

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM & ADDENDUM

To:	Matthew Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	TRANSMISSION OF "VERBATIM MINUTES" AND A RECORDED AUDIO COPY OF THE PLANNING COMMISSION MEETING OF JANUARY 15, 2009 FOR THE APPEAL OF CUP-253-08 (THE CAN RESTAURANT & CLUB)		
		Date:	March 24, 2009

OBJECTIVE

To transmit the "Verbatim Minutes" and a recorded audio copy of the Planning Commission hearing of Conditional Use Permit (CUP-253-08) proposed for The CAN Restaurant & Club, located at 14241 Euclid Street, Suite C-101. The Planning Commission hearing for this item occurred on January 15, 2009. The "Verbatim Minutes" and CD containing the recorded audio of the hearing are hereto attached to the City Council staff report and made part of the record relating to Conditional Use Permit No. CUP-253-08.

BACKGROUND

The Planning Commission heard and approved the new Conditional Use Permit No. CUP-253-08 on January 15, 2009. The business owner/operator appealed the Planning Commission decision, and the appeal was scheduled to be heard at the March 10, 2009, City Council Meeting. The attorney for the owner/operator of The CAN requested a continuance of the item because he was unable to attend the March 10th Meeting. City Council approved the request for a continuance and rescheduled the appeal for a hearing on March 24, 2009.

All planning cases referred to the City Council include an attached "Minute Excerpt," which is a written summary of the item's hearing before the Planning Commission. The hearing for The CAN Restaurant & Club included important information that was added verbally into the record by Police Staff and details of the business operation added verbally by the owner/operator.

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AND A RECORDED AUDIO COPY OF THE
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To have a complete record of the information stated at the Planning Commission meeting of January 15, 2009, staff is providing the City Council members a written copy of the "Verbatim Minutes" and a CD of the audio recording of the item's public hearing. Both the "Verbatim Minutes" and the audio CD are made part of Conditional Use Permit No. CUP-253-08 and are available to the public from the City Clerk's Office.



SUSAN EMERY
Community Development Director



By: Erin Webb
Senior Planner

- Attachment 1: "Verbatim Minutes" from the January 15, 2009 Planning Commission meeting regarding The CAN Restaurant & Club
Attachment 2: CD of the audio recording from the January 15, 2009 Planning Commission meeting regarding The CAN Restaurant & Club

Approved for Agenda Listing



Matthew Fertal
City Manager

VERBATIM MINUTE EXCERPT-CUP-253-08

GARDEN GROVE PLANNING COMMISSION

REGULAR MEETING

COMMUNITY MEETING CENTER
11300 STANFORD AVENUE
GARDEN GROVE, CALIFORNIA

THURSDAY
JANUARY 15, 2009

CALL TO ORDER: The regular meeting of the Planning Commission was called to order at 7:00 p.m. in the Council Chambers of the Community Meeting Center.

PRESENT: COMMISSIONERS BANKSON, BEARD, BRIETIGAM,
KIRKHAM, PAK, PIERCE

ABSENT: NGUYEN

ALSO PRESENT: Omar Sandoval, Assistant City Attorney; Susan Emery, Community Development Director; Karl Hill, Planning Services Manager; Erin Webb, Senior Planner; Lee Marino, Senior Planner; Chris Chung, Assistant Planner; Sid Ashrafnia, Associate Civil Engineer; Sergeant Kevin Boddy, Police Department; Chief Joe Polisar, Police Department; Kyle Rowen, Deputy City Attorney; Judith Moore, Recording Secretary

CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-253-08
APPLICANT: CITY OF GARDEN GROVE
LOCATION: NORTH OF BUSINESS CENTER PARKWAY, SOUTH OF FORBES AVENUE ON
WEST SIDE OF EUCLID STREET AT 14241 EUCLID STREET, SUITE C-101
DATE: JANUARY 15, 2009

REQUEST: A request from the City of Garden Grove to revise the 'conditions of approval' for an existing restaurant with entertainment (The Can Restaurant and Club) that operates with a State Alcoholic Beverage Control Type "47" (On-Sale General, Eating Place) License. The conditions of approval shall be revised through the approval of a new Conditional Use Permit No. CUP-253-08, that replaces the existing Conditional Use Permit No. CUP-285-96. The proposed conditions will clarify the operational requirements of the business and add new strategies to reduce criminal activity, problems, and CUP violations. The site is in the PUD-104-81 Rev. 86, 90, 91/ Planned Unit Development-Euclid Business Park zone.

Susan Emery: Good evening Chairman Pierce and members of the Commission. Tonight you are conducting a public hearing for a proposed revised CUP for The CAN Restaurant and Night Club. Over the past month or so, you have been provided with a great amount of information in relation to the operations of this business and the impact (inaudible). From time to time, the Planning Commission has the opportunity to support or deny a new CUP for a business, particularly those with alcohol or entertainment as an integral part of its operations, because both alcohol and entertainment have the potential to seriously impact a business operation, its affect on its surrounding uses and the overall community. We bring these CUP's to you for careful review and consideration. It is unusual for us to bring back to the Planning Commission, a recommendation for a revised CUP. In writing the CUP

and its associated conditions, we strive to adequately address all potential issues that may occur with a particular business. By providing clear definitions in the CUP, we can better assure the success of a business and minimize the demand on already straining City services. Thus, we pay careful attention to such things as the hours of operation, the floor plan layout, the types of entertainment, the types of alcohol served and the ratio of alcohol to food served. By clearly addressing these issues up front, we provide better direction to each individual business about what our expectations are in terms of how they should operate. Clear expectations and communication offer the best opportunity for business success and reduce the potential demand on our public safety services. Our goal is to do our best to ensure that businesses in this community are poised for success in ways that will be beneficial for our community. We believe that by revising the existing CUP for The CAN Restaurant and Night Club, we can ensure a more successful operation for this business and we can dramatically reduce the demand on our services as well. Tonight you will hear from several Staff members regarding the request to revise the CUP. Our goal is to provide the most information possible to you, so that you may make a well-informed, and well-thought out decision. After my remarks, you will hear from the Chief of Police, Joe Polisar, regarding his thoughts and recommendations on this revised CUP. Senior Planner, Erin Webb, will review the proposed changes to the CUP and provide some background information as well. Sergeant Boddy will go over specific information regarding police calls for service at the operation. And finally, Ms. Webb will finish with a Staff recommendation. So right now, I would like to ask the Chief of Police to address the Commission.

Chief Polisar: Thank you, Susan. I'll try to keep this brief. Thank you, Mr. Chairman and Commissioners. As you've heard, the purpose tonight is for us to ask the Planning Commission to modify The CAN CUP due to a history of problems dating back well over a decade. The fact that the Chief of Police, the Economic Development Director, Senior City Attorney Staff, and other members from the Senior Staff are making this presentation should speak volumes. You've read a staff report that probably took you many, many hours to get through, that lays out a pattern and practice of violating the Conditional Use Permit that is turned The CAN into almost a full-time job for the Police Department. You'll hear about calls for service, liquor law violations, crime stats, shootings, stabbings, fights, gang issues, and more. You'll hear from a representative of the owner of the property that leases that area to the business. You've seen photos of underage juveniles dressed in short shorts, bikini tops, and heels. And these same juveniles are seen by my officers being dropped off by their parents, sisters, or brothers, and then scurrying into bushes or behind dumpsters to change into these clothes. You've read a study by an independent group out of Berkeley, California that supports the belief that an undue concentration of liquor licenses in any given area contributes greatly to an increase in a host of problems and we've known that for years. That study also identifies The CAN as our number one problem. And not to be melodramatic, not one hundred yards from this very room, my officers investigated one of the most horrific fatal traffic accidents our department has ever had to deal with, when two sisters wrapped their car around a tree right next to the pond and were killed instantly. They had just left The CAN nightclub.

You will hear how the City has tried time and time again to get The CAN to run a respectable, safe business, to no avail. The City wants The CAN to be successful, but The CAN has to demonstrate a willingness to do so. The Community Development Director, the City Attorney, and I, along with Staff members from our departments, met with the owner of The CAN and her attorney in October and November of this past year. We went over our concerns and tried to impress upon them how serious an issue this has become. And yet, you will hear about continued violations up to and including this very Christmas Eve. It's time for The CAN to be held accountable and to be forced to live within the confines of a new CUP, and that CUP will be described during this presentation. Thank you for your time.

Erin Webb: Commissioners, we are bringing this Conditional Use Permit from The CAN before the Planning Commission to approve new conditions of approval for The CAN Restaurant and Club. The old Conditional Use Permit under which the business operates does not provide clear direction so we are hoping to one, clarify the Conditional Use Permit so that the use is clear as are the requirements of the operation. We are hoping to help the owner/operator have a successful business. We are trying to remove the drain caused by The CAN on police resources. And finally, we are hoping to protect the public's health, safety, and welfare.

The reason for the new Conditional Use Permit with these new conditions is that there is this on-going issue with criminal activity, problems, and CUP violations that plague The CAN. The staff report provides an overview of the history of these issues and the efforts by the City throughout the years to address these problems and the police documentation about the types of violations occurring. There are many, many pages of that. A pattern of behavior has emerged in which the owner/operator of The CAN makes the attempt to operate her business in compliance with the conditions of approval and within the law for a short period of time, but is unable to maintain this permanently. As the Chief of Police said, there were actually two office hearings, office meetings, in 2008. We had one in March, and then seven months later, we had to have another in October because there had been no appreciable change in the operation. And at that second hearing on October 28th, senior staff attended, that means the Chief of Police, the Deputy Chief of Police, and the Community Development Director. At that meeting, the police explained again, the serious nature of the problems, criminal activity, CUP violations, and they told the operator that we were proposing to revise the conditions of approval. So both she, and her attorney got a draft copy of those conditions of approval in October.

The new conditions of approval have been crafted to be a comprehensive group of requirements so that they work together and they reinforce each other. As an example, we can look at two of the important new conditions, and that is Condition No. 20, about cover charges, and Condition No. 5, about a dividing wall. Both of these conditions are important in reinforcing the requirements under which The CAN has always been operated or approved. And that is, is that it is a restaurant with entertainment, meaning that it is a bona fide eating place with a kitchen that is open and preparing food during all hours that the establishment is open. Another clear condition that has always been

required of The CAN, is that no one under twenty-one shall be in the segregated bar and nightclub area of the establishment. So Condition No. 5 requires that the owner/operator construct a new full height wall that clearly separates the areas. The original floor plan showed the low partition, but over time, that has disappeared. The condition under which she operates right now says that 'any change to the approved floor plan, which has the affect of expanding or intensifying the present use, shall require a new CUP'. With the removal of this divider, the use has expanded, as the promoters have been able to use the entire floor area, both restaurant and nightclub, for their events.

Condition No. 20, as revised in the addendum staff report, you have the first conditions and revised, allows for a cover-charge, but only after 10:00 p.m., and only if the payment is made at the entrance to the bar and nightclub. This makes sense with a floor area clearly separated into two different spaces for two different uses. It allows the restaurant area to remain a bona fide eating place during all the hours of operation, and it creates clear entryways, where the age of patrons entering the bar and nightclub area, can be checked.

Other important conditions are live entertainment, that's Condition No. 17, the ratio of food sales to alcohol sales, Condition No. 10, hours of operation and cessation of alcohol sales with entertainment thirty minutes prior to closing.

Live entertainment. The CAN is approved, of course, to have entertainment, as long as it is a restaurant, a bona fide eating-place. There's documentation that there has been numerous flyer and promoter parties, they are advertised as 18 and older, or 'teen nights'. And adult-oriented activities have occurred. The City's position is that the promoter/flyer parties are a direct cause of many of the violations at the establishment. So in light of the long term and on-going problems with the operation of The CAN, Condition No. 17 has been written to prohibit promoter/flyer parties, and to define the types of adult-oriented entertainment that are expressly prohibited. Staff has reviewed the proposed condition and changed it to remove the restriction limiting live entertainment to music conducted by a DJ and dancing. This change will allow the operator to have live bands and karaoke.

Additional language has been added to reinforce that the entertainment is not to be provided by outside promoters, rather that the owner/operator is solely responsible for any live entertainment in the establishment. And therefore, is the responsible party for compliance with the conditions of approval.

The ratio of food sales to alcohol sales, Condition No. 10. The City believes it is necessary to clarify what incidental alcoholic beverage sales means, by revising the condition to state that alcohol sales shall not exceed 35%. The original approval in 1995 included a condition at that ratio. In 1996, it was changed to be 50%. The 35% ratio of alcohol sales reinforces that this business is a restaurant with entertainment. And, it's consistent with the current approvals of Type 47 ABC Licenses. This condition also adds language that the revenue from the sale of non-

related food, cover-charges, and merchandise, aren't included in the business gross sales.

The last conditions are linked together, and those are the cessation of alcohol sales and entertainment thirty minutes prior to closing and the hours of operation. These conditions are a means to reduce the criminal activity and the drain on police personnel that is on-going at The CAN. Hours of operation have been reduced. Police records show that the serious violations occurring at The CAN have been in the early morning hours of the operation. A memorandum from the police watch commander states that there is almost nightly monitoring of The CAN by the police. Lieutenant Eriksen states that frequently, officers have been dispatched to fights, assaults, and disturbances occurring inside and outside The CAN during the time of night when customers are leaving and closing, which is approximately 1:00 to 2:00 a.m. He goes on to say that he has personally observed patrol officers and gang unit officers monitoring the egress of customers in order to prevent and discourage disturbances and assaults from occurring. The CLEW Study shows statistically, that crime at or from ABC licensed outlets increases in the late hours. In connection with the reduced hours, the stopping of the sale of alcohol, the (inaudible), and all entertainment thirty minutes prior to closing, allows extra time for patrons to finish last drinks and socializing before leaving the establishment and driving home. The additional time allows for more orderly exiting of the establishment.

The City believes applying these new conditions will reduce criminal activities, problems, and CUP violations. There are several new additions I've given you tonight. There is a packet of new statistics from the police regarding time, costs, and calls for service. There is a letter from the owner/operator's attorney, Mr. Andrew Couch. And there is a letter from the attorney of the property, Catherine Weinberg. I am now going to turn the Staff presentation over to Sergeant Boddy who will discuss more fully, the police perspective.

Sergeant Kevin Boddy: Good evening, Chair and Commissioners. What I am going to first cover is the additional information received tonight on the time and costs of the Police Department's responses to The CAN restaurant. I'd like to clarify for you that on the map behind you, that there are two addresses for large industrial complexes that have multiple tenants, 14241, where The CAN is located, is up here at the corner. There are issues of other businesses that you may hear about in the public forum, but specifically, we went through and painstakingly identified the responses solely to The CAN. And in the package you've been given tonight, you've seen the total responses to 14241, and then broken down to other locations within 14241, and then specifically to The CAN.

Regarding the time and costs, we've determined that we've spent approximately 365 man-hours, to the total cost of over \$16,000 for the January 1st to December 31st, 2008 time frame. That is a minimum estimate and does not include most officer's time in writing reports and also time where officers go by and check or spend monitoring the business and don't put themselves out on activity. So that's just again, a

minimum cost effort that is factual, that is documented in the computer system.

Also, for all the calls at 14241, we've determined that during the 2008 year we had 218 calls specifically to the 14241 address. Out of those 218 calls, 153 were specific towards the business in question, The CAN restaurant. The other 65 were for other businesses. Out of those 153 calls, 31 of those calls were dispatch calls, which means someone called in dispatch requesting assistance or police services. Three of them were neighbors from the City of Santa Ana, who were calling to complain about noises coming from the business. The other calls related to thefts, people having their purses stolen from the business, cell phones while they were inside the business, or when vehicles were broken into in the parking lot while they were inside the business, or for their vehicles being stolen. There is also, out of those, several calls that relate to people being assaulted that were at the business and were calling for assistance. The 122 self-initiated calls were the police going out there to monitor the business to make sure that there was no criminal activity going on. To make sure that the business was operating in a safe environment.

I will cover eight of the more significant arrests that we've had there, as Erin mentioned. That March of this year, we had an office meeting with a representative from the restaurant, a lawyer who arrived on the owner's behalf, at which time we again expressed our concerns relating to flyer parties and promoter parties. This attorney agreed that promoters do not have the best interest of the business, and that he would talk with the owner to alleviate this problem. We also explained to the attorney that we had concerns with the 18 year olds being on the dance floor. That in our opinion, the way the current CUP stands, only 21 and over are allowed on the dance floor, which is the north side. There is supposed to be a divider that delineates the restaurant from the quote 'nightclub' area. And we expressed our concerns about having under 21 in this area.

So then Saturday, March 22 of 2008, at 0108 hours, officers were driving by the business and as they were driving by, heard a fight on the patio area. When the officers stopped and called for assistance, security was removing 25 to 30 suspects involved on the patio and pushing outside the business doing their job. The officers ended up arresting seven people for being drunk in public, and one for assault on a police officer. During the arrest, the officer was assaulted by one of the suspects and pushed. This took seven hours of man-time, officer's time, to complete this investigation. And again, probably, this does not include the time the officer spent writing the report at the end of the shift, or during the shift. The ages of these suspects were from 21 to 27 years old.

On Monday, July 7th of 2008, at 0038 hours, two females were fighting inside the business. During this, another male struck another victim over the head with a beer bottle. During this incident, we arrested two subjects for fighting in public and one for assault with a deadly weapon. The ages were 34, 42, and 25.

On Saturday, September 6th, at 0115 hours, officers were at the business watching patrons leave and a fight started in the parking lot. Officers have indicated these patrons were leaving The CAN restaurant. Officers

also estimate in police reports that there's two to three hundred people leaving the business. They made five arrests for being drunk in public. They took over three hours for them to process and to handle the investigation. And, the ages were 19, 20 to 27 years old. I have also checked the promoter's website and found that there is documentation on the promoter's website that they did have an event this night.

On Saturday, September 20th at 0145 hours, officers again were watching patrons leave the business. They saw a group of people start to argue. Officers attempted to send the suspects on their way when one of the suspects punched an officer in the face. During this incident, officers needed to use pepper spray to subdue suspects at which time, they arrested six people. The suspects ages were 19 to 22 years old. This investigation took over 14 hours.

Again, same night. September 20th, but earlier in the night at 0025 hours, officers were at the business again and witnessed two suspects fighting in front of the business that had been removed by security guards. Suspects attempted to grab an officer during this incident and officers needed to use batons to subdue the suspect, and he was arrested for assault and battery. This took three hours. On both these incidents, again, being the same night, there is evidence that there was a promoter event taking place.

On Saturday, October 18th at 0149 hours, officers again are watching the business as patrons are leaving. Subject to become involved in a fight inside of the business. As officers enter to help security to help break the fight up, an officer has to remove a bar stool from one suspect as he is going to assault a person. During this incident, suspects again attempt to assault the officer. Pepper spray, batons, and a taser is needed to take suspects into custody. Two arrests were made for resisting arrest and being drunk in public. The ages of the suspects were 25 to 35 years old. A victim of the assault and battery is 20 years old. This investigation takes ten hours.

On Sunday, October 19th at 0217 hours, officers are dispatched to an assault call. Subject said they left the business and then became involved in a fight. One arrest was made for being drunk in public. The subjects are 21 and 18 years old.

