



MILPITAS PLANNING COMMISSION

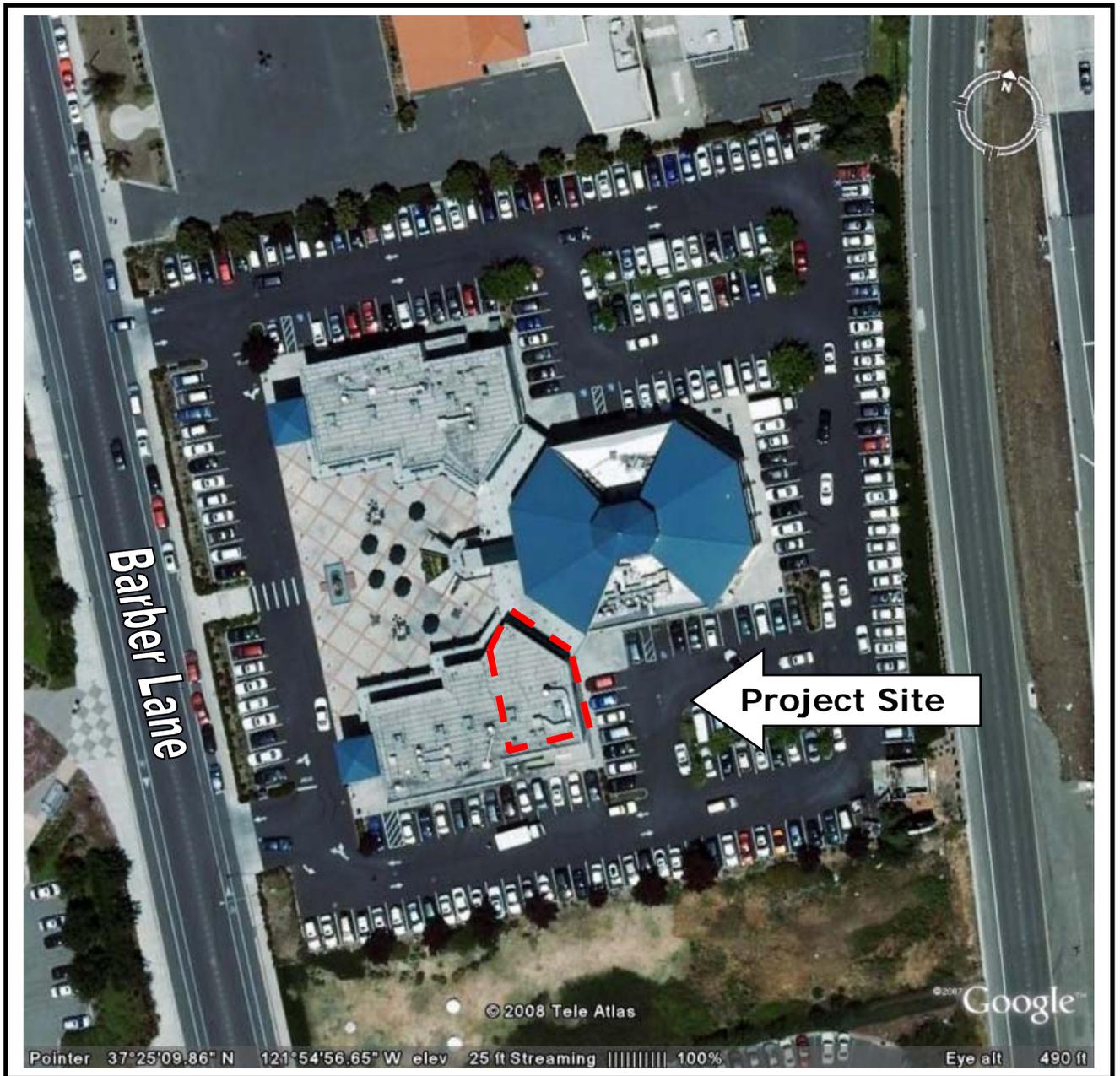
AGENDA REPORT

Meeting Date: December 8, 2010

NEW BUSINESS

APPLICATION:	Report on Permit Violations - KTV Musicland
APPLICATION SUMMARY:	A report on violation of conditions of approval.
LOCATION:	788 Barber Lane (APN: 86-01-035)
APPLICANT:	Joe Zheng, 2656 Sommersville Road, Antioch, CA 94509
OWNER:	Ulferts Center (USA) Inc., 668 Barber Lane, Milpitas, CA 95035, Attn: Karen Kam
RECOMMENDATION:	Staff recommends that the Planning Commission: Direct staff to schedule a 3-month permit review with a public hearing.
PROJECT DATA:	
General Plan/Zoning:	General Commercial (GNC)/General Commercial (C2)
Overlay District:	Site and Architectural Overlay
Project Site Area:	acres
Tenant Space:	2,400 square feet
CEQA Determination:	Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities)
PLANNER:	Cindy Hom, Assistant Planner
PJ:	
ATTACHMENTS:	A. Conditions of Approval B. Administrative Citation letter dated October 24, 2010 C. Assessment of Compliance with conditions

LOCATION MAP



No scale

BACKGROUND

The Planning Commission approved a conditional use permit (UP2006-18) for a 2,400 square foot karaoke establishment on November 8, 2006 located within the Ulfert's Center located at 788 Barber Lane. The site is zoned General Commercial with a Site and Architectural overlay (C2-S) and is surrounded by Cisco Systems corporate campus to the west, commercial and potential residential uses to the north, and a large day care facility to the south. A vicinity map of the subject site location is included on the previous page.

The conditional use permit allowed the karaoke establishment to operate seven days a week between the hours of 4:00pm and 2:00am and includes a front reception area and nine karaoke rooms with no food or alcohol service. As per the conditions of approval, the project was given a nine month review that occurred on October 27, 2007 and a subsequent three month review.

On October 22, 2008, the Planning Commission granted an approval for a conditional use permit amendment (UA08-0004) to modify a condition of approval that restricted the use of blinds on storefront windows and added conditions for a six month review to address any potential issues; installation of a new observation window to allow for visual inspection of the VIP room. A copy of the current conditions of approval is provided in Attachment A.

