



CITY OF SUNNYVALE REPORT ZONING ADMINISTRATOR HEARING

July 27, 2011

File Number: 2011-7365

Permit Type: Use Permit

Location: 769 N. Mathilda Ave. (near San Aleso Ave.) (APN: 165-43-021)

Applicant/Owner: Emrah Gures / Vickie Wilms et al

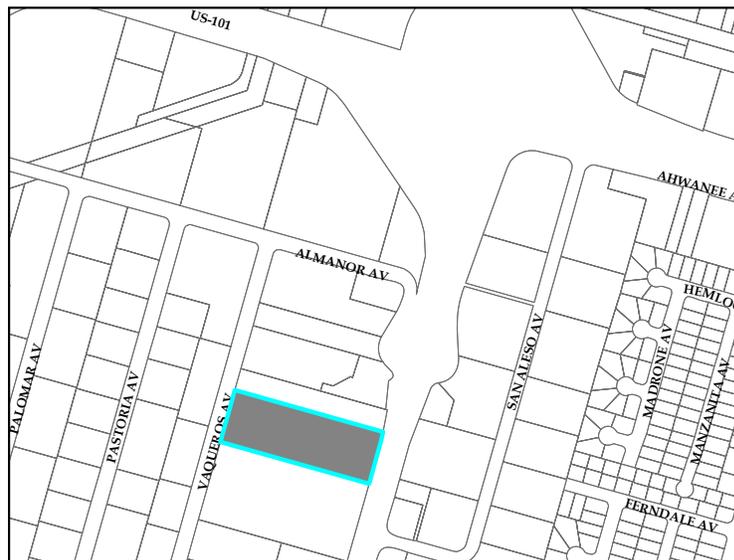
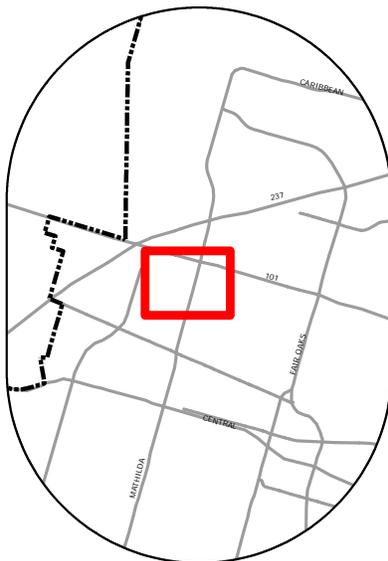
Staff Contact: Ryan Kuchenig, Associate Planner, (408) 730-7431

Project Description: To allow a hookah lounge within an outdoor patio of an existing restaurant/bar (Taverna Lounge).

Reason for Permit: A Use Permit is required for a hookah use within an existing restaurant establishment.

Issues: Compatibility of Use, Maintenance and Compliance of Existing Conditions

Recommendation: Approve with Conditions



500

Feet

PROJECT DESCRIPTION

	Existing	Proposed
General Plan:	Industrial	Same
Zoning District:	M-S	Same
Total Sq. Ft. on Site:	20,709	Same
Tenant Sq. Ft. (restaurant/bar):	2,400	Same
Parking:	337 (32 spaces for project site restaurant/bar)	Same

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing / Decision	Date
1999-0224	Use Permit to add live entertainment at an existing restaurant	Administrative Hearing / Approved	5/10/1992
1979-0031	Use Permit for a Front Patio Addition	Planning Commission / Approved	5/29/1978
1963-0015	Use Permit for a bar/restaurant	Planning Commission Approved	6/24/1963

Neighborhood Preservation Complaints Neighborhood Preservation recently cited the business regarding a temporary banner that had been installed without permits. More discussion is noted in the "Signs" section of this staff report.	Yes
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Use Description: The site had been approved for a restaurant and bar with live entertainment through previous Use Permits. The proposed use would allow an outdoor hookah lounge within the existing patio area of the restaurant (Taverna Lounge).

State Requirements: Hookah bars are required to comply with Labor Code Section 6404.5, the California Smoke-free Workplace Act, which makes virtually all indoor smoking in bars and restaurants illegal. There are only two circumstances in which indoor smoking in a bar or restaurant would be allowed under State law:

- 1) The establishment qualifies as a "retail or wholesale tobacco shop", and
- 2) The establishment is owner-operated and has no employees.

