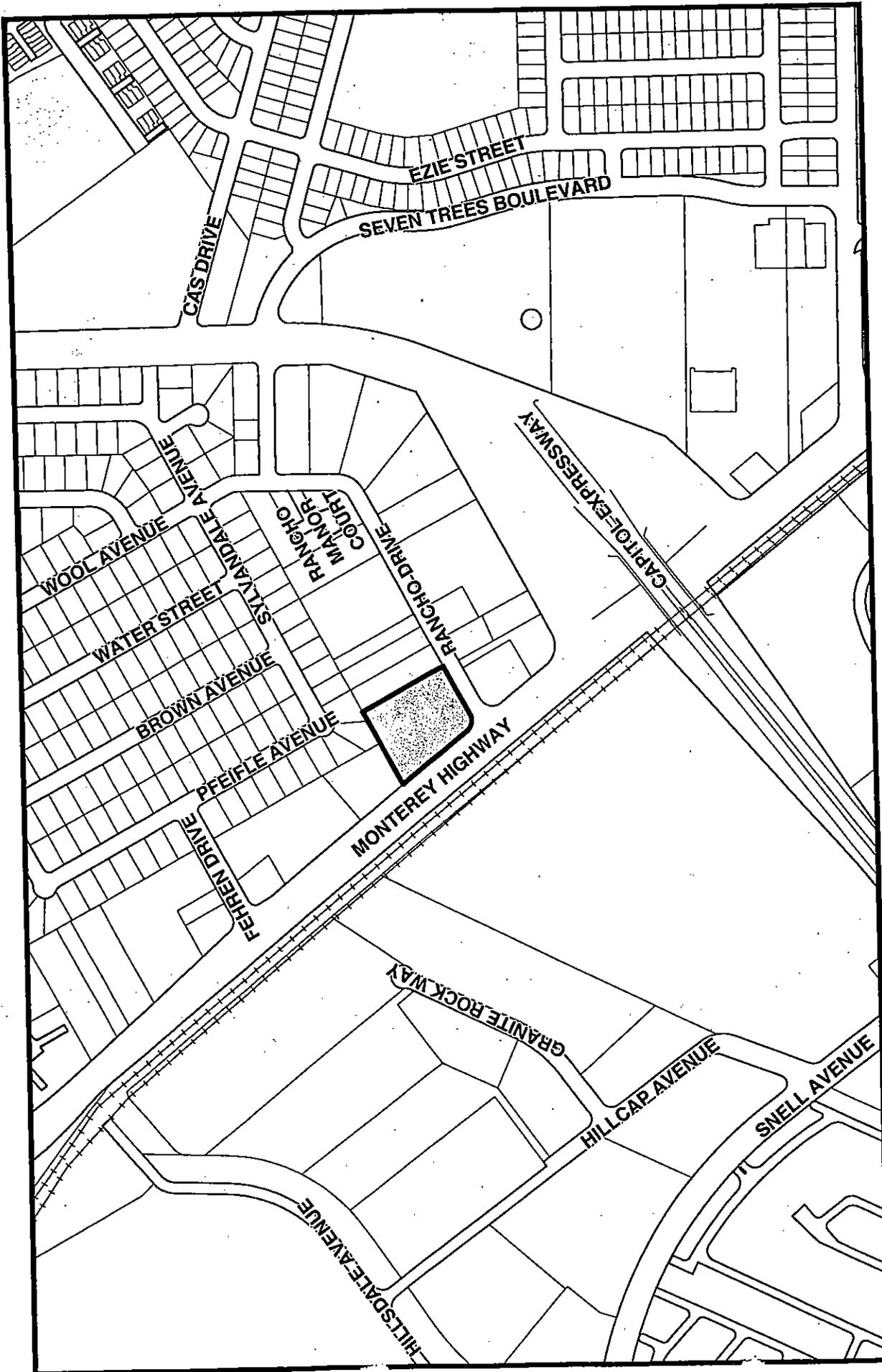
The quick in-out service touted by such small stores combined with the generally low volume of customers at late night hours should mitigate the worst problems associated with loitering of groups leading to fights and other problems. Most of the products sold at such stores are intended for use at home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

TITLE EVALUATION OF 24-HOUR USES	PAGE 7 of 7	POLICY NUMBER 6-27
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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.
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File No: CP03-010

District: 07

Quad No: 115

Scale: 1"=500'



