



Council Meeting: October 20, 2009

SUBJECT: 2009-0691 Revocation of Use Permit #5714 allowing live entertainment and general sale of alcoholic beverages at 146 S. Murphy Avenue.

REPORT IN BRIEF

Staff recommends that Use Permit #5714 be revoked for the following reasons:

- The current business, known as the “The Abyss,” at 146 S. Murphy Avenue in Sunnyvale, is operating in violation of the Sunnyvale Use Permit approved Conditions of Approval by not complying with the issued state liquor license; and
- The approved nightclub use has expired since the current business has been operating under a state liquor license that does not allow the business to operate as a nightclub as defined by the Sunnyvale Municipal Code.

BACKGROUND

The property at 146 S. Murphy Ave. originally housed a small movie theater, which was extensively renovated in the late 1980’s by a prior owner, Donald Eaton, for use as a dinner theater and restaurant. Donald Eaton sold the property in 1998 to Oran T. Chang, who sold it to Sun & Sun LLC. Currently, the title is held by the Sun & Sons Holding Trust, Auburn Holding Trust and the J.L. Stanford Holding Trust.

An approved Use Permit is tied to the land regardless of the owner or operator of a business. It is important, in this case, to review the history and evolution of both the land use entitlement (Use Permit) and the State issued Liquor License as the two are intrinsically linked. The following discussions under “Land Use History” and “Alcohol License History” provide the history and evolution leading to the current conditions. Revocation proceedings occur in extreme conditions, which are documented in the “Business Operations 2009-Present” and “Summary of Public Safety Incidents in 2009.” This information is intended to assist the Council in establishing the unique circumstances leading to this Use Permit Revocation.

Land Use History

On April 8, 1986, the City Council approved a Use Permit (5714) to allow renovations to the exterior of the building, a theater-restaurant use (including beer and wine sales) and a roof-mounted satellite dish (Attachment 1). A one-year review was required for the Use Permit, which was approved by the City Council in 1987 (Attachment 2). The Use Permit (5714-B) was later modified on August 28, 1990 to allow live entertainment (nightclub) and sales of alcohol pursuant to an on-sale general liquor license (Attachment 3).

Since the original approval, the businesses operating at the subject property have varied, including “The Palace” and “The Forum.” Since 2005, the property has been leased by The Abyss Entertainment Group, Inc., (Emma Nguyen, president), doing business as “The Abyss.”

Until 1996, the Palace operated as a restaurant with live entertainment under the appropriate State Liquor License of a Type 48 (On Sale General – Public Premises). A Type 48 license allows a business to operate a nightclub, bar or restaurant with live entertainment. However, in 1996, The Palace changed the liquor license to a Type 47 (On Sale General – Eating Place) which requires that the business operate a restaurant. A Type 47 establishes operational standards such as normal mealtimes and a substantial amount of sales must be for food service. The limitations of a Type 47 permit are counter to the limitations for a “nightclub” in the City of Sunnyvale Municipal Code (SMC §19.12.150), which states the following:

“Nightclub” means a business establishment where live music, entertainment and/or a dance floor is provided, alcoholic beverages are sold for consumption on the premises and where, if food is served, it is incidental to the sale of beverages, comprising no more than twenty-five percent of total sales.

The SMC further states that the permit shall expire and become null and void if the use is discontinued for more than one year. The “The Abyss” violated ABC regulations which, in December 2006, resulted in modifications to the liquor license, eliminating live entertainment and requiring the business to operate as restaurant, with a substantial amount of the sales resulting from food service. Despite the ABC modification requiring the discontinuance of the nightclub, the Abyss continued to provide live entertainment in the form of DJs and dancing without sufficient food service.

Although the City may have considered revocation following the 1996 change in liquor license, the number of incidences never rose to the current level of The Abyss. The business’ lack of cooperation with the Department of Public Safety, irresponsible business operations, and repeated incidents, have led City staff to

recommend revocation of the use permit. At this time, the SMC does not provide a mechanism for City Council to impose additional Conditions of Approval on a previously approved project.

Alcohol License History

To sell alcohol, a business owner is required to obtain the appropriate liquor license from the California Department of Alcoholic Beverage Control (ABC). On December 15, 1992, the ABC issued "Type 48" (On-Sale General Public Premises) liquor license (License No. 272760) to the "New Entertainment Corporation," Donald Eaton, CEO (Attachment 4). A Type 48 license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Food service is not required. (Attachment 5, "Common ABC License Types and Their Basic Privileges.")

On January 11, 1996, the New Entertainment Corp. (Donald Eaton) converted the Type 48 license to a "Type 47" (On-Sale General Eating Place) license. (Attachment 4). A Type 47 license allows the following:

ON SALE GENERAL – EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises. (See Attachment 5 and see also California Business & Professions Code §23038, §23396.)

Generally speaking, a Type 47 license is the proper license for a restaurant which has full bar service. It is possible that a restaurant with a Type 47 license may be operating primarily as a bar during certain hours, such as Friday and Saturday nights. The Type 47 license does not require that every person buying a drink be served food or that meals be served continuously at all times of day. However, the establishment must be a "bona fide eating place" in that it must have adequate kitchen facilities and a substantial part of its business must consist of selling meals.

On January 24, 2001, the New Entertainment Corp.'s Type 47 liquor license was transferred to NHAH Inc. doing business as the Forum Nightclub at 146 S. Murphy Ave. Pursuant to the transfer, the ABC issued a Type 47 license to NHAH Inc. on March 30, 2001 (License No. 373671, Attachment 6).

On August 25, 2005, NHAH Inc. transferred its Type 47 license to Chien T. Duong dba The Abyss at 146 S. Murphy Ave. The ABC issued the license on January 11, 2006 (License No. 430051, Attachment 7).

On February 9, 2006, the Abyss Entertainment Group, Inc., submitted an application for a City of Sunnyvale business license describing the business as “restaurant and dancing nightclub” (Attachment 8). The business license was issued and approved by the City.

On December 15, 2006 less than a year after The Abyss opened its doors, the ABC suspended The Abyss’ liquor license for 20 days as a result of violations that included operating a “disorderly house” and serving contaminated beverages (Attachment 9). On the same date, the ABC also imposed additional permanent conditions on The Abyss’ liquor license, to wit:

“1. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.

“2. Licensee(s) shall not share any profits, or pay any percentage or commission to a promoter or any other person, based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimal drink orders, or the sale of drinks.

“3. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed premises. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

“4. The sales of alcoholic beverages for consumption off the premises is strictly prohibited.

“5. Between the hours of 8:00 PM and 2:30 AM, the licensee(s) shall provide licensed uniformed security personnel in the premises, and parking lot adjacent to the premises, and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of the property by nearby residents. Said personnel shall be clothed in such manner as to be readily identifiable as security.

“6. Licensee(s) shall police the area under their control in an effort to prevent loitering of persons about the premises.

“7. The licensee(s) shall post and maintain a professional quality sign, one facing S. Murphy Avenue, and one facing the rear parking lot, which reads as follows: NO LOITERING, NO LITTERING, NO DRINKING OF

ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST.
The sign shall be at least two feet square with two inch block lettering.”

The holders of the liquor license, Chien T. Duong and Chung Nguyen,¹ agreed to these restrictions by signing a “Petition for Conditional License” dated December 5, 2006 (Attachment 10).

Throughout 2008, the City of Sunnyvale, Department of Public Safety worked closely with The Abyss in an effort to prevent criminal activity and reduce calls for service occurring in and around the premises. In January 2009, the Abyss and Public Safety finalized a security plan pursuant to Sunnyvale Municipal Code §9.47.030. Among other things, the security plan outlines standards for security and crowd management and specifically requires The Abyss to adhere to the terms and conditions of its liquor license (Attachment 11).

Business Operation 2009-Present.

On January 8, 2009, the ABC initiated proceedings to revoke the Abyss’ liquor license on a number of grounds including, among other things, sale of alcoholic beverages for consumption at times when the premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of Sections 23038 and 23396 of the Business and Professions Code; providing live entertainment in violation of the liquor license conditions; and operation of a “disorderly house” that is injurious to the public morals, health, convenience or safety, in violation of Business and Professions Code Section 25601 (Attachment 12).

At the hearing, Emma Nguyen, the manager of the Abyss, admitted that the club has been unable to make money selling food. "Nobody come in to eat. Electrical bill exceed what we ever make. We start selling -- what is it? Authentic food. Nobody buy it. Food we offer. Everything we throw it. Everything go to waste." (Attachment 14, ABC Transcript Vol. II, Testimony of Emma Nguyen, p.496:17-23.) The Abyss stipulated to the truth of Counts 1 and Count 4 of the Accusation, that the Abyss served alcoholic beverages at times when "the premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of Sections 23038 and 23396 of the Business and Professions Code" (Attachment 12, Accusation dated Jan. 8, 2009, and Attachment 14, ABC Decision dated April 3, 2009).

Ms. Nguyen also admitted that the Abyss regularly advertises events with DJ's because "that's the only way that we can make a living." (*Id.*, page 484:2-7).

¹ Chien T. Duong and Chung Nguyen are the parents of Emma Nguyen, who is the president of The Abyss Entertainment Group, Inc., and manager of The Abyss nightclub.

She testified that club complies with the restriction on live music by having the DJ's play pre-mixed CD's. "We advertise it, but we don't have a DJ." (*Id.*, page 490:4-6.) There was conflicting testimony at the hearing about whether DJ's ever enter the DJ booth and perform as if they were mixing music while playing a pre-recorded CD ("DJ-syncing"). However, the Administrative Law Judge found "credible evidence" that the club had violated the restriction on live entertainment through use of DJ's and dancers. (Attachment 14, page 7-8, ABC Decision dated April 3, 2009)

In addition, the Administrative Law Judge found that The Abyss was a "disorderly house" within the meaning of Business and Professions Code Section 25601 based on a number of public safety incidents described in the Accusation and testified to at length at the hearing. Finally, the Judge concluded that revocation was an appropriate remedy because "The evidence establishes that continuation of this license would be contrary to public welfare and morals" (Attachment 14, pp.10-11, ABC Decision dated April 3, 2009).

On April 3, 2009, the ABC issued a ruling to revoke The Abyss' liquor license (Attachment 14). This decision is currently on appeal. The City has been informed that the appeal will likely be heard sometime in 2010. Until the appeal is decided, the revocation of the liquor license is stayed and The Abyss can remain in operation and continue to sell alcoholic beverages.

Throughout 2009, even after revocation of its liquor license in April 2009, the Abyss has continued to operate in a manner that violates the conditions of its liquor license including use of promoters, live entertainment, and DJ's, as evidenced by advertising on The Abyss' website (see Attachment 15).

In addition, the Abyss has continued to operate primarily as a nightclub, not as a restaurant/bar. The City has no evidence that the Abyss has changed its business in order to operate as a bona fide eating place, as required by its liquor license. Failure to operate a bona fide eating place was one of the grounds for the ABC's revocation of the Abyss' liquor license.

Staff initiated proceedings to revoke the use permit on September 9, 2009 based on the history of the ABC license, continued noncompliance with the use permit, and continued public safety incidents. The following discussion cites recent Department of Public Safety incidents.

Summary of Public Safety Incidents in 2009

The ABC Accusation dated January 8, 2009, the ABC Decision dated April 3, 2009, and the transcript of the hearing (Attachments 12, 14 and 15, incorporated herein by reference) summarize the Public Safety incidents which occurred in 2008.

Due to ongoing problems at The Abyss from 2006-2008, in January 2009, the owners of the Abyss met with members of Public Safety regarding a security plan in accordance with the newly-enacted Sunnyvale Municipal Code 9.47.030, to improve the security and safety of the operation of their business. One of the stipulations in the security plan was that the owners and operators of the club would notify Public Safety of all incidents, including but not limited to: acts of violence, patrons who are injured or any other law violation that occurs on the premises. Since the inception of the security plan Public Safety has had 17 calls for service at the establishment in which patrons from the club were either overly intoxicated, causing a disturbance or were involved in a physical altercation that required medical aid. In four of the instances the operators of the club refused to summon the proper aid as outlined in the security agreement or they assisted the suspects in leaving the area prior to police arrival. The following is a sample of the calls for service since January:

- 3/27/09, Arrest for Public Intoxication, CR09-3313
- 3/29/09, Assault with a deadly weapon occurred in the parking lot of Macy's during the closing time of the Abyss. The victim and his friends were attacked by patrons leaving the Abyss. One victim was kicked in the head and sustained other facial injuries. This case fell under the Extraordinary Response clause of the Municipal Code. The owners of the Abyss were sent an invoice for \$2,897.90.

The Abyss was billed \$2,897.90, on June 10, 2009, pursuant to Sunnyvale Municipal Code §9.47.040, for emergency response costs associated with the incident that occurred on March 29, 2009 (Attachment 16). To date, this bill has not been paid.