On Saturday, November 8th at 0135 hours, officers are watching people leave the business again. Officers observe a suspect run from the business being chased by security. Turns out, the suspect had hit one of the off-duty security guards with a beer bottle. As the officers goes to assist in detaining the suspect, he estimates a crowd of approximately 200 leaving the business. Then he sees approximately 25 to 30 people fighting in the parking lot in front of the business, at which time he puts out an officer needs assistance call. We make one arrest for assault with a deadly weapon. The investigation takes us 12 hours to complete and the suspect is 21 years old.

On Friday, November 7th at 2258 hours, this is after we've met with the business, with the Chief of Police and the Community Development Director, and the City Attorney, and explained our concerns, we go to the

business to do a check and we find that the kitchen is closed. The officer indicates that there is no evidence of food being served and not seen anywhere in the business. There are two females, 18 and 19 years old, sitting at a table on the dance floor, which is in the nightclub, and they're not supposed to be there.

On Sunday, December 14th at 0042 hours, the kitchen is closed, officers indicate that there is no food being prepared, there is alcohol on the patio, and there is also a 20 year old and a 17 year old on the patio. Again, the patio is unlicensed by ABC. We've had violations for this and we've submitted them to ABC and we're waiting for ABC to take action. The patio is also not part of the original floor plan, therefore, under 21 is not permitted on the patio area.

On Thursday, December 25th, officers at 0026 hours go in and conduct a business check and they find out that there is a 19 year old inside being offered alcohol by a male subject. She was possibly on the patio. The issue here is, goes to the promoter, which is one of the new conditions that we want to prohibit the promoter, and it's part of your attachment, specifically (tape change) 18 and over. Normally we are 21 and over. For this night only, the venue is allowing us to be 18 and over again. We have documentation in the large binder that you've been given with undercover officers inside where they've observed minors drinking and being handed alcohol, that do not appear to be over 21 years of age. We have patrons placing dollar bills into the go-go dancers of the photographs that you've seen. We've had alcohol on the patio, we've had fights on the dance floor that have not been called into the Police Department that security have removed. These are documented police reports. We've got officers who have observed the kitchen being closed where no food is being prepared or served and there has been no evidence of food on the tables. You've seen the photographs of the 14 to 18 year old night, which was held in July and August of this year, where the business shut down and had foam parties. We've had officers that have documented in the police reports where they've spoken to 15 year old girls and in the words from him, they appeared to be in their bras and panties in the foam pit. He is also indicating in his police report that the bar area, although closed, and no alcohol being served, was unsecured. And, in his opinion, anyone could reach over and help themselves to the alcohol in the bar area. The conditions that we propose tonight by Staff feel that we will help the business to succeed but will also address the concerns. Of the eight incidents that I've talked to you and discussed, six of them have occurred after 1:00 a.m. Two of them after 12:25 a.m. So by modifying the hours and making them close at 1:00 a.m. on certain nights, and stopping the alcohol service at 12:30, we are hoping this is going to help the business make an orderly exit of their patrons out into the parking lot and leave to avoid potential problems. As you've heard, the majority of these incidents occurred with officers on scene, us doing preventative work to avoid these problems. And even with officers on scene, officers have been assaulted. We've had to use batons and pepper spray, and tasers to subdue these subjects. You've also heard that some of them are 19 and 20 years old. We feel that by modifying it to have it only 21 on the dance floor, as the original Conditional Use Permit states, we can alleviate the problems. As the Chief of Police mentioned, the tragic accident that occurred, these were 17, 18, and 19-year old girls

that the family said were at the business. Now although we cannot say that they were drinking at the business or whatever, if the CUP was being adhered to, and they were not having 21 year olds on the dance floor, 21 and under patronizing the business at these hours at night, it's possible we could have avoided this tragic situation because they wouldn't have been there in the first place, because they wouldn't have been allowed inside the business. And that concludes my report.

Erin Webb: Commissioners, Staff is recommending that the Planning Commission approve Conditional Use Permit No. CUP-253-08, subject to the conditions of approval, the addendum staff report that you received and revisions to the Conditions No. 10, 12, 17, 20, 41, and 45. And we're all available for questions.

Chair Pierce: Now I would like to open up the public hearing. Will the applicant please come forward, for the record please state your name and address.

Andy Couch: Is that a request for the applicant, sir?

Chair Pierce: Yes.

Andy Couch: My name's Andy Couch, I'm a lawyer for the applicant, Quinn, Inc., doing business under the name CAN Restaurant and Night Club. We had requested of Staff a continuance of this hearing for the purpose of enabling us to complete our study of the addendum, which we only received last Friday. Now, apparently, that was not acted upon by Staff. We renew that request here. Certainly, you have heard a number of interesting and pertinent facts this afternoon, this evening. We are very, very close to an agreement on all of the material points of the revised CUP. There are a couple of points on which we would like to have the opportunity to further discuss with the City. I've requested information from the City. I've received a CD of information just before this meeting commenced. CAN has retained a law enforcement consultant, a retired senior law enforcement person, who is in the process of preparing a security plan for CAN. CAN's in the process of hiring a new security director. The big thrust of why we want a little bit more time on this is because we want to have the opportunity to present to the City the security plan devised by the security director so that we can try to refine a couple of the conditions of the proposed CUP. And so, I've heard the comments about the previous meetings we've had and certainly we did have a meeting with the City on October 28th of last year where we saw the new CUP for the first time. We had another meeting on November 24th where we further discussed, sorry, November 21st, where we further discussed the new CUP. Now, on November 24th I sent a detailed letter to the City raising various questions of clarification and frankly, some negotiation with regard to some of the conditions on the proposed CUP. And, the response we received was this addendum on January 9. So, I would simply submit that I understand it may have taken the City some time to go through the letter, to discuss among the various departments, etc., the issues pertaining to the various conditions. I would simply ask that the applicant be given more than six days to review the addendum and have the opportunity to discuss it in intelligent and complete detail with City Staff. And so, for that, for these reasons, I again renew the

request that this matter be continued for two weeks so that the applicant has the opportunity to, particularly to review the addendum, to review the data, including data I just received this evening with regard to this proposed new CUP.

Chair Pierce: Can I ask you what conditions that you're looking at on changing?

Andy Couch: The biggest issue, Chairman Pierce, has to do with the closing time. And we have heard the police and Sergeant Boddy give a very detailed explanation of some of the police reports. There are two issues that we really want to take a hard look at. One is in regard to the security plan. If CAN can come up with its own security force, probably headed by retired law enforcement, that demonstrates the prospect for a reduced need for police services in these early morning hours, then CAN would want to have the opportunity to at least to further discuss the possibility of being open until 2:00 a.m. And the reason 2:00 a.m. gets to be an important time is because from a competitive perspective, that ends up being a big part of CAN's business.

Now you've heard this evening about some promoter events and I would simply ask that you keep an open mind with regard to those promoter events. Certainly there are some very inflammatory pictures in this three ring binder that was distributed to you on December 4th. Not all those pictures were taken at CAN. There's another side to this, but without getting into an adversarial discussion of the evidence, what I'm trying to do is simply get some more time to review the data and to present a security plan so that perhaps we can work out an agreement with the City regarding the 2:00 a.m. closing. Perhaps we won't. And then maybe we'll have to present that information and evidence to the Planning Commission as the Planning Commission decides what it wants to do with regard to the closing time.

Commissioner Kirkham: Chair Pierce? I'm not in favor of extending it. They've had, I see at least ten years worth of stuff in here. If you were going to change anything, you should have changed it in the ten years. You've had a lot of opportunity to do so. That's my opinion. And I'm only one Commissioner, but I'm pretty sure that you're going to get others that feel the same way.

Commissioner Brietigam: Mr. Chair?

Chair Pierce: Sure.

Commissioner Brietigam: I've got a question for Staff. How much information, new information was provided this evening? Was it anything substantial?

Kyle Rowen: Commissioner, to answer your question, earlier this week, I believe on Sunday, the 11th, we received a faxed letter from Mr. Couch requesting the raw data that was used by the CLEW study to formulate its conclusions for fiscal years 2005, 2006, and 2007. That raw data, that the Police Department gave to CLEW from their computer-aided dispatch

system, the report management system, and Sergeant Boddy, help me out with the third, the report-writing system, is that it?

Sergeant Boddy: The computer dispatch system was the information that was provided, and then also there was arrest information. All the information that was provided to CLEW for the '05, '06, and '07 study was (inaudible).

Kyle Rowen: (inaudible) was provided to Mr. Couch this evening on a CD per his request from January 11th. So, he had the binder that included the CLEW study on December 4th, and Staff just received his request on the 11th, the Police Department acted on it and was able to compile the data and this evening we were able to provide it to him. The reports that are included in the three-ring binder from 2008 do not and are not included as part of the data for the CLEW study.

Commissioner Brietigam: Would that mean that he didn't receive anything tonight that substantially changes any of the conditions of approval that the City is looking to amend?

Kyle Rowen: The data that he received tonight relates only to the CLEW study and the basis for what they found and analyzed.

Susan Emery: Might I interject for a moment. I want to clarify one thing, that the CLEW study has been a useful analytical tool for the City in terms of evaluating lots of different issues relating to alcohol. It's not the primary reason why we're at this hearing tonight on this particular case. The facts that were presented by Sergeant Boddy, related to the calls for service, that isn't from the CLEW study. It's based upon the Police Department's own experience out in the field. So, we didn't come to this recommendation because of the CLEW study. We came to this recommendation because of the demands on the police services. It's what the officers are dealing with day in and day out. So, whether the CLEW study is pertinent or not pertinent, from our recommendation, it's a useful tool. It wasn't the reason why we proposed the recommendation or the changes.

Commissioner Brietigam: And for those reasons I support Commissioner Kirkham.

Chair Pierce: Anything else from the other Commissioners? Do you have any questions for the attorney?

Vice Chair Pak: Mr. Couch, when you requested that extension on January 9th, did you follow up on Monday or Tuesday, or Wednesday, even yesterday?

Andy Couch: I received the addendum on January 9th. I met with Ms. Tieu, the owner of Quinn that evening. That was a Friday. On the next business day, Monday, the 12th, is when I first contacted Deputy City Attorney Rowen to discuss the addendum. And he and I spoke on Wednesday, sorry, Monday of this week. We spoke again yesterday, and we spoke again this afternoon. I received a fax from Mr. Rowen as late as 4:30 this afternoon regarding this matter. If I could touch on a couple

of points that were raised by the Commissioner's comments. I, like everyone else apparently, received my copy of the CLEW study on December 4th in this big three-ring binder. Now, once I got the CLEW study, I had to retain a law enforcement expert. That obviously takes some time to find the right man. Then we had the holidays intervene and so I just want to make the point that in essence we had a four or five week turn around from the time I got the CLEW study, recognized the need for the expert, found the expert, became the expert, met with him, he did his survey of The CAN restaurant. He did his review of the CLEW report. He provided me with his request for additional information and I was able to transmit that to the City. And again, in context, it took the City seven weeks basically, to respond to my November 4th letter with the January 9th addendum. I would submit that that is not an inordinate period of time. And with regard to Commissioner Kirkham's comment about ten years of problems, I would simply point out that, if there had been ten years of problems, we would have had this proceeding some time in 1998 instead of 2008. You know, there have been issues that have been presented to the Commission with regard to recent events. There is another side to those issues. But in the City's file on this Conditional Use Permit, we have letters signed by City officials stating that CAN is in compliance with all of the conditions of its Conditional Use Permit as of that point in time. So this has not been a situation where this business has been in violation of its CUP for the last ten years. Although I understand that's an impression that one could draw from this three-ring binder.

Commissioner Kirkham: Wasn't the CUP just updated a few years ago?

Andy Couch: In 1996.

Commissioner Kirkham: And were you in compliance before that, with that CUP?

Andy Couch: I have to tell you, sir, I was not representing CAN at that point in time, and so I don't have any personal information on that. So I can't speak to that right now.

Commissioner Kirkham: Okay.

Vice Chair Pak: Mr. Couch, you mentioned several times about the CLEW, the data that's supplied, the CLEW. And, you just heard from Ms. Emery that that's not the basic reason for modifying the CUP. Do you agree with what she is saying?

Andy Couch: I base my request for further information about the CLEW report based upon the fact that in the two meetings that CAN has had with City Staff, the CLEW report has been referred to repeatedly, both with regard to the idea that CAN has inordinate amount of calls for service and arrests, with regard to the conclusion of the CLEW report that CAN's calls for service are generally in the early morning hours. With regard to the CLEW report itself, you know, one of the issues that arises from the three-ring binder is the fact that there are a number of arrest reports in that three-ring binder that make reference to a street address, 14241 Euclid, making no reference to suite number, making no reference

to name of business. There are ten businesses at the address 14241 Euclid. So, it may well be that when our law enforcement consultant reviews the underlying data that was provided to me this evening, it has no bearing upon a security plan. It ends up being an issue that's not of great import. The problem is, we didn't get that data until this evening so, we don't know. So, it's entirely possible, and I say this without making any kind of commitment, it's entirely possible that in two weeks, we'll come in here and we'll say, please adopt this new CUP, we have been able to review the addendum, we have been able to review the data underlying the CLEW report, we've been able to, we've at least had the chance to talk to the City about our proposed security plan that would reduce the need for potential need for police services. But the problem is there's a rush to action here, without any, as far as I can tell, any compelling need to necessarily deal with the new CUP this evening. And I don't see how there is any prejudice to the City's interests if the new CUP is not postponed for two weeks when the applicant has the benefit of all this data, the input from her law enforcement consultant, perhaps the opportunity for more conversations with the City Staff about various aspects of things.

Chair Pierce: I have a question for you too. Were you the one representing them as an attorney in October, when the police had a meeting with you guys?

Andy Couch: I was present at the meetings in October 28th, and also the meeting on November 21st of 2008. Now, I was also present at an office meeting that has not been discussed here, but an office meeting that took place on October 26th, 2006, where Karl Hill chaired the meeting, Lee Marino, Senior Planner was present, Sergeant Robert Fowler of the Police Department was present, where there was a question raised about activities in the parking lot at CAN, and CAN responded to that issue by installing security cameras that basically recorded the activities in the parking lot. Now, at that meeting, I was corresponding with Mr. Hill. Every member, every person in attendance at the meeting had my business card. Everybody had a way to get a hold of me if there was any continuing problems with CAN. And yet, the way I found out about the fact that there was an office meeting in October of 2008, is apparently, some police officer mentioned something to that affect. And Ms. Tieu, she raised it with me. I sent a letter to Mr. Hill. Mr. Hill redirected the letter to the city attorney, and then the city attorney sent me a letter saying, oh yes, we're going to have a meeting on October 28th. And I call this to your attention because I think it addresses Commissioner Kirkham's point, that if there had been problems, big monster problems of the sort that have been described at CAN, between October of 2006 and October of 2008, City Staff certainly knew how to get a hold of me. And I didn't hear from City Staff.

Erin Webb: Can I add something? There was a meeting on March the 6th, 2008 and there was a different attorney representing Ms. Tieu at that meeting.

Commissioner Brietigam: Mr. Chair? I have a question. You represent the owner, correct?

Andy Couch: Yes, sir.

Commissioner Brietigam: Is it your assertion that it is the City's job to notify you, or to notify the owner?

Andy Couch: My point would be that if the City wants action on a problem, certainly notifying me is one way of bringing about that result.

Commissioner Brietigam: But you represent the owner, correct?

Andy Couch: That's correct.

Commissioner Brietigam: So by representing, by notifying the owner, as to what you basically said, isn't it her responsibility to notify you?

Andy Couch: Certainly, but I've reviewed the files presented by the City and I don't see a wealth of correspondence from the City to this operator from October of 2006 to October of 2008.

Chief Polisar: Mr. Chair, for clarification on the CLEW study. For years, the Police Department and members of the Police Department have proffered opinions, all but professional opinions, to members of this Commission over the years, and to members of the City Council. And, we've talked about our professional opinion being that an over concentration of liquor licenses in any due area creates a host of problems. We were then asked by members of this group and the Council to find studies that would support that professional opinion. Well, some of the studies that we used became outdated. So, we were able to find an independent group out of Berkeley, California, that could do a new, updated study. That's the background. The bulk of the information that's been presented to you, that you've had the opportunity to read and to hear from Staff deals with issues of responses. The CLEW study is just an addendum to help understand the questions we've been asked by Council and Planning Commission about undue concentration.

Vice Chair Pak: I have a question for Staff. Mr. Couch mentioned that at 14241 there are ten units, ten suites at that address. How many of those ten suites, other than CAN, operate beyond midnight?

Sergeant Boddy: I don't have the exact number. I know that we do have, the Police Department has issues with at least one business in that building with violating their CUP. We're in the process of doing the same thing we're doing with this business, of documenting to hold them accountable. We've already had one office meeting with the owner of that, putting him on notice and we're waiting to go with our next step. I cannot give you off the top of my head how many businesses. I can address that out of the 153 service calls, I've personally verified that it has been at this business. The police reports that I refer to tonight, the eight incidents, the significant ones, occurred at this business. I read them. The officers indicated they were at this business. Patrons from this business were inside or outside of this business. Also, I'd like to clarify that there was a comment made by some of the photos not being taken inside this business. I can tell you that on October 22nd, the Police Department went out and we documented it in the police report. We took

photographs of the activities, and I was able to verify the activities with promoter photographs. They did happen at that business. On October 8th, again, the Police Department went out and documented the police report. I was able to match Police Department photographs with promoter photographs. On September 20th, same thing, promoter and PD photographs. On August 23rd, August 21st, August 18th, which was the foam party night, which was from 14 to 18 year olds with the girls that you've seen photographs of. You should have copies of all these reports. And we have verified that these provocative photographs did occur because we were able to match them up with Police Department photographs. And again, you should have copies in that three-ring binder.

Vice Chair Pak: I just want to mention that after listening to your report earlier about those attacks to the police officers, the way they responded with the pepper spray and baton, I really commend them for resorting to those other weapons, it could have escalated much worse.

Chair Pierce: I have one question too. If he's not in agreement with conditions of approval, what would be our legal way to go about it, since we cannot really, without him really being in agreement. Can we vote for it?

Omar Sandoval: The Planning Commission has sole authority over the conditions of approval. Remember, the reason a CUP is required is because of, first of all, the use is not allowed unless the Commission grants a Conditional Use Permit. It gives the Commission the opportunity to identify any negative impacts and to put conditions on that would reduce those impacts or eliminate those impacts. Now, the question for you will be whether conditions of approval as proposed by Staff are in your opinion, appropriate to mitigate the negative impacts that have been described to you. It's solely within your authority. There's no requirement that the applicant agree. Obviously, we always strive for the property owner and the applicant, the user of the property, to agree to the conditions. We always try to have a win-win on these situations, but to the extent that the Commission has identified negative impacts, and to the extent that Staff has proposed conditions that would mitigate those impacts. It's really within the discretion and the authority of the Commission to determine whether those conditions are appropriate or not. If I may also just clarify, with us today, Mr. Rowen, who is Deputy City Attorney with my office. He has been assigned to work with Staff on these issues because my role has to be the same as it is every other meeting, every meeting, which is basically to provide advice to the Commission on procedural and issues with respects to your authority and the application of the code. Mr. Rowen is tasked with assisting Staff and dealing with the case before you.

Commissioner Brietigam: Mr. Chair?

Chair Pierce: Yes?

Commissioner Brietigam: Question for Staff. Mr. Rowen. You have a business who basically continues to thumb their nose at the current CUP's for over ten years, constantly being called in for meetings with the City

over this period of time, constantly having issues. What makes you believe by giving them more restrictive CUP's they are going to abide by these? Shouldn't we be looking at revoking their ABC license in totality and just be done with the problem?

