



Department: Community Development
Cost Center: 4008
For Agenda of: 10/15/2024
Placement: Public Hearing
Estimated Time: 60 minutes

FROM: Timmi Tway, Community Development Director
Prepared By: Hannah Hanh, Associate Planner

SUBJECT: REVIEW OF AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE A CONDITIONAL USE PERMIT TO ESTABLISH A FRATERNITY (USE-0331-2023, APPL-0365-2024)

RECOMMENDATION

Adopt a Draft Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, denying an appeal and upholding the Planning Commission's decision to approve a Conditional Use Permit to establish a fraternity for up to 24 residents at 1264 and 1264 ½ East Foothill Boulevard and 1241, 1243, 1249, and 1251 Monte Vista Place. The project includes a request to provide two (2) parking spaces in tandem on an existing driveway along East Foothill Boulevard. The project is exempt from environmental review under Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines as represented in the council agenda report and attachments dated October 15, 2024 (USE-0331-2023, APPL-0365-2024)."

REPORT-IN-BRIEF

Lambda Chi Alpha (Applicant) has applied for a Conditional Use Permit to establish a fraternity for up to 24 residents at 1264 and 1264 ½ East Foothill Boulevard and 1241, 1243, 1249, and 1251 Monte Vista Place (Attachment C – Project Description, Attachment D – Project Plans). The site is an approximate 0.58-acre through lot that contains four (4), separate residential buildings with a total of six (6) units and has street access from both East Foothill Boulevard and Monte Vista Place. The project includes a request to allow tandem parking for two (2) spaces on the west driveway along East Foothill Boulevard. Minor site improvements (e.g., parking area restriping, installation of wheel stops, etc.) would be required to accommodate the fraternity on the property.

On [June 12, 2024](#), the Planning Commission reviewed the request for a Conditional Use Permit by the Applicant. After considering all evidence, including the application, staff's evaluation and recommendation, and public testimony, the Planning Commission conditionally approved the project, subject to the findings and revised conditions of approval ([Resolution No. PC-1085-24](#), [Minutes](#)).

On June 24, 2024, Residents for Quality Neighborhoods (Appellant) filed a timely appeal of the Planning Commission's decision to approve the Conditional Use Permit (APPL-0365-2024) (Attachment B – Appeal Form and Statement). As described in the Appeal Form and Statement, the Appellant does not concur with the findings and requests that additional and/or revised conditions be imposed to address concerns related to large gatherings, noise, and ongoing enforcement of the conditions of approval.

DISCUSSION

Policy Context

Per [Table 2-1](#) (Uses Allowed by Zone), establishment of a fraternity requires approval of a Conditional Use Permit in the High-Density Residential (R-4) zone. Approval of the Conditional Use Permit is subject to requirements, outlined in [Section 17.110.060](#) (Minor Use Permits and Conditional Use Permits – Criteria for Approval), [Section 17.110.070](#) (Minor Use Permits and Conditional Use Permits – Required Findings), and [Section 17.86.130\(B\)](#) (Fraternities and Sororities – Required Findings), to ensure consistency with the General Plan and Zoning Regulations and for compatibility of the proposed fraternity with existing and future land uses in the vicinity.

As proposed, the project is consistent with the intent of both the High-Density Residential land use designation and zone, which allow dense housing in proximity to concentrations of employment and college enrollment. In addition, the project would advance [Land Use Element](#) Policy 2.6.5 (Fraternities & Sororities) and [Housing Element](#) Policy 8.5 (Special Housing Needs) by locating a fraternity in a High-Density residential area within 0.25-mile of Cal Poly SLO campus.

Background

The project site was previously approved and used for fraternity activities. On October 10, 2001, the Planning Commission reviewed and approved a Use Permit (U 86-01) to establish a different fraternity (Phi Delta Theta) at 1264 and 1264 ½ East Foothill Boulevard. Approval of this fraternity was limited to use of the three-bedroom and one-bedroom units, located towards East Foothill Boulevard, for a maximum of four (4) residents (Attachment B – Resolution 5323-01 of Appeal Form and Statement). Due to inactivity, this Use Permit (U 86-01) expired in 2021.

To accommodate an updated project description for Lambda Chi Alpha, the Applicant has applied for a new Conditional Use Permit to utilize the entire project site for a fraternity with up to 24 residents.