- 5/31/09, Assault and battery occurred and victims asked for the club security to summon police aid for a report. They refused and the victim had to seek police aid on his own after the fact. During the follow up investigation the self-proclaimed President of the Abyss, Emanuel Nguyen, said she knew about the fight but she did not call the police because "There was no injury or bleeding". She further stated that when there is a physical altercation in the club if there is not an obvious injury such as being hit in the head with a bottle, or stabbed, or the patron requests an ambulance, the Abyss nightclub does not call 911 for its customers. In this case both victims sustained moderate injuries to their faces. The victims were persuaded to sign agreements not to sue the Abyss for their reluctance to summon the proper aid and in return they were given "VIP privileges" at the club. CR09-6236

- 7/19/09, Assault and Battery with serious injury occurred near 168 S. Murphy Ave., Fibbar's Bar. Three victims in this case were assaulted by five patrons from the Abyss when they were sitting on a bench waiting for their ride. During the unprovoked attack the five patrons from the Abyss punched all three victims and severely injured one of them causing blood to come from his ear. Prior to police arrival, security personnel from the Abyss escorted the suspects to their vehicle and let them leave the scene. CR09-7240.
- 7/25/09, Assault and Battery with serious injury occurred at the Abyss. The reporting party was a doctor at the Kaiser Hospital Emergency Room. During the investigation it was discovered that the security personnel at the Abyss were the suspects in the case. During the altercation at the Abyss the victim sustained trauma to his face and left eye that required stitches. After he was assaulted by the security personnel he was taken to the men's room where they had him clean himself up. They had him remove his shirt and undershirt. According to the victim the undershirt was covered in blood. The victim was allowed to put his dress shirt back on and they kept the blood soaked undershirt. They then walked him outside and sent him on his way with his friends. Both suspects were eventually arrested for battery. CR09-7468
- 8/9/09, it was discovered that one of the security personnel working at the Abyss was on parole for felony battery and one of his conditions of parole was that he not frequent places whose primary function is to serve alcohol. When notified, the parole officer requested he be arrested for violating the terms and conditions of his parole. When questioned, the head of security told officers he knew the subject was on parole but did not know any of the circumstances. He said that neither he nor the owners of the Abyss perform any type of background checks on the personnel they employ. CR09-7944
- 9/13/09, an assault with a deadly weapon occurred inside the night club. The victim was attacked by several suspects inside the club. One of the suspects struck the victim several times on the head with a beer glass that eventually broke and lacerated his skull. The victim lost consciousness during the attack. At some point he was taken upstairs in the club and provided towels and ice to stop the bleeding. One of the security guards called 911 but when paramedics, fire personnel and police arrived, they were first told by the manager that there was no altercation. He then "checked with his staff" and said the victim left the premises with his friends. After paramedics and fire personnel left the scene, a patrol officer saw the victim being escorted out the back door of the Abyss by security personnel. They were detained, medical aid was

summoned and the victim was taken to the hospital for treatment.
CR09-9014

- On 9/12/09, the evening prior to the above referenced battery case, Capt. Verbrugge visited the Abyss and met with security staff and the manager. Capt. Verbrugge was escorted throughout the establishment, including the kitchen area. Within the kitchen it was observed that there were fruit plates prepared and sitting out on the counter. The cooking area (stove top and oven) appeared to not have been used for a long period of time. There was dust and dirt on the cooking surface as well as numerous boxes stacked in front of and around the cooking area. There also did not appear to be any cooks, busboys or waiters/waitresses working that evening.

DISCUSSION

Sunnyvale Municipal Code §19.98.130 provides that a zoning permit “may be revoked by the city council, after a public hearing thereon, by an affirmative vote of a majority of its voting members, when the city council finds a violation of or noncompliance with the conditions of approval of such permit.”

The Use Permit granted on August 28, 1990, includes a provision that the permittee will “comply with applicable City Codes, Ordinances and Resolutions.” In addition, the permit was granted for entertainment and sale of alcoholic beverages pursuant to an “on-sale general liquor license.” In 1992, the prior owner, Donald Eaton, obtained a “Type 48” (On-Sale General Public Premises) liquor license, appropriate for a nightclub. However, in 1996, he converted it to a “Type 47” (On-Sale General Eating Place) license. Operation of an establishment that is strictly a bar/nightclub, without substantial sales of meals, is not allowed under a Type 47 license.

Sunnyvale Municipal Code §19.98.200 provides that the use of property in violation of the City’s Zoning Code is considered to be a public nuisance. More generally, nuisances are prohibited by Sunnyvale Municipal Code §1.04.040 (providing that any violation of the Municipal Code is deemed a nuisance) and §9.26.030(x) (defining nuisance as “Any other condition on or use of property which is in fact a menace to the public peace, health, or safety”).

The sale of alcoholic beverages without the proper kind of liquor license, or in a manner that violates the requirements and conditions of the liquor license, constitutes a public nuisance and is unlawful under the Sunnyvale Municipal Code.

Although The Abyss has appealed the revocation of its liquor license, even if the appeal is successful, The Abyss will still be required to operate as a “bona

vide eating place” under its Type 47 license. Moreover, the restrictions which the ABC placed on the license in 2006 require the Abyss to earn half its revenue from sales of meals. The restrictions also prohibit promoters, live entertainment, and DJ’s. The Abyss has shown no willingness or ability to comply with these restrictions, despite having agreed to the restrictions in 2006.

Revocation of the Use Permit will not preclude the owners of the property from re-applying for a new permit² to operate a restaurant, bar, nightclub, or other use at the site pursuant to appropriate terms and conditions to ensure that whatever business locates at 146 S. Murphy Ave. will operate lawfully.

FISCAL IMPACT

There will be no direct fiscal impact resulting from the revocation; however, there may be a minor loss in sales tax revenue resulting from the business closure.

PUBLIC CONTACT

Public contact was made by publication of the legal add in the “Sun,” posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site. In addition, all property owners and business owners with 300 feet of the subject property were mailed a notice and the site was posted.

On September 9, 2009, the business owner and property owner were notified that the City would begin revocation proceedings and that the item would be presented to the City Council on October 6, 2009 (Attachment 17). Following notification, the property owners’ representative requested that the item be moved to October 20, 2009 due to a scheduling conflict. All interested parties were notified that the City Council review had been moved to October 20, 2009 (Attachment 18).

ALTERNATIVES

1. Revoke Use Permit #5714 eliminating any uses authorized by that permit which include on-sale general liquor and entertainment at 146 S. Murphy Street based on the findings in Exhibit A.
2. Take no action and do not Revoke Use Permit #5714.

² A Special Development Permit would be required since the subject property is currently located within the Sunnyvale Downtown Specific Plan Area.

RECOMMENDATION

Alternative 1, revoking Use Permit #5714 eliminating any uses authorized by that permit which include on-sale general liquor and entertainment at the subject property based on the findings in Exhibit A.

City staff is recommending revocation of Use Permit #5714 based on the history of the ABC license, continued noncompliance with the use permit, and continued public safety incidents as referenced in this report. The revocation of Use Permit #5714 would require the property owner to reapply for any use that is not permitted as of right at the subject property, in which the City would be in a better position to impose specific conditions of approval based on the past track record at the site.

Reviewed by:

Hanson Hom Director, Community Development

Prepared by: Shaunn Mendrin, Senior Planner

Approved by:

Gary M. Luebbers

City Manager

Exhibits

A. Findings for Revocation

Attachments

1. 1986 Use Permit #5714 Staff Report, Conditions of Approval and Recorded Document
2. 1987 One Year Review of 1986 Use Permit.
3. 1990 Use Permit #5714-B Staff Report, Conditions of Approval and Minutes
4. Permit History for ABC Liquor License #272760 (Type 48 and conversion to Type 47) "New Entertainment Corporation"
5. ABC "Common ABC License Types and Their Basic Privileges."
6. Permit History for ABC Liquor License #373671 (Type 47) "The Forum"
7. Permit History for ABC Liquor License #430051 (Type 47) "The Abyss"

8. Business Application for "The Abyss", dated February 9, 2009
9. ABC Decision to Suspend liquor license, dated December 15, 2006
10. Petition for Conditional State Liquor License, dated December 5, 2006
11. January 2009 Security Plan
12. ABC Initiation of Proceedings to Revoke State Liquor License for "The Abyss", dated January 8, 2009
13. ABC Transcript Vol I & II, Testimony of Emma Nguyen, dated February 24-25, 2009
14. ABC Decision, dated April 3, 2009
15. Advertising from Abyss website beginning April 2009
16. Invoice for emergency response costs dated June 10, 2009
17. Notice of Revocation Proceedings, dated September 9, 2009
18. Change of City Council Hearing Date, dated September 17, 2009

FINDINGS FOR REVOCATION

Use Permit No. 5714
149 S. Murphy Avenue, Sunnyvale, California
Sun & Sons Holding Trust, Auburn Holding Trust and the J.L. Stanford
Holding Trust, Owners

Based upon the evidence contained in the staff report and attachments, and presented at the public hearing, the City of Sunnyvale does hereby find:

1. The property at 146 S. Murphy Avenue (“The Property”) is a former movie theater that was renovated in the 1980’s for use as a restaurant, nightclub, and venue for live entertainment. The Property is currently owned by the Sun & Sons Holding Trust, Auburn Holding Trust and the J.L. Stanford Holding Trust, and is leased to the Abyss Entertainment Group, Inc., doing business as “The Abyss.”
2. On April 8, 1986 and the one year review on August 8, 1987, the Sunnyvale City Council approved a Use Permit #5714, subject to specified conditions of approval, to allow the Property to be used a theater-restaurant with beer and wine sales. On August 24, 1990, the City Council approved a Modification of the previous Use Permit #5714-B, subject to specified conditions of approval, to allow live entertainment (nightclub) and sale of alcoholic beverages pursuant to an on-sale general liquor license.
3. Under California law, any person selling alcoholic beverages must have a liquor license issued by the California Department of Alcoholic Beverage Control (ABC).
4. The conditions of approval of Use Permit #5714 and #5714-B included a requirement that the permittee comply with applicable City Codes, Ordinances and Resolutions.
5. Use of property in a manner that constitutes a public nuisance is prohibited by Sunnyvale Municipal Code §1.04.040, §9.26.030(x) and §19.98.200.
6. Violation of state liquor laws is a public nuisance in that such activities are a menace to public peace, health, and safety.
7. The Permittees have failed to comply with the conditions of approval imposed pursuant to Use Permit #5714 by violating the terms and conditions of their liquor license, thus creating a public nuisance. These violations consist of the following:

- A. The Abyss is operating under a "Type 47" (On-Sale General Eating Place) liquor license with special conditions that were imposed by the ABC on December 15, 2006. A "Type 47" license requires that the establishment operate as a "bona fide eating place." There is no evidence that the Abyss is a "bona fide eating place" as required by California Business & Professions Code Sections 23038 and 23396.
 - B. In addition, there is no evidence that The Abyss' quarterly gross sales of food are equal to the quarterly sales of alcoholic beverages during the same period, as required by the conditions of the liquor license. On the contrary, the Abyss manager admitted under oath that The Abyss cannot make money selling food.
 - C. At the hearing to revoke the Abyss' liquor license that was conducted on February 24-25, 2009, the parties stipulated that the Abyss is not a bona fide eating place.
 - D. Credible evidence has been presented that The Abyss has violated the conditions of its liquor license by offering live entertainment, particularly DJ's and dancers, and using promoters.
 - E. Credible evidence has been presented that The Abyss is a "disorderly house" that is injurious to the public morals, health, convenience or safety, in violation of Business and Professions Code Section 25601. In addition to the Public Safety incidents described in the liquor license revocation proceedings, similar incidents have occurred during 2009 where patrons from the club were either overly intoxicated, causing a disturbance or were involved in a physical altercation that required medical aid. In four of the instances the operators of the club failed to summon the proper aid as outlined in the security agreement, or they assisted the suspects in leaving the area prior to police arrival.
8. The Abyss has further violated the Sunnyvale Municipal Code by failing to follow the Security Plan which it agreed to in January 2009 pursuant to Sunnyvale Municipal Code §9.47.030. The Security Plan requires that The Abyss adhere to the terms and conditions of its liquor license. The Security Plan also requires that the owners and operators of the club notify Public Safety of all incidents, including but not limited to acts of violence, patrons who are injured or any other law violation that occurs on the

- premises. Credible evidence has been presented showing violations of the above provisions of the Security Plan.
9. In addition, The Abyss has failed to pay a bill of \$2,897.90 for emergency responses costs imposed under Sunnyvale Municipal Code §9.47.040.
 10. The approved Use Permit #5714 has expired due to modifications to the current State Liquor License issued by ABC as amended on December 15, 2006. The amended license resulted in the elimination of live entertainment and that the business operates as a bona fide eating establishment requiring a minimum of half the sales resulting from food service. A nightclub use may not exceed one quarter of sales from food service.
 11. Permittees have not complied with the conditions of approval, as set forth in Finding 2, and modifications of the conditions of approval or Use Permit would not be in the public interest because the conditions are necessary to protect the public health, safety and welfare. In addition, permittees have failed to comply with the conditions, despite notice and cooperation from the City and security plan, for an extended period of time. Based upon the permittee's history of noncompliance, future compliance is unlikely.
 12. Pursuant to Sunnyvale Municipal Code section 19.98.130, for all of the above-stated reasons, is hereby revoked.



