

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Cindy Hom

Public Hearing: Yes: X No:

Notices Mailed On: 10/12/07 Published On: 10/11/07 Posted On: 10/12/07

TITLE: PERMIT REVIEW NO. PR2007-3

Proposal: A nine-month review of KTV Musicland, a 2,400 square foot karaoke establishment with no food or alcohol service.

Location: 668 Barber Lane

APN: 086-01-035

RECOMMENDATION: Modify the conditions subject to the findings and special conditions.

Applicant: Joe Zheng, 4704 Pacific Ave., Stockton, CA 95207

Property Owner: Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn: Karen Kam

Previous Action(s): "S" Zone Approval, Conditional Use Permits

General Plan Designation: General Commercial

Present Zoning: General Commercial with an "S" Zone Overlay (C2-S)

Existing Land Use: Multi-Tenant Commercial Building

Agenda Sent To: Applicant & Owner (same as above)

Attachments: Plans
Attachment A: Compliance with Special Conditions of Approval
Attachment B: Copy of Background Checks

PJ#2465

BACKGROUND

This item was continued from the October 24, 2007 Planning Commission meeting to enable the applicant more time to correct violations cited during inspection for the nine-month review.

The Planning Commission approved Conditional Use Permit No. UP2006-18 for a 2,400 sq. ft. karaoke establishment on November 8, 2006. No food or alcohol service is permitted with this Conditional Use Permit (CUP). The karaoke establishment includes a front reception area and nine individual karaoke rooms that will be operated seven days a week between the hours of 4:00 P.M. to

2:00 A.M. Pursuant to Special Condition No. 15, a nine-month review is required to verify compliance with conditions of approval.

SITE DESCRIPTION

The project site is located on the east side of Barber Lane between the Hetch-Hetchy Right-of-Way and the vacated Billings Chevrolet site. Interstate 880 runs along the eastern boundary of the site. The site has a zoning designation of General Commercial with an “S” Zone overlay (C2-S). Neighboring land uses include industrial park, commercial uses and a large day care facility.



APPLICATION

Pursuant to Section 19.03-1 (Arcades, with mechanical or electronic games or games of skill or science), a CUP was approved for the 2,400 sq. ft. karaoke entertainment establishment. The CUP was approved subject to 25 special conditions of approval that included a nine-month review by the Planning Commission. The purpose of the nine-month review is to verify compliance with the conditions of approval.

ISSUES

Based on a recent inspections conducted by the staff, the following conditions have not been satisfied:

1. SC #7: The applicant shall maintain signs stating “No loitering or consumption of alcoholic beverages” on the exterior of the building and within the establishment. (P) – Only “No Loitering” is posted on the exterior of the Building and “No Alcohol” sign is posted within the premises which does not substantial conform to the condition.

2. SC #11: The front exterior windows shall be maintained free and clear. No tinting or blinding of the exterior windows shall be allowed. (P) – Drapes are installed in the VIP room and in the front lobby area.
3. SC #23: All conditions applicable to patrons, particularly the stated prohibitions included in these “Conditions of Approval”, of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size. (P) – No signage was posted on the premise.

As a result, staff is recommending the following new or modified conditions of approval for the project:

1. Modify Special Condition No. 19; to replace the nine-month reviews with three-month reviews or until the Planning Commission determines it is no longer necessary. The applicant shall submit all necessary public hearing notification materials and fees in accordance with the Zoning Ordinance. (PC)
2. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures.
3. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees.

CONFORMANCE WITH CEQA

Staff conducted an environmental assessment of the project in accordance with CEQA and determined that the proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (“Existing Facilities”, ~ minor alteration of existing public or private structures ~ involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination) .

RECOMMENDATION

Close the Public Hearing. Modify the conditions subject to the findings and special conditions.

FINDINGS

1. The proposed karaoke establishment t is consistent with the City of Milpitas Zoning Ordinance and General Plan in terms of land use and development standards for the General Commercial zoning district. The use is a conditionally permitted use in the C2 zoning district. The proposed karaoke entertainment will add to the mix of businesses in Ulfert’s Center and will help to increase the attraction and vitality of the area by providing a night use that is compatible with the existing restaurants and office uses.
2. As conditioned, the proposed karaoke establishment will not be detrimental or injurious to the public health, safety, and general welfare to adjacent future tenants or the surrounding community because the project will mitigate noise with installation of noise attenuating devices, post signs that prohibits drinking and loitering on the premises, and will complement the restaurant uses by providing a venue for commercial recreation.
3. The project is exempt from further environmental review pursuant to Class 1, Section 15301 (“Existing Facilities” (“Existing Facilities”, ~ minor alteration of existing public or private structures ~ involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination).