PERMIT VIOLATIONS

On three separate occasions evidence of alcohol consumption within the private rooms at KTV Musicland was observed by the Police Department. The business was also open past 3:00am during one of those occasions. Condition Nos. 10 and 12 of Conditional Use Permit Amendment No.UA08-004 prohibit the consumption of alcoholic beverages within the business and requires the business be closed by 2:00am. The owner of KTV Musicland has since been issued an Administrative Citation for these violations of their conditions of approval, refer to Attachment B. The purpose of the report is to inform the Planning Commission of these violations and to recommend the Planning Commission initiate a 3-month permit review with a public hearing. Staff has provided a current assessment of the businesses' compliance with other conditions as Attachment C.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission direct staff to schedule a three month review with a public hearing of the conditional use permit.

ATTACHMENTS:

- A. Conditions of Approval
- B. Administrative Citation Letter date October 25, 2010
- C. Assessment of Compliance with Conditions

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004
(Restated and revised original conditions)

Planning Division

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 22, 2008, in accordance with these Conditions of Approval.
2. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.
3. Conditional Use Permit Amendment No. UA08-0004 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA08-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.
5. Planning approval is for 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 October 22, 2008 except as modified herein. (P)
6. 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. (P)
7. The use at the facility shall not engage and/or render any services as defined in Section 13.04, Adult Businesses, of the Milpitas Zoning Ordinance. (P)
8. Proposed use shall comply with all Federal, State and local code requirements. (P)
9. Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department. (PC Sub)
10. No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)
11. The applicant shall maintain signs stating "No loitering or consumption of alcoholic beverages" on the exterior of the building and within the establishment. (P)