Kyle Rowen: As to the Commission's role in the options before it, I refer to Mr. Sandoval because that would be legal advice to the Commission and not Staff's position on this. So, I'll let the Assistant City Attorney answer that question.

Omar Sandoval: Okay. The Municipal Code provides the violations of a CUP are violations of the Municipal Code, which are misdemeanors or can be prosecuted as misdemeanors. There are other avenues of enforcing the Code within the Code, which is one, would be civil nuisance abatement, and the other one would be a revocation proceeding on the CUP's. CUP's run with the land, they are a property right, but not absolute, because if you violate the provisions of the CUP, it can be taken away and the Code grants you the authority to do that provided that we have a hearing such as this one. The City obviously had the option to go that route, but I think you have plenty of evidence provided by Staff, that it is the City's wish to help the business be successful, and rather than taking away the use. Staff has gone the route of amending, further refining, the conditions, again, to assist the property owner business in the City to be successful and to operate without any negative impacts to the community. Had we gone the other route, again, it's...

Commissioner Brietigam: Furthering my question, if we did decide it to go that way instead of going with the CUP changes, what would need to happen? Would we need to motion it here?

Omar Sandoval: Well, the answer is...

Commissioner Brietigam: Because quite frankly, for ten years... (tape change) continually disregards that public press. And I think the City's been more than patient for a long time and been more than generous by trying to just change the CUP's. Quite frankly, I'm of the opinion we should probably start a revocation procedure on the ABC license or I guess it would be on the CUP. Could that be done at this point?

Omar Sandoval: Well, the answer is that we would have to start a new process because the property owner has, under due process, the right to get notice of the charges against them, and number two to be heard before we actually bring back to you a proposal to revoke the CUP. Again, clearly you want to work, or the City wanted to work with the property owner to identify those areas where they were not complying and refine the conditions to assist the property owner, actually the business, in being successful. But, basically, it would be like a new application that would have to start from scratch. I mean, there's a lot of work already involved that we can re-use to go the other route, but it would be like a new application that we'd have to start with, a new application, a new case matter, new notices.

Commissioner Brietigam: There's nothing that can prevent us from going ahead and approving these CUP's tonight and moving that the City look

into the revocation proceedings if they do not go with, abide by these conditions?

Omar Sandoval: Well, the answer is that there are conditions already in place that indicate that if there are further violations, including a revocation of the ABC license by the state, that we still have the opportunity to bring back to you revocation proceedings.

Commissioner Kirkham: Mr. Chair, I have another question. Chief, is the owner notified when we make a major arrest like we've just talked about? Do they know that this happens at the property? I mean, I'm sure they should be if they're on the property, right?

Chief Polisar: Mr. Chair and members of Commission. I don't know that I can answer that accurately. I don't know if the owner is on the property at 1:30, 2:00 o'clock in the morning every night that they're open. I would like to assume that her employees would notify her of serious incidents that occur in and outside of her business the night before if she wasn't there. She certainly has become aware of it over the course of the documents you've seen, given to you for review.

Commissioner Kirkham: Is there a, I know sometimes when you have an alarm the officer will leave a report of service. Is there a report of service, is there any piece of paper that's left at the property when there's a problem like that?

Chief Polisar: No, there is not.

Commissioner Kirkham: Omar, I see all these conditions but I don't see anything here where they're fined or anything if they don't comply. Is there any fines being imposed on the business? And why not?

Omar Sandoval: Yeah, that is a different...currently the Code does not have provisions for administrative fines. Fines would need to be imposed by a court of law and we would have to bring prosecution and criminal court. So, I mean, that is available, but that is a completely separate procedure before a judicial body, not an administrative body within the City.

Commissioner Kirkham: That what I'm saying. There's no conditions in this CUP to impose any fines at all?

Omar Sandoval: The Municipal Code provides a violation of the CUP are violations of the Zoning Code, which again, can be prosecuted as misdemeanors.

Commissioner Kirkham: Sale to minors is misdemeanors?

Omar Sandoval: That is state law. That is within the state codes, not within the Municipal Code.

Sergeant Boddy: Chair Pierce?

Chair Pierce: Yes.

Sergeant Boddy: Just to clarify, it's unknown on the nights of these major events if the owner was present, but I do have documentation that on September 20th, when we had violations of subjects drinking alcohol on the patio, the kitchen was closed, the owner was present and spoken to by officers. There was a known dancer, a go-go dancer walking around in violation of nudity laws, but was not dancing at this time.

Also, on September 20th, we had the business checked on when the owner was present, there was under 21 on the patio, again in violation of the CUP, along with drinking alcohol, which is in violation of ABC laws. And this night we do have PD photos, which match the promoter photos, and the dancers at the time indicate they were in violation of the nudity ordinance and that they were employees of the promoter. And again, the owner was present.

I also have documentation that on August 15th, the owner was present. This was a night where observed alcohol violations, under 21 on the dance floor, go-go dancers with nudity violations. Officers observed a male subject that was believed to be involved with the promoter, hand what appeared to be a minor, alcohol. Also, this was the night where officers observed patrons placing dollar bills in the go-go dancer's outfits. And again, the owner, according to the report, was working the bar that night. So, although the Police Department does not go out and notify owners of issues, there are times where the owner has been present for at least some of the CUP violations.

Chair Pierce: Okay.

Andy Couch: Chairman Pierce, if I could address just a couple of points please, just to clarify. You asked the question what happens if the applicant doesn't sign? I don't want to create the impression that there is this tremendous gulf between the City Staff and the applicant, the present owner of the CUP CAN regarding the proposed new CUP. I believe there are 45 conditions of the proposed new CUP. The fax I received from Mr. Rowen this afternoon, I think addressed maybe six of them or so, and I think the real problem right now is closing time. Now, all we are asking for is a two week extension or continuance, or postponement of this proceeding so that we can both study the data we got today, have the opportunity to speak with City Staff about a security plan that might address the concerns regarding police service in the early morning hours. If we reach an agreement, fine. Issues resolved. If we don't reach an agreement, we may elect to come to the Planning Commission and present to the Planning Commission our evidence on that issue, but that's all we're asking for is the opportunity to have a reasonable period of time to react to the addendum that we got six days ago and the data we got this evening.

Chair Pierce: From what I was looking here on the hours, I thought the City was bringing it to 11:00 o'clock during the week, on the weekends 'til one o'clock, which you're only losing an hour from what you were doing before. I thought that was pretty reasonable for what it was before to 2:00 a.m. to 6:00 a.m. Now they're closed down some of the hours,

which they've had the problems with the times, most of the stuff is at the end of the night. By closing a little bit...

Andy Couch: And the Commission's ultimate determination may be that 1:00 a.m. on Thursday, Friday, and Saturday is the appropriate time. We just want to have the opportunity to both discuss this subject with City Staff and City Staff has been fairly generous with its time. I know that Chief Polisar has spent over three hours in meetings with this.

Chair Pierce: Right. Did you guys have any prior meetings before that, talking about times before tonight, since you got all this last week? Because you've had all this stuff at least a month.

Andy Couch: Well, we received the three-ring binder, the primary staff report on December 4th. And we received the addendum on January 9th. The addendum January 9 really responds to a letter that I sent to the City on November 24, seven weeks before. And so, again, we're not asking you for seven weeks to respond with the addendum, we're asking for a couple of weeks so that our law enforcement consultant can review the data I received this evening, complete a security plan. Maybe this is much ado about nothing, frankly, because maybe we will decide there's nothing for us to talk about with the City Staff and there's nothing for us to present to the Commission other than to indicate our agreement to these new conditions. Maybe it'll be something we'd want to talk about with City Staff, and maybe it will be something we'll want to talk about with the Commission. I just don't know yet, because we got this information so recently.

Vice Chair Pak: Mr. Couch, to you have any promoter facilitated events next two weeks?

Andy Couch: No, sir.

Chief Polisar: Mr. Chair?

Chair Pierce: Yes.

Chief Polisar: If I may, just for some clarification. First of all, the vast majority of the problems that our department and the City experiences relates to businesses like this. Our restaurants that act like nightclubs. They are the businesses that give us the most problems. Under the existing CUP, The CAN is required to have two security guards on duty all the time that they're open, and we still have not been able to stem these problems. I can tell you that we have been in negotiations with Mr. Couch and the owner since, well, October. And not to sound flip, but if we started here, and the City was here in the negotiations, and The CAN was here, they've moved this far, and we've come here. The CUP that you see before you tonight is nowhere near what I wanted as a Police Chief of this City who is responsible for the welfare and the safety of all of our citizens. And I would just say that I can assure you there is no security plan that Mr. Couch could provide me that would change my position as far as what you have before you tonight.

Chair Pierce: Thank you very much.

Commissioner Bankson: Mr. Chairman, the one point that I can't get over, and I know he keeps saying, no, he hasn't had a ten year problem, but you've been in meetings since October and we still had a flippant violation of the CUP December 24th. I mean, how do we explain this, if obviously, the owner is thumbing their nose at the City. They don't give a rip. Or else they would be trying to work things out to show the City that they can, they want modifications, they should be trying to show the City that they're willing to work with them, and I don't see that.

Andy Couch: And on that subject, Commissioner Bankson, I would agree that especially under these circumstances, there should be no CUP violations whatsoever, and frankly, I am concerned about the fact that there was a reported CUP violation on the 25th. And I believe that's the one that involved the liquor on the patio. There shouldn't be any. But again we have a business that's in the process of trying to, for want of a better term, to reinvent itself. A business is in the process of trying to establish new security procedures so that, for example, alcohol stays off the smoking patio. People under 21 stay off the smoking patio. And so, there shouldn't be any violations, but I would simply observe that I don't think it's accurately characterized as a thumbing of the nose at the CUP because there have been a substantial number conditions that have been complied with. Is it perfect? No. Is the reason why the owner is spending significant sums on a law enforcement consultant to come up with a security plan because the owner wants better security? Wants better devices on site to enforce the rules that are basically derived from the conditions in the Conditional Use Permit? I would just take issue with the characterization of thumbing of the nose.

Vice Chair Pak: How do you explain not providing two armed securities, which is under conditions of approval CUP?

Andy Couch: Well, the existing CUP requires two licensed security guards, I don't believe it requires they be armed. And frankly, most evenings there are anywhere from four to eight security guards. The problem is that they haven't been particularly effective on all nights in all situations. And that's why this law enforcement consultant has been retained and that's why he's working on the security plan.

Erin Webb: May I clarify, the existing CUP requires one uniformed security guard, licensed uniformed security officer. The revised conditions require two per Condition No. 33 - A minimum of two California licensed uniformed security guards from 9:00 p.m. on. So that is the absolute minimum that we will accept. It goes on further to say that if there are continued security problems, the police can ask for more. So we have a minimum requirement already for a security plan.

Andy Couch: And there have been security guards on site. So it's not as though the operator thumbed its nose at that condition in the Conditional Use Permit by not having security guards on site. They were on site. Again, there needs to be an enhancement in that area.

Chair Pierce: Okay. I'm going to continue with the hearing since I see the owner is here too, and she's got a yellow card too and I figure we

might as well hear from her, and we have five yellow cards. So I'd like to hear from everybody.

Andy Couch: Okay, and again, all we're asking for now is a continuance so that...

Chair Pierce: I understand that and I don't think there's two of our Planning Commissioners that will even go for that right now. And if you'd want us to put it to a vote, I can see that.

Omar Sandoval: No, it is a public hearing. You do need to hear from everyone before you actually make any decisions on this matter.

Chair Pierce: Exactly. So I've got to do all my yellow cards anyway. So what'll we'll do is, I'm going to call up the owner now and we'll hear from each person all the way through it. Then we'll make a decision. So, at this time, I'd like to call up Victoria Tieu. For the record, please state your name and your address.

Victoria Tieu: My name is Victoria Tieu at 14241 Euclid Street in Garden Grove. And, I'd like to thank the City, for tonight, to have a chance to thank everyone for giving me a license to do business, and serve the community. And, we've been in business for 25 years in Garden Grove and I do appreciate all the City Staff and Police Department for working with me and giving us a chance to make a living. And, there are sometimes some problems occur and we willing to change and abide by the rules. All we ask for is just two weeks to, because today my attorney told me that to sign this, to agree to this or your license would be revoked. And I don't want to go there. I'd like to have a chance to review, like my attorney say that, it's probably, is good. We going to come back and ask for, yes, we accept this. But I just didn't have any time to read through it. All the details. Thank you very much.

Chair Pierce: Are there any questions from Commissioners?

Commissioner Beard: Have you been the owner for ten years now?

Victoria Tieu: 25 years.

Commissioner Beard: At that same location?

Victoria Tieu: 20 years in the same location.

Commissioner Beard: Okay. And then are you the original ABC license holder?

Victoria Tieu: Yes, sir. Yes, sir.

Commissioner Beard: And you started out as a restaurant. And did you add a club?

Victoria Tieu: Yes, we started the same business '47' restaurant nightclubs since 1983.

Commissioner Beard: So, since '83 it's been sort of a nightclub with a dancer or two?

Victoria Tieu: Yes. We've been operating the same business for the 25 years.

Commissioner Beard: Do you have any other businesses, any other dance places, any other clubs?

Victoria Tieu: No, sir. No.

Chair Pierce: Any other questions from Commissioners?

Commissioner Beard: Just a general question, just a general response to the incidents at that location. Do you have anything to say about the conditions and what's transpired?

Victoria Tieu: Well, that's a police calls that is addressed to, like, I'm very surprised to see the number of the CLEW report that is significant amount that I am unaware of, but I understood that, because my business is big business, a big suite, a prominent suite in that area and so every time the police calls and they would just simply look up the address and write as it happened at my place. I like for the Police Department and the Commission to take a look at it to have a chance to investigate, to look into further more, instead of pointing on me.

Commissioner Beard: Are there any clubs next door to you?

Victoria Tieu: Yes, there's two more clubs.

Commissioner Beard: That serve alcohol?

Victoria Tieu: Yes. And to answer the question that Commissioner had earlier with Sergeant Boddy, that the other place, what time they close. Their condition close at 12 or 11, but they always open until 2, 3 o'clock. And we always close at 1:30, and last call at 1:30. We always combine by the hours. I mean comply with the hours.

Commissioner Beard: Do you consider yourself, your business, more of a restaurant that has club, dancing entertainment, or dancing club that has a restaurant portion to it?

Victoria Tieu: We consider ourselves as a restaurant with entertainment and club.

Vice Chair Pak: If it's a restaurant with a night club, what percentage of revenue is from selling the food and what percentage would be from alcohol?

Victoria Tieu: The alcohol we selling, like I have had it and, presented in the past with the City. The alcohol sale is low compared with, it's 35% or 33% compared with our food sale, because people now are very smart, they don't drink as much as we all do. We don't drink as much as before. People drink more water, and Red Bull, and energy drinks. We sell a lot

of that. And we always have food available at all time we open. Sometimes we even cook after 2 o'clock to be sure someone to have a bite to go to eat or have a bottle of water. Bite to eat when they in the car to keep them awake.

Commissioner Brietigam: Mr. Chair?

Chair Pierce: Yes.

Commissioner Brietigam: You know, it's been said for at least ten years he's been abiding by the CUP's that have already been in place, have been sketchy. There'll be periods of time where you guys will abide by them, then there's periods of time when you don't. You get called in for a meeting and then you abide by them again for a while and then you don't. Is there any reason why this is so inconsistent?

Victoria Tieu: In 2006, when we have several incident and Sergeant Fowler ask for a meeting, we went in and we installed security cameras and stuff because a lot of things happened in the parking lot that we were blamed for. So we install the camera and then business, economy went down, business went down, and also on Monday we closed. So when we were approached by promoter, that they wanted to do teen club benefits, the girls and the boys clubs, so I thought Monday since we closed, we open it and for the summer, we do just five weeks for the teens for teenager to go dancing. And I thought when I was a teenager I loved to dance so I thought I would do community a great service by having teens off the street. We have parents that come in and drop the kids off and stay and watch to be sure what we doing and we know what they doing. And, to see what they doing. And they say that, oh, they should have this more often, because it's so nice and we could drop them off at a secure place and we go out to dinner and come and pick them up. And after that, the City, it was only five weeks. And in October, when they present us with all that picture of the star clubs. And I immediately stop, and I promise I won't have any more teen club anymore. And we have several, business went down, I did contract some promoter to promote Friday night and that's where all the picture come from on the advertisement. And the City in October, informed me that they don't want that, I immediately stopped. And it only happened a few weeks.

Chair Pierce: Any more questions?

Commissioner Beard: Does that mean you're in agreement with that one condition that disallows promoting from outside?

Victoria Tieu: Yes, sir.

Chair Pierce: Any more questions from Commissioners? Thank you very much.

Victoria Tieu: Thank you.

Sergeant Boddy: Chair Pierce?

Chair Pierce: Yes?

Sergeant Boddy: I'd like to clarify some information that the owner has stated about the kitchen being open. I've got several incidents that I'd like to present to the Commission starting with March 7th, at roughly around midnight. This report documenting that the tables in the restaurant area are pushed back against the south wall extending the dance floor. We have documentation of under 21's at the bar, under 21 year olds at the bar, under 21 appear to be intoxicated.

On April 11th, we have it documented, it's an 18 and over night, officers were in the business at 10:30 p.m. The kitchen was closed and dark. There was a cover charge at the front door.

On August 16th, officers report that the tables at the restaurant are pushed back to the very southwest portion of the business. The patrons are using this area as an extended dance floor. Under 21 on the dance floor. Owner of the business is present and spoken to by officers. And there's also alcohol observed by the officers being consumed on the patio.

On August 21st, we have documentation of go-go dancers, nudity violations. The kitchen was closed and dark. There was under 21 on the patio. This is at ten to midnight. We have Police Department photos that show this, that match the promoter photos and this report of go-go dancer admits working for The CAN.

On August 23rd, at roughly 12:15 a.m., officers indicate that there's go-go dancers with nudity violations, the kitchen is dark and closed. There's another 21 year old at the bar and admitted being on the patio. Again, this night we have Police Department photos that match promoter photos. And again, a dancer admits working for the business.

On Sunday August 24th, at 0026 hours, roughly 12:30 in the morning, officers report that the kitchen is closed. There's no employees working in the kitchen area. 100 to 125 people on the dance floor. Over 21 had orange wrist bands on. There was two subjects on the patio under 21 years of age. We have Police Department photos to match this.

On Monday, August 25th, at 8:40 p.m., officers report that there's under 21 years on the dance floor and the patio. This is the club stars night, which is the 14 to 18 year old night. No food being prepared in the kitchen.

On September 20th, we have a report indicating at roughly midnight, subjects were drinking on the patio, the kitchen was closed and dark, and the owner was present and spoken to by officers. Again, this was with the known dancer that was walking around violating nudity laws.

On September 24th, at 11:15 p.m., we have documentation that no one's working in the kitchen, there was dancing on an elevated box near the dance floor. This was a promoter night.

On September 26th, at I believe it's quarter to midnight, we have documentation that the kitchen is closed. We have Police Department photos to verify this. An officer talks to a go-go dancer who admits that

she'd been hired by the promoter to dance. We have a 19 year old near the bar and the report indicates that there is no food seen by the officers indicating that anyone in the business is eating.

