

REPORT TO CITY COUNCIL

DATE: NOVEMBER 14, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: REVIEW OF A SIX-MONTH MONITORING REPORT OF SUNSET ROOM'S CONDITIONAL USE PERMIT (CASE NO. 05-CUP-001)

The request before the City Council is to review the monitoring of the Sunset Room, as required of the Conditional Use Permit Amendment approved, upon appeal, by the City Council on May 9, 2012. Sunset Room is located at 29020 Agoura Road, Suite A-14.

As background, in October 2011, the Planning Commission approved a request by James Ashford of the Sunset Room, to amend an existing Conditional Use Permit (Case No. 05-CUP-001) that was originally granted to Chapter 8 Restaurant in 2006, to operate a new supper club and modify the type of entertainment to take place as ancillary use in the dining establishment.

In April of 2012, the Planning Commission reviewed a six-month monitoring report of the CUP and, on a 4-1 vote (Commissioner Northrup opposed), approved another amendment requested by the applicant. Specifically, the Planning Commission approved an amendment to conditions to extend the alcohol service hours by allowing for "last call" to occur at 1:30 a.m. on all nights (instead of 1:00 a.m. on weeknights and 1:15 a.m. on weekends), and to allow alcohol service until 1:45 a.m. on all nights (instead of 1:15 a.m. on weeknights and 1:30 a.m. on weekends). The Planning Commission also approved the applicant's request for outdoor ambiance music, but denied his request to allow lingerie shows.

The City Council appealed the action of the Planning Commission and held a public hearing on May 9, 2012 to consider the appeal. On a 3-1-1 vote (Mayor Edelston opposed and Council Member Buckley Weber abstained), the City Council approved a motion upholding the decision of the Planning Commission and required a six-month monitoring report of this latest Conditional Use Permit Amendment.

Since last May, staff visited the Sunset Room at night on four separate occasions. Staff observed customers patronizing the facility from 8:00 p.m. until 10:00 p.m. for dinner, and a separate group of customers who patronize the business for its entertainment and dancing to recorded music inside the building, or to a band outside on the patio in the later hours. During our visits, staff did not observe any violations of conditions regarding entertainment. The busiest evenings appears to be on Fridays and Saturdays. The kitchen is open from 5:00 p.m. to 10:30 p.m. every day with an abbreviated menu from

10:30 p.m. to closing if customers ask for food after 10:30 p.m. But according to the owners, there has not been a significant demand for food in the later hours. Staff was advised by the owners that a new restaurant operator, "Casa Ado," is currently negotiating final lease terms and anticipates operating by December.

The owner confirms, in the attached letter (Exhibit A) to staff, that Sunset Room is open from Wednesday to Saturday, from 5:00 p.m. until closing, with the following entertainment:

- Wednesday: Karaoke until 11:00 p.m.
- Thursday: Three-piece band until 12:00 a.m.
- Friday: Female oldies singer from 6:00 p.m. to 10:00 p.m.; a DJ from 10:00 p.m. until closing.
- Saturday: Soft dinner music followed by a DJ from 10:00 p.m. until closing.

The applicant has indicated that he has not contracted with anyone for lingerie shows to take place at the restaurant.

In regard to the extended hours to serve alcoholic beverages, as approved in the last CUP amendment, the Sheriff's Department does not report more incidents than previously reported to the City Council at the May hearing. During the first six months of operation, the Sheriff's Department reported 5 calls related to disorderly conduct, 6 calls related to drunkenness, 2 calls related to theft, and 5 calls related to false security alarms. During the next 6 months, the Sheriff's Department reported 3 calls related to disorderly conduct, 4 calls related to drunkenness, 2 calls related to theft, and 4 calls related to false security alarms. The number of calls for service averaged 4 per month for the first 6 months, and 3 per month for the next 6 months. The Alcoholic Beverage Control Department reports no official investigation or violations occurring at the restaurant at this time.

Regarding the last CUP amendment, which allowed outdoor ambience music, staff's inspections have found that the sound level generated from amplified music in the outdoor dining patio was reasonable and not intrusive.