12. 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. (P)
13. All patrons within and employees of the facility must be the age of 18 years or older. (P)
14. 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. (P)
15. Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices. (PC)
16. 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. (PC)
17. 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. (PC)
18. 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. (P)
19. 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. (P)
20. 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. (P)
21. 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. (P)
22. 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. (P)
23. All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations. (P)
 24. 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. (P)
 25. 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)
 26. This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request. (P)
 27. 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. (P)
 28. 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)
 29. 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)
 30. The project shall be subject to six months review until the Planning Commission deems them unnecessary. The applicant shall submit all the necessary public hearing materials and fees to the Planning Division. (P)
 31. The operator or designee shall develop a training manual that ensures that staff is properly trained on how to effectively handle emergency situations. A copy of this procedure manual shall be submitted to the Planning Division. Adequacy of the manual shall be determined by Planning staff. Any revisions to the manual shall be submitted to the Planning Division. (P, PC)
 32. The applicant shall install an adequately sized window to allow for visual inspection of the VIP room. The window shall be installed within 30-days from the Planning Commission approval of the amendment to allow for storefront window blinds.



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov

25 October 2010

Joe Zheng
4704 Pacific Avenue
Stockton, CA 95207

**Re: Administrative
Citations for Zoning Violations at 788 Barber Lane (Music Land KTV)**

Dear Mr. Zheng,

It has come to our attention the subject site has incurred three separate zoning violations. Each violation is subject to a separate administrative citation pursuant to XI-10-63.07 of the Milpitas Municipal Code.

All three instances violated the conditions of approval of Conditional Use Permit No. UA08-0004 for the establishment. The following includes the conditions of approval and how they were violated.

Condition of Approval number 12:

The hours of operation 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.

Violation

On October 16, 2010, there were patrons on site past the closing time and 30 minutes past closing time (3 A.M.).

The amount of the fine due for this violation is \$100.00.

Condition of Approval number 10:

No alcoholic beverages may be consumed within or outside of the karaoke facility.

Violations

1. On October 16, 2010, a number of the rooms within the facility had alcoholic beverages.

The amount of the fine due for this violation is \$100.00.

2. On October 21, 2010, patrons cited for underage consumption of alcoholic beverages and distribution of alcohol to under aged persons.

The amount of the fine due for this second violation is \$200.00.

The total fine for the violations listed above is \$400.00 and is due and payable to the City of Milpitas within thirty (30) calendar days from the date of this Notice.

Please make your check payable to the City of Milpitas:

Payment may be made by mail or in person:

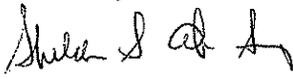
**City of Milpitas
Attn: Planning Division
455 E. Calaveras Blvd.
Milpitas, CA 95035**

You have a right to appeal this citation. If you wish to appeal this citation, you must provide an advance deposit of the fine amount listed above and request an Administrative Hearing within fifteen (15) days of the date of this notice, in this case by November 5, 2005, 5 P.M. If your appeal is successful, the fee will be refunded to you.

Payment of this fine does not excuse you from continuing violations of the code section that is the subject of this administrative citation. You are hereby ordered to immediately correct or abate the violation described in this administrative citation. Failure to comply with this order will result in the City of Milpitas issuing additional administrative citations if not corrected within fifteen (15) days from date of this citation. The fine for a second offense is \$200 and for a third offense \$500, or the City, after an administrative hearing, abating the violation and recovering the costs of abatement from you.

The Planning Commission will be informed of these repeated violations and may set a hearing to review your Conditional Use Permit. If you have any questions, please contact me at (408) 586-3278.

Sincerely,



Sheldon S. Ah Sing
Senior Planner

Attachment:

Resolution No. 08-056 (Conditions of approval) for Conditional Use Permit No. UA08-004.

ATTACHMENT A: COMPLIANCE WITH CONDITIONS OF APPROVAL:

SC No. 1: The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 22, 2008, in accordance with these Conditions of Approval.

COMMENT: Perpetual

SC No. 2 Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

COMMENT: Perpetual

SC No. 3 Conditional Use Permit Amendment No. UA08-0004 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.