SPECIAL CONDITIONS

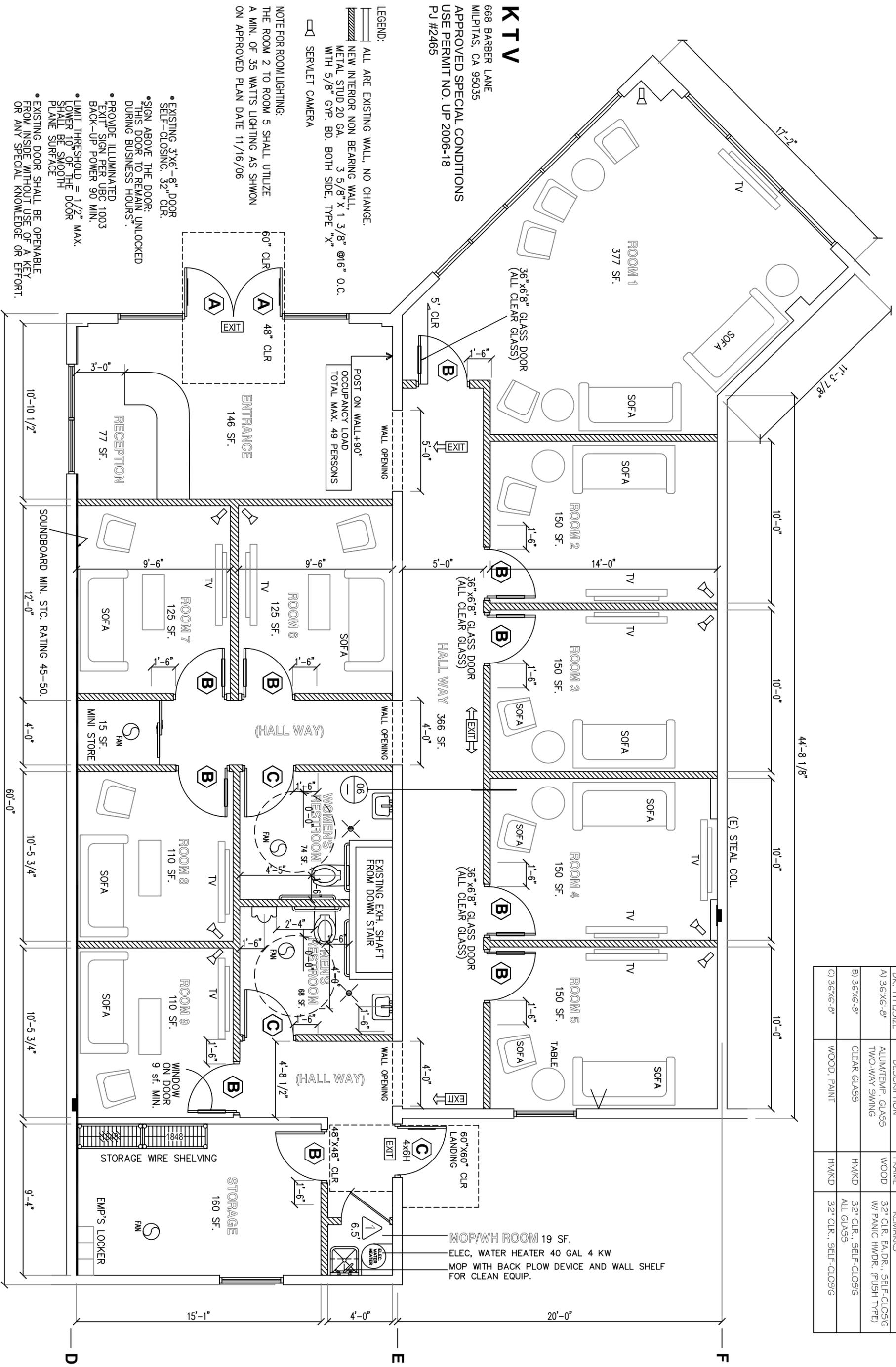
1. The previous conditions of approval for the project (UP2006-18) shall remain in full force and effect except as modified here.
2. Modify Special Condition No. 19; to replace the nine-month reviews with three-month reviews or until the Planning Commission determines it is no longer necessary. The applicant shall submit all necessary public hearing notification materials and fees in accordance with the Zoning Ordinance. (P)
3. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures. (PD)
4. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees. (PD)
5. The three-month permit review shall be scheduled no later than February 13, 2008 (PC). The applicant shall submit all the necessary public hearing materials and fees to the Planning Division no later than January 13, 2008.