On the 28th of September, at roughly ten minutes after midnight, we have a police report that documents two go-go dancers on the stage. One admits being paid by the business to dance. The kitchen is closed, there's under 21 year olds on the dance floor. 21 year old allowed inside without identification. And again, the officers indicate that no one is eating food at the business.

Chair Pierce: We understand. May we have Teresa Pinon? Please state your name and address for the record and please keep it to five minutes.

Teresa Pinon: My name is Teresa Pinon. I live at 5117 West Progresso Street, Santa Ana. Euclid separates Progresso Street from the complex where The CAN is. I came to the meeting to better understand the plans for The Can and also to express my concern that the situation is not improving. We've had excessive noise and late summer there was a problem where emergency services were called. And, some kids came over from the area and were just kind of wandering around disoriented. We called again for police assistance to see if anybody was hurt, and they just all piled in and went back, but they were just so lost they got up onto our neighbor's front lawn. They were close to his windows. It's upsetting, it's scary. Just because they looked like they were having problems, intoxicated. I've learned a lot about the CUP restrictions. I don't understand how this business still is operating in Garden Grove, a community of working people, families with young children, because of its history with excessive noise and criminal activity. I feel (tape change) I'm not sure that this type of business, nightclub business belongs in this area. And I'm just here to learn more. Thank you.

Commissioner Kirkham: How many times in the past year have you had instances (inaudible).

Teresa Pinon: Other people, the dispatcher will tell us that the police are already on their way, that they've already received a call.

Commissioner Kirkham: So it's nuisance for you.

Teresa Pinon: Yes, it's annoying, mostly noise. It wasn't until this summer that we actually had people spilling over. When there's an event, there's a problem, we can see emergency vehicles arrive, and we can see people in the parking lot, but this was the first time it actually spread over into the neighborhood.

Commissioner Kirkham: What was the date on that, do you remember?

Teresa Pinon: No, I'm sorry, it was late summer this year.

Commissioner Kirkham: Late summer?

Teresa Pinon: Yes.

Commissioner Kirkham: September, October?

Teresa Pinon: I'm not sure. I tried looking through the binder to see if I could find anything that was similar, but I can't recall.

Commissioner Beard: So it progressively got worse since last summer, or last year or two years? Can you give the estimate of the time frame?

Teresa Pinon: I would say over the last two years. There's just no improvement. It's just noisy. We have an old house. We had our windows replaced. You can still hear the music through, not as loud, but you can still hear it. And you can still feel a slight vibration at times. And the time of the incident last summer, it was either a Friday or a Saturday and it was about 2:00 a.m. in the morning because by the time the situation was resolved, I looked at the clock and it was three.

Chair Pierce: Thank you very much.

Erin Webb: Can I add that there is a condition currently that sound emitted from the premises shall not be audible outside the boundaries of the establishment. That's a current condition.

Chair Pierce: Catherine Weinberg?

Catherine Weinberg: I'm Catherine Weinberg. I'm the attorney representing the owner of the property at 14241. My address is 3146 Redhill Avenue in Cost Mesa. I'm just here, as I said, representing the owner of the property to show support for the City's efforts to reduce criminal activity. The property owner shares the concerns of the Staff and is also concerned not only with the public health, safety and welfare, but also wanting to protect property values which criminal activity is not good for. I believe that you all have a copy of the letter that I submitted on behalf of the owner in with your paperwork. The property owner is in agreement with the conditions that the City would like to impose, and the property owner is willing to consent to any and all necessary modifications that if the operator of the business is required to, for instance, build a higher wall, provided that all of the permits are properly obtained and the operator uses insured and licensed contractors, the owner of the property will certainly consent as necessary for whatever is needed to comply with the conditions imposed by the City. Are there questions?

Commissioner Kirkham: It states in your letter that the tenant's lease period is set to expire in April 30th of 2009.

Catherine Weinberg: That's correct.

Commissioner Kirkham: And it says that the tenant has a five-year option to extend?

Catherine Weinberg: That's correct as well.

Commissioner Kirkham: Have they contacted you for that to extend?

Catherine Weinberg: They have not yet exercised the option although the option is theirs. They may or may not, but they don't have to exercise it. So should they choose not to that's their option.

Commissioner Kirkham: And they could get another five-year extension?

Catherine Weinberg: If they want to exercise the option, then they would be entitled to lease the premises for an additional five years beyond end of April 2009.

Commissioner Kirkham: My question is, do they have to take the whole five years? Are they required to take the whole five years? That's what I'm asking.

Catherine Weinberg: The option as it stands is a five-year option. So either they terminate at the end of April 2009 or they exercise their option, in which case, they have a lease for an additional five-year period.

Chair Pierce: Thank you very much. Blandina Bryant?

Blandina Bryant: My name is Blandina Bryant and I live at 1425 N. Euclid right at the corner of Progresso and Euclid and I just heard her say that you aren't supposed to hear music outside. Well, every Friday, Saturday, and Sunday my house vibrates and I call the police many a time. And I can't understand how come she's had this problem for ten years and nobody's done anything about it. You would live around there, and you are all invited to spend a weekend at the house, and then you will understand what it's like. And like she was saying that in the summer you have teenagers, or whatever, yeah, they're running all over the parking lot. I mean, I don't call that taking care of the kids. You know, when the parents drop the kids off. They should be inside the building, they shouldn't be running around the parking lot at one o'clock in the morning, you've got all the cars leaving and it's really bad. I shouldn't talk, but it's just, why do they have to tint their windows. You know, when I got the letter, I went down and I took a walk and everybody has tinted windows, whatever, and they had the door open. Are they allowed to play cards in there?

Chair Pierce: I don't know.

Blandina Bryant: Well, they have all these tables and there's men in there, playing and my friends (inaudible), but they're playing cards and smoke cigarettes, and drinking. And there's about four or five clubs like that. The club I saw the other day was just a big hall with a kitchen at one end and a stage at the other. (inaudible) So, I don't know. (inaudible).

Chair Pierce: Is there anybody else here to speak for this project or against this project?

Andy Couch: Chairman Pierce just a couple of points of clarification. Again, this is Andy Couch, attorney for the owner.

Omar Sandoval: Before we continue, the applicant will have an opportunity to come back and rebut as that's part of the part of the process, but before you do that, I would like to clarify something, or I should correct myself. For the record, I've just had an opportunity to review Title 9 of the Municipal Code in terms of revocation and I will stand corrected by the Code. Section 9.24.030 Subsection D, Subsection 10 provides that the City Council hearing body, in this case, the Planning Commission, or City Manager, may initiate revocation proceedings for any land use action designated by this title and require findings the hearing body may revoke or modify the land use action if any one of the following findings are made, and there two that are pertinent to this issue.

The first one being that the approved use is being or recently has been exercised contrary to the terms or conditions of such approval or in violation of any statute, ordinance or regulations.

And the second one is that the approved use was so exercised as to be detrimental to the public safety or so as to constitute a public nuisance.

Thus, today you would have four options before you. Once you've closed the public hearing you've heard everyone, you've given the applicant's attorney an opportunity to rebut the information provided to you today. One option is to continue this matter and ask Staff to come back with additional information. Second option would be to adopt Staff's recommendation and revise the CUP as proposed by Staff, or as you may wish to modify the Staff recommendation. The third one is to deny the Staff recommendation, which means the current CUP stands as it is. And the fourth is to request Staff to bring back this matter for revocation hearing. It's for you to consider revocation of the CUP all together. The only requirement of the Code is that we provide a 10-day notice to the property owner of the City's, the Planning Commission's intention to hear revocation, to consider revocation of the CUP.

Chair Pierce: Okay, now I'm going to ask for the applicant to please come up and rebut any of the comments.

Andy Couch: Andy Couch again for The CAN restaurant. I just wanted to touch on a couple of points. Ms. Weinberg, the present attorney for the property owner, made reference to a letter that had been sent to the City back in 2006. It was included within the City's staff report that you received on December 4th. I just wanted to call the Commission's attention to the fact that in 2004, The CAN restaurant had to file a lawsuit against the landlord. There was a dispute over the option to extend the lease. Now that lawsuit was eventually resolved and the landlord recognized CAN's right to extend the lease twice. Frankly, I was unaware of the letter sent by the landlord until I received this package on December 4th. And again, I don't think Ms. Weinberg was involved in that. I think it's unfortunate that the landlord took a parting shot in a lawsuit that may have not turned out the way the landlord wanted it turned out by sending a letter to the City and then apparently never pursuing the matter again. With regard to some of Ms. Bryant's comments, the last public speaker, when she was referring to people playing cards and smoking, I believe she was referring to the coffee shop next door to CAN, not the CAN itself. I just wanted, I didn't want you to

have the false impression that the CAN was a place where people smoked in violation of the law and played cards because that's not true of the CAN. And those are my comments for rebuttal. Perhaps Ms. Tieu has some as well.

Victoria Tieu: I'm all shook up, I don't have any further comments. I just want to thank everyone here. I would like to be a good asset to the community. And I did stop the promoters and that would eliminate all the problems that we had the last two months, three months, since August. Thank you very much.

Vice Chair Pak: Ms. Tieu, there is a letter here from the Garden Grove Fire Department dated August 26th, 2008. Is this regarding the occupancy?

Victoria Tieu: Yes.

Vice Chair Pak: And there's a deviation from the floor plan from 1999 to what it is right now, such as the counter and chair area has been removed to enlarge the dance floor and also removal of the pool tables at the northeast corner of the bar, and there's no division of bar and restaurant area, and Mr. Don Nguyen, who is Senior Fire Protection Specialist, noticed you were removing the chairs out of that area and told you that's in violation. You remember that conversation?

Victoria Tieu: Well, we did not enlarge the dance floor. We explained to him we have the rails around the dance floor and we removed the rails. We cut the rails in the front and in the side because we don't want people to be, on original plan, we had stools, for sitting around the dance floor, and we don't want people to sit around the dance floor to block people. We moved the tables to the, instead of stools we moved the big tables, the large table so people could eat around the dance floor.

Vice Chair Pak: Any deviation from original floor plan you need to go back for CUP process for modification.

Victoria Tieu: I'm sorry. We removed the bar stools and we replaced the bar stools with dining tables around the dance floor and he acknowledged that. The only thing we did not, now we replace it with a five-foot nine wall, is the flower box that divide the dance floor and the restaurant. Before it was just flower box on wheels and in 20 years, it fell apart. So now the City required to put a wall there, so I put up the wall. It's a very good wall. It cost me \$7,000 to get that wall.

Chair Pierce: Thank you very much.

Commissioner Beard: Question if I may. I think Sergeant Boddy said that in the report that the officers said that they talked to the dancers and they were employed by CAN? Some of the dancers were employed by CAN?

Victoria Tieu: We have one dancer employed by us and we immediately, after we went to have the meeting, and we find out that the City doesn't want us to have go-go dancers, we immediately eliminate that.

Chair Pierce: Thank you very much.

Commissioner Beard: One other question, I'm sorry. Underage drinking? How do you monitor or respond to that? Wrist bands?

Victoria Tieu: We have wrist bands, yes. And come to the underage drinking, we don't serve any underage at all. The incident on December 24th is that we have a live band on the night before Christmas. We have a band with a Gothic rock people, and we have two ladies that belong to the band. I don't know why they advertise as over 18 only one night. And that's their faults. And, I'm sorry for that because I don't, I computer illiterate and I didn't look at it. And I didn't know what the advertisement. That's no excuse for me, but I think I just found out now they say the only night has 18, I did not know that. I instructed my security not to let anyone under 21 in. And those two ladies that with the band, that came in before the security was there, and they were sitting in the patio, and one gentleman, I have a, two customer that come by like ten years ago, just happened Christmas they came by. They just want to be nice. He didn't know that ladies underage that offer drink. We didn't serve them. He didn't buy it for her. And the police came in and talked to her and write down the report.

Commissioner Beard: How often are you there on Friday, Saturday, and Sunday nights?

Victoria Tieu: I'm there every night.

Commissioner Beard: Every night?

Victoria Tieu: Yes.

Commissioner Beard: How do you explain the kitchen not being open when it should be?

Victoria Tieu: Oh, that's another thing. The police, a lady came in and took picture. We have an open kitchen. We have two pots in kitchen. Open kitchen, we cook, we stir outside. And then inside is the prep. And the night she took picture, we even have the kitchen, and then we have tacos on the patio for that Wednesday night because people like eating tacos, and they like to eat on that smoking patio with the fire pit, and smoking and talking to their friends. We even have tacos served on the patio on the very night she took the picture. She didn't see that the gentleman that was serving tacos was right there on the patio. Or maybe, she doesn't want to take the picture of that. I don't know.

Commissioner Beard: So, you're presenting this as the rare occasions that the officers were there that things didn't appear as they appeared in the police reports? Are you almost refuting the police reports?

Victoria Tieu: I don't know how to answer it. We always have food serving the whole time we're open.

Commissioner Beard: The police happened to come on the rare occasions it didn't appear you were serving food?

Victoria Tieu: Well, when don't have, to save electric, when we don't have order, we don't turn on the fan, and the fan has the lights and that's why it's dark.

Commissioner Brietigam: Chair Pierce? A question?

Chair Pierce: Sure.

Commissioner Brietigam: As far as the wrist band goes, so you put the wrist bands on the adults or do you put the wrist bands on the under 21 year olds.

Victoria Tieu: We put the wrist band on 21 and over who has wrist band that could be served. And, who doesn't have the wrist band, cannot serve.

Commissioner Brietigam: And your employees monitor, you know, if you have, some of the reports the police officers (inaudible) have proved that underage people were intoxicated. And quite frankly, if they appear intoxicated, do you allow them to come into your restaurant? Already intoxicated?

Victoria Tieu: No. No, sir. It could be that they go out to the car and drink and then come back in unnoticed.

Commissioner Brietigam: And you're security just doesn't notice that kind of stuff?

Victoria Tieu: Well, you know, when you just drink from the car and then you go in, you don't appear intoxicated until like, you know, 15 minutes or half an hour later.

Commissioner Brietigam: Any other questions? Thank you very much. I'm now going to close the public hearing. Are there any additional comments from Staff?

Chief Polisar: Mr. Chair, Commissioners, if I could just add a couple things. I think it's safe for the Commission to assume that there has been extensive conversations with the entire City Staff and the City Attorney's office on how to deal with this very, very critical and important public safety issue. And that is what you have before you, is our Staff recommendation to modify the CUP. I can assure you with clarification from Assistant City Attorney, Omar Sandoval, on that Title 9 revocation process, we want nothing better than for The CAN to be successful. And, we think that with these modifications and our oversight, we can help them be successful. Rest assured, if past performance is any indication of future behavior, we will also have no problem coming back to this body with other recommendations in the future if the need arises.

Chair Pierce: Thank you very much. Comments from Commissioners?

Commissioner Beard: I have comments. After just hearing that from the Chief, I was ready after hearing the testimony tonight to look into the revocation process and based on the facts, based on the reports. I mean, I don't think there is any question that the facts and evidence presented that this is a big problem. No question about it. Whether there's a CLEW study or not, the problem's been developing over the last couple of years. So, it doesn't mean it has to go back ten years or so, the problem is now. The problems related to the CUP, or their violations of the CUP. I think it's time to break this pattern. I mean, it's clear to me from the report and from the testimony. I don't think we should grant an extension to consider this. I will support the CUP as it's proposed with Staff recommendations. Only less than the revocation process. And I think we should give serious thought to monitoring the situation that they abide by the CUP, if they don't, then we do institute the revocation process. I believe the city attorney clearly read there's findings for that, even at this point, but willing to help out businesses in the City, being supportive of businesses, we need to be supportive also too of the residents in the area, of the surrounding businesses. I mean, it's been proven that they're not responsible or have not been responsible by following through with these CUP's. So, in light of a revocation process, I will support the recommendation and hopefully, hopefully it'll turn the situation around. If it doesn't, I think we really should look at that as they aren't accountable and living up to the CUP. I mean, this to me, seems to be their last chance at this stage. That's my position.

Commissioner Brietigam: Mr. Chair? You know, quite honestly, many times the City's way over here and they're usually really firm and then the Commission kind of comes to the middle and joins things. And in this case I see it just the opposite. I think the City has been extremely lenient with this business to the degree that I couldn't support these CUP's. I think revocation is necessary. I think it's imperative. And I think the City should really consider, I mean, I understand a lot of City Staff may not live in the City. We live here, our children grow up here (tape change). From notes: Revocation is imperative, especially with the assaults on the Police Department.

From notes: Commissioner Kirkham agreed with Commissioner Brietigam as there is a limited amount of Police Officers; that there were 142 violations in 2008; that the owner knows this is happening; and that we want to save businesses, however, this is costing the City too much.

From notes: Commissioner Bankson asked Staff to clarify why they did not recommend the revocation process.

(Tape resumed)

Chief Polisar: I'll see if I can answer to your satisfaction. Obviously, as you've heard this stated before, we've had extensive conversations with our legal counsel, the City's legal counsel, the City Attorney's office, about how to deal with this issue. I would use the analogy of the criminal side of our profession. The assistant district attorney's who handle our criminal cases would like nothing better than for us to give them an iron clad case with video of the perpetrator violating the crime to go to trial. That's the ideal. That's the analogy. The reason we come to you is, with

these recommendations is, number one, to try and help the business be successful, but also the strong message being that if they're not, then we would be back before you with a case for revocation. I don't know if I've answered your question, but I've tried to.

Commissioner Bankson: So based on my feeling, you're trying to help the business sustain itself to continue to be (inaudible) business in the City of Garden Grove.

Susan Emery: There's always due process issues. And I think what the Chief is saying when you go through a revocation process, you want the best possible case, and have given the applicant the best opportunity to be successful. And, there's interpretations about what's the best way to go. This was a recommendation to Staff and that's why we're (inaudible) It doesn't mean that you didn't have, or that we don't have the option to do the revocation, it's just that this was one path that we could pursue, and we did give the business another opportunity to try and be successful.

Chair Pierce: This is their last chance.

Commissioner Bankson: Okay then, Mr. Chair, my comment to that being that a couple of our Commissioners have expressed their desire to start the revocation process. I'm going to follow the City Staff's lead and I will support their amendment to the CUP, but let it be well known to the owners that if they come to us for any violation I won't hesitate to vote to revoke the CUP on a moment's notice. To me, it's right there, but I'll take it that the City Staff has studied the situation and has made their best recommendation. So I'll go along with Staff this time.

Chair Pierce: Joe?

Vice Chair Pak: When I was listening to Sergeant Boddy's list of the criminal activities, especially some of the intoxicated clients getting at the police officer, that really scared me. I think that it just was moments before the deadly weapon could be fired and we don't want anything like that. I know the media would love to cover that kind of cover stories but we don't want this happen to our community, our neighborhood. And, I think that the way that we have recommended, that City Staff has recommended modification of the CUP will affect a change. Hopefully that will bring back a senses to the people. That this is a nice, dining restaurant area where you can have some entertainment. About three month ago, we approved similar entertainment license to Garden Grove area, and everybody thought that it was a nice venue. We need something like that in our community. But listening to the Staff's report, CAN restaurant has gone beyond just being a restaurant. It has really breached the trust of the public. You know, we really need to make sure that this revised CUP is followed to the letter and spirit. And, make sure that there is no misunderstanding that this Commission, as Commissioner Kirkham says 'I'm just one', but I also would have the feeling that it must be followed to the letter and spirit of this revised CUP in order to succeed in our community.

