

# PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING JULY 22, 2010

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**ITEM V-B:** 

ORDINANCE AMENDMENTS - ZONING ORDINANCE AND MUNICIPAL CODE (TITLE 9) - CITYWIDE - FILE #2010PL-048; PROJECT #OA-000023

## **REQUEST**

Amendments to the Zoning Ordinance are proposed to require restaurants to obtain a Conditional Use Permit prior to providing amplified live or recorded music and holding public dances. Amendments to the Municipal Code are also proposed to address seating at restaurants and to clarify when a dance permit is required.

Applicant – City of Roseville, Planning & Redevelopment Department

# **SUMMARY RECOMMENDATION**

The Planning Department recommends that the Planning Commission take the following actions:

- A. Recommend that the City Council approve the proposed Zoning Ordinance Amendments; and
- B. Recommend that the City Council approve the proposed Municipal Code Amendments.

## **SUMMARY OF OUTSTANDING ISSUES**

There are no outstanding issues associated with this request. The Planning & Redevelopment Department has worked in conjunction with the Police Department, Code Enforcement Division, and Attorney's Office to address the issues outlined in this report and conducted public outreach to the restaurant business community and Chamber of Commerce. To date no concerns have been expressed.

#### **BACKGROUND**

At the March 17, 2010 Council meeting, staff was directed to bring forward modifications to the Zoning Ordinance and Municipal Code to address public safety and enforcement issues arising from restaurants that were operating as nightclubs. The Council Communication is provided as **Attachment 1**.

Historically the City has had issues with restaurants turning to nightclub operations as a way of generating a significant portion of their revenue. Due to the typical hours of operation and potential for noise and other associated impacts, nightclubs are required to obtain a Conditional Use Permit (CUP) in the commercial and industrial zones, were allowed. Following the City's experience with Big Shot Billiards, additional regulations were adopted for nightclubs including; nightclubs shall also be at least 500 feet from a residential zone, and notice of the CUP application shall be provided to all property owners within 1,000 feet of the use (300 feet is the standard noticing requirement).

More recently, The Station and Cloud 9 created public safety and enforcement issues by altering their operations from typical restaurant operations to those more typical of a nightclub after restaurant hours without first obtaining the required CUP. This issue was further compounded because both establishments were located adjacent to residential zones, where the separation requirements would prohibit a nightclub. The commonality between these restaurant establishments is that after normal restaurant hours they provided amplified music and space for dancing. Staff has spent numerous hours

trying to clarify for these establishments the differences between a restaurant use and a nightclub use, as well as enforcing the Zoning Ordinance and dance permit regulations.

The primary purpose of a restaurant is to provide food service, whereas the primary purpose of a nightclub is to provide music/entertainment, dancing and alcohol service. As demonstrated through recent experience, the Zoning Ordinance does not establish a bright enough line between a restaurant and a nightclub. Additionally, there is inconsistency between the Municipal Code and the Zoning Ordinance with regards to when a dance permit is required. Therefore, a key focus of the amendments is to remove the potential for inconsistency by aligning the two codes governing nightclubs, restaurants and dance permits, as further addressed below.

The Council adopted the Downtown Specific Plan (DTSP) in April of 2009. The DTSP identified the Historic Old Town (HOT) district as an entertainment district and addressed potential noise issues. Consistent with the plan, nightclubs were principally permitted in portions of the HOT district upon approval of a Zoning Clearance (ZC). The ZC was designed to be a streamlined CUP process; the same criteria that would be applied to nightclubs through the CUP process (e.g. security plan, queuing lines, lighting, hours of operation, and noise reduction standards) are required for nightclubs in the Downtown with the ZC entitlement. Restaurants are principally permitted in all districts Downtown and do not require a ZC or CUP.

## PROPOSED AMENDMENTS AND EVALUATION

The pertinent regulations addressing what constitutes a restaurant or a nightclub are included in the City's Zoning Ordinance. The Municipal Code regulates dance permit requirements (when they are needed) and how dance permits are administered. Staff is proposing to modify the Zoning Ordinance and Municipal Code as follows:

## **Zoning Ordinance:**

The definition for a restaurant (Eating & Drinking Establishment) would be modified to restrict amplified music and dancing. Restaurants that wish to provide amplified music and dancing would be considered a Nightclub and would be required to obtain a CUP (a ZC in the principally permitted portion of the HOT district) and a dance permit. The definition of a Full Service restaurant would also be expanded to include the provision that fixed seating or tables and chairs shall be provided for the seating of each patron or customer at all times.

## Municipal Code:

The definition of a Public Dance would be modified to clarify the type of music provided (amplified) and the location; held within establishments that provide floor space for dancing. The definition would also be simplified to eliminate the discussion on fixed seating and chairs and what is not considered a public dance.

The proposed amendments are provided in redline/strikeout format in **Exhibit A**. Established restaurants that are operating consistent with the current zoning ordinance requirements that offer some level of music and dancing would not be affected by the proposed modification, and could continue to operate. A map showing the pre-existing nightclubs has been provided as **Attachment 2**. The proposed municipal code regulations would only apply to new restaurants or existing restaurants that do not currently offer nightclub activities and wish to convert to a nightclub.