Prior Actions

On [June 12, 2024](#), the Planning Commission reviewed the request for a Conditional Use Permit by Lambda Chi Alpha. After considering all evidence, including the application, staff's evaluation and recommendation, and public testimony, the Planning Commission voted 5-0 to conditionally approve the project, subject to the findings and revised conditions of approval ([Resolution No. PC-1085-24](#), [Minutes](#)).

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In response to concerns raised in public comment for the Planning Commission hearing¹, the conditions of approval were revised to include Conditions No. 14 through 16, listed below, with any subsequent conditions renumbered as appropriate:

- *Condition No. 14: The fraternity use shall comply with Table 1 (Exterior Noise Limits) of Section 9.12.060 (Exterior Noise Limits) between the extended hours of 10:00 p.m. and 9:00 a.m., except as approved in writing as a special event by the Community Development Director.*
- *Condition No. 15: Prior to a special event approved by the Community Development Director pursuant to Condition No. 5, the fraternity shall provide written notification of the event to occupants within 300 feet of the site. The written notification shall include the date, hours, and contact information for the responsible party for the special event.*
- *Condition No. 16: Live entertainment, bands, and/or amplified sounds are prohibited, unless otherwise approved through a special event by the Community Development Department.*

To address concerns related to noise identified by both the public and the Planning Commission, and upon specific direction from the Planning Commission, Conditions No. 14 and 16 were included to require an extended range of hours between 10:00 p.m. and 9:00 a.m. (instead of only between 10:00 p.m. and 7:00 a.m. as required by the Municipal Code) for regular compliance with a lower exterior noise limit, and to clearly identify that approval of a special event is required prior to conducting any amplified noise-generating activities. To address the public's concerns related to the notification of special events, Condition No. 15 was included to establish and require ongoing communication between the fraternity and its neighbors in the vicinity.

On June 24, 2024, Residents for Quality Neighborhoods filed a timely appeal of the Planning Commission's decision to approve the Conditional Use Permit (APPL-0365-2024) (Attachment B – Appeal Form and Statement). As described in the Appeal Form and Statement, the Appellant supports the request for the Use Permit, but does not concur that there are sufficient conditions to support Findings No. 5 and 6, listed below:

- *Finding No. 5: As conditioned, the project will not be detrimental to the health, safety, and welfare of persons living or working at the site or in the vicinity because conditions have been included that place limits on the number of persons allowed on site, restrict activities, provide adequate parking, and limit potential disturbances to neighboring properties. The project will be compatible with the existing site constraints and the character of the neighborhood.*

¹ [Agenda Correspondence](#) for June 12, 2024 Planning Commission Hearing

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- *Finding No. 6: As conditioned, the establishment and subsequent operation or conduct of the project will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project includes conditions that (a) place limits on the number of persons allowed on site, (b) restrict activities, (c) provide adequate parking, and (d) limit potential disturbances to neighboring properties. The project would be compatible with the existing site constraints and the character of the neighborhood.*

The Appellant requests that additional and/or revised conditions be imposed to address concerns related to large gatherings, noise, and ongoing enforcement of the conditions to ensure that the use will not be detrimental to the health, safety, and welfare of persons living or working in the area.

Appeal

The Appeal Form and Statement identifies seven (7) issues, which are summarized and discussed in the following analysis.

Appeal Issue No. 1 – Consistency with Conditions in Older Conditional Use Permits Approvals

Throughout the Appeal Statement, the Appellant states that older Conditional Use Permits approvals for fraternities contain more restrictive conditions that should be applied to this Conditional Use Permit application (USE-0331-2023) for consistency between approvals and to address concerns related to the compatibility of the proposed fraternity with existing and future land uses in the vicinity (Attachment B – Pages 1, 3, and 4 of Appeal Statement, Resolution No. 5323-01).²

Staff Response

It is noted that the older Conditional Use Permits mentioned in the Appeal Statement (and identified in public comment for the Planning Commission hearing¹) were approved between 1983 and 2013.

Since the approval of these older Conditional Use Permits, there have been incremental improvements as codified changes to the Municipal Code that directly address concerns related to noise, public disturbances, and other disorderly conduct, regardless of a Use Permit approval. Many of these code requirements are outlined in [Title 9](#) (Public Peace, Morals, and Welfare) with key chapters applicable to fraternity activities listed below:

² Requests to add and/or revise specific conditions are identified and analyzed in the following sections as Appeal Issues No. 2 through 7.