Neither of these applies to the application at hand as the applicant is not requesting indoor smoking. Under State law, smoking may be allowed in outdoor areas, such as patios; this authority is deferred to the local jurisdictions.

City Requirements: The Sunnyvale Municipal Code states that “*Sixty percent of outdoor eating areas for all eating establishments shall be reserved for nonsmokers. Smoking is prohibited and unlawful in such areas*” (SMC 9.28.020(a) (2)). Therefore, smoking may be permitted in up to 40% of outdoor restaurant eating area. The Municipal Code requires signposting in such establishments to clarify where smoking is and is not permitted (SMC 9.28.040(a), see Attachment A, Condition of Approval GC-7).

Hours of Operation: The Taverna Lounge would be open daily from 11:00 A.M. to 2:00 A.M. Consistent with the previous Use Permit, the hours of operation for the approved live entertainment use is limited to Wednesday through Saturday from 8:00 P.M. to 1:00 A.M. (Condition of Approval AT-2)

Employees: The business would have approximately five employees. Staff has included Condition of Approval GC-6 to ensure employee consent with regards to working in a permitted smoking area. The condition states that “all employees who enter the smoking area shall have established their consent in writing to work in a permitted smoking area. No one shall be required to work in the area where smoking is permitted as part of their job responsibilities. The business operator shall maintain a copy of the Employee Consent with each employee file.”

To further ensure air quality within the non-smoking area of the restaurant building, staff has included Condition of Approval GC-10 which requires some form of air management, such as a fan, to be used within the patio area to direct smoke away from the restaurant area.

Floor Plan: The interior of the building consists mostly of open dining area. A bar and kitchen situated towards the right side and back corner of the building. Restrooms are located at the back of the building as well. The main entrance/exit door is located facing the street with secondary exit at the left (south) side of the building. Another door towards the front of the building allows access to an enclosed patio area. The patio area is enclosed by an existing wood fence which is approximately four to five feet high. Several tables and chairs are setup in this area. A floor plan is provided in Attachment B.

As stated in a previous section, no more than 40% of the outdoor restaurant area can be used as smoking area. Similar to previous applications for this type of use, the area is calculated based on the percentage amount of seating area. (See Condition of Approval GC-8.)

Exterior Changes: The proposal does not include any exterior changes. Recent improvements included modifications to the fencing around the patio as well as new signage on the building façade. Staff has included Condition of Approval GC-18 which requires adequate lighting to be maintained within the patio area and area near parking spaces adjacent to the building. Replacement of existing broken lamps positioned along the columns of the fence may be necessary.

Signs: Staff notes that no permit has been issued for the signs that appear to be recently installed. Certain signs may need to be removed or modified to meet current Municipal Code requirements. Staff has included Condition of Approval GC-13, which requires a separate sign application with the Planning Division within 60 days of operation. To further ensure compliance, a building permit for such signs is required to be approved within 120 days.

At the time of the draft of this report, a temporary banner had also been installed at the site without a permit. Per Condition of Approval GC-14, a separate temporary sign permit is required to be filed with the Planning Division.

Trash Enclosure: The existing trash bin is located behind the building. The previous Use Permit to allow the live entertainment at the site included improvements that included repair and enlargement of an existing trash enclosure. The structure does not appear to have been repaired or reconstructed. Per Condition of Approval GC-16, the trash enclosure shall be reconstructed and enlarged to accommodate the needs of the restaurant. A separate Miscellaneous Plan Permit shall be filed with Planning Staff within 60 days of operation of the approved use.

Parking: The restaurant shares a large parking lot with a nightclub located south of the property. Approximately 337 spaces are provided on site for the two businesses. Of these spaces, a total of 32 spaces are needed for the subject restaurant/bar based on the Sunnyvale Municipal Code Section 19.46.050 rate of 1 space per 75 square feet. The site meets this standard; however, at certain locations the parking area is not clearly delineated. Staff has included a Condition of Approval GC-15, which requires that 32 spaces be clearly striped within 60 days of operation of the proposed use.

Landscaping: Existing landscaping lies mostly at the front of the site. Although the site does not likely meet landscaping standards, there is little opportunity to increase landscaping locations within the rear parking lot without removing spaces needed for the site and neighboring business. Other than a few plants located directly adjacent to the fenced patio area, much of the area consist of dead lawn area and rocks. Existing landscaping at the front of the site could be improved. Staff has included Condition of Approval AT-6 to require the space

around the front patio to be re-landscaped within 60 days of operation of the approved use.