The proposed changes to the Zoning Ordinance will prevent restaurants from offering dancing and other activities associated with a nightclub unless they first secure a CUP. As a condition of the CUP, a public dance permit will be required. This approach accomplishes several goals of the City which are: to minimize public health and safety concerns by incorporating conditions into the CUP that address nightclub operations; to provide a clearer definition of, and distinction between, a restaurant and a nightclub; and, to eliminate enforcement challenges by more closely aligning the provisions of the Zoning Ordinance with the public dance permit requirements in the Municipal Code. The intent is not to establish additional regulatory barriers to businesses currently operating or interested in locating in Roseville, rather it is to address a public health and safety concern that arises when restaurants turn to nightclub operations. Staff believes the proposed amendments will meet the original purpose of eliminating the potential for inconsistency between the two codes when administering and/or interpreting existing restaurant and nightclub regulations and dance permit requirements. The amendments will also minimize the time and effort that is currently dedicated to enforcing nightclubs and restaurants that provide amplified music and dancing.

## RESEARCH

In preparing the proposed amendments, staff researched other jurisdictions to see how they differentiate between restaurant and nightclub uses, if permits are required for nightclubs or restaurants that offer music and dancing, and who enforces the regulations. Staff found that although the term used to describe a nightclub varied between cities (i.e. discotheque), each City associated a "nightclub" with an establishment that provided dancing, music and alcohol service. Nightclubs were listed separate from a restaurant use; with the exception of the City's of Rocklin and Lincoln, which did not address and therefore do not permit nightclub activities within their city. The City of Rocklin's Police Department is actively working on developing a nightclub ordinance. In all cities researched an additional permit was required for nightclub uses, were permitted. The findings of staff's research are provided in the table below.

#### Comparison of Permit Requirements for Nightclubs by City

City	Permit Type	Who Enforces
Roseville	Conditional Use Permit/Dance Permit	Planning/Police
	(no change to permit type proposed)	_
Folsom	Conditional Use Permit	Planning
Rancho Cordova	Conditional Use Permit	Planning
Citrus Heights	Use Permit	Planning/Finance
Fullerton	Conditional Use Permit	Planning
Sacramento	Conditional Use Permit/Entertainment Permit	Planning/Police
Palo Alto	Conditional Use Permit	Planning
Rocklin	(No additional permit required for Bars & Restaurants; nightclub activities not	
Lincoln	addressed)	

The table above demonstrates that the Roseville proposed amendments requiring a Conditional Use Permit (CUP) for nightclub activities are similar to those of other cities. The proposed amendments also take into consideration Roseville's existing permitting system. By using the established CUP and dance permit entitlements to regulate restaurants that provide music and space for dancing, the proposed amendments will not create the need for additional permit types to be created. Based on the research listed above and the minimal impact to the existing code, staff feels the proposed amendments are the most appropriate solution to address Council's concerns.

## **PUBLIC NOTICE**

On June 3, 2010, staff sent a letter to the Chamber of Commerce and to existing Roseville restaurants that could possibly want to convert to a nightclub, notifying them of the proposed amendments to the Code. The letter (provided as **Attachment 3**) requested that they contact the City if there were any concerns or questions with the proposed amendments or if they wished to be notified of future public hearings. Of the approximately 90 letters that were mailed, staff only received two (2) responses. Piatti's restaurant and The Station did not express concerns but did request to be notified of the public hearing. Notices of the Planning Commission hearing were mailed to those two restaurants. Consistent with the City's noticing requirements, the notice of the Planning Commission hearing was also posted in the paper and at the Civic Center. Prior to the public hearing, staff also contacted the Chamber to see if they were interested in staff attending a Chamber meeting or discussing this item further. The Chamber did not express an interest. Since no concerns were expressed staff is moving forward with the proposed amendments to Planning Commission and City Council.

## **ENVIRONMENTAL DETERMINATION**

The proposed project is not defined as a "project" by the California Environmental Quality Act (CEQA) Section 15378 (b) (2), as the action will not result in a direct physical change on the environment. The proposed project will result in administrative changes only. Therefore, the Commission's action is not subject to environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines.

## **RECOMMENDATION**

The Planning Department recommends that the Planning Commission take the following actions:

- A. Recommend that the City Council adopt the two (2) findings of fact for approval the Zoning Ordinance Amendments as stated below:
  - 1. The proposed Zoning Ordinance Text Amendment is consistent with the public interest, health, safety, and welfare of the City; and
  - 2. The proposed Zoning Ordinance Text Amendment is consistent with the City of Roseville General Plan and any Specific Plan within the City.
- B. Recommend that the City Council approve the Zoning Ordinance Amendments as outlined in Exhibit A; and
- C. Recommend that the City Council approve the Municipal Code Amendments as outlined in Exhibit A.

# **ATTACHMENTS**

- 1. Council Communication dated March 3, 2010
- 2. Pre-existing Nightclubs Map
- 3. Letter to Roseville restaurants dated June 3, 2010 with mailing list

#### **EXHIBIT**

A. Proposed Zoning Ordinance and Municipal Code Amendments