Commissioner Brietigam: Mr. Chair?

Chair Pierce: Yes?

Commissioner Brietigam: I have a question of City Staff if a revocation were to occur, who would actually preside? Would that be function of the City Council and then ultimately it would end up in the courts? Is that kind of how it would go?

Omar Sandoval: No. The revocation would be before you, so, because CUP's are granted by this body, this body has the authority to revoke the CUP's. So they present it to us and you would render a decision whether to revoke or not. The Code provides that your decisions can be appealed to City Council. So the way it works is, you would render a decision. If either the property owner or Staff is not happy with your decision, it can be appealed to City Council. The case cannot go to court unless it's appealed to City Council. Once the City Council renders a decision, that decision can then be, it's not an appeal, it's more of a writ or a request, or a court to review, the decision of the City Council. And, it is basically a claim that, you know, the evidence, or the decision of the City Council is not supported by the evidence presented to the City Council.

Commissioner Beard: Yeah, did I understand correctly that they are being considered for a revocation for their liquor license? ABC license? Something pending right now that you're aware of?

Chief Polisar: I'm not aware of any pending issues with a liquor license, no.

Kyle Rowen: Commissioner, Mr. Chairman, and members of the Commission, currently pending before the ABC, they have their own administrative board, alcohol and beverage control has their own investigators that are peace officers. They documented reports, those reports are included in your packet relating to noise violations at the establishment. At last check on the alcoholic and beverage control, that administrative proceeding has not resolved yet and is still pending before their hearing body. That's as much information as we have on that.

Chair Pierce: I was going to make a comment. I've been on the Planning Commissioner for four years, I've never seen a case like this come up. I am going to support the City on this. I hope we don't see this problem ever happening again. So, with that comment, is there a Commissioner who would like to make a motion regarding this project?

Commissioner Brietigam: Mr. Chair, if I could make a motion? I'm going to move that we initiate revocation proceedings on this CUP.

Commissioner Kirkham: I'll second.

Omar Sandoval: Just to clarify, your motion is direction for Staff to bring back for a revocation hearing?

Commissioner Brietigam: Correct.

Vice Chair Pak: Could I make a substitution motion?

Omar Sandoval: Well, if it's one of procedure that would take precedence. If it's a substitute item, you can ask too if the maker of the motion can, would agree to an amendment to the motion.

Vice Chair Pak: You can go ahead and go with the vote, but I can make a substitute motion to approve the Conditional Use Permit No. subject to the recommended conditions of approval. And if I get the second on that one (inaudible)

Omar Sandoval: Yeah, that one cannot be considered until you first vote on the motion on the table.

Commissioner Bankson: Question for Omar. So, we vote on the motion on the table and it doesn't pass, then we can bring up the options?

Omar Sandoval: You can bring up the option to consider alternative motions. Yes.

Chair Pierce: Call for a vote. Yes, would be for revocation and no would be against it.

Judy Moore: Motion received. Three yes votes for the revocation with the no votes going to Pierce, Bankson, and Pak, with Commissioner Nguyen being absent. The motion has failed.

Commissioner Kirkham: It's tied.

Omar Sandoval: No. You need majority vote. That's how it fails. A tie is basically not an approval. You need a majority vote to approve the motion.

Vice Chair Pak: I'd like to make a motion to approve Conditional Use Permit No. CUP-253-08, subject to the recommended conditions of approval.

Commissioner Bankson: I'll second.

Chair Pierce: Call for a vote.

Judy Moore: Motion received. Four yes votes to follow Staff's recommendation, with the two no votes going to Commissioners Kirkham and Brietigam, and Nguyen being absent. (Resolution No. 5665)

Chair Pierce: Thank you. You're approved.

JUDITH MOORE
Recording Secretary

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	APPEAL OF CONDITIONAL USE PERMIT NO. CUP-253-08 TO REPLACE A PRIOR CUP AND PROVIDE NEW CONDITIONS OF APPROVAL FOR AN EXISTING BUSINESS (THE CAN RESTAURANT & CLUB) LOCATED AT 14241 EUCLID STREET		
		Date:	March 10, 2009

OBJECTIVE

To transmit an appeal of the Planning Commission's approval of Conditional Use Permit No. CUP-253-08 by the business owner/operator. Based upon a long history of problems occurring at The CAN Restaurant & Club, city staff requested changes to the prior "Conditions of Approval" to clarify the operational requirements of the business to reduce criminal activity, nuisance problems, and CUP violations. The business is located at 14241 Euclid Street, Suite C-101.

BACKGROUND

The City of Garden Grove is requesting approval of revised "Conditions of Approval" through the approval of a new Conditional Use Permit No. CUP-253-08 for an existing restaurant and nightclub, The CAN Restaurant & Club. The owner/operator originally received CUP approval for a restaurant with entertainment and a Type "47" (On-Sale General, Eating Place) Alcoholic Beverage Control (ABC) license in 1990. An extension was granted the owner/operator in 1996 under Conditional Use Permit No CUP-285-96. This is the Conditional Use Permit under which The CAN Restaurant & Club is currently regulated. CUP-285-96 requires the business to be operated as a bona-fide eating-place. Among other existing requirements, no customers under the age of 21 are allowed in the establishment except in the segregated food service area and no use or activities of an adult-oriented nature are permitted.

Problems with the operation of The CAN restaurant began in 1995 when the Police Department had concerns with disturbances, the number of calls for service, the selling of alcohol to intoxicated individuals, the lack of adequate security, and the observed ratio of 90% revenue from the sale of alcohol. In the last several years, the Police Department has had increasing concerns about the continuing problems

and reoccurring violations at The CAN. These violations include, but are not limited to, serving alcohol to minors, serving "obviously intoxicated" customers, public disturbances, assaults, underage patrons in the nightclub/bar/patio area, "adult oriented" activities and not operating as a bona fide eating-place. In an effort to eliminate these problems, City staff met with the owner/operator or her agents in 2003, 2004, 2006 and 2008. The property management company, Sperry Van Ness, sent formal complaints to ABC regarding The CAN in 2005 and 2006.

After the office meeting in March of 2008, there was no appreciable decline in the criminal activity, problems, and CUP violations at The CAN. As a result, the City held a second office meeting, this time with the Chief of Police, the Deputy Chief of Police and the Community Development Director. The meeting was held on October 28, 2008 and after discussing the ongoing problems at the establishment, City staff provided the owner/operator a draft copy of the proposed new "Conditions of Approval" for the establishment.

The Chief of Police, Deputy Chief of Police and the Community Development Director met again with the owner/operator to discuss the violations occurring at The CAN and further review the proposed "Conditions of Approval." This meeting was held on November 21, 2008.

Planning Commission Meeting 01/15/09. On January 15, 2009, the Planning Commission conducted a public hearing for Conditional Use Permit No. CUP-253-08. Presentations included an introduction from the Community Development Director and an overview of Police concerns from the Chief of Police. Planning gave a staff report that was followed by a report from Police staff detailing the violations at the establishment and presenting time/cost analysis of The CAN's impact on Police resources. Police staff provided information to the Planning Commission that there were 153 calls for service at The CAN in 2008, and those included eight significant events with arrests. Significant events include but are not limited to, assaults on Police officers, assaults with a deadly weapon, and fights with multiple participants that may include arrests for "drunk in public" and resisting arrest. Of the eight significant events, six occurred after 1:00 a.m. and the other two occurred after 12:25 a.m.

An addendum report was included as part of the staff report and provided to the owner/operator and her attorney six days before the Planning Commission meeting. The addendum report discussed revisions/additions made to the proposed "Conditions of Approval" and City staff's effort to address concerns from the owner/operator by revising two specific conditions. Two police reports of further violations were included as attachments. These violations occurred at The CAN after the meeting on November 21, 2008 between the owner/operator and senior City staff. The Addendum Report recommended approval of the new Conditional Use Permit No. CUP-253-08 with revised conditions.

The attorney for the owner/operator requested a two-week continuance from the Planning Commission to study the Addendum Report and the raw data provided by the City to its consultant who prepared the CLEW Study. The owner/operator's attorney sent a request for this information on Sunday, January 11, 2009, which was received on Monday, January 12, 2009. The CLEW study itself was included in the staff report and hand delivered to the attorney on December 4, 2008. The attorney stated that a new security plan was being prepared for The CAN. The comments of the owner/operator's attorney are set forth in Attachment 4 of this memorandum. It was apparent the Planning Commissioners believed that the owner/operator had more than enough time to prepare for the January 15, 2009 meeting.

The owner/operator stated that she had owned the business for 20 years and acknowledged that occasionally problems occur. She added that she would be willing to abide by the rules and requested two weeks for her to review the Addendum Report. She replied to questioning that she was the original owner and had no other businesses. When asked what her response was to all that had been presented to the Planning Commission regarding The CAN, she replied that she was surprised by the figures in the CLEW report. She added that the Police should investigate two other clubs that serve alcohol in the same shopping center, that she considers her business a restaurant with entertainment and a club, and that alcohol sales are low compared to food sales.

When asked by a Commissioner why her compliance with the conditions was so inconsistent, the owner/operator stated that she had installed security cameras in 2006, stopped the teen parties, and stopped the Friday night parties. Police staff responded with a list of eleven dates from May to September 2008 in which there were Police reports of continued violations at The CAN. Later in the public hearing, the owner/operator stated that wristbands are used for "21 and older" customers, that the kitchen is always open and serving food, and that she is present at the establishment every night.

Two citizens from the neighboring residential areas spoke about concerns with the business. One neighbor described excessive noise coming from the business and an incident with disoriented kids wandering around her neighborhood. She stated that the situation had become progressively worse over the last two years, that the business was a nuisance, and that she had called the Police four times in the last year regarding The CAN. She stated that the owner of The CAN has shown a lack of respect to the community, the other tenants, and the Police. A second neighbor also described loud noise, a call to Police, and teens all over the parking lot.

The attorney for the property owner of the commercial center spoke in support of the City's efforts to revise the conditions of approval and a willingness to consent to all necessary modifications at the tenant space.

The Planning Commissioners and City staff discussed that a hearing body may initiate revocation proceedings. Two Commissioners made statements that a revocation should be processed due to the history of violations and the burden on Police resources. Other Commissioners commented that the new Conditional Use Permit would be The CAN's last chance and that any further violations would warrant a revocation.

A motion was made and seconded to bring back a resolution for a revocation hearing. The motion failed on a 3-3 vote, with Commissioner Nguyen absent.

A second motion was made and seconded to approve the new Conditional Use Permit No. CUP-253-08. The Planning Commission approved the motion on a 4-2 vote, with Commissioner Nguyen absent. The two "no" votes were by Planning Commissioners who voted in favor of directing staff to bring the matter back for consideration of a CUP Revocation.

DISCUSSION

The business owner/operator has appealed the decision by the Planning Commission approving Conditional Use Permit No. CUP-253-08 and is asking City Council to deny the request by City staff for the new CUP "thereby reinstating the existing CUP-285-96." In the appeal request, the business owner/operator states that the new CUP-253-08 initiated by City staff imposes new conditions on the establishment, which are "tantamount to a revocation of the existing CUP-285-96, because they preclude the profitable operation of the business." The owner/operator further states that Quyen, Inc., dba The CAN Restaurant & Club, "is willing to agree to some new conditions, as long as the new conditions do not have the effect of revoking the existing CUP-285-96 and will permit the profitable operation of the business."

City staff has documented in the staff report a history of criminal activity, problems, and CUP violations at The CAN. These violations occurred under the existing Conditional Use Permit. Over the years, a pattern of behavior has emerged in which the owner/operator operates her business with fewer violations for a period of time, but is unable or unwilling to maintain this permanently. The Police Department has records of many violations under the current operation of the business. Even after meeting in March of 2008 with City staff to discuss the violations at The CAN, no changes were made to the business operation by the owner/operator and there was no appreciable decline in the criminal activity, problems, and CUP violations.

After a second office meeting, held on October 28, 2008, with the Chief of Police, the Deputy Chief of Police, and the Community Development Director, the same type of violation occurred at The CAN. On Friday night, November 7, 2008 (continuing into the morning of November 8, 2008) a large-scale fight erupted at The CAN involving approximately 20 to 30 of The CAN's customers. The fight took place after a security guard was struck over the head with a beer bottle. The incident required an emergency response by approximately one dozen police officers.

The City of Garden Grove believes there is an urgent need to resolve the continuing problems with The CAN and delays cannot be accepted as the public's health, safety and welfare are put in serious jeopardy by allowing The CAN to continue to operate in the same manner. The City has determined that more stringent "Conditions of Approval" are required to ensure that the owner/operator operates the business in compliance and, therefore, has crafted a new set of "Conditions of Approval." The proposed changes to the conditions have been written to work together and comprehensively address the serious violations at The CAN. These changes were formulated by City staff and are based upon the demands for Police calls for service, crime reports, and Police staff experience. These conditions include the percentage of alcohol to food sales, the cessation of alcohol beverage sales and entertainment 30 minutes prior to closing, the restriction of no promoter/flyer parties, a permanent wall separating the restaurant from the bar/nightclub/patio, and changes to the hours of operation.

The City of Garden Grove is committed to working with business owners to develop an effective strategy for successful businesses that also comply with the City's requirements. To that end, senior City staff met a second time with the owner/operator on November 21, 2008 to further discuss the violations at the establishment, and the proposed changes in the new Conditional Use Permit. Through her attorney, the owner/operator expressed concerns with several changes to the conditions. To address her concerns, City staff revised the "cover charge" condition (Condition No. 20) and the "live entertainment" condition (Condition No. 17). The changes allow cover charges from 10:00 p.m., allow payment of the cover charge at the entrance to the bar/nightclub area and remove the restriction limiting "live entertainment" to music conducted by a disc jockey and dancing thereby allowing live bands and karaoke.

Violations continue at The CAN. There are Police reports for violations on December 14, 2008 and December 25, 2008. The violations included underage drinking, underage customers in areas where they are prohibited, and the kitchen being closed during operating hours. An attachment to this City Council memorandum is a Police report documenting violations at The CAN on January 29, 2009. On that night, Police officers were dispatched to the establishment for possible underage drinking. The officers found that the kitchen was open but there were no menus available to customers and therefore, no food was being prepared. In violation of the current restriction prohibiting persons under 21 years of age on the patio or dance floor, the Police found four girls under the age of 21 on the patio and numerous patrons without the "age 21" wristbands on the dance floor.

FINANCIAL IMPACTS

None.

COMMUNITY VISION IMPLEMENTATION


Public Safety, Goals: "Ensure that the Garden Grove Police and Fire departments remain efficient, high-quality public safety service providers" and "Make efforts to address safety-related quality-of-life issues to the greatest extent practicable."

RECOMMENDATION

It is recommended that the City Council:

- Adopt the attached Resolution denying the appeal of the Planning Commission approval of Conditional Use Permit No. CUP-253-08.


SUSAN EMERY
Community Development Director


By: Erin Webb
Senior Planner

Approved for Agenda Listing


Matthew Ferial
City Manager

- Attachment 1: Draft City Council Resolution for approval
Attachment 2: Planning Commission Resolution No. 5665 with Exhibit "A" Revised Conditions of Approval
Attachment 3: Copy of Appeal
Attachment 4: Planning Commission Minute Excerpt of January 15, 2009
Attachment 5: Police Report for January 29, 2009

NOTE: The Planning Commission Staff Report including the Addendum Report, and all attachments thereto, were transmitted to the City Council under separate cover on February 17, 2009 and are incorporated into this memorandum.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, DENYING THE APPEAL, AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. CUP-253-08, FOR AN EXISTING BUSINESS, THE CAN RESTAURANT & CLUB, LOCATED AT 14241 EUCLID STREET, SUITE C-101, PARCEL NO. 099-183-03.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

WHEREAS, the case, initiated by the City of Garden Grove, is a proposal to revise the "Conditions of Approval" through the approval of a new Conditional Use Permit No. CUP-253-08 to clarify the operational requirements to reduce criminal activity, nuisance problems, and CUP violations at The CAN Restaurant & Club, which operates under a State Alcoholic Beverage Control Type "47" (On-Sale General, Eating Place) License; and

WHEREAS, the Planning Commission, at a public hearing held January 15, 2009, voted 4-to-2, with Commissioner Nguyen absent, to approve the Conditional Use Permit under Municipal Code Section 9.24.030 (Conditional Use Permits). The two "no" votes were by Planning Commissioners who voted in favor of directing staff to bring the matter back for consideration of a Revocation of Conditional Use Permit No. CUP-285-96 which The CAN Restaurant & Club operates under; and

WHEREAS, pursuant to Resolution No. 5665, the Planning Commission, at a public hearing held on January 15, 2009, approved Conditional Use Permit No. CUP-253-08; and

WHEREAS, on February 5, 2009, the owner/operator of The CAN Restaurant & Club filed an appeal of the Planning Commission's approval of the Conditional Use Permit; and

WHEREAS, pursuant to a legal notice, a public hearing was held by the City Council on March 10, 2009, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter.

NOW, THEREFORE, the City Council hereby finds and determines as follows:

1. The appeal of the Planning Commission's approval of Conditional Use Permit No. CUP-253-08 is hereby denied.

2. The basis for the Council's decision includes the same basis upon which the Planning Commission approved the Conditional Use Permit request as set forth in Planning Commission Resolution No. 5665. Accordingly, the Facts and the Findings and Reasons set forth in Resolution No. 5665 are incorporated herein by reference in support of the City Council's decision.
3. In addition, the City Council further makes the following FINDINGS AND REASONS:

Conditional Use Permit (Section 9.24.030 Land Use Actions, Subsection 4. Conditional Use Permit, b. Required Findings.)

- i. The proposed "Conditions of Approval" are intended to ensure the compatibility of the establishment with the surrounding uses and community. A business that operates in compliance with its land use definition, Eating Place/Restaurant with Entertainment, and its "Conditions of Approval" is consistent with the General Plan Land Use Designation of Industrial/Commercial Mixed Use.
- ii. Based upon a long history of problems at the establishment, the new "Conditions of Approval" are required to clarify the operational requirements of the business to reduce criminal activities, nuisance problems, and CUP violations. These new "Conditions of Approval" are set forth in Exhibit "A". The criminal activity, nuisance problems, and CUP violations occurring at The CAN include but are not limited to public disturbances, assaults, serving alcohol to "obviously intoxicated" customers, serving alcohol to minors, "adult oriented" activities, underage customers in the nightclub/bar/patio, sound emitted from the premises being audible outside the establishment, the kitchen being closed and not preparing food during all hours the establishment is open, changes in the design of the floor plan without approval of the City, not operating as a bona fide eating-place and inadequate separation between the restaurant area and the bar/nightclub area. These activities, problems, and violations are more particularly put forth in: the Staff Reports to the Planning Commission and the City Council, including specifically, but not limited to, Table 1 (2008 Violations at the CAN) on pages 8 through 12 of the Planning Commission Staff Report and all of the Police Reports attached to the Staff Reports to Planning Commission and City Council and attached to the Addendum Report to the Planning Commission; the Addendum Report to the

Planning Commission; the City Council Reports/Memorandum; and all oral presentations made to the City Council and therefore all of these documents and/or records, together with all attachments are incorporated herein by reference.