APPLICATION FOR PLANNING COMMISSION OR ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT, Planning Division

File No. 5714 A

Account #	Planning Office Use Only	Related Fees
11.3477	<input checked="" type="checkbox"/> Use Permit (\$ 5-40)	<input type="checkbox"/> Modification
11.3478	<input type="checkbox"/> MAP (\$)	<input type="checkbox"/> Modification
11.3479	<input type="checkbox"/> Design (\$)	
11.3489	<input type="checkbox"/> Plan Approval (\$)	<input type="checkbox"/> Signs (\$)
11.3475	<input type="checkbox"/> Site (Prelim) (Permit) (No. of sheets) (\$)	<input type="checkbox"/> (Permit) Mtg. Date <u>1-10-86</u>
11.3490	<input type="checkbox"/> Variance (\$)	Council Mtg. Date <u>1-10-86</u>
11.3470	<input type="checkbox"/> Options (\$)	(Check box)
11.3471	<input checked="" type="checkbox"/> Prev. Cl. (\$ 400)	<input type="checkbox"/> J.R. (\$)
	<input type="checkbox"/> Neg. Dev. (D.J.R.)	PC Mtg. Date <u>1-10-86</u>
		HP Mtg. Date <u>1-10-86</u>

Accepted by: [Signature] Date: 1-10-86
 PRC Mtg. Date: 1-10-86
 Council Mtg. Date: 1-10-86

Station Zone: C-4 Alt. Section: _____
 General Plan Designation: _____
 TOTAL FEE: \$ 1,040.00
 Distribution: City, Traffic, P.D., C.T.S., Other _____

TO BE COMPLETED BY APPLICANT (PLEASE TYPE OR PRINT LEGIBLY):

ADDRESS OF SUBJECT PROPERTY: 146 S. Murphy Ave.
 Assessor's Parcel Number: 209-05-034 Size of Property: 181.5x50 7,525 sq. ft.
 (Net Acres or Square Feet)

PROPERTY OWNER: Legal Name Kevin A. Basik & Helen M. Basik
 Address (Street) 160 Arroyo Way City Sunnyvale Zip 95088
 Phone (Business) 739-0488 (Home) 737-8818

APPLICANT: Name New Entertainment Corporation
 Address (Street) P.O. Box 262 City Los Gatos Zip 95030
 Phone (Business) 559-5700 (Home) _____

CONTACT PERSON: Name Gregory J. Eaton Firm or Co. New Entertainment Corp.
 Address (Street) 207 Belmont Ave. City Los Gatos Zip 95030
 Phone (Business) 559-5700

Application for Approval to Allow: Remodel of existing theatre building

I certify that the foregoing statements and information are true and that any submitted material, statements or plan designs are correct to the best of my knowledge and belief; and that I agree to accept the approved application, subject to the provisions of all pertinent City Ordinances. I understand that the Planning fees are non-refundable.

[Signature] (Property Owner's Signature) 1/8/86 (Date)

NOTE: Only those persons whose names and addresses are given will be notified of meetings.

Sunnyvale Planning Commission - Agenda

PUBLIC HEARING - USE PERMIT

February 24, 1986

REPORT IN BRIEF

5714 Kevin and Helen Kask (New Entertainment Corp.) Application for a Use Permit and site plan approval to allow (1) renovation of existing theater building, (2) to allow a dining use in connection with a movie theater use, including a beer and wine license, and (3) a roof-top satellite dish antenna. The property is located off the South Murphy Avenue in a C-1B Zoning District.

Issues	Screening of roof-mounted dish antenna
Existing Site Conditions	Existing theater building
Surrounding Land Uses	North: Vacant lot East: Public parking lot South: Commercial building West: Commercial uses (across Murphy Ave.)
Environmental Status	A Negative Declaration has been prepared in compliance with California Environmental Quality Act provisions, as amended, and Resolution #355-81.
Recommendation	Approve with conditions and affirm Negative Declaration



<u>PROJECT DATA</u>	<u>Existing</u>	<u>Proposed</u>	<u>Required/Permitted</u>
Type of Project	movie theater	prog. photo and trucks	by Use Permit
Lot Size	8,518 sq. ft.	8,518 sq. ft.	9,125 sq. ft.
Bldg. Coverage	7,625 sq. ft.	7,625 sq. ft.	—
Bldg. Coverage	88.1%	88.3%	100%
No. of Stories	1	1	2
Bldg. Height	32.5 ft.	32.5 ft.	16 ft. - 22 ft.
Setbacks:			
• Front	0 ft.	0 ft.	0 ft.
• Rear	10.5 ft.	10.5 ft.	0 ft.
• Right Side	0 ft.	0 ft. - 11 ft.	0 ft.
• Left Side	0 ft.	0 ft.	0 ft.
Seating	150	129	—
Solar Energy Provisions	unknown	yes	yes

5714 - Kevin and Helen Kusik - USE PERMIT

2.

ANALYSISOverview of Proposal

Use. The applicant is proposing major modifications to the exterior of the existing theater building and plans extensive modifications for the interior.

Uses proposed for the theater include movie theater use with light meals, seminars, private parties, special showings of major sporting events, smaller conventions and club meetings, sales presentations and product introductions, technical screenings and other similar functions. These events make use of the stage, kitchen and multimedia capabilities, including a satellite dish, slide projector, 16 mm and 35 mm film projection and wide screen video projection. A more detailed account of the proposed uses may be found in a letter from the applicant, entitled "Clivia 'N' Drafthouse Company and Concept" (attached).

Land Use Policies. The concept of a theater-restaurant use is encouraged by policies adopted for Murphy Avenue. The application, as presented by the applicant, would appear to implement the policy for high-quality services and food, an attractive interior decor and a remodeled exterior. It is anticipated that these features will aid in the theater/restaurant becoming a success and will help implement the revitalization of Murphy Avenue.

Architectural Elevations. The applicant has submitted exterior elevations for the proposed restoration and enhancement of the facade of the existing building. Consideration of exterior elevations is technically not in the purview of the Planning Commission but is subject to the approval of the Heritage Preservation Commission. It is important that the Use Permit indicate that the proposed changes actually be accomplished and tied to the Use Permit. This is the intent of recommended Condition #8.

Parking. The Parking District Advisory Board considered the proposal at their meeting on February 13, 1986. The Board voted unanimously to recommend the project for approval.

The applicant has submitted a letter which addresses the parking demand (please refer to letter dated January 22, 1986, attached).

Theater Facades. On February 19, the Heritage Preservation Commission gave conceptual approval to theater facade plans. The City's architectural consultant is working with the applicant to refine these concepts. More precise plans will be submitted for approval in March.

Concerns have been raised about the number, type and area of proposed signs. The architectural consultant and Heritage Preservation Commission will take these factors into account:

1. Ordinance. The new Sign Ordinance allows signs in the Heritage Landmark District to differ from or exceed these regulations: (a) standard prohibitions of exposed neon signs, projecting signs and signs above the roofing, and (b) standard regulations for the number, type, area and copy height of wall signs and ground

5714 - Kevin and Helen Koak - USE PERMIT

signs. The Ordinance allows readerboards for theaters that seat 200+ people, and exempts those signs from standard area and height regulations. The Ordinance requires all signs in the Murphy Landmark District to conform with special design guidelines for that area, with conditions imposed by the Heritage Preservation Commission, and with applicable sections of the Sign Ordinance (including limits on "Items of Information").

2. Design Guidelines - Front Facade. Adopted guidelines recommend a maximum 1:5 sq. ft. of sign area per 1 linear foot of building width. The guidelines also include qualitative criteria regarding sign area, types, materials, etc. The guidelines stress unique qualities of the theater's front facade, and seem to imply that the 1:5 ft ratio does not necessarily apply: "An elaborate wall sign for the theater could be designed to serve as the basis for the design of an entirely new facade...A bright new readerboard sign and a large projecting sign, typical of the original facade, could be added (to the theater). This sign could be seen up and down the street and would add a focal point to the block both day and night. Lighting of the readerboard should be with colored light bulbs or neon tubing."
3. Design Guidelines - Rear Facade. Adopted guidelines recommend maximum 1 sq. ft. of sign area per 1 linear foot of building width. The guidelines state that rear elevation signs should be smaller for rear walls than for front walls. No mention is made of the theater's rear facade. This implies that the total area of all signs on the rear wall of the theater should conform to the 1:1 ratio.

Floor Plans. The extensive changes proposed for the interior of the building would include a reduction of the existing 750 seat capacity to 328, terracing of the floor area from the stage back to accommodate tables and chairs, and the installation of a kitchen and cocktail lounge area.

Trash Enclosure. Trash facilities are not shown on the submitted plans. A trash enclosure should be placed within the area shown on the submitted plans as "unimproved property", as approved by the Heritage Commission.

Landscaping. The area shown on the submitted plans as "unimproved property" should also be landscaped. Landscape plans would be part of the Landmark Alteration Permit which must be obtained from the Heritage Preservation Commission prior to issuance of a Building Permit.

Dish Antenna. Typically, roof-mounted equipment must be screened to the highest portion of the equipment. Also, dish antennas are to be screened from residential uses. Staff is proposing a partial waiver from the basic requirements. The recommendation is that the antenna be screened from the street level view from all public streets but not from second story residential on Sunnyvale Avenue and Murphy Street. Staff believes this is a reasonable compromise. A visible antenna does not enhance the historic nature of the block. Second story screening may be prohibitive. Information provided by the applicant is not sufficient enough to indicate the screening from all parts of Murphy or from Sunnyvale Avenue.

RECOMMENDATION

Affirmation of Negative Declaration and approval of use, based on findings stated below and subject to the following conditions:

5714 - Kevin and Lohas Kask - USE PERMIT

d.

A. FINDINGS

1. The proposed use is desirable, essential and compatible because it will provide dining/recreation facilities and exterior elevation changes in accordance with land use policies.
2. The proposed use will not be detrimental or injurious because off-street parking is provided through the Parking District.

B. CONDITIONS OF APPROVAL

In addition to complying with applicable City Codes, Ordinances and Resolutions, the following conditions of approval are imposed:

1. Attach a copy of the conditions of approval and Standard Development Requirements to each copy of working drawings submitted for a Building Permit for this project. Note by each condition how compliance with the condition is achieved; indicate in the left hand margin by each condition number the page number of the set of drawings where compliance with condition is achieved.
2. Execute a Use Permit document prior to issuance of a Building Permit.
3. A Use Permit for any permitted use, once exercised, shall become null and void if the property is not used for such use for a period of one year or more.
4. Uses permitted shall be limited to movies, TV and video projections, serving of food and beverages including beer and wine, large and small parties, fashion shows and slide projections.
 - a. Any proposed on-sale general liquor license, public dancing or live entertainment must be approved in advance by the Planning Commission.
5. Provide trash enclosures that are a minimum of 6 feet high and enclosed on all four sides, of a design approved by the Heritage Preservation Commission prior to issuance of a Building Permit. Install trash enclosures prior to occupancy.
6. A solar energy collection system shall be provided as the primary means of heating water for domestic and restaurant/bar uses.
 - a. All such systems shall comply with applicable State laws and regulations in addition to Chapter 16.42 of the Sunnyvale Municipal Code.
 - b. Applicant shall demonstrate that the solar system is designed to displace a minimum of 70% of the calculated annual natural gas or electricity which would otherwise be consumed for water heating.
 - c. All such systems shall carry a warranty as prescribed by the California Energy Commission in order to qualify for State income tax credit.
 - d. All such systems shall be designed and installed in accordance with an overall plan as approved by the Director of Community Development.

5716 - Kovels and Helen Kasik - USE PERMIT

look forward to in the evening hours. He welcomed comments from the Parking District Advisory Board and the Heritage Preservation Commission.

The motion carried unanimously. (All members present)

Public Discussion

Ms. Draper explained that the Heritage Preservation Commission will actually approve the sign for this development through a Landmark Alteration Permit in accordance with the criteria outlined in the Murphy Plan.

Ms. Draper mentioned that staff was of the opinion that the area marked "unimproved property" on the submitted plan should be landscaped. On the dish antenna, staff is suggesting that a partial waiver be granted so that screening from second story residential would not be necessary. Screening from the pedestrian view would be required.

Ms. Draper said the Heritage Preservation Commission has reviewed this proposal and is "excited" about it. The Parking District Advisory Board has also looked at the plans and has recommended approval.

Comm. Kowczynski said that in connection with the dish antenna, technology evolves at a rapid pace, with dishes getting smaller and smaller. He asked if the City could require that at some point in time the applicant would have to come back with plans for a smaller dish? Ms. Draper said if the Commission wished to do this, they would have to actually state that this was to be in a specified number of years.

The public hearing was declared open.

Mr. Greg Eaton, representing the applicant, said the satellite dish they are purchasing is a transparent dish, 6 feet in diameter, not a white, fiberglass dish. They had investigated smaller dishes but found that they can not use a smaller dish since they need the capability to get the satellite communications. Mr. Eaton mentioned that the hours of operation would be Sunday through Thursday - shows at 7:30 p.m. and 9:30 p.m.; Friday and Saturday - shows at 7:30 p.m., 9:30 p.m. and Midnight. He stated that they had no intention of staying open past the Midnight show.