Public Contact: 16 notices were sent to surrounding property owners and residents adjacent to subject site in addition to standard noticing practice. No letters were received.

Environmental Determination: A Categorical Exemption Class 1 (minor changes in use) relieves this project from CEQA provisions.

FINDINGS

Goals and Policies that relate to this project are:

Land Use and Transportation Element

Policy N1.1 – *Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.*

Action Statement N1.1.1 - *Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.*

In order to approve the Use Permit the following findings must be made:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *(Finding Met)*

The proposed use supports an existing restaurant and bar with live and entertainment. The use will comply with Federal, State and City regulations, and is not expected to be a nuisance to surrounding properties.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties. *(Finding Met)*

The proposed use, as conditioned, will not impair the orderly development of the existing use or neighboring properties. Conditions of Approval ensure that the proposed use is located within a contained area and meets Municipal Code regulations. Improvements to the site also allow for most upgrades to the site and ensure code compliance.

ALTERNATIVES:

1. Approve the Use Permit with recommended Conditions in Attachment A.
2. Approve the Use Permit with modifications.
3. Deny the Use Permit.

RECOMMENDATION

Alternative 1. Approve the Use Permit with recommended Conditions in Attachment A.

Reviewed by:

Shaunn Mendrin
Senior Planner

Prepared By: Ryan Kuchenig, Associate Planner

Attachments:

- A. Standard Requirements and Recommended Conditions of Approval
- B. Site and Architectural Plans
- C. Letter from the Applicant
- D. Site Photos

**RECOMMENDED
CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
July 27, 2011**

Planning Application 2011-7365

769 N. Mathilda Avenue

Use Permit to allow a hookah lounge within an outdoor patio of an existing restaurant/bar (Taverna Lounge).

The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with "Mitigation Measure" and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE APPROVED PROJECT.

GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:

All building permit drawings and subsequent construction and operation shall substantially conform with the approved planning application, including: drawings/plans, materials samples, building colors, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing. [COA] [PLANNING]

GC-2. USE EXPIRATION:

The approved use Permit for the use shall expire if the use is discontinued for a period of one year or more. [SDR] (PLANNING)

GC-3. PERMIT EXPIRATION:

The permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development. [SDR] (PLANNING)

GC-4 ALCOHOL BEVERAGE CONTROL (ABC):

The project applicant shall obtain all appropriate licenses from the Department of Alcoholic Beverage Control prior to commencement of the sale of alcohol on the subject property. [COA] [PLANNING]

GC-5 USE AND ABC COMPLIANCE:

Non-compliance with the Conditions of Approval for this Use Permit or non-compliance with the requirements of the Department of Alcoholic Beverage Control at any time may trigger either: 1) reconsideration of the Use Permit and the imposition of additional Conditions of Approval; or 2) initiation of revocation proceedings by the Director of Community Development. [COA] [PLANNING]

GC-6 EMPLOYEE CONSENT:

All employees who enter the smoking area shall have established their consent in writing to work in a permitted smoking area. No one shall be required to work in the area where smoking is permitted as part of their job responsibilities. The business operator shall maintain a copy of the Employee Consent with each employee file. [COA] [PLANNING]

GC-7 "NO SMOKING" SIGNS:

"No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every room, building or other place where smoking is prohibited by this chapter, including, but not limited to, all entrances, all restrooms and all elevators. Signs of equivalent size and character reading "Smoking is prohibited except in designated areas" shall be posed at each entrance to a building or structure where smoking is permitted in designated areas. Signs of equivalent size and character reading "Smoking Permitted" may be posted where legally applicable. Alternative means of notification may be employed, provided they are equivalent to the aforementioned signs in their effect. [COA] [PLANNING]