Parking availability was a concern for the initial opening of the Sunset Room. Sunset Room was conditioned to secure parking agreements for off-site parking with nearby property owners, to accommodate 170 additional parking spaces in addition to the 97 on-site parking spaces. Since the initial opening of Sunset Room, the parking demand has decreased such that off-site parking is less necessary and valet parking is needed only on Fridays and Saturdays. The applicant has indicated that he has changed his parking arrangements and hired ABC Valet Parking Company, who already coordinated the parking in the area. ABC provides services for three restaurants and has signed agreements with various property owners in the area to use additional parking if needed. Staff did not observe parking issues associated with Sunset Room during our visits.

The owner also states that in addition to valet parking, the restaurant manager, security, and cleaning companies have been replaced since the last hearing in an effort to improve service. Valet parking and security were two important issues when the project was initially reviewed by the Planning Commission to avoid potential issues associated with the combination of alcohol service and live entertainment activities approved with the previous restaurant. During staff's visit, proper security was

in place, and there were no issues with the efficiency of valet parking. Staff, however, requested that the new manager continue to enforce the parking and security conditions to protect the public health and safety and to minimize calls for service to the Los Angeles County Sheriff's Department.

Based on our observations and monitoring, staff finds the Sunset Room to be in general compliance with the Conditional Use Permit. Staff, however, will continue to periodically monitor and will apply code enforcement when violations occur. Staff will also submit a monitoring report to the City Manager in six months.

RECOMMENDATION

Staff respectfully requests the City Council receive and file the report.

Attachments: Exhibit A: Information from Applicant (via email)
Exhibit B: Council Resolution No. 12-1669 and Conditions of Approval
Exhibit C: May 9, 2012 City Council Staff Report

CASE NO. 05-CUP-001 Amendment #3

**For the project located at 29020 Agoura Road
Agoura Hills**

**Exhibit A
Information from Applicant**

Valerie Darbouze

From: James Ashford [ashfordapts@sbcglobal.net]
Sent: Tuesday, September 11, 2012 9:23 AM
To: Valerie Darbouze
Subject: Re: Sunset Room

September 9, 2012

Valerie Darbouze
City of Agoura Hills

Dear Valerie

I would like to bring you up to date on some of the changes we have made at the Sunset Room sense our last meeting.

Hours of Operation

The Sunset Room is open Wednesday through Saturday from 5 PM til closing.

Wednesday is Karaoke til 11PM

Thursday three piece band til midnight

Friday 6 to 10 we have an oldies lady singer and from 10 to closing we have a DJ.

Saturday we have soft dinner music followed by a DJ from 10 til closing.

Valet Parking

We have hired a new Valet Company called ABC Parking. Jaime the owner at present also valets Padre's and Adobe Cantina. We have valet currently on Friday and Saturday evening only and do not get busy enough to use valet until 10:30. ABC Parking has requested that we help pay for the valet service because of the cost of off site parking that has been required by the the Sunset Room conditions. We seldom use any off site parking an this has prompted the attached letter from our valet service. The Sunset Room valet company has contracted off site parking at Adobe Cantina, Whizen's Center, Do It Center and the City lot next door which total's over 300 parking spots.

Security

We have replaced our Security company from Anello Security to Olympic Security. The change was initiated due to the amount calls for service to the Sheriff's that we felt should have been handled on site. There were other issues that were and ongoing problem and felt a change was needed. We will be having the new Olympic Security company present a in depth security plan that will be very detailed since we have almost one years of experience at this location. The Sunset Room takes very serious the safety of our patrons.

Cleaning Company

A change was required due to the amount of times the cleaners forgot to disable the alarm system after the numerous warnings given by the owner and the GM Matt.

Kitchen

The kitchen is open from 5 PM to 10:30 PM Wednesday through Saturday with an abbreviated menu, if requested from 10:30 PM to closing. The Sunset Room has hired the chef from Isabella's next door(which closes at 10 PM) to work as our chef from 10 to closing. I have been informed by Valerie from the City of Agoura Hills that at times when asked for food service have been told the kitchen was closed.