Mr. Eaton said he was trying to imagine how to screen the antenna. Ms. Draper stated that the applicant would have to put in mechanical screening. Staff thought because of the height of the building and the height of the mechanical screening, this should be sufficient to screen the dish antenna from the street. Mr. Eaton said this would be agreeable to them.

Mr. Eaton said they did have a concern over Condition #4 since they intended to have live entertainment, such as a three piece band and singer-type entertainment, from time to time. Comm. Hanton asked if the applicant would be agreeable to changing Condition #4 to say that uses permitted shall be limited to movies, large and small parties (live entertainment permitted at those parties). Ms. Draper explained that her application did not mention "live entertainment". Staff would need to have information on the capacity anticipated, type of use intended, etc. Comm. Hanton said his intention was to restrict it to private functions, rather than functions open to the general public.

5714 - Kevin and Helen Kasik - USE PERMIT

Mr. Eaton said there are 330 seats in the theater, therefore, 330 people should be permitted to watch a jazz band at a private party or purchase tickets to see an entertainment group. He said they had no plans to cram 1500 people into the theater for a large concert. Mr. Bresler, Sr. Assistant City Attorney, said probably the Commission should modify Condition #4 to change "large and small parties" to "and live entertainment incidental thereto where such parties are not open to the public". Mr. Eaton said they would not agree to that. Mr. Eaton said they would like to be able to have live entertainment; they keep it within the seating capacity of the theater.

Ms. Draper said the material submitted by the applicant did not mention "live entertainment", therefore, the notice did not mention "live entertainment". Also, the Commission should have a better idea of the scope of the live entertainment request before approving such a use. Staff feels this should be re-posted so the public will be aware of this added feature. Commr. Philips suggested proceeding with the present application and then having the applicant file for a modification. Ms. Draper stated that this was an excellent suggestion and would allow the applicant to proceed with filing for Building Permit.

The public hearing was closed.

FILE: 5714

PC ACTION: 4-24-86

PC ACTION: 4-8-85

ATTACHMENT

Page 9 of 13

USE PERMIT

CITY OF SANMAYALA

Pursuant to order of the City Council of the City of Sanmayala, made on April 8, 1986, a Use Permit is hereby granted to KEVIN AND HELEN KASIK hereinafter called "Permittee," to use the following described real property located in the City of Sanmayala, County of Santa Clara, State of California:

PARCEL ONE:

ALL OF LOTS 10 and 11, in Block 4, as shown upon that certain Map entitled, "MAP OF THE TOWN OF KENCINAL", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on January 25, 1898 in Book 1 of Maps, at pages 88 and 89.

EXCEPTING FROM LOT 11, the westerly 5 feet of said lot on the east side of Murphy Avenue by a depth easterly of 5 feet, as conveyed to the County of Santa Clara for the widening of Murphy Avenue.

PARCEL TWO:

PORTIONS OF LOTS 27 and 28, in Block 4, as shown upon that certain Map entitled, "MAP OF THE TOWN OF KENCINAL", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on January 25, 1898 in Book 1 of Maps, at pages 88 and 89, and more particularly described as follows:

BEGINNING at a point in the Northwest corner line of Arques Street where the same is intersected by the line dividing Lots 28 and 29, in Block 4, as shown upon the Map hereinabove referred to; running thence Northwestwardly and along said dividing line 170 feet to the common corner for Lots 12, 13, 28 and 29 in said Block 4; running thence Northwestwardly and along the line dividing Lots 10, 11 and 12 on the West, and Lots 27 and 28 on the East, a distance of 75 feet to the Northeast corner of said Lot 10; thence Southeastwardly

and parallel with the line dividing Lots 27 and 28, a distance of 16 feet; thence Southwesterly and parallel with said line of Arques Street, 43 feet; thence Southeasterly and parallel with the line dividing Lots 28 and 29, a distance of 95 feet to the Northwesterly line of Arques Street; thence along said line Southwesterly 17 feet to the point of beginning.

EXCEPTING THEREUPON the Southwesterly 12 feet of Lot 28, Block 4, as shown on the Map entitled, "MAP OF TOWN OF RINDRAL, being a part of Lot 2 of the part of the Rancho Pastoria de las Borregas, patented to Martin Murphy, Jr., as recorded in Book 6 of Maps, pages 74 and 75, records of Santa Clara County", and which said Map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on January 25, 1898 in Book "1" of Maps, pages 88 and 89, as condemned in the Final Judgment of Condemnation entered on August 4, 1954 in proceedings made in the Superior Court of the State of California, in and for the County of Santa Clara, entitled, "City of Sar-yvala, a municipal corporation, vs. A. Blando, et al", Case No. 91139, a certified copy of which was recorded on December 7, 1954 in Book 3024 of Official Records, page 298.

as follows to allow (1) renovation of existing theater building, (2) to allow a dining use in connection with a movie theater use, including a beer and wine license, and (3) a roof-top satellite dish antenna.

THIS PERMIT GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

A. The use of the aforesaid real property by said Permittee shall be limited solely to the purposes allowed and set forth by this Permit.

B. This Permit document shall be properly stored, maintained by Permittee and filed with the Department of Community Development of the City of Sunnyside.

C. Permittee, for himself and his heirs, executors, administrators, successors to ownership, and assigns, shall indemnify and hold harmless the City of Sunnyside, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which now arise out of, or occur by reason of the use of the real property which is the subject of this Permit for the purposes of which this Permit is granted.

D. In addition to the above, Permittee accepts and agrees to comply with the following conditions:

1. Attach a copy of the conditions of approval and Standard Development Requirements to each copy of working drawings submitted for a Building Permit for this project. Note by each condition how compliance with the condition is achieved; indicate in the left hand margin by each condition number the page number of the set of drawings where compliance with condition is achieved.
2. Execute a Use Permit document prior to issuance of a Building Permit.
3. A Use Permit for any permitted use, once exercised, shall become null and void if the property is not used for such use for a period of one year or more.
4. Uses permitted shall be limited to movies, TV and video projections, servicing of food and beverages including beer and wine, large and small parties, fashion shows and slide projections.
 - a. Any proposed on-site general liquor license, public dancing or live entertainment must be approved in advance by the Planning Commission.
5. Provide trash enclosures that are a minimum of 6 feet high and enclosed on all four sides, of a design approved by the Heritage Preservation Commission prior to issuance of a Building Permit. Install trash enclosures prior to occupancy.

- a. A solar energy collection system shall be provided as the primary means of heating water for domestic and restaurant/bar uses.
 - a. All such systems shall comply with applicable State laws and regulations in addition to Chapter 16.42 of the Sunnyvale Municipal Code.
 - b. Applicant shall demonstrate that the solar system is designed to displace a minimum of 70% of the calculated annual natural gas or electricity which would otherwise be consumed for water heating.
 - c. All such systems shall carry a warranty as prescribed by the California Energy Commission in order to qualify for State income tax credit.
 - d. All such systems shall be designed and installed in accordance with an overall plan as approved by the Director of Community Development.
 - e. Where it can be demonstrated that a solar hot water heating system is not cost effective for a commercial or industrial development, the applicant may substitute alternative energy conservation methods subject to approval by the Director of Community Development. Calculations demonstrating that such a solar system is not cost effective shall be submitted to the Director of Community Development prior to issuance of a Building Permit.
7. Any exterior area lights shall be sodium vapor lights of a design and placement as approved by Director of Community Development.
 - a. All area lights shall have a photo electric control for the on/off switch.
8. Obtain a Landmark Alteration Permit from the Heritage Preservation Commission prior to issuance of a Building Permit which includes landscaping of all unimproved areas.
9. Consult with the Crime Prevention Division of the Public Safety Department for crime prevention measures appropriate to the proposed development.
10. The proposed dish antenna on the roof shall be screened from ground level view from all adjoining public streets.
 - a. The screening need not be provided to obscure the antenna from any secondary residential use on Murphy or Sunnyvale Avenues.

For the purpose of this Permit, the singular shall include the plural and the masculine include the neuter and feminine.

Printed 1 2 16

CITY OF SUNNYVALE

By: [Signature]
NAME

The undersigned does (do) hereby accept this Permit subject to all terms and conditions hereinafter set forth.

Date: 5/17/21

By: [Signature]
NAME: KRYSTIN KASIK

[Signature]
NAME: KRYSTIN KASIK

STATE OF CALIFORNIA
COUNTY OF Santa Clara

On this 17 day of June to the year 2021
before me, Sharon K. Kasik, a Notary Public, State of California,
my commission and expiry, personally appeared [Signature]
personally known to me or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) all
subscribed to the within instrument, and acknowledged to me
that they executed the same.
IN WITNESS WHEREOF I have hereunto set my hand and affixed
my official seal to the said County of
Santa Clara on the date set forth above
in this certificate.



[Signature]
Notary Public, State of California
My commission expires 6/30/22

Sunnyvale Planning Commission - Agenda

PUBLIC HEARING - USE PERMIT

REPORT IN BRIEF

August 24, 1987

5711 Donald and Gregory Eaton (New Entertainment Center) Application for a Use Permit and site plan approval to allow (1) the conversion of an existing theater building, (2) dining use in connection with movie theater use, including live entertainment and a beer and wine license, and (3) a roof-top satellite dish antenna. The property is located at 146 South Murphy Avenue in a C-22 zoning District.

Issue	Setting of roof-mounted dish antenna/parking
Existing Site Conditions	Existing theater building
Surrounding Land Uses	North Commercial uses East Public parking lot South Commercial West Commercial/Murphy Ave.
Environmental Status	A Negative Declaration has been prepared in compliance with California Environmental Quality Act provisions, as amended, and Resolution #121-86.
Staff Recommendation	Affirm Negative Declaration and approve with conditions
Planning Commission Action	Affirm Negative Declaration and approve with conditions



PROJECT DATA	Existing	Proposed	Required/Permitted
Type of Project	movie theater	movie theater, dining, live entertainment, beer and wine license, unscreened dish antenna	by Use Permit
Lot Size	8,518 sq. ft.	8,518 sq. ft.	3,125 sq. ft.
Bldg. Coverage	7,525 sq. ft.	7,525 sq. ft.	---
Bldg. Coverage (%)	88.3%	88.3%	100%
No. of Stories	1	1	3
Bldg. Height	32.5 ft.	32.5 ft.	16 ft. - 27 ft.

500 - Donald and Gregory Eaton - USE PERMIT

PROJECT DATA	Existing	Proposed	Required/Permitted
Seating	750	720	---
Solar Energy Provisions	unknown	yes	yes

ANALYSIS

Background

The proposed use, site plan arrangements, and exterior modifications were approved by the Planning Commission and the Heritage Preservation Commission in February 1986. Both approvals have exceeded the one year period and have lapsed. The new proposal is exactly the same as the old proposal and has been heard by the Heritage Preservation Commission on August 19, 1987. Ownership of the building has changed since the previous application.

Overview of Proposal

Use. Uses proposed for the theater include movie theater use with light meals, seminars, private parties, special showings of major sporting events, smaller conventions and club meetings, sales presentations and product introductions, technical screenings and other *alcohol* functions. These events make use of the stage, kitchen and multi-media capabilities, including a satellite dish, slide projector, 16 mm. and 35 mm. film projection and wide screen video projection. A more detailed account of the proposed uses may be found in a letter from the applicant entitled, "Cinema '84 Drafthouse Company and Concept" (attached).

A question that was brought up during the public hearing on last year's application was the frequency and the type of live entertainment to be provided on the site. The applicant has submitted a letter which is attached that describes the live entertainment that will be held. The applicant states that they do not intend to promote live entertainment productions. "These productions seem to disrupt the pattern of loyal Cinema Drafthouse customers." However, live entertainment is still an alternate source of business and revenue which is needed since the film industry is cyclical. The live entertainment will be in the form of comedy shows, live plays, jazz groups, fashion shows, sporting events and other multi-media events. There will be no rock concerts or large public gatherings at the Cinema Drafthouse. Live entertainment, as previously defined, will not exceed the limited number of seats available in the theater.

Land Use Policies. The concept of a theater-restaurant use is encouraged by policies adopted for Murphy Avenue. The application, as presented by the applicant, would appear to implement the policy for high-quality services and food, an attractive interior decor and a remodeled exterior. It is anticipated that these features will aid in the theater/restaurant becoming a success and will help implement the revitalization of Murphy Avenue.

5714 - Dunsitt and Gregory Edton - USE PERMIT

Architectural Elevations. The applicant has submitted exterior elevations for the proposed restoration and enhancement of the facade of the existing building. Consideration of exterior elevations is technically not in the purview of the Planning Commission but is subject to the approval of the Heritage Preservation Commission. It is important that the Use Permit indicate that the proposed changes actually be accomplished and tied to the Landmark Alteration Permit. This is the intent of recommended Condition #3.