- GC-8 LOCATION OF HOOKAH USE:
No hookah pipes shall be used inside the building and shall be confined to the enclosed patio area in front of the building. A maximum of 40% of the total seating area within the enclosed outdoor patio area may be used. [COA] [PLANNING]
- GC-9 MONITORING:
The hookah pipes and the tobacco used are to be monitored by the business owner or designee at all times while they are in use. Addition of any substances other than the standard hookah tobacco shall be considered a violation of this permit and grounds for revoking the permit. [COA] [PLANNING]
- GC-10 AIR QUALITY MANAGEMENT:
Some form of air quality management shall be required for the smoking area, such as a fan, directing the smoke away from the restaurant area. [COA] [PLANNING]
- GC-11 MINORS:
The smoking area shall not be accessible to minors. [COA] [PLANNING]
- GC-12 CONFORMANCE WITH PREVIOUS PLANNING PERMIT:
The subject site shall comply with all conditions of approval and requirements of planning application 1999-0224 related to restaurant/bars with live entertainment. [COA] [PLANNING]
- GC-13 SIGNS:
All existing/new signs shall be brought into conformance with Title 19 of the Sunnyvale Municipal Code. A separate application for a sign permit is required within 60 days of operation of the approved use. Within 120 days, a building permit shall be approved. [COA] [PLANNING]
- GC-14 TEMPORARY SIGNS:
Obtain a temporary sign permit for all existing and proposed temporary signs prior to operation of the approved use. [COA] [PLANNING]
- GC-15 PARKING LOT STRIPING:

A total of 32 spaces shall be striped and maintained for the subject use within 60 days of operation of the approved use. [COA] [PLANNING]

GC-16 RECYCLING AND SOLID WASTE ENCLOSURE:

The existing enclosure shall be repaired and enlarged as necessary for the restaurant. A separate Miscellaneous Plan Permit shall be filed with Planning Staff within 60 days of operation of the approved use. The required solid waste and recycling enclosure shall match the design, materials and color of the main building. [COA] [PLANNING]

GC-17 RECYCLING AND SOLID WASTE CONTAINER:

All recycling and solid waste containers shall be metal or State Fire Marshall listed non-metallic. [COA] [PLANNING]

GC-18 LIGHTING:

Adequate lighting shall be provided around the building near parking spaces and within the enclosed patio area. Existing lamps that are broken shall be replaced as necessary. [COA] [PLANNING]

GC-19 FIRE LANE

Fire lane markings within the parking lot shall meet applicable requirements. [COA] [PLANNING]

GC-20 FIRE EXTINGUISHERS:

Provide required number of approved fire extinguishers (minimum size of 2A10BC).

AT: THE FOLLOWING CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH AT ALL TIMES THAT THE USE PERMITTED BY THIS PLANNING APPLICATION OCCUPIES THE PREMISES.

AT-1. DELIVERY HOURS:

Delivery hours for the approved use shall comply with SMC 19.42.030:

- a) Delivery hours are limited to daytime (period from 7:00 a.m. to 10:00 p.m. daily) only.
- b) Nighttime delivery (period from 10 p.m. to 7:00 a.m. daily) is prohibited. [SDR] [PLANNING]

AT-2. HOURS OF OPERATION:

The use permitted as part of this application shall comply with the following hours of operation at all times:

- a. The hours of operation are limited to 11:00 a.m. to 2:00 A.M., daily, for standard hours of operation.
- b. Consistent with the previous Use Permit, the hours of operation for live entertainment shall be limited to Wednesday through Saturday between 8:00 P.M. and 1:00 A.M.
- c. Hours extending beyond those listed above shall require separate review and approval of a Use Permit through a Zoning Administrator Hearing. [COA] [PLANNING]

AT-3. RECYCLING AND SOLID WASTE:

All exterior recycling and solid waste shall be confined to approved receptacles and enclosures. [COA] [PLANNING]

AT-4. LOUDSPEAKERS PROHIBITED:

Out-of-door loudspeakers shall be prohibited at all times. [COA] [PLANNING]

AT-5. EXTERIOR EQUIPMENT:

All unenclosed materials, equipment and/or supplies of any kind shall be maintained within approved enclosure area. Any stacked or stored items shall not exceed the height of the enclosure. Individual air conditioning units shall be screened with architecture or landscaping features. [COA] [PLANNING]

AT-6. LANDSCAPE MAINTENANCE:

All landscaping shall be maintained in a neat, clean, and healthful condition. New landscaping around the patio area and in front of the building shall include additional plantings such as shrubs or trees. Landscaping shall be installed within 60 days of operation of the approved use. Trees shall be allowed to grow to the full genetic height and habit (trees shall not be topped). Trees shall be maintained using standard arboriculture practices. [COA] [PLANNING]

AT-7. PARKING LOT MAINTENANCE:

The parking lot shall be maintained in accordance with the approved plans and as follows:

- a) Clearly mark all employee, customer, and compact spaces.
- b) Maintain all parking lot striping and marking.
- c) Assure that adequate lighting is available in parking lots to keep them safe and desirable for the use.