COMMENT: Perpetual

SC No. 4 Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA08-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

COMMENT: Perpetual

SC No. 5 - Planning approval is for 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 October 22, 2008 except as modified herein. (P)

COMMENT: Perpetual

SC No. 5 - 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. (P)

COMMENT: Perpetual

SC No. 7 - The use at the facility shall not engage and/or render any services as defined in Section 13.04, Adult Businesses, of the Milpitas Zoning Ordinance. (P)

COMMENT: Perpetual

SC No. 8 - Proposed use shall comply with all Federal, State and local code requirements. (P)

COMMENT: Perpetual

SC No. 9 - Prior to business license issuance, the business owner must submit their background check to the Planning Division and Milpitas Police Department. (PC Sub)

COMMENT: Complies. Demonstrated at 9 month review. No change in owner or operator.

SC No. 10 - No alcoholic beverages may be consumed within or outside of the karaoke facility. (P)

COMMENT: Noncompliance – See Attachment B (Administrative Citation).

SC No. 11 - 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: Noncompliance – No sign were posted on staff site inspection.

SC No. 12 - 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. (P)

COMMENT: Noncompliance – See Attachment B (Administrative Citation).

SC No. 13 - All patrons within and employees of the facility must be the age of 18 years or older. (P)

COMMENT: Perpetual

SC No. 14 - 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. (P)

COMMENT: Complies.

SC No. 15 - Prior to building permit final, the applicant shall install tempered glass doors for all (9) karaoke rooms. Doors shall not include any locking devices. (PC)

COMMENT: Complies.

SC No. 16 - 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. (PC)

COMMENT: Complies. Operator demonstrated video surveillance system and showed recording dating back to November 21, 2010 during staff site visit. The reason why the recording it is less than the 30 days mandated by the CUP is because it is a newly installed system. However on a prior staff visit on 11/23/10, a KTV employee was asked to work the system to provide a visual look into rooms using surveillance system, the employee indicated that she did not know how to work the computer system. The other issue that staff noted was that KTV staff was not properly trained.

SC No. 17 - 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. (PC)

COMMENT: Perpetual.

SC No. 18 - 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. (P)

COMMENT: Perpetual

SC No. 19 - 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. (P)

COMMENT: Perpetual

SC No. 20 - 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. (P)

COMMENT: Complies. No audible sound detected outside of the premise during site visit.

SC No. 21 - 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. (P)

COMMENT: Perpetual

SC No. 22 - 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. (P)

COMMENT: Perpetual

SC No. 23 - All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations. (P)

COMMENT: Perpetual

SC No. 24 - 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. (P)

COMMENT: Perpetual.

SC No. 25 - 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)

COMMENT: Noncompliance – Conditions are not posted.

SC No. 26 - This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request. (P)

COMMENT: Perpetual. During site visit on 11/23/10, a copy of condition was provided to staff upon request.

SC No. 27- 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. (P)

COMMENT: Perpetual

SC No. 28 - 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)

COMMENT: Complies. Demonstrated at 9 month review. No change in owner or operator.

SC No. 29 - 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)

COMMENT: Perpetual

SC No. 30 - The project shall be subject to six months review until the Planning Commission deems them unnecessary. The applicant shall submit all the necessary public hearing materials and fees to the Planning Division. (P)

COMMENT: Perpetual

SC No. 31 - The operator or designee shall develop a training manual that ensures that staff is properly trained on how to effectively handle emergency situations. A copy of this procedure manual shall be submitted to the Planning Division. Adequacy of the manual shall be determined by Planning staff. Any revisions to the manual shall be submitted to the Planning Division. (P, PC)

COMMENT: Noncompliance – no training manual submitted.

SC No. 32 - The applicant shall install an adequately sized window to allow for visual inspection of the VIP room. The window shall be installed within 30-days from the Planning Commission approval of the amendment to allow for storefront window blinds.

COMMENT: Complies.