(P) = Planning Division

(PC SUB) = Planning Commission Subcommittee

(PD) = Police Department

DR. TYPE/SIZE	DESCRIPTION	FRAME	REMARKS
A) 36"x6'-8"	ALUM/TEMP. GLASS TWO-WAY SWING	WOOD	32" CLR. E.A.D.R., SELF-CLOS'G W/ PANIC HWDR. (PUSH TYP)
B) 36"x6'-8"	CLEAR GLASS	HW/KD	32" CLR., SELF-CLOS'G ALL GLASS
C) 36"x6'-8"	WOOD, PAINT	HW/KD	32" CLR., SELF-CLOS'G



K T V
 668 BARBER LANE
 MILPITAS, CA 95035
 APPROVED SPECIAL CONDITIONS
 USE PERMIT NO. UP 2006-18
 PJ #2465

LEGEND:
 ALL ARE EXISTING WALL, NO CHANGE.
 NEW INTERIOR NON BEARING WALL,
 METAL STUD 20 GA. 3 5/8" X 1 3/8" @ 16" O.C.
 WITH 5/8" GYP. BD. BOTH SIDE, TYPE "X"
 SERVLET CAMERA

NOTE FOR ROOM LIGHTING:
 THE ROOM 2 TO ROOM 5 SHALL UTILIZE
 A MIN. OF 35 WATTS LIGHTING AS SHOWN
 ON APPROVED PLAN DATE 11/16/06

- EXISTING 3'X6'-8" DOOR SELF-CLOSING. 32" CLR.
- SIGN ABOVE THE DOOR: THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS.
- PROVIDE ILLUMINATED "EXIT" SIGN PER UBC 1003 BACK-UP POWER 90 MIN.
- LIMIT THRESHOLD = 1/2" MAX. LOWER ED OF THE DOOR SHALL BE SMOOTH PLANE SURFACE
- EXISTING DOOR SHALL BE OPENABLE FROM INSIDE WITHOUT USE OF A KEY OR ANY SPECIAL KNOWLEDGE OR EFFORT.

FLOOR PLAN (Scale: 1/4" = 1'-0")

ATTACHMENT A: COMPLIANCE WITH CONDITIONS OF APPROVAL:

SC NO. 1: This Use Permit No. UP2006-18 approval applies only to the 2,400 square foot tenant space denoted on the site and floor plan. The uses approved include 9 karaoke stations with no food or alcohol beverage service. The floor plan proposed for building permits shall substantially conform to the approved plans dated November 8, 2006 except as modified herein.

COMMENT: Perpetual

SC NO 2: Any changes to the use, business operations or modifications to the approved plans shall require a use permit amendment and Planning Commission review and approval.

COMMENT: Perpetual

SC NO 3: The use at the facility shall not engage and/or render any services as defined in Section 54.18 of the Milpitas Zoning Ordinance relating to “Adult Businesses.”

COMMENT: Perpetual

SC NO 4: Proposed use shall comply with all Federal, State and local code requirements.

COMMENT: Perpetual

SC NO 5: Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department.

COMMENT: Complies (see Attachment B).

SC NO 6: No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)

COMMENT: Perpetual.

SC NO 7: The applicant shall maintain signs stating “No loitering or consumption of alcoholic beverages” on the exterior of the building and within the establishment. (P)

COMMENT: Not in compliance. Sign does not substantial conform to the above condition. Sign should state “No loitering or consumption of alcoholic beverages. The applicant has posted two “No loitering signs on the along the north elevation (photo 2) and east elevations (photo 1A) and one interior sign that states “No alcohol” (Photo 1B)

Photo 1A



East Elevation (side entrance)

Photo 1B



SC NO 8: The hours of operations for the facility shall be limited to 4 P.M. to 2 A.M., Monday through Sunday. All patrons must be off the premises within 30 minutes after the facility's closure.