- d) Require signs to direct vehicles to additional parking spaces on-site, as needed. [COA] [PLANNING]

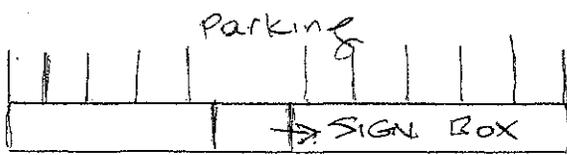
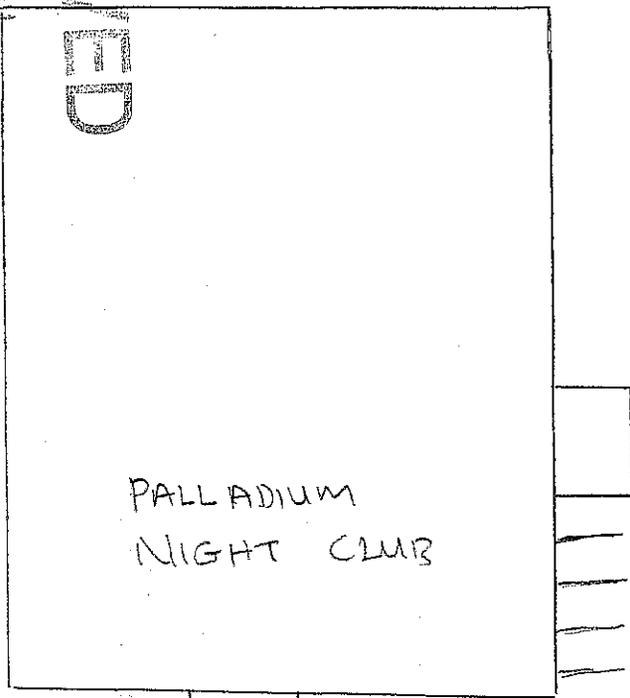
AT-8 OUTDOOR STORAGE:

Outdoor storage of goods is prohibited. All storage shall remain in designated enclosed storage areas. [COA] [PLANNING].

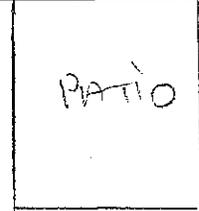
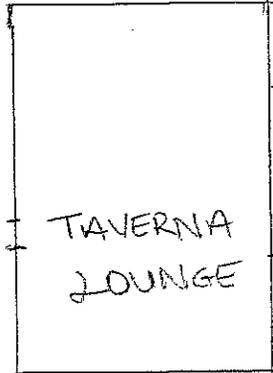
PLANNING DIVISION

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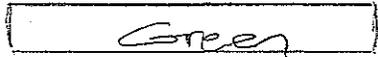
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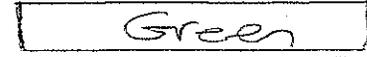
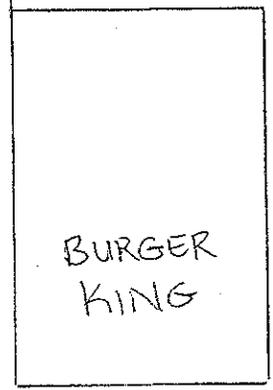
PARKING -