- iii. The owner/operator of the CAN Restaurant & Club must comply with the proposed "Conditions of Approval" to ensure the operation of the business "will not adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area" or "unreasonably interfere with the use enjoyment, or valuation of property of other persons located within the vicinity of the site".
 - iv. The Police Department has increasing concerns over the last several years about the continuing criminal activities, nuisance problems and reoccurring CUP violations at The CAN. The Police Department frequently dispatches officers to The CAN in response to fights, assaults and disturbances occurring inside and outside of the business. Patrol and Gang Unit officers routinely monitor the egress of customers from the business to discourage such events. The City of Garden Grove believes that the public's health, safety and welfare are put in serious jeopardy by allowing The CAN to continue to operate in the same manner. Therefore, the City has crafted a comprehensive new set of "Conditions of Approval" to reduce or eliminate the criminal activities, nuisance problems, and prior CUP violations and to ensure the owner/operator operates the business in a manner to protect the public health, safety and welfare of the community.
4. In addition, the City Council further finds that the Appellant presented no significant evidence during the public hearing before either the Planning Commission and/or the City Council to rebut the findings in this Resolution and in Planning Commission Resolution No. 5665.

RESOLUTION NO. 5665

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE APPROVING CONDITIONAL USE PERMIT NO. CUP-253-08.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on December 4, 2008, approved Conditional Use Permit No. CUP-253-08 for the property located on the west side of Euclid Street, between Forbes Avenue and Business Center Parkway, at 14241 Euclid Street, Suite C-101, Assessor's Parcel No. 099-183-03.

BE IT FURTHER RESOLVED that the Planning Commission has considered the Exempt status under CEQA for the proposed Conditional Use Permit together with comments received during the public review process. The record of proceedings on which the Planning Commission's decision is based is located at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The Planning Commission finds that the request is Exempt from further environmental analysis due to the basis that the proposal is in an Existing Facility and does not involve an expansion of an existing use (15301).

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-253-08, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by The City of Garden Grove.
2. The City of Garden Grove is requesting approval of revised "Conditions of Approval" through the approval of a new Conditional Use Permit No. CUP-253-08 for an existing restaurant and nightclub (The CAN Restaurant and Club). The restaurant is operating under an existing Conditional Use Permit No. CUP-285-96 with a Type "47" (On-Sale General, Eating Place) State Alcoholic Beverage Control (ABC) license. The City requests the changes to the "Conditions of Approval" to clarify the requirements of the business and implement new strategies to reduce criminal activity, problems, and CUP violations.
3. The Community Development Department has determined that this request is exempt from CEQA environmental review because the business is in an "Existing Facility" and does not involve an expansion of an existing use per the California Environmental Quality Act (CEQA), Article 18 "Statutory Exemptions" Section 15301. The property at 9140 Trask Avenue has a General Plan Designation of Industrial/Commercial Mixed Use and is within the PUD-104-81/Rev. 86/Rev. 90/Rev. 91 (Planned Unit Development) zone. Existing land use, zoning, and General Plan designation of property in the vicinity of the subject property have been reviewed.
4. Report submitted by City Staff was reviewed.

5. Pursuant to a legal notice, a public hearing was held on December 4, 2008, and all interested persons were given an opportunity to be heard.
6. The Planning Commission gave due and careful consideration to the matter at its meeting on December 4, 2008, and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.24.030, are as follows:

FACTS:

The subject business is part of a Planned Unit Development No. PUD-104-81/Rev. 91. The PUD is mainly intended for industrial, research & development, and office uses except for those properties that are adjacent to Euclid Street. The properties that front on Euclid Street are designated as Area III. Area III tenant spaces are intended to utilize their location adjacent to Euclid Street for offices and research/development businesses and also to allow for limited retail. The allowed commercial uses in Area III are administrative offices, barber/beauty shops, delis/coffee shops, Savings & Loans, health clubs and restaurants. Only in a particular section of Area III, between Forbes Avenue and Business Center Parkway, is there one additional permitted use. This use is described as "live entertainment in conjunction with a bona fide eating establishment subject to Conditional Use Permit approval".

The City of Garden Grove is proposing revised "Conditions of Approval" for The CAN Restaurant & Club to reduce criminal activity, problems, CUP violations, and the demands on Police resources. The problems with The CAN restaurant and its operation have occurred over many years. The continued problems at the establishment include; not operating as a bona fide eating-place, serving alcohol to minors, serving "obviously intoxicated" customers, public disturbances, assaults, underage patrons in the nightclub/bar/patio area, and "adult-oriented" activities.

In collaboration with the Orange County, Alcohol and Drug Education and Prevention Team (ADEPT), the Police Department received a study from CLEW Associates showing the patterns for crimes associated with businesses having ABC licenses. The CLEW study found that 10% of alcohol outlets in the City generate 50% of the Police "calls for service". The CAN is one of the outlets included in the 10% that generates 50% of the Police "calls for service". The study found that Type "47" (On-Sale General, Eating Place - Restaurant) establishments generate more Police activity and were found to be similar in "calls for service" to establishments operating under a Type "48" license (On-Sale General, Public Premises -Bar/Nightclub) in that regard. CLEW Associates determined through their study that evening and late-night hours are the times at which the greatest Police activity occurs.

The CLEW study provided a list of the "top ten" on-sale alcohol outlets; those ABC licensed facilities that had the most police events ("calls for service") in the City of Garden Grove for the year 2007. The CAN is at the top of the list for number of arrests with 46, also at the top for AOD (Alcohol and Other Drug) events, and third for total Police events.

The City of Garden Grove believes that there is an urgent need to resolve the continuing problems with The CAN and that the public's health, safety, and welfare are put in serious jeopardy by allowing The CAN to continue to operate in the same manner. The implementation of all the proposed changes to the CUP will comprehensively address the criminal activity, problems, and CUP violations that have occurred and continue to occur at The CAN.

FINDINGS AND REASONS:

Conditional Use Permit:

1. The proposed "Conditions of Approval" are intended to ensure the compatibility of the continued operation of a restaurant with entertainment with the surrounding uses. The use is consistent with the City's General Plan that allows for a mix of industrial and commercial uses in this area.
2. The proposed "Conditions of Approval" are intended to reduce criminal activity, problems, CUP violations, and the demands on Police resources. If the owner/operator complies with the "Conditions of Approval" the continued operation of a restaurant with entertainment will not adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area.
3. The proposed "Conditions of Approval" are intended to reduce any problems caused by the business for the neighboring tenants, the Property Management Company, property owner, and surrounding neighborhoods. If the owner/operator complies with the "Conditions of Approval", the continued operation of a restaurant with entertainment will not unreasonably interfere with the use, enjoyment, or valuation of property of other persons located within the vicinity of the site.
4. The proposed "Conditions of Approval" are intended to reduce criminal activity, problems, CUP violations, and the demands on Police resources. If the owner/operator complies with the "Conditions of Approval", the continued operation of a restaurant with entertainment will not jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare.
5. The business is in an existing building that was developed as part of a Planned Unit Development. In 1990, it was determined that the site and existing building could accommodate the use of a restaurant with entertainment with no impact to other uses in the surrounding area. The proposed "Conditions of

Approval" would ensure that the use integrated with uses in the surrounding area.

6. The site layout of parking and vehicular access was approved as part of the original PUD entitlements. The proposed changes to the "Conditions of Approval" do not affect the sites adequacy in regard to parking, vehicular access, and other public or private service facilities.

INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

The Conditional Use Permit possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.24.030.

In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the attached Conditions of Approval (Exhibit "A") shall apply to Conditional Use Permit No. CUP-253-08.

ADOPTED this 15th day of January, 2009.

/s/ RON PIERCE
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly Adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on January 15th, 2009, by the following votes:

AYES: COMMISSIONERS: (4) BANKSON, BEARD, PAK, PIERCE

NOES: COMMISSIONERS: (2) BRIETIGAM, KIRKHAM

ABSENT: COMMISSIONER: (1) NGUYEN

/s/ JUDITH MOORE
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6)

A decision becomes final if it is not timely appealed to the City Council. The Appeal deadline is February 5, 2009.

EXHIBIT "A"

Conditional Use Permit No. CUP-253-08

The Can Restaurant and Club, 14241 Euclid Street, Suite C-101

CONDITIONS OF APPROVAL with Revisions from the Addendum Report

Asterisks indicate New or Updated Conditions

** = New Condition of Approval

* = Updated Condition of Approval

- ** 1. The owner/operator shall sign with a notarized signature and provide the City of Garden Grove for recordation a "Notice of Agreement with Conditions of Approval and Discretionary Permit of Approval," as prepared by the City Attorney's Office, on the property required within 30 days of this approval. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Planning Commission.
- * 2. Approval of this Conditional Use Permit No. CUP-253-08, (changing the conditions of the existing Conditional Use Permit No. CUP-285-96), shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the Garden Grove Municipal Code shall apply.
- * 3. All Modifications, including changes to the floor plan, shall be submitted to the Planning Department for review. Modifications that are considered to be minor, because they do not change the intent of the project, may be approved by the Community Development Director. If major modifications are made that result in the intensification of the project or create impacts that have not been previously addressed, a new Conditional Use Permit shall be filed for approval by the Planning Commission. The new Conditional Use Permit shall include all proposed revisions.
- ** 4. All requirements of the Garden Grove Building Division and Fire Department shall be met, including any required occupancy permits and inspections.
- ** 5. The owner/operator of the business shall provide a permanent, separation wall between the restaurant portion of the business and the bar/nightclub area. The bar/nightclub area includes the outdoor patio. The original, approved floor plan shows a low partition wall that separates these areas. The applicant/owner shall submit a detailed floor

plan to construct a full height wall that ties into an existing soffit or is a minimum of 8'-0" in height. This wall shall have two sets of doors that lead into the nightclub/bar/patio area. This wall shall provide visibility between the restaurant and bar areas, with four feet solid wall material at the bottom and above this, a minimum of 50% of the wall area covered in clear and transparent material. The applicant shall submit for review and approval by the Community Development Department a floor plan for a building permit to construct the separation wall within 30 days of the date of this approval and shall finish construction of this wall within 60 days from issuance of a building permit. All changes from the original, approved floor plan including the removal of any booths, counters, etc. that are proposed to remain, shall be included and clearly noted on the floor plan submitted for review and approval by the Community Development Department. Once the floor plan has been approved and a permit issued, a final copy of the floor plan shall be submitted to the Planning Department.

- * 6. The approved floor plan is an integral part of the decision approving this Conditional Use Permit. There shall be no change in the design of the floor plan without the approval of the Community Development Director. Any change in the approved floor plan that has the effect of expanding or intensifying the present use shall require a new Conditional Use Permit. With the exception of the dance floor shown on the approved floor plan, there shall be no platforms of any kind such as raised stages, go-go poles, etc., for use by patrons or performers in the establishment.
- * 7. At all times, there shall be no customers in the establishment under 21 years of age except in the segregated restaurant area. At no time shall the restaurant area be converted into a "club" area for use of bar/nightclub activities with the tables and chairs removed. At all times that the business is operating, the tables and chairs shall remain in place to accommodate dining within the restaurant area. Allowing any person under the age of 21 in the bar/nightclub area (which includes the outside patio) is expressly prohibited by this condition. The outside patio is currently not licensed for alcoholic beverages and there shall be no alcoholic beverages permitted in this area. The outside patio is reserved for smoking only and there shall be no congregating, eating or drinking allowed in this area.
- * 8. The establishment shall be operated as a "Bona-Fide Public Eating Place" that is regularly used and kept open for the serving of meals to guests. The restaurant shall contain sufficient space and equipment to assure a full restaurant kitchen, and the kitchen shall be open and preparing food during all hours the establishment is open. The establishment shall provide an assortment of foods normally offered in restaurants at various times of the day; the service of sandwiches and salads shall not be deemed in compliance with this requirement.

- ** 9. At all times when the premises are open for business, the sale of alcoholic beverages shall be incidental to the sale of food.
- * 10. The business shall operate as a restaurant with a segregated, attached bar/nightclub facility. Alcohol sales shall not exceed 35% of the business gross sales, with a minimum of 65% food sales. Any income or revenue derived from entrance fees, cover charges, sales of merchandise, and non-food related items, shall be excluded from the business gross sales in the calculation of the ratio of food to alcoholic beverage sales.
- ** 11. All Alcohol sales/service shall stop 30 minutes prior to the required closing time.
- * 12. By June 1st of each year, the owner of the establishment shall provide for review to the City of Garden Grove, an audited report of sales ratio of food to alcoholic beverage for the establishment's immediately preceding fiscal year that includes records of purchases from vendors for food and alcohol. The report shall be audited by a Certified Public Accountant firm and be submitted to the City's Community Development Director. In the event the City's Community Development Director finds the audited report to be insufficient to properly document compliance with the sales ratio requirements for food to alcoholic beverages, the City reserves the right to engage its own auditors to review the business for compliance with the sales ratio requirements for food to alcoholic beverages. The owner shall fully cooperate with any requests of the City of Garden Grove including, but not limited to, providing any document, record, report, receipt, and/or invoice requested by the City of Garden Grove to investigate and ensure compliance with the conditions of approval.
- 13. The sale of alcoholic beverages for consumption off of the premises is prohibited.
- * 14. The owner/operator of the business and all employees of the establishment shall not allow any alcoholic beverages to be consumed outside the premises including the outside patio.
- ** 15. No employee or agent shall solicit or accept any alcoholic or nonalcoholic beverage from any customer while in the business.
- * 16. No "B-girl" or "hostess" activity (as defined in Penal Code Section 303) shall occur within the establishment at any time. No employee or agent shall, be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the establishment, nor shall the business provide or permit, or make available either gratuitous or for compensation, male or

female persons who act as escorts, companions, or guests of and for the customers.

- ** 17. The owner/operator shall not lease space, enter into any agreements with promoters or otherwise allow the facility to be used by promoters for the purpose of promotional events such as live bands, flier events, promoter parties or any other type of similar entertainment. "Under 18" or "Under 21" promotion parties are prohibited. Exotic dancers, fashion shows, and special entertainers (i.e., Go-Go dancers, dance models, platform or pole dancers, lap dancers or any other form of adult-oriented entertainment) are expressly prohibited at this establishment. Live entertainment other than that prohibited above shall only be permitted in the bar/nightclub area of the establishment. Amplified music is permitted in compliance with the Municipal Code, "Noise Ordinance" and Condition No. 21 below. Examples of the types of prohibited promotional events are attached to these "conditions of approval" (Attachment No. 3, No. 4. and No. 7 from the Addendum Staff Report).

Any live entertainment at the establishment is the sole responsibility of the owner/operator of the establishment. Disc Jockeys shall be limited to regular employees of the establishment and shall not be independent contractors, volunteers, and/or any other person who is not a regular employee of the establishment. The owner/operator of the establishment shall be solely responsible for all bookings and contractual arrangements for any type of live entertainment allowed by Condition No. 17, except for Disc Jockeys as indicated above. Any advertisement (written, email, webpage, etc.) shall promote the establishment first with secondary/incidental listings of any live entertainment. Any such advertisement that is printed (handbill, flier, printed promotion) shall be limited to distribution within the City of Garden Grove.

- ** 18. Dancing shall only be permitted on the designated "dance floor" as shown on the approved floor plan (see Condition No. 5 above). There shall be no special entertainers (i.e., Go-Go dancers, "dance models", platform or pole dancers, lap dancers or any other form of adult-oriented entertainment) permitted to dance/perform in this business. The owner/operator of the business shall not permit "Taxi Dancing" or similar type of activity, where partners are provided for dancing or social purposes, to occur on the premises. Social purposes include, but are not limited to, the soliciting or accepting of any alcoholic beverages or any other form of gratuity from any customers within the business.
- ** 19. All entertainment, including dancing and all music, shall stop 30 minutes prior to the designated closing time.
- ** 20. No payment (entrance fee/cover charge) shall be charged to gain access

to the business before 10 p.m. at night. All such entrance fees or cover charges shall be charged or collected at the doors/openings to the bar/nightclub area. At no time shall any entrance fee/cover charge be collected at the main entry door or any other door that leads into the restaurant area. At no time, shall the collection of any such payment at the entrance to the bar/nightclub area disrupt the operation of the restaurant as a bona fide eating-place.

- * 21. The sound emitted from the premises shall not be audible outside the boundaries (walls) of the establishment. No amplified music shall be permitted outside of the fully enclosed building. In the event that noise from the business is a nuisance to surrounding properties and/or businesses, the owner/operator shall remedy the situation to the satisfaction of the Community Development Director.
- 22. There shall be no gaming tables or gaming machines as outlined in City Code Sections 8.20.010 and 8.20.050 on the premises at any time.
- * 23. There shall be no pool tables on the premises at any time. A maximum of three (3) arcade games may be permitted provided that the devices do not block or obstruct interior paths of travel as required by the U.B.C. or the U.F.C.
- * 24. There shall be no uses or activities permitted of an adult-oriented nature as defined in City Code Section 9.04.060, Adult Entertainment Businesses and described in City Code Section 9.08.070, Adult Entertainment Uses. Additionally, the owner/operator shall not allow any employees, entertainers, patrons or any other person on the premises to remain when their clothing (or lack thereof) is in violation of the City of Garden Grove nudity laws as contained in Chapter 44, Title 8, of the Municipal Code.
- * 25. There shall be no enclosed booths or rooms excluding kitchen areas and bathrooms on the premises and the wall separating the restaurant area from the bar/nightclub area. Walls and/or partitions exceeding thirty-six (36) inches in height that partially enclose or separate booths shall be of a clear and transparent material. No item shall be placed in the area of booths to limit or decrease the visibility of the interior of the business from any location within the business.
- * 26. Hours of operation shall be permitted only between the following hours: Sunday through Wednesday 8:00 a.m. to 11:00 p.m. and Thursday through Saturday 8:00 a.m. to 1:00 a.m.
- 27. There shall be no deliveries from or to the premises before 8:00 a.m. and after 9:00 p.m. seven days a week.

28. There shall be no customers or patrons in or about the premises when the establishment is closed.
29. The rear doors shall be kept closed at all times during the operation of the premises except in case of emergency or to permit deliveries, or to allow the ingress or egress of employees. Panic hardware on doors shall comply with all City code requirements. Patrons shall enter through the main entry doors only.
30. Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
- * 31. All signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. Neon light may be permitted as part of an approved business sign. Neon lights shall not be used to highlight architectural features of the tenant space unless an overall design has been submitted to and approved by the Community Development Department to incorporate such details on the entire shopping center.
32. The owner/operator of the establishment and the owner of the property shall be responsible for providing lighting in the parking areas during the hours of darkness and the establishment is open. This lighting shall be a minimum of two (2) foot-candles of light on the parking surface and a minimum of one (1) foot-candle of light during all other hours of darkness. Lighting in the parking area shall be directed, positioned, or shielded in such manner as to not unreasonably illuminate adjacent properties.
- * 33. The owner/operator of the establishment shall at her/his own expense provide a minimum of two (2) California licensed, uniformed, security guards from 9:00 p.m. until closing time, on each day that the business is open. In the event, that a security issue arises within the facility and moves outside, the security guards shall continue to ensure the safety and security of the patrons. The owner/operator shall take reasonable steps to monitor and control the parking area. The Police Department may require additional security guards on the premises to address security problems. If it is determined by the Police Department that additional security guards are required, the Police Department shall notify the business owner/operator of the effective date of any required additional security guards. California State law requires licensed security guards to carry "guard cards" while performing their duties.