Summary

I will be preparing a much more detailed and in depth report on all aspects of the Sunset Room prior to our council meeting November 1, 2012. Should you require additional information before our November meeting please let me know.

Sincerely,

James Ashford, Owner Sunset Room.

Valerie Darbouze

From: abcvalet@aol.com
Sent: Thursday, September 27, 2012 2:32 PM
To: Valerie Darbouze
Subject: Re: City of Agoura Hills
Attachments: Sunset Room # of Cars Outline.doc

Hi Valerie,

Attached is an Outline of the # of Cars we've parked on Friday & Saturday Nights at "The Sunset Room". We no longer need Overflow Parking as we can utilize the Sunset Room parking lot for all customers including patrons of "Isabella's" & Employee Parking. Let me know if you have any further questions or concerns. Thanks Valerie :)

Best,

Abbey Scott
Vice President

ABC Valet Parking 1-800-822-PARK

-----Original Message-----

From: Valerie Darbouze <VDarbouze@ci.agoura-hills.ca.us>
To: abcvalet <abcvalet@aol.com>
Sent: Tue, Sep 25, 2012 11:05 am
Subject: City of Agoura Hills

Hello Jamie,
This is the email address you can use.
Thank you.

Valerie Darbouze, Associate Planner
Department of Planning and Community Development
City of Agoura Hills
(818) 597-7328

ABC VALET SERVICE

SUNSET ROOM	# OF CARS	# OF VALET	# OF EMPLOYEE CARS	ISABELLA'S # OF CARS	HOURS
08/31/12	45	3	20	12	5PM-CLOSING
09/01/12	55	4	25	17	5PM-CLOSING
09/07/12	50	4	20	15	5PM-CLOSING
09/08/12	58	4	28	18	5PM-CLOSING
09/14/12	52	3	20	12	5PM-CLOSING
09/15/12	56	4	25	15	5PM-CLOSING
09/21/12	45	3	18	10	5PM-CLOSING
09/22/12	50	4	22	16	5PM-CLOSING

AS YOU CAN SEE WE DO NOT NEED OVERFLOW PARKING

CASE NO. 05-CUP-001 Amendment #3

**For the project located at 29020 Agoura Road
Agoura Hills**

**Exhibit B
Council Resolution No. 12-1669
And
Conditions of Approval**

RESOLUTION NO. 12-1669

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, UPHOLDING THE DECISION OF THE PLANNING COMMISSION AND APPROVING AMENDMENT TO CONDITION NO. 13 AND TO CONDITION NO. 24 OF CONDITIONAL USE PERMIT AMENDMENT #3 (CASE NO. 05-CUP-001 AMENDMENT #3) AND DENYING AMENDMENT TO CONDITION NO. 25

Section 1. An application was duly filed by James Ashford of The Sunset Room, with respect to the real property located at 29020 Agoura Road, Suite A-14, Assessor's Parcel Numbers 2061-031-023 and 024. The Applicant requested approval of an amendment to the conditions of approval for the current Conditional Use Permit Case No. 05-CUP-001. Specifically, the applicant requested: (1) to delay the time for "last call" of alcoholic beverages (Condition No. 13); (2) to allow for outdoor entertainment in the form of ambience music in the outdoor dining patio (Condition No. 24); and (3) to allow for lingerie shows (Condition No. 25). A public hearing was duly held by the Planning Commission on April 5, 2012 at 6:30 p.m. in the City Hall Council Chambers, City Hall 30001 Ladyface Court, Agoura Hills, California.

Section 2. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid public hearing on April 5, 2012. The Planning Commission approved Conditional Use Permit Amendment #3 Case No. 05-CUP-001 Amendment #3 on a 4-1 vote (Commissioner Northrup opposed), per the findings in Resolution No. 12-1055. Specifically, the Planning Commission approved amendments to Condition No. 13 to change the last call to 1:30 a.m. and last service to 1:45 a.m. every night of the week and to Condition No. 24 to allow outdoor live entertainment in the outdoor dining patio, and denied amendment to Condition No. 25 to allow lingerie shows.