I DO SMOG



PARKING -



SIDE WALK

N. MATHILDA AVE

767 N MATHILDA AVE SUNNYVALE

MOTE 6

Page 1

ATTACHMENT B

of 3

MANOR

PALLADIUM
NIGHT CLUB

72^{ft}

TAVERNA
LOUNGE

I DO
SMOG

35^{ft}

BURGER
KING

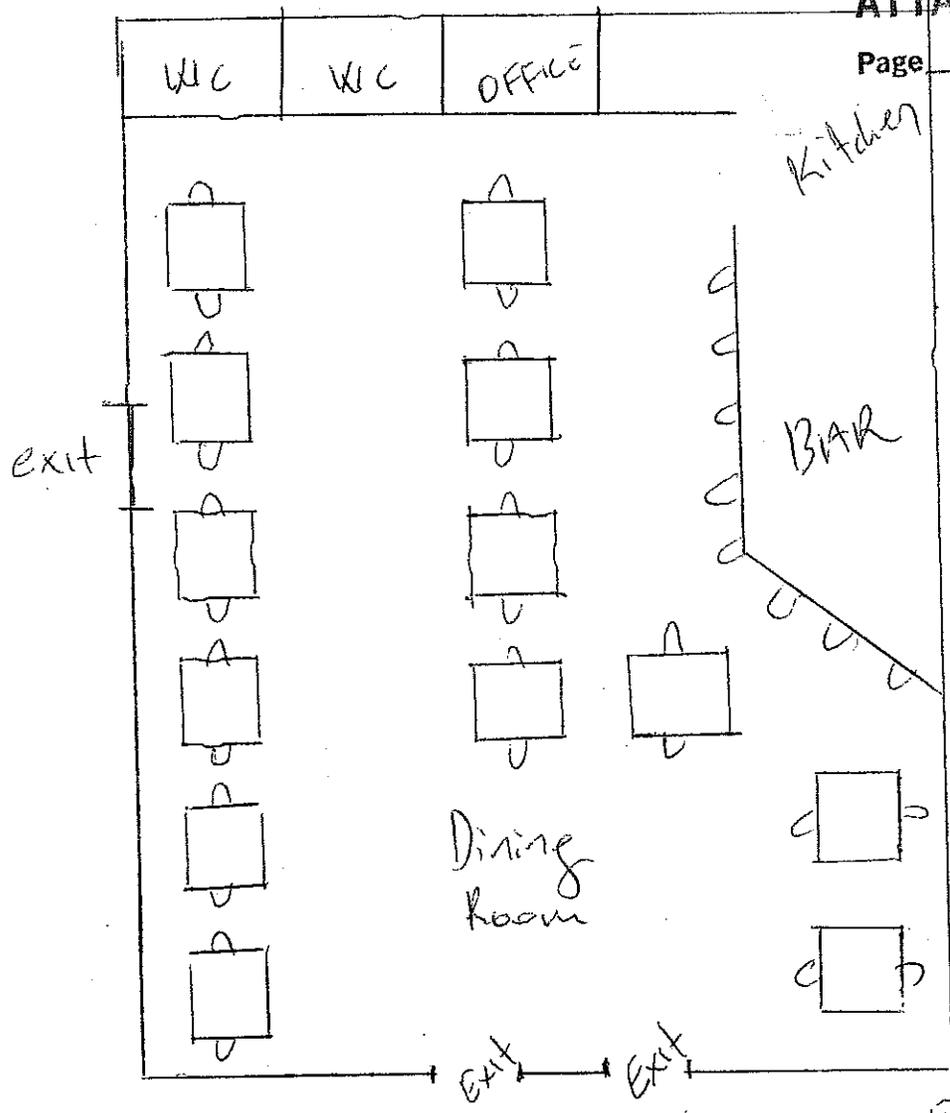
50^{ft}

PATIO

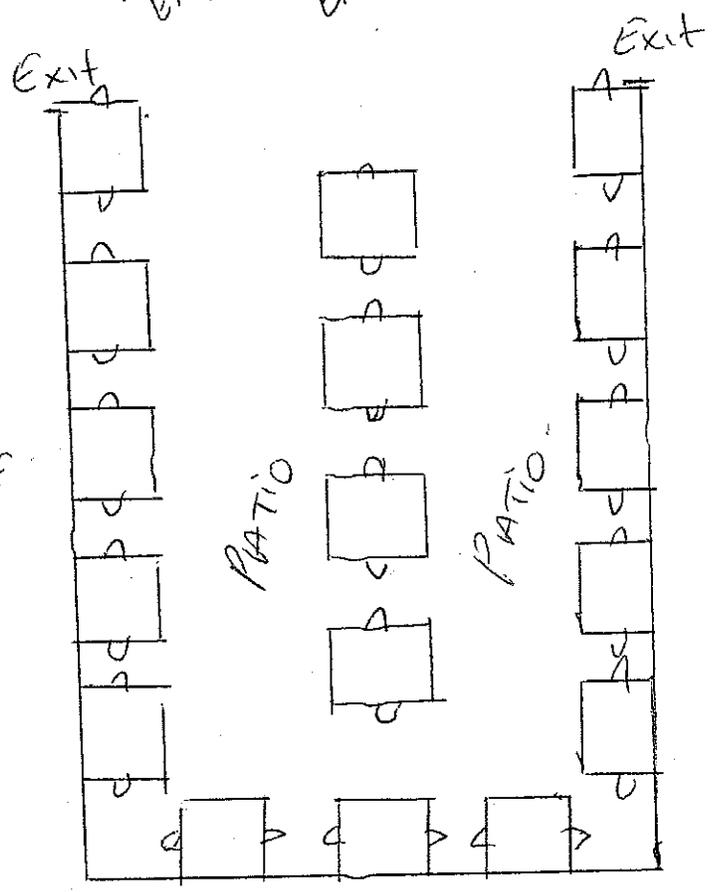
22^{ft}

N. MATHILDA AVE

767 N. MATHILDA AVE.



TAVERNA LOUNGE
Floor plan



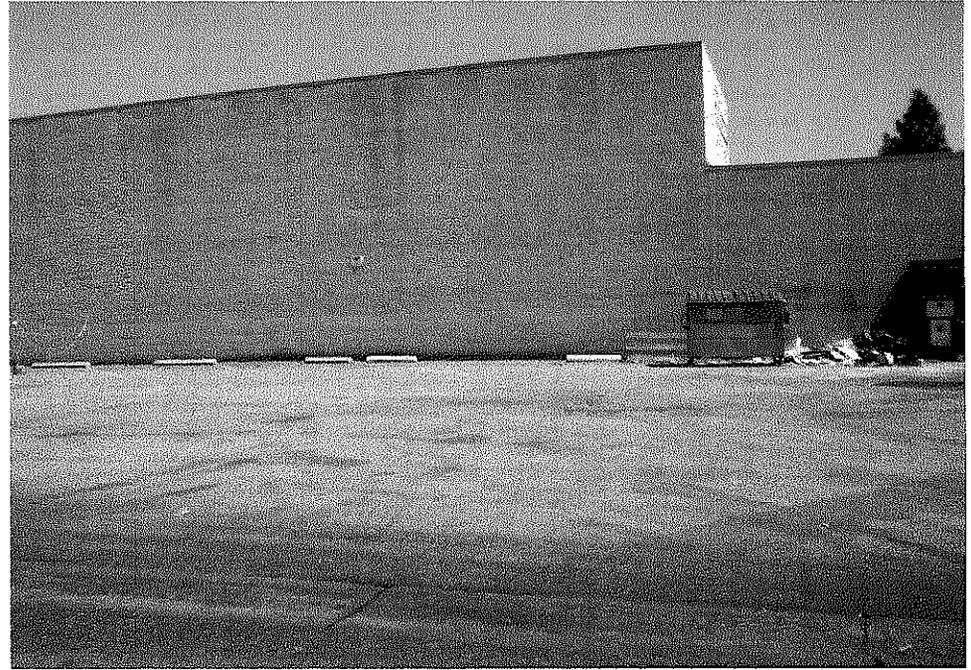
Subject: Serving Hookah in the Patio

I have been a restaurant owner in Downtown Sunnyvale for many years now. I serve Middle Eastern food along with hookah to my customers. I owe my big success to the hookah portion, where I serve it outdoors, in the back patio of my restaurant. A hookah is a water pipe that consists of one or more hoses for smoking, a pipe and a bowl to hold the tobacco. It is an extensive Middle Eastern tradition. It is usually seen to be in back patios of the restaurants in the Middle East and the Bay Area, just like mine, and most people smoke it at their homes after dinner as well. However, this popular tradition of smoking hookah is not only among Middle Eastern people. People with different cultures are also attracted to this Middle Eastern tradition. I believe that many people enjoy the leisure of smoking from a hookah because of its advantages over other types of smoking. I have seen from my customers that they prefer smoking hookah outdoors rather than indoors. It gives them a chance to socialize with their friends and even enhance their social relationships with others. Also, many of my customers have found jobs in this recession through the people they met at my hookah bar. I bring people all over the bay area to Sunnyvale, because outdoor hookah bars are really rare around here.

After this success of mine in Sunnyvale, I decided to open up my second restaurant on Mathilda Avenue. I bought Shooters Bar and Grill. I plan to do the same business plan here as well because I have seen from experience that this is what attracts people. People want to be able to smoke their hookahs outdoors and at the same time be able to eat and socialize with their friends. I plan to this with my partner, his wife and with his brother. It will be a family run business. I know because of my first restaurant that this will work and this is why I want your approval on this. I hope I was able to present the purpose of my letter well to you and thank you for your time.

Emrah Gures





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