Parking. The Parking District Advisory Board voted unanimously to recommend the project for approval to their meeting of February 13, 1986. The present application has not been presented to the Parking District Advisory Board and is scheduled for review at their September meeting. Staff anticipates that the Parking District Advisory Board recommendation will be similar to its recommendation for the proposed uses for 135 South Murphy Avenue (Lee Barker and Dzong Tran - SDC #0051). In this application, the Parking District Advisory Board recommended approval of the use but noted reservations because the proposed use would have negative impacts on Macy's parking lot. The Cinema Drafthouse, however, is adjacent to public parking which differentiates it from the location of the Lee Barker and Dzong Tran application.

Theater Facade. The Heritage Preservation Commission gave conceptual approval to the theater facade plans and set a one year expiration date for exercise. The applicant was unable to commence construction and has submitted for a renewal. That was found by the Heritage Preservation Commission on August 19, 1987. In addition to exterior modifications, the applicant has submitted a detailed landscape plan for the Commission's approval. A copy of the staff report to the Heritage Preservation Commission for the Landmark Alteration Permit has been attached. The Commission approved the Landmark Alteration Permit in accordance with staff's recommendation.

Signage. The Heritage Preservation Commission approved the proposed signage, together with the landscaping and exterior modifications.

Floor Plans. The extensive changes proposed for the interior of the building would include a reduction of the existing 750 seat capacity to 328, terracing of the floor area from the stage back to accommodate tables and chairs, and the installation of a kitchen and cocktail lounge area.

Trash Enclosure. Trash facilities are not shown on the submitted plans. A trash enclosure should be placed within the area shown on the submitted plans as "unimproved property", as approved by the Heritage Commission.

The applicant has offered space for trash enclosures of adjacent properties in the unimproved strip. Staff will coordinate with the applicant on the design and details of the enclosures.

Dish Antenna. The proposed antenna will be a mesh type, 6 feet in diameter. Typically, roof-mounted equipment must be screened to the highest portion of the equipment. Also, dish antennas are to be screened from residential uses. Staff is proposing a partial waiver from the basic requirements. The recommendation is that the antenna be screened from the street level view from all public streets but not from second story residential on Sanyvala Avenue and Murphy Street.

5/14 - Donald and Gregory Eddy - Use Permit

4.

RECOMMENDATION

Affirmation of Negative Declaration and approval of use, based on Findings stated below and subject to the following conditions:

A. FINDINGS

1. The proposed use is desirable, essential and compatible because it will provide eating/recreational facilities and exterior elevation viewing in accordance with land use policies.
2. The proposed use will not be detrimental or injurious because off-street parking is provided through the Parking District.

B. CONDITIONS OF APPROVAL

In addition to complying with applicable City Codes, Ordinances and Resolutions, the following conditions of approval are imposed:

1. Attach a copy of the conditions of approval and Standard Development Requirements to each copy of working drawings submitted for a Building Permit for this project. Note by each condition how compliance with the condition is achieved; indicate in the left hand margin by each condition number the page number of the set of drawings where compliance with condition is achieved.
2. Execute a Use Permit document prior to issuance of a Building Permit.
3. A Use Permit for any permitted use, once executed, shall become null and void if the property is not used for such use for a period of one year or more.
4. Uses permitted shall be limited to movie, TV and video projections, servicing of food and beverages including beer and wine, large and small parties, slide projections and live entertainment limited to comedy shows, live plays, fashion shows and musical performances.
 - a. Any proposed on-sale alcohol liquor license, or public dancing must be approved in advance by the Planning Commission.
5. Seating or audiences shall be limited to 328.
6. Provide on-site trash enclosures for the Cinema Draftbox that are a minimum of 6 feet high and enclosed on all four sides, of a design approved by the Heritage Preservation Commission prior to issuance of a Building Permit. Install trash enclosures prior to occupancy.
7. A solar energy collection system shall be provided as the primary means of heating water for domestic and restaurant/bar uses.
 - a. All such systems shall comply with applicable State laws and regulations in addition to Chapter 16.42 of the Sunnyvale Municipal Code.

3.75 - Donald and Gregory Latta - Link Permit

5

2. b. Applicant shall demonstrate that the solar system is designed to displace a minimum of 25% of the calculated annual natural gas or electricity which would otherwise be consumed for water heating.
- c. All such systems shall carry a warranty as prescribed by the California Energy Commission in order to qualify for state income tax credit.
- d. All such systems shall be designed and installed in accordance with an overall plan as approved by the Director of Community Development.
- e. Where it can be demonstrated that a solar hot water heating system is not cost effective for a commercial or industrial development, the applicant may substitute alternative energy conservation methods subject to approval by the Director of Community Development. Candidates demonstrate that such a solar system is not cost effective shall be submitted to the Director of Community Development prior to issuance of a Building Permit.
3. Any exterior area lights shall be sodium vapor lights of a design and placement as approved by Director of Community Development.
4. All area lights shall have a remote electric control for the on/off switch.
5. Comply with all the requirements of Landmark Alteration Permit L-86-31.
6. Comply with the Crime Prevention Division of the Public Safety Department for "protection measures appropriate to the proposed development."
 - a. A screen or awning on the roof shall be screened from ground level view adjoining public streets.
 - b. A screen or awning shall be provided to obscure the antenna from any ground story residential use on Murphy or Sunnyvale Avenues.

August 24, 1987

Planning Commission Action

Comm. Zarewoni moved for approval, in accordance with staff recommendation, seconded by Comm. Horton.

Comm. Zarewoni commented that she was looking forward to the opening of this business and wished them a lot of luck.

The motion carried unanimously. (All members present)

Public Discussion

Ms. Maria Barton, Associate Planner, explained that this is a renewal of last year's 2nd Permit. Staff was available if the Commission has any questions.

The public hearing was declared open.

5714 - Donald and Gregory Eaton - USE EDRMII

6.

Mr. Craig Eaton was present. Comm. Zimmerman asked if the Permit is approved, when will this project go forward. Mr. Eaton answered that they have working drawings on this proposal. The job goes out to bid on Thursday. They will hope that if there are no further delays, they should be able to open the middle of December.

Comm. Carter asked who owns the amount of just north of the location. Mr. Eaton answered that it is owned by Fred Hill. Mr. Hill said he is looking for a tenant to do a "build to suit" project. Mr. Eaton said he will talk to Mr. Hill about a way to clean up this property. He would like to have it cleaned up, put in lights and perhaps some inexpensive landscaping or arbors.

Comm. Carter asked staff if there was some way to get this lot cleaned up and made more presentable. Ms. Dupon answered that besides doing Code Enforcement, staff can not induce a property owner to make improvements on the property if they choose not to. If there are nuisances, then the City can require him to clean it up. Mr. Eaton said he would clean it up if Mr. Hill does not. He didn't want this property with broken bottles and old pieces of wood to detract from the theater. Comm. Carter said his concern was the condition of the lot -- littered with broken glass.

The public hearing was closed.

SUNNYVALE PLANNING COMMISSION - AGENDA

PUBLIC HEARING - USE PERMIT AMENDMENT

REPORT IN BRIEF

July 23, 1990

0714 Gregory P. Eaton - New Entertainment Center. Application for a Use Permit amendment to an existing permit to allow mixed uses - ballroom dancing, comedy, live entertainment, and on-sale general liquor license. The property is located at 146 S. Murphy Avenue in a C H Zoning District. Recommend to City Council.

Existing Site Conditions: Existing theatre building

Surrounding Land Uses: North: Commercial uses
South: Commercial uses
East: Public parking lot
West: Commercial/
Murphy Avenue

Environmental Status: A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions, as amended, in accordance with Resolution #103-88

Recommendation: Approve with conditions

Planning Commission Action: Approved



PROJECT DATA	Existing	Proposed	Required Permitted
Type of Project	night club	ballroom dancing live entertainment alcoholic beverages	by Use Permit
Lot Size (sq. ft.)	8,518	8,518	8,528
Building Coverage (sq. ft.)	7,525	7,525	---
Building Coverage (%)	88.2	88.2	100
No. of Bldgs. on site	1	1	---

G714 Gregory F. Faion - New Entertainment Corp.

2

PROJECT DATA	Existing	Proposed	Required Permitted
No. of Stories	1	1	3
Building Height (ft.)	32.5	32.8	16 - 22
Setbacks (ft.)			
a. front	0	0	0
b. R. side	0	0 - 13	0
c. L. side	0	0	0
Parking Demand	---	208	0
Seating	750	628	---
Solar Energy Provisions	unknown	yes	yes

ANALYSIS

Background

The proposed use, site plan arrangements, and exterior modifications were approved by the Planning Commission in August, 1987. This was an approval of a previous Use Permit approved in February, 1986, by the Planning Commission and Heritage Preservation Commission that had expired. The amended proposal seeks to include new entertainment uses in addition to the uses approved in the previous Use Permit.

Overview of Proposal

Use. The amendment to the Use Permit the Murphy Avenue Theatre would allow live entertainment and dancing, comedy, ballroom dancing and the sale of alcoholic beverages. The proposed additional uses for are compatible with the other approved entertainment uses.

The owners propose to operate the facility Tuesday through Saturday. Rooster T. Feathers will operate comedy shows on Tuesdays and Wednesday nights. Live entertainment and dancing are scheduled for Thursdays through Saturdays. There is no proposal at this time for Sunday or Monday night entertainment.

Land Use Policies. The proposed entertainment uses are compatible with policies adopted for downtown Sunnyvale. The entertainment facility, if successful, should aid in the revitalization of the downtown area.

6714 Gregg, F. Eaton - New Entertainment Corp.

3

Architectural Elevations and Signage

The Heritage Preservation Commission has approved architectural elevations and signage with the previous permit approval. No changes are proposed.

Parking. The changes in use would change the seating capacity from 328 to 638 seats. This would increase the demand for parking from 100 spaces to 208 spaces. This should not affect existing parking capacity because of night hours of operation. At that time of night, ample parking is available in the Sunnyvale Avenue, Carroll and Florence Street lots, as well as parking in the vicinity of Town and Country Village and Town Center.

The Parking District Advisory Board reviewed the application at its July 12, 1990, meeting but did not make a recommendation.

RECOMMENDATION

Approval, based on findings stated below and subject to the following conditions:

A. FINDINGS

1. The proposed use is desirable, essential and compatible because it will provide entertainment facilities consistent with land use policy.
2. The proposed use is not detrimental or injurious because off-street parking is provided through the Parking District.

B. CONDITIONS OF APPROVAL

In addition to complying with applicable City Codes, Ordinances and Resolutions, the following Conditions of Approval are imposed:

1. The conditions of approval and Standard Development Requirements shall be reproduced on one page of the plans submitted for a Building Permit for this project.
2. Execute a Use Permit document prior to issuance of a Building Permit.
3. Any major site plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing before the Planning Commission, except that minor changes of the approved plans may be approved administratively by the Director of Community Development.
4. Any expansion or modification of the approved use shall be approved by

5714 Gregory F. Ealon - New Entertainment Corp.

separate application at a public hearing by the Planning Commission.

5. Provide trash enclosure that is a minimum of 6 feet high and enclosed on all four sides, of a design, approved by the Director of Community Development prior to issuance of a Building Permit. Install enclosure prior to occupancy.
 - a. The enclosure shall match the design, materials and color of the main building.
6. Measures shall be installed to reduce the amount of energy required to heat water for domestic or any use involving handling or sale of food or drinks. Energy conservation measures shall be approved by the Director of Community Development prior to issuance of a Building Permit.
7. Obtain approval of all proposed signs from The Heritage Preservation Commission.
8. Consult with the Crime Prevention Division of the Public Safety Department for crime prevention measures appropriate to the proposed development.
9. Comply with all requirements of previously approved Use Permit #5714 (August 24, 1987) deleting Conditions 4 and 6.
10. Comply with all the requirements of the Landmark Alteration Permit L-86-31.
11. Any exterior area lights shall be sodium vapor lights of a design and placement approved by the Director of Community Development.
12. Submit a plan for the screening of the transformer at the rear of the building. The screening shall match the design, materials and color of the main building. such screening shall be reviewed and approved by the Heritage Preservation Commission.

Encls.

#714B - Gregory F. Fagan

MINUTES

July 23, 1990

Planning Commission Action

Comm. Adair asked staff to define live entertainment and what it included. Mr. McQueen responded that there would be a D.J. and have not indicated that there would be live bands.

Comm. Freidin made Motion to Approve Item #5714B in accordance with staff recommendation, Second by Comm. Whittier

Comm. Freidin stated that for the record, he hoped that these sites will bring in 628 people every night of the week, along with their cars.

Chair Bernhardt stated for the record, he was joking about the parking situation, although he is not joking, this is a very serious matter which needs to be considered. He added that when the Commission voted for the theater the first time, he was enthusiastic and still is, but like very much to know what will be done with these people in the Dowd town region and would like City Council, when considering this, to realize that Murphy Avenue may not be one of those areas that can be considered perennially exempt from parking requirements because of the Parking District. He added that the Parking District needs to be expanded and perhaps the City itself, needs to think about investing in some sort of parking garage on one of those structures. Chair Bernhardt stated that he was recommending to City Council that if adequate parking cannot be provided for this site, then the City has an obligation to either contract this out or find parking in some other manner. He added that if the Master Plan goes through, that will be fine and there will be enough parking, but this project will go through in the next year and if this is the case, the City needs to seriously consider doing something for the parking in that area.