Section 3. An appeal of the Planning Commission's approval of Conditional Use Permit Amendment Case No. 05-CUP-001 Amendment #3 was filed by the City Council on April 12, 2012 with respect to the property described in the Section I hereof. A hearing on the appeal was duly held and public testimony was given on May 9, 2012 at 6:00 p.m. in the City Council Chambers of the City of Agoura Hills, at 30001 Ladyface Court, Agoura Hills, CA 91301.

Section 4. Evidence, both written and oral, including the staff report and supporting documentation, was presented to and considered by the City Council of the aforesaid public hearing on May 9, 2012.

Section 5. Pursuant to Section 9673.2.E of the Agoura Hills Zoning Ordinance, and based upon the evidence presented at the hearing, including the staff report and oral and written testimony, the City Council finds the request to revise Condition No. 13 and Condition No. 24 in substantial conformance with the original approval per the findings in Resolution No. 11-1041.

Section 6. Based upon the evidence presented at the hearing, including the staff report and oral and written testimony, the City Council denies the Applicant's request to amend Condition No. 25 based on the following:

- A. In approving Conditional Use Permit Case No. 05-CUP-001 Amendment #2, the Planning Commission imposed certain conditions on the requested use in order to be able to make the findings required by Section 9673.2.E of the Agoura Hills Zoning Ordinance for the approval of a conditional use permit.
- B. The conditions approved by the Planning Commission per Resolution No. 11-1041 specifically included a prohibition against lingerie shows. The Applicant accepted these conditions and began operating The Sunset Room in October 2011.
- C. The record demonstrates that the Planning Commission imposed this condition in order to ensure that the proposed use of the property is not detrimental to the public health, safety, or welfare. The Applicant has not demonstrated any changed conditions suggesting that this condition is no longer required to make sure that the operation will not be detrimental to the public health, safety or welfare.
- D. The use is located in the Agoura Village Specific Plan (AVSP) area. The Agoura Village Specific Plan prohibits adult entertainment in the AVSP area and allowing lingerie shows in a business that caters to adults would be inconsistent with the AVSP.

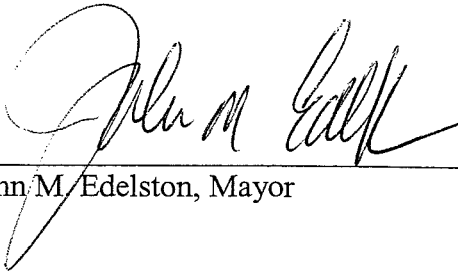
Section 7. The City Council hereby finds that the action taken by this resolution is categorically exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq., "CEQA"), pursuant to Section 15061(b)(3) of the state CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.) because the project does not have any potential for causing a significant effect on the environment. The revised condition of approval amends only two conditions of approval to change the hours of last call and last service of alcohol and to allow ambience music on the outdoor dining patio. Thus, there is no possibility that the project will have a significant effect on the environment. In addition, the Project involves the operation of an existing structure involving negligible or no expansion of use beyond the already existing use. Thus, the Project is exempt from CEQA review pursuant to Section 15301 (Class 1).

Section 8. Based on the aforementioned findings, the City Council hereby upholds the Planning Commission's decision and approves amendment to Condition No. 13 and to Condition No. 24 of Conditional Use Permit Case No. 05-CUP-001 Amendment #2 and adds a new Condition No. 39 requiring that a monitoring report return to the City Council in 6 months, per the attached Exhibit A (Conditions of Approval) and incorporated herein by reference. This approval supersedes the prior conditions of approval of Conditional Use Permit Case No. 05-CUP-001 Amendment #2 and #3.

