CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 15, 2016 **ITEM NUMBER: PH-2**

SUBJECT: REVIEW OF PLANNING APPLICATION PA-16-55 FOR HOLIDAY (FORMERLY LION'S DEN AND MAISON)
719 WEST 19TH STREET

DATE: NOVEMBER 3, 2016

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MEL LEE, SENIOR PLANNER

FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER (714) 754-5611
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RECOMMENDATION:

Uphold, Reverse, or Modify the Planning Commission's decision to approve Conditional Use Permit PA-16-55 to allow live entertainment including, but not limited to, music, dancing, and open microphones, for an entertainment venue (Holiday, formerly Lion's Den and Maison) within 200 feet of residentially-zoned properties, and on-site valet parking. A current public entertainment permit allows disc jockey entertainment (DJ) and dancing. Proposed hours of operation are from 7:00 a.m. to 2:00 a.m., seven days a week; proposed hours for live entertainment are 11:00 a.m. to 2:00 a.m., seven days a week.

The Planning Commission's approval was called up for review by a Council Member.

APPLICANT/AUTHORIZED AGENT

The applicant/authorized agent is Pacific Planning Group Inc., representing Pange Family Trust, the property owner.

BACKGROUND/ANALYSIS

Project Site/Environs

The subject property is located on the south side of West 19th Street, between Wallace Avenue and Pomona Avenue. The site is bounded by a commercial use to the east (Smart and Final Market), a multi-tenant commercial building to the west, and various commercial uses to the north across West 19th Street. The site abuts residential properties to the south. The subject site and surrounding commercial properties are zoned C1 (Local Business District) and has a General Plan Land Use Designation of General Commercial. The residential properties to the rear are zoned R2-HD (Multiple Family Residential-High Density) and has a General Plan Land Use Designation of High Density Residential.

Site History

Retail Center

The subject property contains two multi-tenant commercial buildings on two separate parcels originally constructed in the early 1960's. The parcels are under the same owner and are also tied together via a recorded reciprocal access agreement. Other uses within the retail center includes restaurants, a laundromat, a medical clinic, and retail shops.

The site is currently striped with 80 on-site parking spaces at the front of both buildings; the parking spaces at the rear of the subject building (adjacent to the residential properties) are not striped. Vehicular access is provided from two driveways on West 19th Street and a single driveway on Wallace Avenue. The rear drive aisle and parking area of the subject building (abutting the residential properties) has rolling vehicle gates at both ends of the building; the gate at the easterly end of the building abuts the Smart & Final property and allows trash and delivery vehicles to access the subject property through the Smart and Final parking lot when the gate is open or unlocked. The subject property is separated from the existing residential properties to the south by a 5-foot high block wall with 2 feet of wood fencing on top of the block wall, and mature trees on the residential side of the property (see site photos attached).

Bar/Lounge

According to the City's building permit records, the subject tenant space has been used as a cocktail bar/lounge since 1963, when it was also used as a restaurant. Prior to its current name (Holiday), its previous names were Lion's Den and Maison.

Zoning Code Section 13-47 requires eating and drinking establishments with alcoholic beverage sales, entertainment, and dancing within 200 feet of residentially-zoned property, and open past 11:00 pm, to have a conditional use permit; however, as the business was established in the early 1960's, it predates this requirement and is nonconforming.

Public Entertainment Permit

Although the establishment does not have a conditional use permit, it is required to have a Public Entertainment Permit (PEP) in accordance with Costa Mesa Municipal Code (CMMC) Title 9, Article 11 (Regulatory Permits for Public Entertainment). The PEP for this establishment has been issued annually by the Code Enforcement Division since the 1980's. A copy of the current PEP, which expires on October 29, 2016, is attached to the Planning Commission report for reference.

It should be noted that prior to 2010, the PEP allowed Lion's Den to have live entertainment; however, when the PEP was renewed in November of that year, the operator at the time (Beverly Corrigan) discontinued providing live entertainment, deciding to provide recorded music (DJ) and dancing only. A copy of the November

2010 PEP, with the operator's request to discontinue live entertainment, is also attached to the Planning Commission report for reference.

State Alcoholic Beverage Control (ABC) License

The establishment is permitted to operate with a State Alcoholic Beverage Control (ABC) License Type 48 (On-Sale General, Public Premise). According to the license query system on the State ABC website, a copy of which is attached to the Planning Commission report, the license is currently active and there are no disciplinary actions related to the license on file with ABC. The conditional use permit, whether it is approved or denied, will not affect the existing ABC license.