Chair Bernhardt called for the vote.

Motion carried with Comm. Adair voting present.

Public Hearing

Eric McQueen, Assistant Planner, presented the staff report stating that the previous approval was for a theater/drafthouse and the proposal has been changed to what is considered a bar. He added that the management of D.B. Coopers of San Jose to run the bar and comedy 2 nights a week which would be run by Roster T. Feathers. Mr. McQueen stated that the floor plan has changed and although the applicant being in the parking district is not required to provide on-site parking, the parking has changed with the change to the bar as opposed to the drafthouse. He explained the parking situation in detail.

ATTORNEY GENERAL
4
3
7

07143 Gregory F. Eaton

6.

Comm. Freidin commented that a previous applicant has promised kiosk and asked if this one would provide seats. Mr. McQueen replied that he thought there was a lifetime pass.

Chair Bernhardt stated that since the City of Sunnyvale has so much interest in this property, including financing, he still needed to ask some questions. He stated that the current parking demand is 208 spaces and asked if daytime use for this facility was expected. Mr. McQueen replied that the demand is usually from 6:00 pm.

Chair Bernhardt commented that a parking space cannot be found in downtown Sunnyvale before 5:00 pm. Much discussion between the Commission regarding the shortage of downtown parking spaces at any time.

Comm. Whittier stated that with the Futures Study it is considered that the parking lot of Macy's will be rezoned into R-4 and there will be the addition of a theater in the other parking area west of Murphy and asked if there will be parking to cover this kind of use.

Comm. Freidin replied that there would be 2,600 spaces underground.

Comm. McKinney interjected that this will be fine, assuming it happens in his lifetime. He stated that he has a concern about parking in that anywhere he goes in this County, there is not enough parking. He stated that he does not understand where the saturation point is with the Parking District and does not feel the City can continue to stuff-off the parking issue.

Chair Bernhardt added his concerns regarding the parking issue, stating that this has been brought up all through the Futures Study as well as the Downtown Site Specific. He stated that it is nice to have a Plan, but if not built, and certainly if it is, it will not all be built at once. Chair Bernhardt asked what would be done in the interim while there are 208 cars sitting on top of the regular parking, or if they would be parking in the Macy's lot and walking. Much Commission discussion regarding this situation.

Comm. Freidin stated that he is in the Murphy Street area at least 2 days a week at various times of the day and that he parks in the Macy's lot.

Comm. McKinney commented that Comm. Freidin should just park at home and walk if he has to park in the Macy's lot as he would be halfway there.

Chair Bernhardt stated that perhaps if not too much parking is put in, it would force people to use other methods, such as public transportation.

57148 - Gregory F. Eaton

7.

Comm. McKinney replied that speaking of this is the same as discussing future parking lots, underground parking, which is fine down the road, but there is no public transportation today or this week, or this year when this property is developed.

Commissions discussed this subject matter in detail.

Comm. Whittier stated that when this project was previously approved, the Negative Declaration was also approved, and stated that since there is a change in the use and the number of persons occupying the building and wondered why a new Negative Declaration was not necessary and that this application stated it is Categorically exempt. Mr. McQueen replied that the Categorical Exemption covered the change from theater to bar.

Comm. Adair stated that the parking is based on the assumption that 2.8 persons would be parking and the assumption is that inside, everyone will be sitting down which usually is not the case, and is questioning why 208 parking spaces and yet carry 628 or 750 what is the difference. She explained that what she was saying is that people usually do not carpool to a lounge, they carpool to work.

Chair Bernhardt opened the Public Hearing, applicant was not present, Public Hearing closed.



**California Department of
 Alcoholic Beverage Control
 License Query System Summary
 as of 9/14/2009**

License Information	
License Number: 272760	Status: CANCEL
Primary Owner: NEW ENTERTAINMENT CORPORATION	
ABC Office of Application: SAN JOSE	
Business Name	
No Active DBA found	
Business Address	
Address: 146 S MURPHY AVE	Census Tract: 5086.02
City: SUNNYVALE	County: SANTA CLARA
State: CA	Zip Code: 94086
Licensee Information	
Licensee: NEW ENTERTAINMENT CORPORATION	
Company Officer Information	
Officer: EATON DONALD J, CHIEF EXECUTIVE OFFICER	
Officer: EATON DONNA ELIZABETH, VICE PRESIDENT	
License Types	
1) License Type: 48 - ON-SALE GENERAL PUBLIC PREMISES	
License Type Status: CANCEL	
Status Date: 11-JAN-1996	Term: 12 Month(s)
Original Issue Date: 15-DEC-1992	Expiration Date:
31-OCT-1996	
Master: Y	Duplicate: 1
Fee Code: P40	
Condition: OPERATING RESTRICTIONS	
License Type was Transferred On: 10-AUG-1995 To: 272760	
2) License Type: 47 - ON-SALE GENERAL EATING PLACE	
License Type Status: CANCEL	
Status Date: 30-MAR-2001	Term: 12 Month(s)

Original Issue Date: 11-JAN-1996	Expiration Date:	
31-OCT-2001		
Master: Y	Duplicate: 1	Fee Code: P40
Condition: OPERATING RESTRICTIONS		
License Type was Transferred On:	From: 272760	
License Type was Transferred On: 24-JAN-2001	To: 373671	
Current Disciplinary Action		
. . . <i>No Active Disciplinary Action found</i> . . .		
Disciplinary History		
. . . <i>No Disciplinary History found</i> . . .		
Hold Information		
. . . <i>No Active Holds found</i> . . .		
Escrow		
. . . <i>No Escrow found</i> . . .		

--- End of Report ---

For a definition of codes, view our [glossary](#).

Department of Alcohol Beverage Control
**COMMON ABC LICENSE TYPES
 AND THEIR BASIC PRIVILEGES**

LICENSE TYPE	
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct wine tastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required, however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE - EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liquors for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.
42	ON SALE BEER & WINE - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licensed premises. Authorizes the sale of beer and wine for consumption off the licensed premises. Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.
48	ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL - SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



LICENSE TYPE	DESCRIPTION
51	CLUB - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-site privileges. Food service is not required. Minors are allowed on the premises.
52	VETERAN'S CLUB - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guest only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
57	SPECIAL ON SALE GENERAL - Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
59	ON SALE BEER AND WINE - SEASONAL - Authorizes the same privileges as a Type 41 issued for a specific season. Inclusive dates of operation are listed on the license certificate.
60	ON SALE BEER - SEASONAL - Authorizes the sale of beer only for consumption on or off the premises where sold. Issued for a specific season. Inclusive dates of operation are listed on the license certificate. Wine or distilled spirits may not be on the premises. Minors are allowed on the premises.
61	ON SALE BEER - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer only for consumption on or off the licensed premises. Wine or distilled spirits may not be on the premises. Minors are not allowed to enter and remain (waiting signs required). Food service is not required.
67	BED AND BREAKFAST INN - Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment for consumption on the premises. No beer or distilled spirits may be on the premises. Wine shall not be given away to guests, but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Removal of wine from the grounds is not permitted. Minors are allowed on the premises.
70	ON SALE GENERAL - RESTRICTIVE SERVICE - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their visitors. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" baggy hour. Minors are allowed on the premises.
75	ON SALE GENERAL - BREWPUB - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. Also authorizes the sale of beer and wine only for consumption off the premises where sold. Minors are allowed on the premises.
80	BED AND BREAKFAST INN - GENERAL - Authorizes the sale of beer, wine and distilled spirits purchased from a licensed wholesaler or winegrower only to registered guests of the establishment for consumption on the premises. Alcoholic beverages shall not be given away to guests, but the price of the alcoholic beverage shall be included in the price of the overnight transient occupancy accommodation. Removal of alcoholic beverages from the grounds is not permitted. Minors are allowed on the premises.



SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

SPECIAL DAILY BEER AND/OR WINE LICENSE - (Form ABC-281) Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

DAILY ON SALE GENERAL LICENSE - (Form ABC-281) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

CATERING AUTHORIZATION - (Form ABC-218) Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

EVENT AUTHORIZATION - (Form ABC-218) Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

WINE SALES EVENT PERMIT - (Form ABC-239) Authorizes Type 92 licensees to sell bottled wine produced by the winemaker for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.5.

Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises, consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional Licenses, Sections 23800-23805.)
4. Licensees whose license allows minors on the premises may have a "house policy" restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-60B); Alcoholic Beverage Control Act (complete laws, Rules & Regulations); and P-90 (describes privileges of non-retail licenses).



**California Department of
Alcoholic Beverage Control
License Query System Summary
as of 9/14/2009**

License Information		
License Number: 373671	Status: CANCEL	
Primary Owner: NHAH INC		
ABC Office of Application: SAN JOSE		
Business Name		
Doing Business As: FORUM NIGHT CLUB		
Business Address		
Address: 146 S MURPHY AVE	Census Tract: 5086.02	
City: SUNNYVALE	County: SANTA CLARA	
State: CA	Zip Code: 94086	
Licensee Information		
Licensee: NHAH INC		
Company Officer Information		
Officer: HAHN BRIT, PRESIDENT		
Officer: HAHN BRIT, SECRETARY TREASURER		
License Types		
1) License Type: 47 - ON-SALE GENERAL EATING PLACE		
License Type Status: CANCEL		
Status Date: 11-JAN-2006	Term: 12 Month(s)	
Original Issue Date: 30-MAR-2001	Expiration Date:	
28-FEB-2006		
Master: Y	Duplicate: 1	Fee Code: P40
Condition: OPERATING RESTRICTIONS		
License Type was Transferred On:	From: 272760	
License Type was Transferred On: 25-AUG-2005	To: 430051	
Current Disciplinary Action		
... No Active Disciplinary Action found ...		
Disciplinary History		

Reg. Number: 03054908
1) Section Violated: 24200(a&b)
2) Section Violated: 23396,23038
Proceeding Status: COMPLETE Decision:
Suspension Days: Stayed Days POIC/Fine:
Suspension Start Date: Suspension End Date:
Proceeding Status: COMPLETE Decision: INDEF. SUSP.
Suspension Days: 10 Stayed Days POIC/Fine:
Suspension Start Date: 09-FEB-2004 Suspension End Date: 13-FEB-2004
Hold Information
. . . <i>No Active Holds found</i> . . .
Escrow
. . . <i>No Escrow found</i> . . .

- - - End of Report - - -

For a definition of codes, view our [glossary](#).



**California Department of
 Alcoholic Beverage Control
 License Query System Summary
 as of 9/14/2009**

License Information	
License Number: 430051	Status: ACTIVE
Primary Owner: DUONG CHIEN T	
ABC Office of Application: SAN JOSE	
Business Name	
Doing Business As: ABYSS THE	
Business Address	
Address: 146 S MURPHY AVE	Census Tract: 5086.02
City: SUNNYVALE	County: SANTA CLARA
State: CA	Zip Code: 94086
Licensee Information	
Licensee: DUONG CHIEN T	
Licensee: NGUYEN CHUNG	
License Types	
1) License Type: 47 - ON-SALE GENERAL EATING PLACE	
License Type Status: ACTIVE	
Status Date: 11-JAN-2006	Term: Month(s)
Original Issue Date: 11-JAN-2006	Expiration Date:
31-DEC-2009	
Master: Y	Duplicate: 1
Fee Code: P40	
Condition: OPERATING RESTRICTIONS	
License Type was Transferred On:	From: 373671
Current Disciplinary Action	
Reg. Number: 08068524	
Disciplinary History	
Reg. Number: 06064482	
1) Section Violated: 24200(a&b)	
2) Section Violated: PC 148(a)(1)	

3) Section Violated: 25601
4) Section Violated: 25177
5) Section Violated: PC 347(b)
6) Section Violated: H&S 110545, 110560, 110620
7) Section Violated: PC 647(f)
Proceeding Status: COMPLETE Decision: SUSPENDED
Suspension Days: 20 Stayed Days POIC/Fine:
Suspension Start Date: 20-DEC-2006 Suspension End Date: 09-JAN-2007
Hold Information
. . . No Active Holds found . . .
Escrow
. . . No Escrow found . . .

- - - End of Report - - -

For a definition of codes, view our [glossary](#).

