



**City Council Meeting, August 6, 2019
Agenda Item No. 9**

TO: Honorable Mayor and Members of the City Council

THROUGH: Bruce Moe, City Manager

FROM: Anne McIntosh, Community Development Director

SUBJECT: August 6, 2019 City Council Meeting, Continued Public Hearing re: 900 Club

DATE: August 5, 2019

SUPPLEMENTAL REPORT

BACKGROUND

Agenda Item 9 on the August 6, 2019, City Council agenda is a continued public hearing to review the 900 Club's compliance with conditions of approval imposed in 2018 and consider the 900 Club's request to extend operating hours for an additional hour and revision of certain conditions. As stated in the staff report, after conducting a duly noticed public hearing in 2018, the City Council approved:

1. An additional one hour of service on Thursday nights; and
2. An increase in the number of special events to 24 annually.

The approval was conditioned upon ten conditions, including that a duly noticed public hearing be held before the City Council for the purpose of reviewing the use permit amendment for compliance with the conditions of approval.

Last week, Don McPherson and his attorney Beverly Grossman Palmer, submitted correspondence to the City that has been distributed to the Council and to the public. Mr. McPherson and Ms. Palmer, assert that:

- The Planning Commission, not the City Council, should conduct the review
- The notice provided to Mr. McPherson of the July 2 public hearing was inadequate
- The Council did not have the authority to approve the additional hour of operation on Thursdays or increase the number of special events in 2018.

Accordingly, they request that the City Council not grant any additional entitlements at this time and instead initiate proceedings to revoke the use permit.

DISCUSSION

The following addresses the arguments made by Ms. Grossman and Mr. McPherson:

1. The City Council retained jurisdiction to conduct the “one year review.”

As stated in Condition No. 10 of Resolution 18-0075, the City Council retained jurisdiction to conduct this review: “a duly noticed public hearing shall be conducted by the City Council for the purpose of reviewing the subject Use Permit Amendment for compliance with all conditions.” This matter was not required to be heard initially by the Planning Commission because the City Council expressly retained jurisdiction to have this matter come directly to the Council.

2. Mr. McPherson was properly noticed of the July 2 public hearing.

My staff provided legally adequate notice of the July 2 public hearing. Nonetheless, the Council continued the public hearing to August 6 to provide the public, including Mr. McPherson, another opportunity to provide input to the Council prior to the Council concluding its review. Mr. McPherson has availed himself of that opportunity, providing 60 pages of documents, including a letter from Ms. Palmer, for Council consideration prior to any decision. Based on this correspondence, Mr. McPherson is clearly aware of the continued public hearing and is participating in it through his submittals.

3. At the time the Council approved the additional operating hour on Thursday nights and an increase in the number of special events to 24 annually, the 900 Club was in substantial compliance with the conditions of approval imposed in 2014.

In October 2014, the City Council adopted Resolution No. 14-0063, approving a modified and restated use permit for the 900 Club, subject to 20 conditions. Similar to Resolution No. 18-0075’s condition 10, Condition No. 20 of Resolution No. 14-0063 required: “a duly noticed public hearing shall be conducted by the Planning Commission for the purpose of reviewing the subject Use Permit for compliance with all conditions.” There are two significant differences in the two conditions: (1) the stated purpose of Condition No. 10 of Resolution No. 18-0075 was to review the “subject Use Permit Amendment,” not the entire Use Permit; and (2) the reviewing body is the City Council, not the Planning Commission.

In December 2015, the Planning Commission held a public hearing for the one-year review of the Use Permit issued in 2014 to assess compliance with the 20 conditions of approval. As stated in the staff report prepared in connection with the 2018 request for an additional hour of operation and additional special events, “The Planning Commission felt that the applicant had complied with all conditions of approval and no further annual review of conditions were warranted.”

Nevertheless, in its two June 2019 inspections, staff reviewed whether the Applicant had continued to comply with all of the 20 conditions of approvals contained in Resolution No. 14-0063. Often times, a business may comply for years with conditions of approval, and then, for a variety of reasons, begin to slip. There could be turnover in staff or other reasons that conditions are not always complied with. So, as pointed out in both the July 2 and the August 6 staff reports, the June 2019 inspections and the six police visits after the 2018 approval revealed that, one on or more such occasions:

- Background music and noise emanating from the establishment was heard on Bayview Drive.
- The back door was open on Bayview Drive.

- The operator was not observed policing the adjacent area.
- No state licensed, bonded, and certified security guard was observed.

In addition, in reviewing City files regarding entertainment permits, staff discovered that the operator has had a very spotty record in submitting yearly applications for an entertainment permit. The City Code requires that a business operator apply for an annual permit in March of each year. Within two months of the October 2014 approval, he submitted his application in December 2014, which means that he was very early for 2015. In 2016, the operator paid the application fee on a timely basis, but failed to leave the application with staff. It was not until 2017 that the omission was discovered. In 2017, the operator submitted the application in June. In April 2018, the operator submitted the application, prior to the Council's consideration of the 2018 request.

In reviewing the Class I entertainment log, it appears that the 900 Club's record is very similar to other establishments in the City: a number of businesses submit their applications in April, May, and June. Staff has emphasized the importance of timely submittals when they met with the operator after the Council continued the July 2, 2019, hearing, and will continue to emphasize this. Having acknowledged this, staff does not see that slightly tardy submittals are as serious as the type of activities that were taking place prior to 2014—such as noise, after-hours service of alcohol, unruliness and boisterous activities outside the business, smoking outside—that have been corrected.

As stated in the Planning Commission staff report in 2015, the Planning Commission found compliance with the conditions. There have been no complaints about smoking in front of the premises. In the six police calls responding to complaints after the 2018 approval, four were about noise, and only one was verified. In responding to the complaints, the police found: (1) the side door was open, but the business was quiet; (2) the side door was open, and music could be heard on Bayside, but the bartender turned down the music at the request of the police; (3) the police found no violation; and (4) the music was off at the time of the visit. The other two complaints were about overcrowding, but the police found the complaint to be unverified, and a man urinating in public. After the bouncer detained the person, the police arrested him.

In the correspondence, Mr. McPherson and his attorney also:

- Restate the same arguments he made in 2018;
- Assert that the City “withholds from public disclosure” the pending litigation filed by Mr. McPherson contesting the Council's 2018 approval of one additional hour and six additional special events each year; and
- Question whether the City has “compensated the 900 Club for their attorneys fees to process the application.”

The rehashed arguments were addressed in 2018. To make the record clear, the lawsuit was mentioned in the July 2 staff report, and the City has not compensated the 900 Club for any of their attorneys' fees.

CONCLUSION

Staff disagrees with the points raised in the correspondence from Mr. McPherson and his

attorney. Staff contends that all legally-required prerequisites to the Council's continued consideration of this matter have occurred, and that the Council may hold the continued hearing and direct staff as appropriate.