Resolution No. 12-1669

PASSED, APPROVED and ADOPTED this 23rd day of May, 2012, by the following vote to wit:

AYES: (3) Edelston, Koehler, Schwarz
NOES: (0)
ABSTAIN: (1) Buckley Weber
ABSENT: (1) Weber



John M. Edelston, Mayor

ATTEST:



Kimberly M. Rodrigues, City Clerk

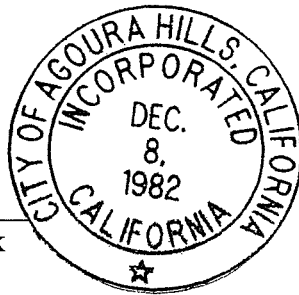


Exhibit A

CONDITIONS OF APPROVAL For Case No. 05-CUP-001 Amendment #3 As Approved by City Council on May 23, 2012

STANDARD CONDITIONS

1. This action shall not be effective for any purpose until the applicants have agreed in writing that the applicants are aware of, and accept all, Conditions of Approval of this permit with the Department of Planning and Community Development. Any conditions on such acceptance or challenges, including the filing of legal action, relating to the permit or the conditions shall be treated as a failure to meet this Condition and shall nullify and void this permit.
2. Except as modified herein, the approval of this action is limited to and requires complete conformance to the labeled exhibits approved by the Planning Commission.
3. It is hereby declared to be the intent that if any provision of this Permit is held or declared to be invalid, the Permit shall be void and the privileges granted hereunder shall lapse.
4. It is further declared and made a Condition of this action that if any Condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicants have been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
5. All requirements of the Zoning Ordinance and of the specific zoning designation of the subject property must be complied with unless set forth in the Conditional Use Permit and Conditional Use Permit Amendments.
6. Unless this permit is used within two (2) years from the date of City approval, Case No. 05-CUP-001 Amendment will expire. A written request for a one (1) year extension may be considered prior to the expiration date.

SPECIAL CONDITIONS

7. The applicants shall comply with all requirements of the State Department of Alcohol Beverage Control.
8. In accordance with Zoning Ordinance Section 9710, a new Conditional Use Permit by the City shall be required when any of the following conditions of the business apply:
 - A. The establishment changes its type of retail liquor license with the Department of Alcoholic Beverage Control;
 - B. There is substantial modification to the mode or character of operation, including, but not limited to, any increase of 20% or more in the floor area.

- C. The alcoholic beverage license has either been revoked or suspended for any period by ABC.
9. All employees involved in direct sales to customers shall enroll annually in ABC-approved alcoholic service training.
 10. A full dinner menu shall be available until 1:00 a.m.
 11. There shall be no minimum number of drinks required to be consumed during the operation of the eating establishment.
 12. There shall be no service of alcoholic beverages on the dance floor.
 13. "Last call" for alcoholic beverages will occur at ~~4:00~~ 1:30 a.m. and there shall be no service of alcohol after ~~1:15~~ 1:45 a.m. ~~On Fridays and Saturdays, "last call" for alcohol beverages will occur at 1:15 a.m. and there shall be no service of alcohol after 1:30 a.m.~~ All patrons must exit the premises by 2:00 a.m.
 14. "Bottle service" shall only be allowed at times when a full dinner menu is available.
 15. The applicant shall comply with all the provisions in the Security Plan, marked Exhibit E and is made a condition of the Conditional Use Permit Amendment #2.
 16. Security/monitoring staff will be designated to patrol the parking lot and adjacent areas during the evening hours until the close of business and until all of the patrons have left the premises.
 17. The telephone number of a responsible party shall be available upon request from the Lost Hills Sheriff Station staff.
 18. Minors must be accompanied by an adult whenever there is dancing or live entertainment.
 19. On-site security cameras shall be maintained. The recording shall be archived a minimum of 14 calendar days.
 20. There shall be no pool tables or electronic gaming machines.
 21. There shall be no leasing of the facility or subletting the facility for outside events.
 22. There shall be no "after hours" use of the facility. Closing time shall be no later than 2:00 a.m.
 23. The dance floor shall not exceed 1,080 square feet.