RECEIVED

SEP 21 2009



PLANNING DIVISION

CITY OF SUNNYVALE

500 West Elgin Avenue P. O. Box 3707
Sunnyvale, California 94088-3707
(408) 730-7520

ATTACHMENT 8

Page 1 of 2

11 02/07/2006 15:25 100442 210
BUSINESS LICENSE 194.00
CLFEX 1-

Business License Application

Business Name: THE ABYSS RESTAURANT & NIGHTCLUB
 (Please Print Clearly)
 Corporate Name: ABYSS ENTERTAINMENT GROUP, INC
 (If Different)
 Business Location: 146 SOUTH MURPHY AVE
 (Not P. O. Box)
 City: SUNNYVALE State: CA Zip: 94086
 Bus. Phone: 408 732-7299 Bus. Fax: 408 732-3654
 Mailing Address: _____
 (If Different) City: _____ State: _____ Zip: _____

Start Date in Sunnyvale: 2/20/2006
 Description of Business (Provide detailed description of business activity): Restaurant and dancing nightclub

Sales: None Wholesale Retail Resale Number _____
 Ownership: Corporation Ltd Liability Company Sole Proprietor Partnership Trust
 Contractors State License No. _____ License Type _____ Expiration Date _____
 Federal I.D. No. 20-4165780 State I.D. No. _____ Postal Address: 55 Fabry St. Cor 1-

Second Information: (List Name(s) of Owner, Partners, or Corporate Officers, Last Address, and Telephone)
 Owner Name: CHUNG NGUYEN Title: OWNER Phone: 408 623-2582
 Home Address: 1627 EVERGLADES DRIVE Cell Phone: _____
 City: MILPITAS State: CA Zip: 95035 S. S. No.: 148 04-5912
 Owner Name: CHIEN DUING Title: OWNER Phone: 408 691-7266
 Home Address: 1627 EVERGLADES DRIVE Cell Phone: _____
 City: MILPITAS State: CA Zip: 95035 S. S. No.: 148.04-6683

PLEASE FILL IN THE APPROPRIATE BOXES BELOW AND SIGN (Review general Business License Lic Summary and enter applicable taxes and fees below.)

Note: Businesses with rental properties need to include number of units and number of employees. Tax shall be based on the greater number of the two.
 No. of Rental Units: 1 No. of employees (including Owner) working in Sunnyvale: 8

The following types of businesses may require special permits. Please mark any applicable types of use.

- FIREARM SALES
- MASSAGE
- HOLISTIC HEALTH
- PAWNBROKER
- SECONDBAND DEALER
- TATOO PARLOR
- ADULT ENTERTAINMENT ESTABLISHMENT

Business Tax Inside/Outside City of Sunnyvale	\$ <u>50.00</u>
Penalty Fee	\$ _____
Interest Fee	\$ _____
Prior Year(s) Amount Due	\$ _____
Processing Fee	\$ <u>57.00</u>
TOTAL AMOUNT DUE	\$ <u>107.00</u>

PLEASE MAKE CHECK PAYABLE TO THE CITY OF SUNNYVALE
A \$10.00 fee will be imposed for all returned checks.

I certify that I have read and understand the above. I declare under penalty of perjury that the information given above is true and correct to the best of my knowledge.
 Signature: Chung Nguyen Date: 1/20/2006 Title: owner

PLEASE COMPLETE THE FOLLOWING INFORMATION

ATTACHMENT 8
Page 2 of 2

Do you own or rent at this location? Own Rent
 Mailing Address 146 South Murphy Ave, Sunnyvale CA 94086
 Web Address abyssnightclub.net
 If business has a separate STORAGE OR CORPORATION YARD, indicate the location:
 Does the business IMPORT OR EXPORT Yes No Which Countries? _____
 Is Company headquartered in Sunnyvale? Yes No If no, where is headquarters _____
 CEO/CO Name CHIENDUONG ICHUNG NGUYEN Title OWNER Phone 408 623.2582
 Email Address Emmanuel - 08817@yaho.com
 CFO Name HAI NGUYEN Title _____ Phone 408 691.7266
 Email Address hainguyen6927@yahoo.com
 Facilities Manager Name Don Nguyen Title _____ Phone 732
 Email Address Don_N@abyssnightclub.com
 Human Resources Manager Emmanuel Nguyen Title _____ Phone 408 732.7299
 Email Address Emma_n@abyssnightclub.com
 Alternate Emergency Contact Person Emmanuel Nguyen Title _____ Phone 408 732.7299
 Email Address Emma@abyssnightclub.net Pager No. _____ Cell Phone () _____

PUBLIC SAFETY BUSINESS LICENSE INFORMATION (Additional permits may be required - contact 408 735 7100)

Alarm System? Burglar Alarm System Yes No Fire Alarm System Yes No
 Burglar Alarm Company Name _____ Phone () _____
 Address _____ License No. _____
 Installation Date: _____
 Fire Alarm Company Name _____ Phone () _____
 Address _____ License No. _____
 Installation Date: _____
 Are there any HAZARDOUS MATERIALS used, stored, or transported? Yes No
 (If yes, attach a detailed list of materials or chemicals and quantities)
 Will your business have PUBLIC ASSEMBLY over 50 people? Yes No (Fire Inspection permit required)
 (Restaurant, bar, theatre, bowling, etc.)
 Is the business involved in any way with FIREARMS or EXPLOSIVES? Yes No
 Does the business dispense or sell ALCOHOLIC BEVERAGES? Yes No

HOME OCCUPATION

Sunnyvale Home Business Yes No If yes, complete questions a-g
 a. Will customers be visiting your home? Yes No
 b. Will there be any deliveries? Yes No
 c. How many people will be working in your home? 0
 d. Where in the home will you be operating your business? None
 e. Total floor area (square feet) of your home 1,500 sqft
 f. Total floor area (square feet) of your home that will be devoted to your business 0
 g. How many vehicles (associated with your business) will visit your home each day? 0
 Home Businesses (if applicable): I have read and understand the requirements for home businesses (see applicable provisions of the Sunnyvale Municipal Code).

Note: Payment of a business license tax and issuance of a Business License do not entitle you to conduct any illegal business or operations, or violate any applicable federal, state or local laws or regulations. As the owner or operator of a business, you must comply with all applicable zoning and public safety regulations and obtain all required permits.

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

ATTACHMENT 9

Page 1 of 2
55

RECEIVED

DEC 19 2006

Dept of Alcoholic Beverage Control

FILE : 47 - 436031000

REG. : 06064482

DECISION

IN THE MATTER OF THE ACCUSATION AGAINST:

Chien T. Doung
Chung Nguyen
The Abyss
146 South Murphy Avenue
Sunnyvale, CA 94086

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

The above-entitled matter having regularly come before the Department for decision; and it appearing to the Department that the respondent(s) has filed a stipulation and waiver in connection with the accusation herein in which respondent(s) waives right to hearing, reconsideration and appeal; and good cause appearing therefor, the Department now finds as follows:

That cause for disciplinary action has been established.

Determination of issues presented: That respondent(s) violated or permitted violation of Business & Professions Code Sections(s) 25601, 25177, California Penal Code Section(s) 148(a)(1), 347(b), 647(f) and Health & Safety Code Section(s) 110545, 110560 & 110620.

Grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code Section 24200(a&b).

Wherefore, it is hereby ordered that the license(s) issued to respondent(s) at the above-mentioned premises be suspended for a period of 20 days.

In addition, the licensee(s) must be in full and total compliance with the following conditions:

1. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.
2. Licensee(s) shall not share any profits, or pay percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders, or the sale of drinks.
3. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed premises. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
4. The sales of alcoholic beverages for consumption off the premises is strictly prohibited.
5. Between the hours of 8:00 PM and 2:30 AM, the licensee(s) shall provide licensed uniformed security personnel in the premises, and parking lot adjacent to the premises, and shall maintain order

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

ATTACHMENT 9

CONTROL 2 RE 2 ED

DEC 19 2006

Dept of Alcoholic Beverage Control

IN THE MATTER OF THE ACCUSATION AGAINST:

Chien T. Doung
Chung Nguyen
The Abyss
146 South Murphy Avenue
Sunnyvale, CA 94086

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

FILE : 47 - 430051

REG. : 06064482

DECISION

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

Page 2 of 2

therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents. Said personnel shall be clothed in such manner as to be readily identifiable as security.

6. Licensee(s) shall police the area under their control in an effort to prevent the loitering of person about the premises.

7. The licensee(s) shall post and maintain a professional quality sign, one facing S. Murphy Avenue, and one facing the rear parking lot that reads as follows:

NO LOITERING, NO LITTERING
NO DRINKING OF ALCOHOLIC BEVERAGES
VIOLATORS ARE SUBJECT TO ARREST

The sign shall be at least two feet square with two inch block lettering.

Said conditions as indicated on attached Petition for Conditional License, dated December 5, 2006, are endorsed upon the license. Pursuant to Section 23802, the licensee shall attach the enclosed Petition to the license certificate.

THE SUSPENSION IMPOSED SHALL BECOME EFFECTIVE
BEGINNING UPON SERVICE OF NOTICE.

CERTIFICATE OF DECISION

It is hereby certified that on December 15, 2006 the Department of Alcoholic Beverage Control adopted the foregoing as its decision in the proceeding therein described effective immediately.

Sacramento, California
Dated: December 15, 2006

Judy Carlton
Judy Carlton

By

Supervisor, Hearing & Legal Unit

ATTACHMENT **10**
Page **1** of **2** RECEIVED
DEC 19 2006
Dept of Alcoholic Beverage Control
San Jose

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF

DUONG, Chien T.
NGUYEN, Chung

Dba: The Abyss

146 S. Murphy Ave.
Sunnyvale, CA 94086

FILE 47-430051
REG. **06064482**

PETITION FOR CONDITIONAL
LICENSE

For continuance of an On-Sale General Eating Place License
Under the Alcoholic Beverage Control Act

WHEREAS, the respondents violated or permitted the violation of Business and Professions Code Sections 25601, and 25177; California Penal Code Sections 148(a), 647(f), and 347(b); and California Health and Safety Code Sections 110545, 110560, and 110620 at the above-mentioned premises; and,

WHEREAS, grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code Section 24200(a) & (b), and

WHEREAS, the continuance of an unrestricted license would be contrary to public welfare and morals;

NOW, THEREFORE, the undersigned petitioners/respondents do/does hereby petition for a conditional license as follows, to-wit:

1. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.
2. Licensee(s) shall not share any profits, or pay percentage of commission to a promoter or any other person, based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders, or the sale of drinks
3. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed premises. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
1. The sales of alcoholic beverages for consumption off the premises is strictly prohibited.
3. Between the hours of 8:00 PM and 2:30 AM, the licensee(s) shall provide licensed uniformed security personnel in the premises, and parking lot adjacent to the premises, and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents. Said personnel shall be clothed in such manner as to be readily identifiable as security.

430351
DUONG, Chien T.
NGUYEN, Chung

Page 2

- 6. Licensee(s) shall police the area under their control in an effort to prevent the loitering of persons about the premises.
- 7. The licensee(s) shall post and maintain a professional quality sign, one facing S. Murphy Avenue, and one facing the rear parking lot, which reads as follows:

NO LOITERING, NO LITTERING
NO DRINKING OF ALCOHOLIC BEVERAGES

VIOLATORS ARE SUBJECT TO ARREST

The sign shall be at least two feet square with two inch block lettering.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioners/respondents agree to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s)/respondents understand that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license.

DATED THIS 05 DAY OF DECEMBER, 2006

Chien T. Duong
Respondent/Petitioner

Chien T. Duong
Respondent/Petitioner

* Translated by Cathy Tran, Licensing Reg. II
Cathy Tran
Cathy Tran

THE ABYSS SECURITY PLAN (2009):

This document has been prepared in response to that letter of October 23, 2008 by Chief Don Johnson, Sunnyvale Department of Public Safety. This document has been subsequently modified based on the meeting with Captain David Verbrugge of November 12, 2008, and that letter of January 13, 2009 by Chief Don Johnson, Sunnyvale Department of Public Safety.

I. GENERAL POLICIES AND PROCEDURES:**(a) EMERGENCY SERVICES:**

All Security Staff are instructed to summon emergency services (Police, Fire, Emergency Medical Services) whenever necessary and have the ability to do so.

(b) REPORTING TO SVPD:

Incidents of physical altercations/fights, acts of vandalism in or around the establishment, excessively intoxicated individuals, and persons who are injured, shall be promptly reported to Sunnyvale DPS at the time of the occurrence.

(c) COMPLIANCE WITH ABC LICENSE TERMS & CONDITIONS:

The Abyss (the "Licensee") will at all times adhere to the terms and conditions of the ABC License.

(d) SECURITY STAFF TRAINING:

The Abyss will conduct periodic training of Security Staff, focusing on:

- Crowd Control
- Unruly Patrons
- Altercations
- Intoxicated Patrons
- Emergency Services
- Incident Reporting

(e) RATIO OF SECURITY STAFF/PATRONS ON 18+ EVENTS:

The Abyss will utilize a ratio of 30 patrons per Security Staff person on duty on all 18+ Events.

(f) RATIO OF SECURITY STAFF/PATRONS ON 14-18 EVENTS:

The Abyss will utilize a ratio of 30 patrons per Security Staff person on duty on all 14-18 Events.

II. LARGE EVENT/SPECIAL EVENT:

A "Special Event" is any event where In-House Management estimates attendance to be near or at the capacity for the establishment or as otherwise specified in Section 9.45.030 (b) of the Sunnyvale Municipal Code.

(a) NOTIFICATION TO THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY:

The Abyss Management will provide Captain Verbrugge of the Sunnyvale Department of Public Safety with advance notice of all upcoming "Special Events" via phone call or electronic mail (or as otherwise specified by the Sunnyvale Department of Public Safety).