34. The trash bins shall be kept inside of the trash enclosure and the gates shall remain closed and latched except during disposal and pickup. Trash pickup shall be at least three (3) times a week.
35. Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 120 hours of application.
36. No roof-mounted mechanical equipment shall be permitted unless a method of screening complementary to the architecture of the building is approved by the Community Development Department prior to the issuance of building permits. Said screening shall block visibility of any roof-mounted mechanical equipment from view of public streets and surrounding properties.
- * 37. All ground- or wall-mounted mechanical equipment shall be screened from view from any place on or off the site. The screening of wall-mounted equipment shall be the same material and color as the building wall.
- * 38. The owner/operator of the business and property owner shall be responsible for the continued maintenance of the building exterior, including repainting when needed. The owners are reminded that all building exteriors within the center shall be maintained as required by the PUD design guidelines and Title 9 property maintenance regulations.
- ** 39. The business shall provide proof to the Police Department that all members of the business staff have completed the LEAD training (Licensee Education on Alcohol and Drugs) through the Alcohol Beverage Control Department. This training shall occur within 60 days of this approval.
- ** 40. The business owner/operator shall meet with members of the Planning Department and Police Department on a yearly basis, as determined by City Staff, to discuss operating conditions of the business.
- * 41. This Conditional Use Permit shall be reviewed annually from the date of approval. The Conditional Use Permit may be called for review before the Planning Commission by City staff, City Council, and/or Planning Commission, if complaints are filed and verified as valid by the Code Enforcement office or other City Departments concerning violation of the approved conditions, the Garden Grove Municipal Code, or any other applicable provision of law. For any violations of this Conditional Use Permit No. CUP-253-08, the Garden Grove Municipal Code, and/or any other applicable provision of law, the City may consider taking action up to and including modification, suspension and/or revocation of the Conditional Use Permit.

42. The owner/operator of the business shall submit a signed letter acknowledging receipt of the decision approving this Conditional Use Permit No. CUP-253-08 and his/her agreement with all conditions of approval.
- * 43. A copy of the resolution and conditions of approval for CUP-253-08 shall be kept on the premises at all times. The owner/operator of the business shall train all employees to operate the business in compliance with the conditions of approval.
- ** 44. Conditional Use Permit No. CUP-253-08, shall nullify the prior Conditional Use Permit No. CUP-285-96. The establishment located at 14241 Euclid Street, Suite C-101, shall be operated in compliance with the conditions of approval of CUP-253-08.
- ** 45. In the event that a California Department of Alcoholic Beverage Control (ABC) license is revoked or suspended at the premises for any period of time, the business owner/operator is fined for any ABC violation, a Petition for Offer in Compromise ("POIC") has been accepted by ABC, and/or any sustained violation of rules and regulations enforced by ABC, the Conditional Use Permit may be presented to the Planning Commission for review and/or further consideration as provided in Condition No. 41.

A P P E A L

Request for City Council or Planning Commission
Public HearingRECEIVED
CITY OF GARDEN GROVE
PLANNING COMMISSION

2009 FEB -5 P 2:31

TO: CITY CLERK
CITY OF GARDEN GROVE

Pursuant to Section 9.24.110 of the Municipal Code (see reverse), I hereby appeal the decision of the CIRCLE ONE Planning Commission / Zoning Administrator) in Case No. CUP-253-08, and petition the CIRCLE ONE City Council Planning Commission) for a public hearing to consider CIRCLE ONE (approving denying modifying) the subject application for the following reasons:

Quyen, Inc., dba CAN Restaurant and Nightclub, presently holds CUP-285-96, for the operation of its restaurant and nightclub at 14241 Euclid St., Suite C101-106, which permits it to hold a Type 47 liquor license, and to have live entertainment and dancing. Quyen did not apply for any changes to its existing CUP-285-96. Instead, the City staff initiated the new CUP-253-08, imposing new conditions on Quyen. These new conditions are tantamount to a revocation of the existing CUP-285-96, because they preclude the profitable operation of the business.

On January 15, 2009, the Planning Commission adopted a resolution approving the new CUP-253-08, including an Addendum that was provided to Quyen on January 9, 2009, less than a week before the hearing. The Planning Commission denied Quyen's request for a postponement of the hearing, so that Quyen could prepare a response to the new CUP-253-08 as modified by the Addendum delivered on January 9, 2009. Quyen is willing to agree to some new conditions, as long as the new conditions
(Use additional sheets if necessary)

Date: February 5, 2009 Appeal Fee (see reverse): _____
Appellant: Quyen, Inc., by its President, Victoria Tieu
Address: 14241 Euclid St., Suite C101-106,

City & ZIP: Garden Grove, 92843 Daytime Phone No.: 714-791-0169

Attachment to Appeal by Quyen, Inc., to the City Council, appealing the decision of the Planning Commission approving the new CUP-253-08, and asking the City Council to deny that application initiated by the City Staff.

do not have the effect of revoking the existing CUP-285-96, and will permit the profitable operation of the business.

The operator seeks a hearing before the City Council, to ask the City Council to deny the application submitted by the City staff for the new CUP-253-08, as amended by the January 9, 2009, Addendum, thereby reinstating the existing CUP-285-96.

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

CONTINUED
PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-253-08
APPLICANT: CITY OF GARDEN GROVE
LOCATION: NORTH OF BUSINESS CENTER PARKWAY, SOUTH OF FORBES AVENUE ON WEST
SIDE OF EUCLID STREET AT 14241 EUCLID STREET, SUITE C-101
DATE: JANUARY 15, 2009

REQUEST: A request from the City of Garden Grove to revise the 'conditions of approval' for an existing restaurant with entertainment (The Can Restaurant and Club) that operates with a State Alcoholic Beverage Control Type "47" (On-Sale General, Eating Place) License. The conditions of approval shall be revised through the approval of a new Conditional Use Permit No. CUP-253-08, that replaces the existing Conditional Use Permit No. CUP-285-96. The proposed conditions will clarify the operational requirements of the business and add new strategies to reduce criminal activity, problems, and CUP violations. The site is in the PUD-104-81 Rev. 86, 90, 91/Planned Unit Development-Euclid Business Park zone.

At the December 4th, 2008 Planning Commission meeting, staff distributed a comprehensive staff report to the Planning Commissioners for their review. On January 8, 2009, and January 15, 2009, the Planning Commissioners received supplements to the staff report for their review.

Overview of staff report was read by staff.

Chief Joe Polisar stated that the purpose is to modify The CAN Conditional Use Permit (CUP); that the Staff Report lays out a pattern and practice of violating the CUP that requires nearly full time service from the Police Department; that there have been calls for service, liquor law violations, crime statistics, shootings, stabbings, fights, gang issues and more; that there are photographs of underage juveniles clothed in shorts, bikini tops and heels; that these juveniles are dropped off by family members and they change into their underwear in the bushes; that an undue concentration of liquor licenses in areas contributes to a host of problems; that the study identifies The CAN as the Police Department's number one problem; that two traffic accident fatalities are connected to The CAN; that the City has repeatedly tried to get The CAN to run a respectable and safe business, but to no avail; that the City wants The CAN to be successful, but there needs to be a willingness to do so; that meetings were held with attorneys, police, staff and the owner to discuss concerns; and that it is time for The CAN to be accountable and to abide by a new CUP.

Staff stated that the old Conditional Use Permit does not provide clear direction, therefore, modifications are recommended to clarify the use and requirements of the operation to help the owner to have a successful business; to remove the drain on Police resources; and to protect the public's health, safety and welfare.

Staff further stated that a pattern of behavior has emerged in which the owner/operator of The CAN makes the attempt to operate the business in compliance for a short period of time but is unable to maintain this permanently; that there were two office hearings, one in March of 2008 and one in October of 2008 as there had

been no change in the operation; that in October, the owner was given a draft copy of the new Conditions of Approval, that included, for example, Condition No. 20 regarding cover charges and Condition No. 5 regarding the dividing wall; that The CAN is a restaurant with entertainment, a bona fide eating place with a kitchen that is to be open and preparing food during all hours the establishment is open; that no one under 21 years of age is allowed in the bar area, therefore, Condition No. 5 instructs the owner/operator to provide a full height wall that clearly separates the areas; that the low wall partition has disappeared and the entire floor area is used for events; Condition No. 20 allows for a cover charge after 10:00 p.m. only at the bar and nightclub entrance; Condition No. 17 addresses live entertainment; Condition No. 10 addresses the ratio of food to alcohol sales; and also addressed, are the hours of operation and the cessation of alcohol sales and entertainment thirty minutes prior to closing.

Staff added that The CAN is allowed to have entertainment in the restaurant, however, flyer and promoter parties advertised as 18 and older or 'teen nights' have occurred along with adult oriented activities; that these parties are a direct cause of violations, therefore, Condition No. 17 prohibits promoter/flyer parties and defines the types of adult oriented entertainment that are expressly prohibited; that Staff modified the proposed condition to remove the restriction limiting live entertainment to music conducted by a DJ and dancing, therefore the operator is allowed to have live bands and karaoke; that the owner/operator is solely responsible for the live entertainment.

Staff explained that Condition No. 10, explains incidental alcoholic beverage sales in that alcohol sales shall not exceed 35%; that 35% is consistent with current approvals of Type "47" ABC licenses; and that the revenue from the sale of non-related food, cover charges, and merchandise are not included in the business gross sales.

Staff stated that the hours of operation have been reduced as Police records indicate that serious violations occurring at the CAN occur in the early morning hours; that the Police Watch Commander states that there is nightly monitoring of The CAN; that indoor and outdoor disturbances occur at or near the closing time of approximately 1:00 to 2:00 a.m.; that Police have monitored the egress of customers in order to prevent disturbances from occurring; that the CLEW study indicates that crime connected with ABC outlets increases in the late hours; and that stopping alcohol sales and entertainment thirty minutes before closing allows a more orderly exiting of the establishment.

Staff added that a packet of new statistics has been handed out regarding time, costs, and calls for Police service, along with a letter from the owner/operator's attorney, Mr. Andrew Couch, and the attorney representing the property owner, Catherine Weinberg.

Staff pointed out the location of The CAN restaurant at 14241 Euclid Street; that 365 man hours costing over \$16,000, from January 1 through December 31, 2008 is a documented minimum estimate of the cost for the year, not including officer time writing reports or spot checking and monitoring the business; that 153 out of 218 calls for service were for The CAN, the other 65 calls were for other businesses; that 31 calls were dispatch calls for issues such as noise issues, thefts of purses, cell phones, vehicles broken into in the parking lot, vehicles stolen, and assaults; that the 122 self-initiated calls were the Police monitoring the business; that eight significant arrests included:

March 22, 2008: Officers heard a fight and stopped, 25-30 suspects on patio, seven arrests for drunk in public, one arrest for assault on a Police officer.

July 7, 2008: Two females fighting in business, two arrests for fighting in public, one arrest for assault with a deadly weapon.

September 6, 2008: Patrons leaving The CAN, fight in parking lot, five arrests for drunk in public.

September 20, 2008: Patrons leaving The CAN, argument resulting in suspect hitting officer in face, pepper spray used, six arrests.

September 20, 2008: Two suspects fighting in front of business, batons used, one arrest for assault and battery.

October 18, 2008: Fight inside business, attempt to assault officer, two arrests for resisting arrest and drunk in public.

October 19, 2008: Two suspects fight, one arrest from drunk in public.

November 8, 2008: Suspect hit security guard, 25-30 people fighting in parking lot, one arrest for assault with a deadly weapon.

November 7, 2008: The kitchen is closed, no evidence of food being served, two 18-19 year olds on table on dance floor.

November 14, 2008: The kitchen is closed, no food being prepared, alcohol on the patio, 17 year old and 20 year old on patio, and the patio is unlicensed and not part of the original floor plan.

December 25, 2008: 19 year old inside being offered alcohol by a male subject.

Staff added that documentation includes undercover officers observing minors drinking and being handed alcohol; patrons placing dollar bills in go-go dancer's clothes, alcohol on the patio; fights on the dance floor; kitchen being closed with no evidence of food on tables; photographs of the 14 to 18 year old night in July and August of 2008; foam parties with young girls in the foam pit; that the bar area, though closed, was unsecured; and that the proposed conditions will help the business succeed and address the concerns.

Staff recommended approval of Conditional Use Permit No. CUP-253-08, subject to the conditions of approval, the addendum staff report, and the revisions to Condition Nos. 10, 12, 17, 20, 41, and 45.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Andy Couch, lawyer for the applicant, approached the Commission and asked for a two-week continuance of the hearing in order to study the addendum received the previous Friday and the CD of the raw data provided to CLEW, which he received just before the Planning Commission meeting; that an agreement is close regarding the modified CUP; that The CAN has retained a law enforcement consultant who is preparing a security plan for The CAN; that a new security director will be hired; that

more time is needed to complete the security plan and refine conditions of the CUP; that he sent a November 24th letter to the City and the response was the addendum from January 9, 2009; that the closing time is the biggest issue; that the new security plan would demonstrate the prospect for a reduced need for Police services in the early morning hours to allow The CAN to be open to 2:00 a.m. due to the competition; and that not all the photographs were taken at The CAN.

Commissioner Kirkham stated that he was not in favor of the extension as The CAN had ample time to change their behavior.

Commissioner Brietigam asked Staff to describe the new information provided to Mr. Couch.

Staff responded that on Sunday, January 11, 2008, Mr. Couch requested the raw data for the CLEW study from 2005, 2006, and 2007; that the data was provided by the Police Department for the CLEW study, which in turn, was provided to Mr. Couch on a CD; that the 2008 data in the staff report binder is not included in the CLEW study; that the CLEW study is a useful analytical tool to evaluate issues related to alcohol, however, the facts for calls for service are not in the CLEW study; and that Staff came to the recommendation based on the demands on the Police services, not based on the CLEW study.

Vice Chair Pak asked Mr. Couch if he followed up his request for the extension.

Mr. Couch responded that he contacted the applicant on January 9, 2008, the day he received the addendum; that on January 12, 2008, he spoke with the City attorney to discuss the addendum and further discussions followed, along with a fax this afternoon; that he received the staff report on December 4th; that a law enforcement expert was hired and the holidays intervened; that the City took seven weeks to respond to his November 4th request for information; that he has letters signed by City officials stating that The CAN is in compliance with the original conditions of approval; that The CAN has not been in violation of its CUP for the last ten years; and that The CAN CUP was updated in 1996.

Vice Chair Pak asked Mr. Couch if he agreed that the CLEW study is not the reason for modifying the CUP.

Mr. Couch replied that in the meetings, the CLEW study was mentioned repeatedly; that there are ten businesses at the 14241 Euclid Street address with no reference to suite numbers; and that in two weeks, the owner/operator may choose to accept the modified CUP as presented; that he was also present at an office meeting in October 26, 2006 at which activities in The CAN parking lot were discussed and addressed by installing security cameras; and that between October of 2006 and October of 2008, he could have been reached if there were issues to deal with at The CAN.

Commissioner Brietigam asked Mr. Couch if he represented the owner. Mr. Couch replied yes.

Commissioner Brietigam then asked Mr. Couch if it is the City's responsibility to notify him or to notify the owner/operator?

Mr. Couch replied yes, that it is the City's responsibility to notify the owner/operator, however, he could be reached and did not see much correspondence from the City concerning issues.

Chief Polisar stated that the Police Department gave their opinions regarding over concentration of liquor licenses in areas of the City and were subsequently asked to find studies to support their professional opinion; that an independent group did the CLEW study; that the bulk of the information provided deals with issues of responses and that the CLEW study is an addendum for staff to understand questions asked by City Council and Planning Commission regarding undue concentration of ABC licenses.

Vice Chair Pak asked staff for the number of businesses at 14241 Euclid Street that operate beyond 12:00 a.m.

Staff replied there are issues with at least one other business with regard to violating their CUP; that 153 service calls were for The CAN including the eight significant issues; and that all of the photographs are from The CAN.

Commissioner Brietigam asked Staff to explain why the applicant would abide by the new CUP?

Staff responded that the violations of the CUP are violations of the Municipal Code and could be prosecuted as misdemeanors; that the Code could be enforced by civil nuisance abatement and revocation proceedings on CUP's; and that the City's wish is to help the business be successful, and therefore, has revised the conditions.

Commissioner Brietigam commented that the City has been patient long enough and that a revocation should be processed.

Staff added that revocation is a different application process and a hearing would need to be properly noticed.

Commissioner Kirkham asked staff if the owner/operator is notified when major arrests occur?

Staff responded that it is not clear if the owner/operator is on the property when the business is open; that employees should notify the owner; that the owner is aware of the documents; that there is no 'report of service' left on the property after an incident; that the Code does not have administrative fines for the owner as that would be imposed by a court of law; and that sale of alcohol to a minor is within the State Code and not the Municipal Code.

Staff provided additional information to clarify the violations, as there are times when the owner has been present for CUP violations:

September 20, 2008: Alcohol drinking on patio, the kitchen was closed, the owner was present, a go-go dancer was present in violation of nudity laws.

September 20, 2008: Same day, owner present, under 21 on the patio drinking alcohol, dancers were employees of the promoter and were in violation of nudity laws.

August 15, 2008: Owner present, alcohol violations with under 21 on the dance floor, go-go dancers with nudity violations, male handed minor alcohol, dollar bills placed in go-go dancer's outfits, owner working the bar.

Mr. Couch reiterated that the closing time is a main concern and he would like a two-week postponement to study and talk with staff about a security plan.

Chair Pierce commented that the problems occur later at night.

Vice Chair Pak asked Mr. Couch if there were any promoter events in the next two weeks. Mr. Couch replied no.

Chief Polisar stated that businesses that give the City the most problems are the restaurants that act like nightclubs; that under the existing CUP, The CAN is required to have two security guards on duty all hours the restaurant is open; that the problems do not go away; and that there is no security plan that would change his position.

Commissioner Bankson asked Mr. Couch to explain that if the owner/operator and her representative had been in meetings with Staff since October of 2008, why was there another violation on December 24, 2008? He then commented that instead of ignoring the CUP, the owner/operator should show the City that she is trying to accommodate the City.

Mr. Couch stated that the business is trying to reinvent itself such as keeping alcohol and people under the age of 21 off the smoking patio; that there are conditions that have been complied with; that the existing CUP requires two unarmed licensed security guards; and that on a typical evening there are four to eight security guards.

Staff clarified that the existing CUP requires one licensed uniformed security officer and the revised conditions require a minimum of two security guards from 9:00 p.m. on.

Ms. Victoria Tieu, the owner/operator, approached the Commission and thanked the City and Staff. She stated that she has had the business for 20 years in the same location; that occasionally problems occur; that she would be willing to abide by the rules; and that two weeks are required to review the new information.

Commissioner Beard asked Ms. Tieu if she is the original ABC License holder and if the business is the same. Ms. Tieu replied yes, since 1983 and that she has no other businesses.

Commissioner Beard asked Ms. Tieu for a response to all she has read and heard. Ms. Tieu replied that she is surprised at the figures in the CLEW report; her suite is prominent in the area; the Police Department should investigate the two other clubs that serve alcohol; that one other business should close at 11:00 p.m. or 12:00 a.m. and they are open until 2:00 or 3:00 a.m.; that her business closes at 1:30 a.m.; that she considers her business a restaurant with entertainment and club; and that the alcohol sales are low compared to food sales as people are drinking more water and Red Bull, and that food is always available.