24. ~~There shall be no outdoor entertainment or dancing.~~
The outdoor entertainment shall be limited to a musician or recorded music for the purpose of playing ambience music to the dining patrons to be located along the east wall. No dancing is allowed in the outdoor dining area.
25. Live entertainment is limited to only what is approved by the Planning Commission under this Conditional Use Permit. There shall be no wet tee-shirt contests, pole-dancing, lingerie shows, bikini dancing or taxi dancing, or the like.
26. Any changes to the Floor Plan shall be subject to review and approval by the Director of Planning and Community Development and/or the Planning Commission.
27. The facility shall be responsible for removing all trash and debris from the site and adjacent sites every day after closing.
28. There shall be no noise audible over 50 dB beyond the property line per the Zoning Ordinance.
29. All live entertainment shall cease no later than 1:30 a.m.
30. All graffiti on the site shall be removed or painted over within 24 hours of each occurrence.
31. Prior to issuance of occupancy, the applicant shall meet with the City Traffic Engineer and shall submit a valet parking circulation plan to the satisfaction of the City Traffic Engineer.
32. Any changes to the valet parking shall be subject to review and approval by the Director of Planning and Community Development and/or the Planning Commission prior to implementation.
33. Prior to issuance of occupancy, the applicant shall enter into parking agreements with Adobe Cantina and with Canyon Tile and Stone, acceptable to the City, for use as off-site valet parking lots of The Sunset Room patrons' vehicles, as per the Parking Study.
34. Prior to occupancy, the Adobe Cantina parking lot's unpaved areas to be used for parking per the Parking Study, shall be provide with a finished surfaced and improved to the satisfaction of the City Engineer and the Director of Planning and Community Development.
35. A copy of these conditions will be maintained on the premises and all managers shall be made aware of these conditions.
36. The applicant shall allow inspection of premises by City Staff during normal business hours. A monitoring report on the applicant's compliance with the conditions of approval shall be prepared by the City Staff to the Planning

Commission no later than 6 months after initial operation and at anytime thereafter as deemed necessary by the City. If at any time there are excessive calls for service by the Sheriff's Department, the applicant shall take action to address those issues immediately, including increasing security personnel and paying the City of Agoura Hills to offset the costs for the increases in calls for services attributed to the Sunset Room.

37. In the event that the applicant seeks to install a cover over the outdoor dining area, the design of the cover is subject to the review and approval of the Director of Planning and Community Development Department and the Building Official.
38. The Sunset Room Restaurant and Lounge will not open for business until the Conditional Use process for live entertainment is completed and all required permits are issued.
39. A monitoring report on the applicant's compliance with the conditions of approval shall be prepared by the City staff to the City Council in 6 months (no later than November 9, 2012). The applicant shall allow inspection of the premises by City staff during normal business hours.

END

CASE NO. 05-CUP-001 Amendment #3

**For the project located at 29020 Agoura Road
Agoura Hills**

**Exhibit C
May 9, 2012 City Council Staff Report**

REPORT TO CITY COUNCIL

DATE: MAY 9, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT AMENDMENT #3 (CASE NO. 05-CUP-001) (CITY COUNCIL, APPELLANT / SUNSET ROOM, APPLICANT)

The request before the City Council is to conduct a public hearing to consider an appeal, made by the City Council, of the Planning Commission's approval of Conditional Use Permit Amendment #3, Case No. 05-CUP-001. The applicant, James Ashford, representing the Sunset Room Lopunge, located at 29020 Agoura Road, requested approval to amend three conditions of approval of the existing Conditional Use Permit to extend the restaurant's time for "last call" of alcoholic beverages; to allow outdoor entertainment; and to allow for lingerie shows. The restaurant is in the Agoura Village Shopping Center, which is located in the Planned Development (Agoura Village Specific Plan) zone.

On October 6, 2011, the Planning Commission reviewed a request by James Ashford to amend the Conditional Use Permit for live entertainment, approved in 2006, for the previous restaurant tenant, Chapter 8. The applicant requested a different type and schedule of entertainment in order to conform to his proposed supper club. The Planning Commission approved the request and imposed a number of conditions. Included in these conditions was a requirement for staff to monitor the business for six months and report back to the Planning Commission on the applicant's compliance with the conditions.

On April 5, 2012, staff presented the Planning Commission with the six-month monitoring report, which is included in the attached Planning Commission staff report. The conditions of approval that were adopted by the Planning Commission last October were intended to address the scope of live entertainment, security, parking, and traffic. These were issues that have arisen in the past with similar live entertainment Conditional Use Permits in the City and specific to this location. With the exception of one lingerie show and not getting a permit or approval from the City for an outdoor patio cover, staff reported to the Planning Commission that the applicant complied with all conditions of approval as observed by staff on seven (7) different occasions.

