

These minutes were approved by the Zoning Administrator on 05-23-13.

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR
ZONING ADMINISTRATOR MEETING
May 22, 2013**

Staff Present: Jim Pechous, Cliff Jones, and Kimberly Maune

2. MINUTES

Minutes of the Zoning Administrator meeting of May 8, 2013 received and filed.

3. ORAL AND WRITTEN COMMUNICATION

None

4. PUBLIC HEARING

A. 212.5 Avenida Del Mar – Amendment to Minor Conditional Use Permit 05-158 – San Clemente Wine Company (Jones)

A request to consider an amendment to the Conditional Use Permit to allow service of alcohol from 10:00 a.m. to 12:00 midnight and allow non-amplified music from 10:00 a.m. to 11:00 p.m. The project site is located at 212.5 Avenida Del Mar, legal description being Lots 29 and 30, Block 16, Tract 779, Assessor's Parcel Number 058-111-56.

Associate Planner Cliff Jones summarized the staff report.

Mr. Pechous asked what other establishments in the immediate area have similar restrictions and are open later with live entertainment. Mr. Jones stated Beach Fire and The Shore both have live entertainment, and similar operating conditions are placed upon those operations. Both have amplified sound and full service of alcohol, not just beer and wine. Mr. Pechous asked if there have been any problems with either establishment. Mr. Jones responded occasionally Code Enforcement receives complaints regarding noise. Beach Fire does not have the condition that their doors and windows remain closed; San Clemente Wine Company would have that condition.

Mr. Pechous asked what the distance is to the closest residential unit. Mr. Jones and Mr. Pechous examined the location map; there are homes behind Beach Fire. Mr. Pechous stated this business only has a front door for customers' ingress and egress so no residences behind this establishment would be impacted.

Jeffrey Wayne Lloyd and Stacey Lloyd were present. Mr. Lloyd stated he and his wife Stacey own San Clemente Wine Company. Mr. Lloyd stated they know Beach Fire doesn't have their glass doors closed and they can hear them. He will have non-amplified music such as a Latin guitar player. He doesn't know what the City decibel limitations are; he imagines the normal noise level from his crowd will be louder than the decibel level of a guitar player. He is wondering if the requirement to keep the doors and windows closed is because of potential future tenants who may have music which makes a lot of racket versus what he is planning. He would be willing to purchase a decibel meter if he knew what the limitations were, and if he is going to increase the noise level of acoustical music above the limit then he will close the doors. In the summer it is unbearably hot inside the shop. His small air conditioner cannot keep his shop and customers cool during the heat of the day. It will be suffocating inside with the doors closed; his customers will be uncomfortable. He isn't sure if this is a reasonable concern.

Mr. Jones stated that Beach Fire has to keep their windows and doors shut after 10:00 p.m. That approval occurred in 1999. City best management practice for live entertainment that is amplified is to make sure the doors and windows are shut during the live entertainment.

Mr. Lloyd stated he is very concerned about ventilation. Last summer was unseasonably hot and humid, it just happened to be their first and only experience. He is terrified that if he closes the doors he will create a hot box environment which is going to be a huge detriment. He might as well not even be here if he has to close the place up like an Easy Bake Oven. The whole purpose of having non-amplified music is to keep the noise level down so he doesn't have to worry about that. He has Dutch doors, he could close the bottoms and leave the tops open; he is willing to compromise however he can.

Dave Gutierrez was present and stated that his office is located at 209 Avenida Del Mar Suite 204, directly across from this operation. Mr. Gutierrez asked if there are any outdoor music venues in the T-zone, primarily El Camino Real and Del Mar. Mr. Jones stated he isn't aware of any; however, he hasn't thoroughly researched to see if there are any. Mr. Gutierrez would like staff to get back to him; he wants to know if there are any outdoor music permits under a Conditional Use Permit. He believes that could be a good comparison. If Mr. Lloyd has to keep his doors shut, and someone else has a venue that is outside, it is probably ten times as bad. Mr. Lloyd has a real problem if he has to shut his doors and windows. He has no windows; he has an air conditioner that probably has a higher decibel level than his music will have.

Mr. Gutierrez stated the hours of music on Del Mar are generally not beyond midnight. Mr. Pechous stated that The Shore and Beach Fire are both allowed to have music beyond 11:00 p.m.; this application is for non-amplified music until 11:00 p.m. Mr. Gutierrez asked staff to let him know what time the latest allowed music is currently on Del Mar. Mr. Jones stated he will provide Mr. Gutierrez with the inventory the City has which lists all of the live entertainment permits in the City. Mr. Gutierrez asked if The Shore is most likely the latest. Mr. Lloyd responded he thinks it is.