(b) RATIO OF SECURITY STAFF/PATRONS ON LARGE EVENT/SPECIAL EVENT:

The Abyss will utilize a ratio of 40 patrons per Security Staff person on duty on all Large Event/Special Event. Therefore, when at least 700 patrons are anticipated to attend any event the minimum number of Security Personnel on duty will be 17, not including the Head of Security ("HOS") who is required to split his time between the outside (line control), parking lot areas, and interior three floors of the venue.

III. CROWD MANAGEMENT PLAN DURING HOURS OF THE EVENT:

(a) PRIOR TO OPENING DOORS:

The following occur in chronological order on all nights:

- Security Staff sets up front door including Stanchions, Ropes, and Barricades;
- As Security arrives, Security positions at the front door are posted up;
- Once line reaches "fibbar's" a security staff person is posted at the end of the line and a second security staff person is posted at the beginning of the Hallway;
- No one is permitted to loiter at the front door, including promotions staff (if applicable);
- Sound & Lighting are set up by in-house Management;
- Upon authorization by in-house Management, Doors open and security staff begins conducting admission;

(b) ADMISSION COMPLETED (inside):

Please refer to Diagram enclosed herein:

- Security staff are posted at Exit Doors, adjacent to Dance Floor, and finally as Roamers;
- Security staff are instructed to be vigilant for persons who appear to be over-intoxicated, aggressive, or may be in need of assistance;
- In-House Management actively monitors crowd and regulates music format and lighting as necessary;

(c) ADMISSION COMPLETED (Outside):

- Security staff are instructed to clear persons loitering in front of the venue, in the hallway, and across the street;
- Security staff will periodically roam the parking lot area;

IV. CUSTOMER LINE MANAGEMENT PLAN:

(a) PRIOR TO OPENING DOORS:

- Security Staff are instructed that all patrons attending that evening's late night event must line up on the right hand side of the venue (as you face the venue), against the wall;
- If the line reaches "Fibbar's" then the line must be broken, restarting at the Hallway;
- Persons lining up in the Hallway are not permitted to have bottles or cans of beverages in their possession;
- Persons lining up in the Hallway may not lean against the glass windows of adjacent businesses, nor chew gum (as it tends to end up on the floor);

(b) ADMISSION (Doors Open):

- All security staff are instructed to be vigilant for patrons who appear to be under the influence, non-compliant with dress-code, or display a poor attitude;
- Security staff are instructed to communicate with HOS at all times prior to and after making contact with the aforementioned patrons;
- ID person acts as second check & balance and identifies persons who may be denied admission for various reasons;
- Persons to be denied admission are referred to HOS;

V. POST-EVENT/CLOSING CROWD MANAGEMENT PLAN:

The following occur in chronological order on all nights:

- Music format is changed to Slow Songs (less than 80 BPM) starting at approximately 30-40 minutes prior to shut-down;
- Lighting is slowly raised beginning approximately 20-15 minutes prior to shut-down;
- Security Staff inside are moved outside and are posted in the Hallway and at the corner of Murphy Street across from the Parking Lot beginning approximately 20-15 minutes prior to shut-down;
- At Shut-Down, security staff inside the venue begin 'pushing' patrons towards the front door of the venue;
- Security Staff outside slowly make way up to parking lot and begin process of 'pushing' patrons to leave the parking lot;

VI. Special Events Permit per 9.45 Sunnyvale Municipal Code:

Pursuant to Section 9.45.030 (b)(3) and Section 9.47 of the Sunnyvale Municipal Code, The Abyss will obtain a Special Event Permit for all Special Events as further defined in Section 9.45.030 of the Sunnyvale Municipal Code.

Respectfully Submitted:

[Emanuel Nguyen]

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

JAN 13 2009

In the Matter of the Accusation Against:

DUONG, Chien T & NGUYEN Chung

DBA: The Abyss

PREMISES: 146 S. Murphy Ave.,
Sunnyvale, CA. 94086

LICENSE(S): On-Sale General Eating Place

File: 47-430051

Reg: 08068524

FILED

JAN 12 2009

SECOND AMENDED

ACCUSATION UNDER
ALCOHOLIC BEVERAGE
CONTROL ACT AND
STATE CONSTITUTION

ALCOHOLIC BEVERAGE CONTROL

I hereby complain and accuse the above respondent(s), holding the above license(s), based on the following statement of facts:

COUNT 1

On or about 1-17-08, respondent-licensee(s), the holder of a type 47 license, sold alcoholic beverages other than beer for consumption on said premises, at which time the premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of Sections 23038 and 23396 of the Business and Professions Code.

COUNT 2

On or about 1-17-08, respondent-licensee violated a condition placed upon the license, to wit: between the hours of 8:00 PM and 2:30 AM, the licensee(s) shall provide licensed uniformed security personnel in the premises, and parking lot adjacent to the premises, and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby residents. Said personnel shall be clothed in such manner as to be readily identifiable as security, by not having security personnel in the parking lot between the aforementioned hours, in violation of Business and Professions Code Section 23804.

COUNT 3

On or about 1-17-08, respondent-licensee violated a condition placed upon the license, to wit: Licensee shall not share any profits, or pay commission to a promoter or any other person, based upon monies collected as a door charge, or any other form of admission charge, including minimum drink orders, or the sale of drinks, by paying promoters based on admission charge of guests in violation of Business and Professions Code Section 23804.

COUNT 4

On or about 2-28-08 respondent-licensee(s), the holder of a type 47 license, sold alcoholic beverages other than beer for consumption on said premises, at which time the premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of Sections 23038 and 23396 of the Business and Professions Code.

DUONG, Chien & NGUYEN Chung
47-430051
Page 2

COUNT 5

On or about 2-28-08 respondent-licensee violated a condition placed upon the license, to wit: There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows, by having disc jockeys in violation of Business and Professions Code Section 23804.

COUNT 6

On or about 6-22-07 respondent-licensee violated a condition placed upon the license, to wit: There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows, by having disc jockeys in violation of Business and Professions Code Section 23804.

COUNT 7

On or about 12-31-07 respondent-licensee violated a condition placed upon the license, to wit: There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows, by having disc jockeys in violation of Business and Professions Code Section 23804.

COUNT 8

On or about 3-8-08 through 9-7-08, respondent-licensee kept or permitted, in conjunction with a licensed premises, a disorderly house, or to which people resort, to the disturbance of the neighborhood or in which people abide or resort which is injurious to the public morals, health, convenience or safety, in violation of Business and Professions Code Section 25601.

SUBCOUNT A

On or about 3-8-08 Licensees and/or their agents or employees permitted a disorderly condition to occur at the premises, to the extent that security personnel and management were involved in the criminal cover-up of a stabbing that took place on the premises. Investigations into the incident by the local police agency provided information that premises manager Hai Nguyen (aka Michael) dissuaded stabbing victims from calling the police. Meanwhile, security guard Phong Lyong destroyed evidence at the crime scene and obstructed police officers by not giving them evidence.

SUBCOUNT B

On or about 3-8-08, respondent-licensee or his agent or employee manager Hai Nguyen (aka Michael), and/or security guard Phong Lyong willfully resisted, delayed or obstructed Sunnyvale peace officers, in or about the premises, in the discharge or attempt discharge of a duty of their office, in violation of Penal Code Section 148(a)(1).

DUONG, Chien & NGUYEN Chung
47-430051
Page 3

SUBCOUNT C

On or about 5-25-08, 21 officers from the Sunnyvale Police Department responded to several fights and a large unruly crowd of 200 to 500 premises patrons that had been dispersed from the premises out onto the public streets. Sunnyvale Police Department had to call for mutual emergency aid from the neighboring Santa Clara Police Department and S. Murphy Street was closed down. Two patrons were arrested for violations of 242 PC (Battery) and 415(1) PC (Challenging Others to Fight in Public).

SUBCOUNT D

On or about 8-10-08, a police officer from the Sunnyvale Police Department contacted a subject in front of the premises that was intoxicated and unable to care for himself. The subject admitted to have been drinking at the premises. The subject was arrested for 647 F PC (Drunk in Public).

SUBCOUNT E

On or about 8-13-08, an unruly subject was contacted after he threatened the security and customers of the premises. The subject fought with police officers and additional police officers had to be called to control the combative subject. The subject was arrested for 148 (a)(1) PC (Resisting, Delaying, or Obstructing a Police Officer).

SUBCOUNT F

On or about 9-7-08, Sunnyvale PD Officers responded to the premises for a reported assault and battery occurring at the premises. The victim had been beaten semi-conscious by two suspects while inside the premises. The subjects were arrested for 245(a)(1) PC (assault with a deadly weapon).

COUNT 9

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

SUBCOUNT A

On or about 3-8-08 Licensees and/or their agents or employees, to wit security personnel and management, were involved in the cover-up of a stabbing that took place on the premises.

SUBCOUNT B

On or about 3-8-08 Licensees and/or their agents or employees, to wit premises manager Hai Nguyen (aka Michael), dissuaded stabbing victims from calling the police.

SUBCOUNT C

On or about 3-8-08 Licensees and/or their agents or employees, to wit security guard Phong Lyong, destroyed evidence at the crime scene and obstructed police officers by not giving them the evidence.

SUBCOUNT D

On or about 3-8-08, respondent-licensee or his agent or employee manager Hai Nguyen (aka Michael), and/or security guard Phong Lyong willfully resisted, delayed or obstructed Sunnyvale peace officers, in or about the premises, in the discharge or attempt discharge of a duty of their office, in violation of Penal Code Section 148(a)(1).

SUBCOUNT E

On or about 5-25-08, 21 officers from the Sunnyvale Police Department responded to several fights and a large unruly crowd of 200 to 500 premises patrons that had been dispersed from the premises out onto the public streets. Sunnyvale Police Department had to call for mutual emergency aid from the neighboring Santa Clara Police Department and S. Murphy Street was closed down. Two patrons were arrested for violations of 242 PC (BATTERY) and 415(1) PC (Challenging Others to Fight in Public).

SUBCOUNT F

On or about 8-10-08, a police officer from the Sunnyvale Police Department contacted a subject in front of the premises that was intoxicated and unable to care for himself. The subject admitted to have been drinking at the premises. The subject was arrested for 647 F PC (Drunk in Public).

SUBCOUNT G

On or about 8-13-08, an unruly subject was contacted after he threatened the security and customers of the premises. The subject fought with police officers and additional police officers had to be called to control the combative subject. The subject was arrested for 148 (a)(1) PC (Resisting, Delaying, or Obstructing a Police Officer).

SUBCOUNT H

On or about 9-7-08, Sunnyvale PD Officers responded to the premises for a reported assault and battery occurring at the premises. The victim had been beaten semi-conscious by two suspects while inside the premises. The subjects were arrested for 245(a)(1) PC (assault with a deadly weapon).

DUONG, Chien & NGUYEN Chung
47-430051
Page 5

For the purpose of the imposition of penalty, if any, arising from the proceeding, it is further alleged that the respondent-licensees have suffered the following disciplinary history;

<u>Date</u>	<u>Violation</u>	<u>Penalty</u>	<u>Reg. #</u>
12-08-06	24200(a&b) B&P 148 (a)(1) PC 25177 B&P 25601 B&P 347(b) PC 110545,110560,110620 H&S 647(f) PC	20 day Suspension and Imposition of Conditions	06064482

Licensee(s) Previous Record: Licensed as above since 1-11-06, with the above history of disciplinary action:

(1) That by reason of the foregoing facts, grounds for suspension or revocation of such license(s) exist and the continuance of such license(s) would be contrary to public welfare and morals, as set forth in Article XX, Section 22, State Constitution, and Section(s) 24200 (a) and (b) of the Business and Professions Code;

WHEREFORE, I recommend that a hearing be held on this accusation.

[Dated this 8th day of JANUARY 2009 RECEIVED [Signature]
District Administrator
JAN 12 2009 Department of Alcoholic Beverage Control]

Reviewed:

Hearing and Legal Unit
Dept. of Alcoholic Beverage Control
SACRAMENTO

Pursuant to Government Code Section 11507.6 discovery is requested to be provided to: Dept. of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834 Phone (916) 419-2500.

STATEMENT TO RESPONDENT(S)

Unless a written request for a hearing, signed by you, or on your behalf, is delivered, or mailed, to the Department of Alcoholic Beverage Control within fifteen (15) days after the foregoing accusation was personally served on you or mailed to you, the Department of Alcoholic Beverage Control may proceed upon the accusation without a hearing to take action thereon as provided by law. The request for a hearing may be made by delivering or mailing the enclosed form entitled: "Notice of Defense", or by delivering or mailing a Notice of Defense to the Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, California 95834, as provided by Section 11506 of the Government Code. The "Notice of Defense" forwarded herewith, if signed and returned to the Department of Alcoholic Beverage Control, shall be deemed a specific denial of all parts of the accusation, but you will not be permitted to raise any objection to the form of the accusation, unless you file a further Notice of Defense as provided, in Section 11506 of the Government Code within said 15 days after service of said accusation upon you. At any or all stages of these proceedings, you have the right to be represented by counsel at your own expense or to represent yourself without legal counsel. You are not entitled to the appointment of an attorney to represent you.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify this agency within 10 working days after you discover the good cause. Failure to notify this agency within 10 days will deprive you of a postponement.