The Planning Commission also considered on April 5, 2012, at a public hearing, the applicant's request to amend three conditions of approval of the Conditional Use Permit, regarding the time of "last call" for alcohol service (Condition No. 13), outdoor entertainment (Condition No. 24), and lingerie shows (Condition No. 25).

Condition No. 13 stated: *“Last call’ for alcoholic beverages will occur at 1:00 a.m. and there shall be no service of alcohol after 1:15 a.m. On Fridays and Saturdays, ‘last call’ for alcohol beverages will occur at 1:15 a.m., and there shall be no service of alcohol after 1:30 a.m. All patrons must exit the premises by 2:00 a.m.”* The applicant requested to amend this condition to change the last call to 1:30 a.m. and last service to 1:45 a.m., for each night of the week, in order to be comparable and competitive with other restaurants serving alcohol in the local area.

Staff recommended against the proposed amendment to this condition, which the applicant had previously agreed to, because it was intended to encourage and assist patrons to leave the premises in an expedient, orderly, and safe manner. This condition, which is applied to the current tenant and any future restaurant within the same tenant space, was meant to serve as a “cool down” period in order to avoid the last minute rush to order alcohol prior to close of business, to help dissipate the crowd safely, to minimize crowds waiting for valets retrieving vehicles, and to reduce traffic congestion in the area. This condition was also coordinated with the condition regarding increased security in the parking lot during the last hour of operation (the business closes at 2:00 a.m.) to help in the orderly shutdown of the business. Past experience has shown that substantial control of the parking lot is necessary at the end of the evening as patrons exit the site. This “cool down” protocol was recommended by staff and the Sheriff’s Department in reaction to what was experienced under the previous operator (Chapter 8) in which there were numerous calls for service at the end of the night regarding altercations and disorderly conduct. It also helps reduce the number of calls at the end of the Sheriff’s patrol shift at 2:00 a.m. It was staff’s opinion that the “cool down” provisions have been effective in reducing the calls for service and in protecting public safety. Since Sunset Room opened in October, 2011, the Sheriff’s Department reports five (5) calls related to disorderly conduct, six (6) calls related to drunkenness, two (2) calls related to theft, and five (5) calls related to false security alarms. If compared to number of service calls originated from Chapter 8, the previous operation, the number of calls is lower and limited to fewer categories of disturbance. Thus, staff found this condition of approval has been effective in its intent.

Four out of the five Planning Commissioners (with the exception of Commissioner Northrup), were in favor of the applicant’s request to extend the last call and last service. They were satisfied that the security measures in place were effective in reducing calls to the sheriff and expressed that the change would provide equity to this business in comparison to other alcohol serving businesses in the area that did not have such restrictions on last call and last service.

The applicant also requested to amend Condition No. 24, which states: *“There shall be no outdoor entertainment or dancing.”* The applicant requested to amend this condition to have a musician play a guitar or keyboard on Sunday afternoons and every evening from 5:00 p.m. to 8:00 p.m., along the east wall of the enclosed outdoor patio. No changes to the building were proposed and the full dinner menu was proposed to continue to be provided.

Staff supported the request provided that it is limited to ambience music. The proposed live entertainment would remain ancillary to the dining and is intended to provide ambience music for diners only. The addition of ambience music in the patio area would not trigger a requirement for additional parking, whereas additional dancing space would require additional parking and revising the original traffic study. A similar request to have indoor and outdoor live entertainment was approved in

December, 2011, by the Planning Commission for Ladyface Alheouse & Brasserie. Although there are no residential neighborhoods in the vicinity of Sunset Room, there is one caretaker unit located on the north side of Agoura Road, across the street from the retail center. Currently, the outdoor dining area is enclosed with solid walls, but is open to the sky. The applicant stated his interest in adding a cover over the outdoor dining area that would help in muffling the sound. There is also a condition of approval (Condition No. 28) limiting noise to less than 50 dB at the property line. It was staff's opinion that the addition of ambience music in the patio area would not fundamentally alter the original application.