COMMENT: Applicant adheres to the operating hours of 4 P.M. to 2 A.M, Monday through Sunday. No complaints have been received to date regarding patrons loitering beyond 2:30 A.M. See Photo 1 for posted hours of operation:

Photo 2:



SC NO 9: All patrons within and employees of the facility must be the age of 18 years or older.

COMMENT: Complies. Patrons are required to fill out a form (See Attachment C). The front receptionist retains the ID card and returns it to the patron at the end of the session.

SC NO 10: Lighting within the facility, especially within the hallways and all stations, shall be established and kept at a level not less than forty (40) watts per hundred (100) square feet of floor area to provide visibility and to ensure the safety of patrons, employees, security and emergency personnel. The established lighting within the facility will be subject to the review, modification and approval of the City's Police Department.

COMMENT: Complies (See Plans dated 10/12/07, Sheet E2)

SC NO 11: The front exterior windows shall be maintained free and clear. No tinting or blinding of the exterior windows shall be allowed.

COMMENT: Not in compliance. The applicant currently has curtains in the Front Lobby and in the VIP Room. See Photo 2:

Photo 2:



VIP Room

SC NO 12: Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices.

COMMENT: Complies. (See plans dated 10/12/07, Sheet 02)

SC NO 13: Prior to building permit final, the applicant shall install closed circuit video surveillance cameras in all (9) karaoke rooms and shall be maintained for no less than one-month or 30 days. Surveillance tapes shall be made available at any time to the Police Department upon request.

COMMENT: Complies. Verified upon inspection dated August 20, 2007.

SC NO 14: Surveillance equipment shall be operable and maintained at all times. Surveillance equipment shall not be down for more than two days. The Planning Director may require the applicant to cease operation until compliance with this condition of approval is met.

COMMENT: Perpetual.

SC NO 15: Within 9 months of building permit final, this Use Permit No. UP2006-18 shall be review by the Planning Commission in order to verify compliance with the special conditions of approval regarding the operations of karaoke establishment. The applicant shall submit all necessary public hearing notification materials and fees.

COMMENT: Complies.

SC NO 16: Posters and signs shall be displayed in a manner that does not obstruct the view of the interior area from outside of the facility or directly into the individual karaoke rooms.

COMMENT: Perpetual.

SC NO 17: The lobby is reserved for patrons waiting for service only. No exterior loitering shall be allowed. All patrons waiting for service must wait in the designated lobby. No waiting list may be maintained beyond the seating capacity provided in the lobby.

COMMENT: Perpetual.

SC NO 18: The walls separating the establishment from adjacent commercial tenants shall employ effective noise attenuating devices to achieve a minimum standard transmission coefficient (STC) sound rating of 45-50. Such wall shall be soundproofed where no amplified music shall be audible on the exterior of the premises or adjoining tenant spaces. Should the improvements installed not provide acceptable noise levels, or should the noise emanating from the establishment cause noticeable discomfort to adjacent tenants, the establishment may be required to install additional noise attenuating devices. In doing so, the applicant may be required to request the services of a professional consultant specializing in noise attenuating devices to mitigate such impacts.

COMMENT: Complies (See plans dated 10/12/07, Sheet A1, Detail 6).

SC NO 19: Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City's Police Department.

COMMENT: Perpetual. Staff is recommending two additional conditions:

- 1. Applicant shall provide Police Department with an Emergency Contact database that consist of after hours contact information for responsible parties of the business in the event of an emergency or when the employee cannot reach a manager or business owner. The applicant shall submit any changes within two weeks utilizing the Police Department procedures.*
- 2. The Operator shall lock the front doors at closing to prevent people from enter the business after hours. People can be let out under the control of employees.*

SC NO 20: The applicant shall work, as necessary, with the Police Department to review and upgrade (if necessary) surveillance equipment installed on site. Surveillance shall be provided for the front lobby and all hallway areas. Surveillance monitors will be located at the front lobby and will be monitored by the business operator at the site. The Police Department shall approve the proposed surveillance equipment prior to the issuance of a business license. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days and made available to the Police Department upon request.

COMMENT: Perpetual.

SC NO 21: All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations.

COMMENT: Perpetual.

SC NO 22: All patrons entering the facility must provide picture identification before engaging in the karaoke service rendered at the facility to ensure that those patrons are adhering to the facility's regulations and conditions. A log must be kept at the facility. Such log shall be maintained for at least 120 days and surrendered to any city official upon request. The log shall include the patron's name, a state license/identification number, date and time service rendered, and specific station within the facility retained for the service.