Building Safety and Fire Prevention Activity

According to City records, the interior layout of the establishment was unchanged under Beverly Corrigan, the operator of Lion's Den. A copy of the original floor plan layout is attached to this report. The operator of Maison, Roland Barrera, acquired the lease and assumed operation of the establishment in October 2014. On March 18, 2015, the Building Safety Division, based on a resident complaint, conducted an inspection and issued a Stop Work Notice for construction that was occurring within the tenant space without building permits. On March 20, 2015, after further inspection by the Building Safety and Fire Prevention inspectors, the building was determined to be unsafe to occupy and issued a "Red Tag". As part of the stop work and red tag notices, the operator was required to do the following:

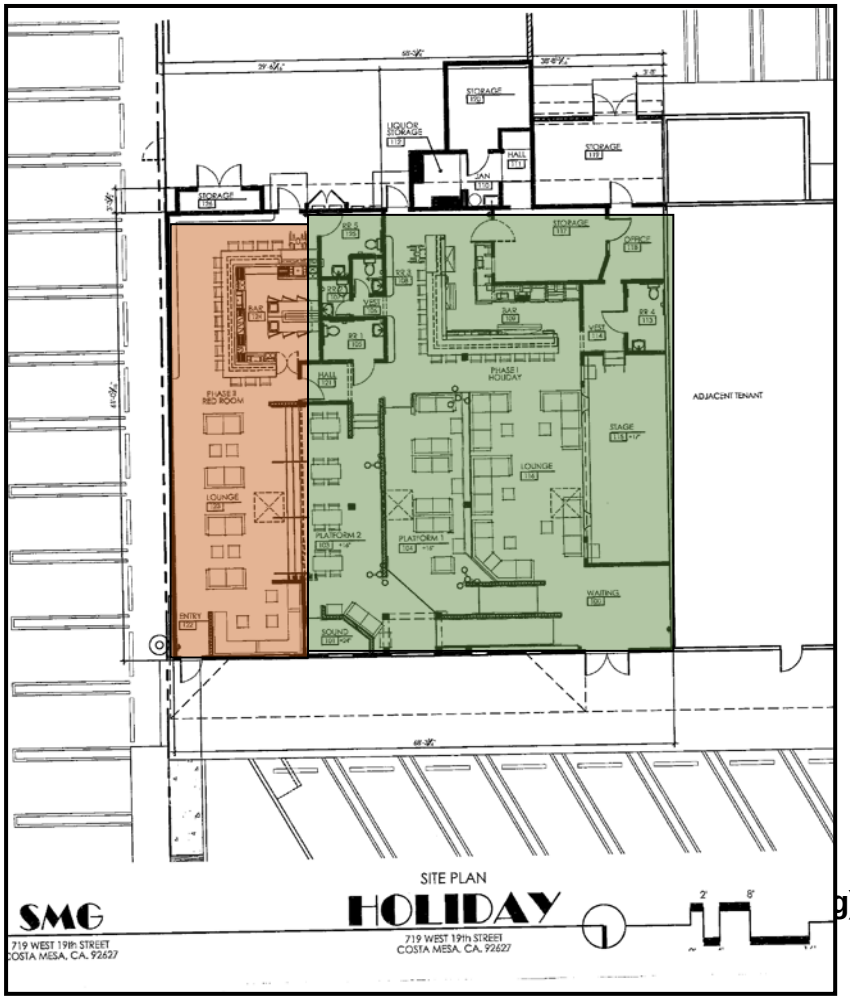
- Submit plans to the Building Safety Division for plan check and obtain the necessary Building Safety and Fire Prevention permits;
- Obtain any required inspections and approvals; and
- Obtain approval of a Conditional Use Permit from the Planning Division for live entertainment.

Status of Building and Fire Safety Permits and Inspections

Tenant improvement plans were submitted to the Building Safety Division for plan check on May 7, 2015. The 4,679 square foot space is divided into two areas described below and indicated in the plans attached to this report:

- Phase 1 (Holiday Room): A 3,063 square foot space with a raised stage floor, 2 raised seating areas, a main lounge with bar, storage rooms, and restrooms.
- Phase 2 (Red Room): A 1,616 square foot space with a smaller lounge area with bar.

Building permits for Phase 1 were issued by the Building Safety Division on July 1, 2015 and finaled by the building inspection staff on September 16, 2015. Building permits for Phase 2 were issued by the Building Safety Division on August 4, 2016. This phase is currently under construction. Holiday has also obtained the required permits and inspections by Fire Prevention, subject to final approval and inspection when the construction for Phase 2 is completed.


STORAGE
LIQUOR STORAGE
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PHASE 3 RED ROOM
PHASE 1 HOLIDAY
ADJACENT TENANT
STAGE
LOUNGE
LOUNGE
PLATFORM 2
PLATFORM 1
WAITING
ENTRY
SOUND
SITE PLAN
SMG
HOLIDAY
719 WEST 19th STREET
COSTA MESA, CA. 92627
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8/25/16 Photo of Holiday Room
(Looking Toward Bar Area from Main Entrance)

8/25/16 Photo of Red Room Under Construction
(Future Bar Area in Foreground)

Code Enforcement Activity

A code enforcement case was opened on March 18, 2015 against the prior operator, Roland Barrera, for construction without permits (see Building Safety and Fire Prevention Activity). The case was closed when the current operator obtained the permits required by those departments as described earlier in this report. The

Community Services/Code Enforcement Division received a complaint in late July 2016 regarding noise, but the complainant did not call police and Code Enforcement staff found no evidence to substantiate the complaint. Code Enforcement staff has not received any additional noise complaints since July 2016. Since the July 2016 complaint, Code Enforcement staff has visited the site and has not found any concerns regarding noise emanating from this location.