The Planning Commission agreed with staff recommendation and approved amending Condition No. 24 to state as follows: *"The outdoor entertainment shall be limited to a musician or recorded music for the purpose of playing ambience music to the dining patrons. No dancing is allowed in the outdoor dining area."*

Lastly, the applicant requested to amend Condition No. 25, which states: *"Live entertainment is limited to only what is approved by the Planning Commission under this Conditional Use Permit. There shall be no wet tee-shirt contests, pole dancing, lingerie shows, bikini dancing or taxi dancing, or the like."* The applicant requested to amend this condition to allow lingerie shows "a few times a year." Although specifically prohibited, one lingerie show took place on February 2, 2012, without City approval and despite staff warning the applicant in advance of the potential violation of his Conditional Use Permit. A video of the event can be viewed on the following YouTube web link: http://www.youtube.com/watch?v=uecY_XJOVq8. Staff did not videotape the event, but was present in the restaurant that evening.

When the Planning Commission approved the live entertainment in October, 2011, they expressly limited the type of entertainment allowed. The applicant indicated his intent to operate a "supper club" where live entertainment would be ancillary to dining. At the time, staff worked with the applicant in crafting Condition No. 25 and the applicant was agreeable to prohibiting lingerie shows. Staff informed the Planning Commission on April 5, 2012, that it was our opinion that the allowance of lingerie shows would fundamentally change the character of the use approved last October and thus necessitating additional traffic studies and changes to the floor plan. Such live entertainment would not be ancillary to dining. Any approval of changes to live entertainment would run with the land and is not personal to any individual or particular business and therefore, the restaurant may be operated under different ownership in the future and the CUP could be used for any type of live entertainment that is within the context of the approved conditions. The Planning Commission agreed with staff and found that the Agoura Village Specific Plan prohibits adult entertainment and allowing lingerie shows in a business that caters to adults would be inconsistent with the Specific Plan.

In summary, the Planning Commission, on a 4-1 vote, approved the applicant's request to amend Condition No. 13 (last call) and Condition No. 24 (outdoor live entertainment), and denied the request to amend Condition No. 25 (lingerie shows). Commissioner Northrup dissented, indicating her support for approval of amendment to Condition No. 24 (outdoor live entertainment) only.

For reference, the Planning Commission Resolution No. 12-1055 and amended conditions of approval (including Condition Nos. 13 and 24) are attached to this report, along with the Planning Commission staff report, the draft April 5, 2012 Planning Commission meeting minutes and letters from the public.

The role of the City Council at this time is to conduct a public hearing on the appeal and to determine whether the applicant is permitted to continue live entertainment, as amended by the Planning Commission on April 5, 2012. The City Council has the following options for a motion:

1. Uphold the Planning Commission's decision per the Planning Commission Resolution No. 12-1055 which approved amendments to Condition No. 13 ("last call") and No. 24 (outdoor live entertainment) and denied amendment to Condition No. 25 (lingerie show); or
2. Modify Condition Nos. 13, 24, and 25 of the amended Conditional Use Permit to address specific issues raised by the City Council; or
3. Reverse the Planning Commission's decision and deny the Conditional Use Permit Amendment #3 based on the evidence presented to the City Council. Under this option, the applicant would still be entitled to use the live entertainment Conditional Use Permit per the conditions approved in October 2011.

Based on the City Council's direction, staff will bring back a resolution and conditions of approval reflecting the City Council's motion for adoption at the next available City Council meeting.

RECOMMENDATION

It is recommended the City Council conduct a public hearing to consider the appeal of the Planning Commission's approval of Conditional Use Permit Case No. 05-CUP-001 Amendment #3, and provide direction to staff reflecting Council's desired action.

Attachments: Exhibit A: Appeal Application
Exhibit B: Planning Commission Resolution No. 12-1055 and Amended Conditions of Approval
Exhibit C: Draft April 5, 2012 Planning Commission Meeting Minutes
Exhibit D: April 5, 2012 Planning Commission Staff Report
Exhibit E: Letters