COMMENT: Complies. Patrons are required to fill out a form (See Attachment C). The front receptionist retains the ID card and returns it to the patron at the end of the session.

SC NO 23: All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size.

COMMENT: Not in compliance

SC NO 24: This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request.

COMMENT: Perpetual

SC NO 25: Should the City receive any complaints arising from the facility's use and/or an indication that the facility's use has resulted in an increased need for service calls from emergency personnel (i.e., the Police Department), the Planning Director shall be authorized to refer this use permit to the Planning Commission. The Planning Commission may require modifications to the facility's "Conditions of Approval", or revoke the permit entirely, if it has been found that the use has caused a substantial adverse impact on the community.

COMMENT: Perpetual



*Dennis Graham
Chief of Police*

Milpitas Police Department

RECEIVED

MAR 02 2007

**CITY OF MILPITAS
PLANNING DIVISION**

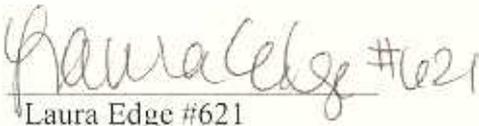
TO WHOM IT MAY CONCERN:

Please accept this correspondence as verification that the Milpitas Police Department performed a Police Records check on the following individual:

NAME: Sheng Lin
DATE OF BIRTH: 07-14-73
ADDRESS: 18405 Capistrano Way, Morgan Hill CA 95037
(Milpitas Business Location 788 Barber Lane, Milpitas CA 95035)

This record check was done by name search only and NOT on the basis of a fingerprint check. This check only applies to the Milpitas Police Department and not to any other agency. State and local criminal history records were not searched.

A search of our database for the last five years reveals that the above named individual does NOT have a criminal record with our department. This information pertains to adult arrest information only. If you have any questions, please contact our Records Division at (408) 586-2400. Thank you.

By:  #621
Laura Edge #621

Date: 03-02-07



Milpitas Police Department

Dennis Graham
Chief of Police

RECEIVED

MAR 02 2007

**CITY OF MILPITAS
PLANNING DIVISION**

TO WHOM IT MAY CONCERN:

Please accept this correspondence as verification that the Milpitas Police Department performed a Police Records check on the following individual:

NAME: Jinxin (Joe) Zheng
DATE OF BIRTH: 12-08-82
ADDRESS: 4704 Pacific Ave, Stockton CA 95207
(Milpitas Business Location 788 Barber Lane, Milpitas CA 95035)

This record check was done by name search only and NOT on the basis of a fingerprint check. This check only applies to the Milpitas Police Department and not to any other agency. State and local criminal history records were not searched.

A search of our database for the last five years reveals that the above named individual does NOT have a criminal record with our department. This information pertains to adult arrest information only. If you have any questions, please contact our Records Division at (408) 586-2400. Thank you.

By: *Laura Edge #621*
Laura Edge #621

Date: 03-02-07



音樂天地

MUSIC LAND KTV

TEL: 408.435-2699

788 Barber Lane, Milpitas, CA 95035

www.musiclandktv.com



WELCOME! 歡迎光臨!

日期 _____ 包廂號碼 _____
Date: _____ Room #: _____
進場時間 _____ 人數 _____
Time in: _____ Number: _____
ID(VIP) # _____ Phone # _____

Store Policies

1. 本店全面禁煙禁酒，違者罰款一百元或依法究辦，謝謝合作!
2. 包廂以十五分鐘為計算單位，狂歡時段最低消費二小時，其他一小時。
3. 每間包廂另加一成清潔費，超過五人另加5%。
4. 如在本店內破壞任何物品，必需照價賠償，並以法律追究一切責任，謝謝合作。

5. 每人餐飲最低消費二元，祝您消費愉快! 歡迎外帶食物。

1. Smoking/drinking alcoholic beverage in the room is prohibited. Violators will be charged \$100 fine or reported to police if necessary.
2. Hourly rate will be calculated by each 1/4 hour increment. Minimum charge for happy hours rate is 2 hours, other sessions is 1 hour.
3. 10% clean up fee will apply. Additional 5% clear up fee if more than 5 people.
4. We will charge any damage in room or reported to police if necessary.
5. \$2 minimum food/drinks charge per person is required. Outside food is welcome.

我們已經讀過並同意遵守以上規定...

We have read and agreed to follow the store policies above.

顧客簽名

Customer signature: _____ Date: _____