Police Calls for Service

Between August 1, 2015 and August 23, 2016 there were 215 calls for service at the specific location according to the Police Department Crime Analysis Unit. Of the 215 calls, 166 were self-imitated by police patrols (subject stop, patrol checks, traffic stops, and bike stops). Calls to a bar/lounge would typically be disturbance calls, loud music calls, and drugs and alcohol-related calls occurring during the establishment's business hours or just after closing. Additional calls for Police Service from August 24, 2016 to September 20, 2016, and September 21, 2016 to October 30, 2016 are also attached to this report (Attachment 9).

CUP Request for Live Entertainment Venue and Valet Parking (PA-16-55)

Holiday opened to the public on July 15, 2016. As indicated earlier, live entertainment was discontinued at the establishment in late 2010. Because the current operator is proposing live entertainment for an establishment open past 11:00 p.m. and within 200 feet of residentially-zoned properties, approval of a conditional use permit is required.

Live entertainment including, but not limited to, music, dancing, and open microphones is proposed. The proposed hours of operation are 7:00 a.m. to 2:00 a.m., 7 days a week. The applicant indicates that light breakfast and lunch items may be served, however, the main use (bar/lounge with live entertainment) begins operating after 11:00 a.m. until 2:00 a.m. A valet parking plan is proposed in the event it becomes necessary to prevent overflow patron parking onto adjacent properties and streets.

Planning Commission Action

The Planning Commission considered the project at their September 12, 2016 meeting. During the hearing 7 persons spoke in favor of the request and 3 spoke in opposition. Written correspondence both in opposition and in support are also attached to this report. During their deliberations, the Commissioners expressed the following opinions and points of view regarding the proposed project:

- The Commission noted that the sound attenuation measures proposed by the applicant's noise consultant would decrease the noise impacts to abutting residents.
- The Commission noted the applicant's outreach to the abutting neighbors, to the extent that they had extended an offer to install noise meters at their homes to monitor the noise levels.
- The Commission amended condition of approval number 3.a) to require the applicant to remit a noise study by an acoustical engineer within one month (originally 6 months) from the approval of the CUP identifying the noise levels at the rear property line adjacent to residential properties. They also added language to the condition that

allows the Development Services Director to impose additional conditions as necessary to mitigate noise issues.

- The Commission noted that the establishment is in compliance with the ABC License regulations as approved.

Based on the above, the Commission approved the project by a 5-0 vote.

Request for review of by City Council

On September 19, 2016, a request for City Council review of the project was filed by a Council Member. It should be noted that the City Council hearing is a **de novo hearing** in which the City Council may consider the project in its entirety.

De Novo Hearing

The purpose of this report is to highlight and/or clarify the evidence in the administrative record that was presented to the Planning Commission prior to its action to approve the proposed project. This report does not provide any further justification for the approval of the request.

ENVIRONMENTAL REVIEW

The request has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.

If the request is denied, it is exempt from the provisions of CEQA Section 15270(a) for Projects Which Are Disapproved.

LEGAL REVIEW

The City Attorney's Office has reviewed the attached resolutions and approved them as to form.

ALTERNATIVES CONSIDERED

As a de novo hearing, City Council has the following options in this case:

- *Alternative A, Uphold the Planning Commission's Action:* Uphold the Commission's action with the conditions of approval as shown in the draft Council resolution.

- *Alternative B, Reverse the Planning Commission's Action*: Deny the Commission's action. If the project were denied, the applicant could not submit substantially the same type of application for six months.

NOTE: If the application were to be denied, the applicant could still continue to operate the establishment with recorded music and dancing under the current Public Entertainment Permit.

CONCLUSION

De novo literally translates to “anew,” “afresh” or “a second time.” A de novo hearing is essentially a new proceeding where the proposal is presented to the City Council for final consideration. In its decision making, Council is not restricted to the evidence that was previously presented to the Planning Commission. In this case, the City Council may uphold, reverse, or modify the discretionary decision of the Planning Commission.

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Economic Development and
Development Services Director /
Consultant

ATTACHMENTS:

1. Location Map and Plans
2. Site Photos
3. Review Application
4. Draft City Council Resolutions
5. Planning Commission Minute Excerpts
6. Planning Commission Report and Attachments
7. Planning Commission Resolution
8. Correspondence
9. Calls for Police Service
10. Plans

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