Mr. Gutierrez asked if the sound ordinance is the same throughout the City. Mr. Pechous stated there is one sound ordinance which applies universally. Mr. Gutierrez asked if there are locations similar to the applicants' that want to provide music, such as Ole Hanson or Casa Romantica, can they provide live music beyond a certain hour. Mr. Pechous responded they all have to have live entertainment permits.

Mr. Lloyd stated Iva Lee's has blues music and they are in the T-zone. He would like to know what the allowed decibel level is. Mr. Jones responded he doesn't have that information at hand but he can provide it. Mr. Lloyd stated he wants to be a good citizen; he wants to stay in compliance. He would also like to know at what distance from the source of the sound he needs to be at to measure properly with a decibel meter.

Mr. Lloyd stated he wants people to come in and relax with a glass of wine. He wants Latin guitar in his shop. He cannot afford to have a lot of noise because it would tear people's evenings up. If he closes the doors he will be suffocating people in the summer. Winter time should be okay. At no time will he have a group, a band, or a choir; he doesn't even think he wants singing.

Mr. Gutierrez stated that the sound level from commercial to commercial is 60 decibels, the street generates 72 decibels, commercial to residential from 7:00 a.m. to 10:00 p.m. is 65 decibels, and after 10:00 p.m. it drops to 60 decibels. The road itself generates higher decibels than Mr. Lloyd's business is going to generate with background acoustics.

Mr. Pechous stated generally the City wouldn't consider a Latin guitarist as a big issue with noise. The problem is he isn't approving a Latin guitarist; he is approving an acoustical permit to play anything the applicant wants. If it is a drum band, for example, that would be loud. The reason he cannot limit it to a Latin guitar is simply because of free speech requirements. The City Attorney has stated that the City cannot restrict a business to one certain type of music. The key is that the business cannot exceed the decibel levels and requirements. Acoustical is generally thought of as a little bit more mellow in terms of the types of sounds that are generated. They don't usually have the low bass which is

about 99 percent of the problem with amplified music, the bass seems to travel long distances compared to the midrange sounds which do not cause problems.

Mr. Pechous and Mr. Jones examined the floor plan and Mr. Pechous stated what the applicant has going for him is his directional situation. Mr. Lloyd stated the music will be in the center of the room so there should be no reverb transfer to the walls; he is trying to minimize any bleed through effect.

Mr. Pechous stated the problem with not closing the door is that is a standard condition of approval applied universally through the entire City. His concern with allowing Mr. Lloyd to do it would be the repercussions of what that would mean to all of the other venues in the City. Certainly other people have the same problem in the summer with the heat.

Mr. Pechous stated there is a piece of equipment which warns once the decibel level has been exceeded. The device can be placed at the entrance to the shop. The device would be more expensive than buying a decibel meter. The device would be one possible solution.

Mrs. Lloyd asked if there would be any consideration for them like with Beach Fire having to close their doors at 10:00 p.m. Mr. Pechous responded he would consider allowing the doors to remain open, with non-amplified live entertainment only until 10:00 p.m., because the biggest problem is with noise that occurs after 10:00 p.m., as a six month trial. This is also contingent on the noise not exceeding the standards in the City Noise Ordinance. In six months the applicant would come back to the Zoning Administrator to assess if there have been any problems. A couple of tests can be scheduled when there is live entertainment to make sure the City requirements are being met.

Mr. Jones stated, for clarification, there will be a six month trial period in which the doors and windows can be open until 10:00 p.m.

Action: The Zoning Administrator approved Amendment to Minor Conditional Use Permit 05-158, San Clemente Wine Company, subject to Resolution ZA 13-018 with attached Conditions of Approval with the amended condition allowing the applicant to leave the doors and windows open with live entertainment until 10:00 p.m. for a six month trial period with at least one acoustical testing.

ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL.

5. NEW BUSINESS

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None

6. OLD BUSINESS

None

ADJOURNMENT

The meeting adjourned at 3:30 p.m. to the regular Zoning Administrator meeting to be held on June 5, 2013 at 3:00 p.m., at the Community Development Department, Conference Room A, located at 910 Calle Negocio, Suite 100, San Clemente, California.

Respectfully submitted,

SAN CLEMENTE ZONING ADMINISTRATOR



Jim Pechous

6B(3)-5