Commissioner Brietigam asked Ms. Tieu to explain why complying with the conditions is so inconsistent. Ms. Tieu replied that in 2006, security cameras were installed; that the business is closed on Mondays; that a promoter approached her to do 'teen'

parties and that when she saw the photographs, she stopped the 'teen' parties; that the Friday night parties have also been stopped.

Commissioner Beard asked if Ms. Tieu agreed with the condition to disallow outside promoters. Ms. Tieu replied yes.

Staff added these statistics regarding the kitchen being open:

March 7, 2008: Tables in restaurant area pushed back along wall to extend dance floor; under 21 at bar and appear intoxicated.

April 11, 2008: 18 and over night, the kitchen is closed and dark, cover charge at front door.

August 16, 2008: Tables are pushed back for extended dance floor, under 21 on dance floor, owner present, alcohol consumed on patio.

August 21, 2008: Go-go dancers nudity violations and working for The CAN, kitchen closed, under 21 on patio.

August 23, 2008: Go-go dancers nudity violations and working for The CAN, the kitchen is closed, under 21 at bar and at patio.

August 24, 2008: The kitchen is closed, 100-125 people on dance floor, over 21 had orange wristbands, two underage on patio.

August 25, 2008: Under 21 on dance floor and patio, Club Stars Night for 14 to 18 years old, no food being prepared in kitchen.

September 20, 2008: Drinking on the patio, kitchen closed, owner present, dancer walking around violating nudity laws.

September 24, 2008: No one working kitchen, patrons dancing on elevated box.

September 26, 2008: Kitchen closed, go-go dancer hired by promoter to dance, 19 year old near bar, no food seen.

September 28, 2008: Two go-go dancers on stage, one paid by business to dance, kitchen closed, under 21 on dance floor, 21 year old allowed inside without identification, no one eating food.

Ms. Teresa Pinon approached the Commission and expressed her concerns that the situation was not improving with regard to excessive noise, kids wandering disoriented, kids on lawn either high or intoxicated; that she cannot believe a business like this operates in Garden Grove; that the problems have progressively become worse over the last two years; and that she replaced her windows due to the loud noises, which could still be heard. She also stated that the owner of The CAN has shown a lack of respect to the community, the other tenants and the Police. She was asked the frequency of problems and replied that they called the Police four times last year and that the business is a nuisance.

Staff added that a current condition states that sound emitted from the premises shall not be audible outside the boundaries of the establishment.

Ms. Catherine Weinberg, the property owner's attorney, approached the Commission and stated that she supports the City's efforts; that the owner wants to protect property values; and that the property owner is in agreement with the City's revised conditions and would be willing to consent to all necessary modifications including the higher wall with proper permits.

Commissioner Kirkham stated that per Ms. Weinberg's letter, the tenant's lease expires on April 30, 2009 with a five-year option to extend.

Ms. Weinberg replied that the tenant has the option to lease the premises for an additional five years.

Ms. Blandina Bryant approached the Commission and expressed her concerns regarding the loud music; that she has called the police; that nothing has been done about it; that teens are all over the parking lot; that the kids should be inside the building especially at 1:00 a.m.; and that there is smoking and card playing.

Staff provided more information regarding the revocation, that under Title 9 of the Municipal Code Section 9.24.030 Subsection D, Subsection 10, a hearing body may initiate revocation proceedings for any land use action designated by this title, and require findings, the hearing body may revoke or modify the land use action if any one of the findings are made.

- 1) The approved use is being or recently has been exercised contrary to the terms of or conditions of such approval or in violation of any statute, ordinance or regulations.
- 2) The approved use was so exercised that to be detrimental to the public safety or so as to constitute a public nuisance.

Staff explained the four options available; to continue this matter asking Staff to return with additional information; to adopt Staff's recommendation to revise the CUP and/or to modify the Staff's recommendation; to deny Staff's recommendation and allowing the current CUP to stand; and to bring back the matter for a revocation hearing. If so, a 10-day notice would be provided to the property owner stating the Planning Commission's intention to revoke the CUP.

Mr. Couch approached the Commission and referenced the 2006 letter by Catherine Weinberg that was included in the December 4th staff report; that in 2004, The CAN filed a lawsuit against the landlord over the option to extend the lease; that the lawsuit was resolved, however, a letter was only sent to the City; and that any card playing or smoking inside a building was probably the coffee shop next door to The CAN.

Vice Chair Pak asked Ms. Tieu to clarify the Fire Department letter dated August 6, 2008 with regard to occupancy from 1999 to 2008, specifically that the counter and chair area has been removed and the food tables were moved to enlarge the dance floor.

Ms. Tieu stated that the rails and bar stools were removed so that people wouldn't sit around the dance floor and block the view; that tables replaced the stools; that a 36" flower box on wheels had divided the restaurant from the dance floor, and now a \$7000 wall has been installed.

Commissioner Beard asked Ms. Tieu to explain the employment of dancers, underage drinking, and how often she is on the premises.

Ms. Tieu eliminated the dancer after the office hearing; that wristbands are used for 21 and over; that on December 24th, two underage ladies came in with the band; that she is present every night; that the kitchen is always open and serving food; that when there is no food order, the kitchen area is dark.

Commissioner Brietigam stated that the Police reports indicated that underage people were intoxicated and asked Ms. Tieu if anyone that is intoxicated is allowed into the restaurant.

Ms. Tieu replied no; that drinking could occur in the car and they come back in unnoticed.

There being no further comments, the public portion of the hearing was closed.

Chief Polisar stated that this is a critical and very important public safety issue; that Staff's recommendation is to modify the CUP; that the City wants The CAN to be successful, however, if past performance is any indication of future behavior, other recommendations would come back to the Planning Commission.

Commissioner Beard commented that The CAN is a big problem occurring now as is clear from the reports and testimony; that the pattern needs to be broken; that he supports Staff's recommendation; that the City Attorney shows there were findings; that they need to be supportive of the residents; and that this is The CAN's last chance.

Commissioner Brietigam commented that the City has been lenient with the business, however, revocation is necessary and imperative, especially with the assaults on the Police Department.

Commissioner Kirkham agreed with Commissioner Brietigam as there is a limited amount of Police officers; that there were 142 violations in 2008; that the owner knows this is happening; and that we want to save businesses, however, this is costing the City too much.

Commissioner Bankson asked Staff to clarify why they did not recommend the revocation process.

Chief Polisar replied that there were many discussions with legal counsel about how to handle this case; that the City's intent is to help make the business successful, and based on direction from the City Attorney, they chose to modify the Conditions of Approval. He also told the Commission there is a strong message that if the establishment does not comply with its requirements, Staff would be back with a case for revocation.

Commissioner Bankson commented that he supports Staff's recommendation, however, at a moment's notice, if there is one violation, he would support a revocation.

Vice Chair Pak agreed that Staff's recommendation should help the restaurant to be a nice dining venue with entertainment; that The CAN has gone beyond the limits of

being a restaurant and breeched the trust of the public; and that the CUP should be followed for The CAN to succeed in the community.

Commissioner Beard asked staff if The CAN is pending a revocation of their liquor license. Staff replied that they are unaware of any pending issues; that the ABC has their own administrative board with investigators checking into noise violations.

Chair Pierce commented that he supports the City's recommendation.

Commissioner Brietigam moved to bring back a resolution for a revocation hearing on the original Conditional Use Permit No. CUP-285-96, seconded by Commissioner Kirkham. The motion failed with the following 3-3 vote:

AYES:	COMMISSIONERS:	BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	BANKSON, PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN

Vice Chair Pak moved to approve Conditional Use Permit No. CUP-253-08, seconded by Commissioner Bankson, pursuant to the facts and reasons contained in Resolution No. 5665. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, PAK, PIERCE
NOES:	COMMISSIONERS:	BRIETIGAM, KIRKHAM
ABSENT:	COMMISSIONERS:	NGUYEN

GARDEN GROVE POLICE DEPARTMENT

Attachment 5

DISPATCH TIME: 2251
 ARRIVAL TIME: 2257
 CLEARED TIME: 2348

☒ CRIME/INCIDENT REPORT
☐ DOMESTIC VIOLENCE
☐ BICYCLE REPORT

DR# 09-01408

☐ JUVENILE
☐ HATE CRIME
☐ GSU
☐ CONFIDENTIAL

REPORTED TO POLICE ON:		TIME	PRIMARY	RELATED
DAY	DATE			
Thursday	01-29-09	2251	Officer's Report	
ADDRESS OF OCCURRENCE		BUSINESS NAME	PHONE	DIVISION
14241 Euclid St.		"The Can"	714-534-3001	2-3
				DISTRICT
				117

OCURRED ON	DAY	DATE	TIME	OR BETWEEN	DAY	DATE	TIME
Thursday		01-29-09	2251				
VIC / INF / DIS		LAST	FIRST	MIDDLE	SOCIAL SECURITY #		CDL NUMBER
(O)							
RESIDENCE ADDRESS		CITY	STATE	ZIP	PHONE		
BUSINESS NAME / ADDRESS OR SCHOOL		CITY	STATE	ZIP	PHONE		
"The Can" 14241 Euclid St.		Garden Grove	CA	92843	714-534-3001		
#C101							
SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	DOB	AGE
							CELL PHONE #

INTERPRETER NEEDED <input type="checkbox"/> YES		VICTIM PHYSICAL CONDITION						
LANGUAGE		<input type="checkbox"/> NO IMPAIRMENT	<input type="checkbox"/> YOUNG/SMALL	<input type="checkbox"/> ELDERLY	<input type="checkbox"/> EMOTIONALLY UPSET	<input type="checkbox"/> SICK/INJURED	<input type="checkbox"/> MENTAL/PHY DISB	<input type="checkbox"/> ALCOHOL/DRUG
VIC / INF / DIS		LAST	FIRST	MIDDLE	SOCIAL SECURITY #		CDL NUMBER	
RESIDENCE ADDRESS		CITY	STATE	ZIP	PHONE			
BUSINESS NAME / ADDRESS OR SCHOOL		CITY	STATE	ZIP	PHONE			
SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	DOB	AGE	
							CELL PHONE #	

INTERPRETER NEEDED <input type="checkbox"/> YES		VICTIM PHYSICAL CONDITION						
LANGUAGE		<input type="checkbox"/> NO IMPAIRMENT	<input type="checkbox"/> YOUNG/SMALL	<input type="checkbox"/> ELDERLY	<input type="checkbox"/> EMOTIONALLY UPSET	<input type="checkbox"/> SICK/INJURED	<input type="checkbox"/> MENTAL/PHY DISB	<input type="checkbox"/> ALCOHOL/DRUG
VICTIM VEHICLE		LICENSE	STATE	YEAR	MAKE	MODEL	BODY	COLOR
VEHICLE DAMAGE		DISPOSITION OF VEHICLE					PHOTO TAKEN	
							<input type="checkbox"/> YES <input type="checkbox"/> NO	

PROPERTY CODES		S - STOLEN	R - RECOVERED	S/R - STOLEN & RECOVERED	L - LOST	VALUE
P/C	QTY	ARTICLE	BRAND	MODEL	SERIAL #	DESCRIPTIVE DETAIL

Officer's responded to location regarding underage girls that were intoxicated and being allowed inside of the business. The calling party believed that the girls were between the ages of 14 and 15 years old. While Officer's were inside of the businesses they noticed Conditional Use Permit (CUP) violations.

ADDITIONAL FORMS USED	<input checked="" type="checkbox"/> NARRATIVE	<input type="checkbox"/> ARREST	<input type="checkbox"/> P/E	<input checked="" type="checkbox"/> MO DATA	<input type="checkbox"/> VEH REPORT	<input type="checkbox"/> SUSPECT	<input type="checkbox"/> CSI	<input type="checkbox"/> OTHER	<input type="checkbox"/> COPY OF TEMP. RESTRAINING ORDER	<input checked="" type="checkbox"/> ADDITIONAL PERSONS
OFFICER / BADGE #	TIME				BROADCAST		PRINT SUPERVISOR NAME / INITIAL			
DeGuire #3294							<i>T. Roman 14241/1-31-09</i>			

GARDEN GROVE POLICE DEPARTMENT

NARRATIVE/PROPERTY

☐ JUVENILE

DR 09-01408

☐ CONTINUATION

☐ SUPPLEMENT DATE _____ TIME _____ Hrs.

☐ RECLASSIFICATION

☒ INCIDENT / ARREST NARRATIVE

Officer's Report
TYPE OF REPORT

PAGE 1 OF 1

PROPERTY CODES: S = STOLEN R = RECOVERED S/R = STOLEN & RECOVERED L = LOST

P/C	ARTICLE	BRAND	MODEL	SERIAL #	DESCRIPTIVE DETAIL	VALUE
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On Thursday, January 29, 2009 at approximately 2251 hours Officer ELFARRA and I were dispatched to 14241 Euclid St. # C101 "The Can" nightclub in reference to underage intoxicated females being allowed inside of the business. Upon our arrival we approached the front door to the business, which was being manned by one security guard. The front door to the business was locked and he had to knock on the door to have an individual inside unlock the door and allow us inside of the business. All persons entering the business had to go through a door that was located directly next to the east bar. This door is located in an area where no persons under the age of 21 are allowed to be per the CUP.

Once inside of the business I noticed that there was a person in the kitchen however I saw no food being served and no menus that were accessible to the patrons. I noticed many individuals on the dance floor and standing next to the bar that did not have wristbands indicating that they were 21 years old. This is a violation of their CUP.

Officer ELFARRA and I spoke with four girls that were on the patio and all under the age of 21. Those girls, [REDACTED] and [REDACTED] said that they did not know they were not allowed to be on the patio and the dance floor.

I request that a copy of this report be forwarded to investigations for further review.

OFFICER / BADGE #:

APPROVED BY:

DeGuire #3294

GARDEN GROVE POLICE DEPARTMENT ADDITIONAL PERSONS REPORT

DR#: 09-01408

DATE: 01-29-2009

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
(O)	[REDACTED]	F	W	[REDACTED]	19	[REDACTED]
AKA'S/MONIKERS						
n/a						
RESIDENCE ADDRESS		CITY/STATE		ZIP	RES. PHONE	
[REDACTED]		Redondo Beach, CA		90278	[REDACTED]	
BUSINESS ADDRESS		CITY/STATE		ZIP	BUS. PHONE	
n/a		n/a		n/a	() n/a	
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
(O)	[REDACTED]	F	W	[REDACTED]	19	[REDACTED]
AKA'S/MONIKERS						
n/a						
RESIDENCE ADDRESS		CITY/STATE		ZIP	RES. PHONE	
[REDACTED]		Auga Dulce, CA		91350	[REDACTED]	
BUSINESS ADDRESS		CITY/STATE		ZIP	BUS. PHONE	
n/a		n/a		n/a	() n/a	
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
(O)	[REDACTED]	F	W	[REDACTED]	20	[REDACTED]
AKA'S/MONIKERS						
n/a						
RESIDENCE ADDRESS		CITY/STATE		ZIP	RES. PHONE	
[REDACTED]		Irvine, CA		92614	[REDACTED]	
BUSINESS ADDRESS		CITY/STATE		ZIP	BUS. PHONE	
n/a		n/a		n/a	() n/a	
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
(O)	[REDACTED]	F	W	[REDACTED]	19	[REDACTED]
AKA'S/MONIKERS						
n/a						
RESIDENCE ADDRESS		CITY/STATE		ZIP	RES. PHONE	
[REDACTED]		Bonita, CA		91902	[REDACTED]	
BUSINESS ADDRESS		CITY/STATE		ZIP	BUS. PHONE	
n/a		n/a		n/a	() n/a	
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						
OFFICER / BADGE #		DeGuire #3294				

CODES: S-SUSPECT; V-VICTIM; W-WITNESS; I-INFORMANT; RO-REG. OWNER; LO-LEGAL OWNER; O-OTHER

GARDEN GROVE POLICE DEPARTMENT ADDITIONAL PERSONS REPORT

DR#: 09-01408

DATE: 01-29-2009

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
(O)	Officer ELFARRA #3740					
AKA'S/MONIKERS						
RESIDENCE ADDRESS			CITY/STATE		ZIP	RES. PHONE ()
BUSINESS ADDRESS			CITY/STATE		ZIP	BUS. PHONE (714) 741-5704
GGPD						
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
AKA'S/MONIKERS						
RESIDENCE ADDRESS			CITY/STATE		ZIP	RES. PHONE ()
BUSINESS ADDRESS			CITY/STATE		ZIP	BUS. PHONE ()
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
AKA'S/MONIKERS						
RESIDENCE ADDRESS			CITY/STATE		ZIP	RES. PHONE ()
BUSINESS ADDRESS			CITY/STATE		ZIP	BUS. PHONE ()
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

CODE	NAME (LAST, FIRST, MIDDLE)	SEX	RACE	D.O.B.	AGE	CDL/ID NUMBER
AKA'S/MONIKERS						
RESIDENCE ADDRESS			CITY/STATE		ZIP	RES. PHONE ()
BUSINESS ADDRESS			CITY/STATE		ZIP	BUS. PHONE ()
WHAT INFORMATION CAN THIS PERSON PROVIDE?						
<input type="checkbox"/> ELEMENTS OF THE CRIME <input type="checkbox"/> SUSP DESCRIPTION <input type="checkbox"/> VEH DESCRIPTION <input type="checkbox"/> CAN ID SUSPECT <input type="checkbox"/> OTHER <input type="checkbox"/> SUPPLEMENT						

OFFICER / BADGE #	DeGuire #3294
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CODES: **S**-SUSPECT; **V**-VICTIM; **W**-WITNESS; **I**-INFORMANT; **RO**-REG. OWNER; **LO**-LEGAL OWNER; **O**-OTHER

GARDEN GROVE POLICE DEPARTMENT

PART II OFFENSES / ARRESTS OTHER REPORTED EVENTS

DR 09-01408

DO NOT COMPLETE THIS FORM ON THE FOLLOWING:

STORED/IMPOUNDED/RECOVERED VEHICLE REPORTS
COURTESY REPORTS
SUPPLEMENTAL ARRESTS

CATEGORY: (SELECT ONE)

SEX CRIMES: Complete sex crimes MO below * (SELECT ONE)

8 Other Numbered Events

PART II OFFENSES (SELECT ONE)

OTHER NUMBERED EVENTS	OUTSIDE WANT / WARRANTS
87 Officer's Report	

WHEN EVENT OCCURRED (SELECT ONE)

Month	HOUR TIMESPANS			
01 Jan	<u>2HR SPAN</u>	<u>4HR SPAN</u>	<u>8HR SPAN</u>	<u>12HR SPAN</u>
<u>Day of Week</u>	58 2200-2359			
25 Thu	<u>OVERNIGHT</u>	* For overnight timespan, mark day discovered		

TYPE OF PREMISES (SELECT ONE)

HIGHWAY
PARKING LOT
RESIDENCE
FOOD/AMUSEMENT 33 Bar/Nightclub
SALES
SERVICES
MISCELLANEOUS

If Other:

CONCLUSION OF EVENT

(SELECT ONE)

9 Not A Crime

SEX CRIMES MO INFORMATION (SELECT ALL THAT APPLY)

OCCURRED IN VEH
INITIAL CONTACT
ENTICEMENT
FORCE
OTHER MEANS
SUSPECT WAS
MASTURBATION
ORAL COPULATION
ABNORMAL ACTS

(Describe Other Unusual Acts, Statements, or Trademarks)

OFFICER/ BADGE # DeGuire #3294