- [Chapter 9.12](#) (Noise Control)
 - Ordinance adopted in 1985, latest revision in 2010
- [Chapter 9.13](#) (Unruly Gatherings)
 - Ordinance adopted in 2010, revised in 2015
- [Chapter 9.22](#) (Safety Enhancement Zones)
 - Ordinance adopted in 2004, latest revision in 2024

Standard conditions for fraternities and sororities, outlined in [Section 17.86.130\(A\)](#) (Fraternities and Sororities – Applicability), were also established as part of the comprehensive update to Title 17 (Zoning Regulations) in 2018. These standard conditions limit the number of permitted residents, regulate the number of attendees for meetings and gatherings, require affiliation and good standing with the university, and establish a responsible contact for the fraternity.

As such, the implementation of these preceding code requirements and incorporation of updated standard conditions for fraternities are taken into consideration in the review of a more recent Conditional Use Permit application. In addition, should there be any imprecise language in past conditions that can, and should be, improved in a manner consistent with both Municipal Code limitations and constitutional requirements, staff recommends more precise language to reflect legally compliant conditions and enhance clarity in enforcement. These Municipal Code changes and improvements to language in the conditions are reflected in the following Staff Responses to Appeal Issues No. 2 through 7.

Appeal Issue No. 2 – Special Events and Noise Ordinance ([Chapter 9.12](#) Noise Control)

The Appellant states that the approval of a special event permit does not allow exceptions from exterior noise limits established in [Chapter 9.12](#) (Noise Control) (Attachment B – Pages 1 and 3 of Appeal Statement).

Staff Response

To provide clarification, [Section 9.12.100](#) (Exceptions) states the noise control officer (e.g., Community Development Director) may grant exceptions from the provisions of Chapter 9.12 (Noise Control), if deemed appropriate. Any requested exceptions would be reviewed as part of a special event permit in accordance with [Section 17.86.260\(B\)\(5\)](#) (Other Temporary or Intermittent Uses and Special Events) and [Chapter 17.108](#) (Director’s Action). Approval of a special event permit with requested noise exceptions is subject to requirements, outlined in [Section 17.108.040](#) (Director’s Action – Required Findings) and [Section 9.12.100\(A\)](#) (Noise Control – Special Exceptions), in order to provide for adequate consideration of, and measures to address, any adverse impact on the public health, safety, and welfare of those in the vicinity.

To address concerns related to noise and public disturbances, Conditions No. 5, 14, and 16 require approval of a special event permit by the Community Development Director prior to any meeting or gathering with more than 48 people and/or amplified noise-generating activity occurring.

Appeal Issue No. 3 – Limitations on Gatherings

The Appellant is requesting a revision to Condition No. 14 that limits the number of people on the premises to *only* residents between the hours of 10:00 p.m. and 9:00 a.m., similar to older Conditional Use Permit approvals for other fraternities issued in the past (Attachment B – Page 3 of Appeal Statement, Condition No. 6 of Resolution No. 5323-01).

Staff Response

People in private residences (e.g., residents of the fraternity) are legally allowed to gather and meet with guests without government interference into their private residences, relationships, and associations, provided that the number and conduct of those residents and guests conform to applicable regulations. Due to constitutional concerns with placing a condition that limits the *type* of people in private residences (i.e., residents vs. non-residents), Condition No. 14 was written to directly address noise concerns by identifying an extended range of hours between 10:00 p.m. and 9:00 a.m. for regular compliance with a lower exterior noise limit.

In addition, the Municipal Code includes applicable regulations on the number and conduct of people, as it pertains to protection of the public peace and welfare, to address concerns related to noise and disturbances that may be created by large gatherings:

- [Chapter 9.12](#) (Noise Control)
 - Prohibited noise-generating acts and exterior and interior noise limits are identified to protect the peace and quiet.
- [Chapter 9.13](#) (Unruly Gatherings)
 - Unruly gatherings, as defined in [Section 9.13.020\(E\)](#), are identified as public nuisances and prohibited to protect the public peace and welfare.
- [Chapter 9.22](#) (Safety Enhancement Zones)
 - During specific periods of time in the year (i.e., holidays such as Mardi Gras, St. Patrick's Day, and Halloween, and start of the fall term for Cal Poly), the City is designated as a safety enhancement zone, which includes enhanced penalties for violations of certain provisions in the Municipal Code, as outlined in [Section 9.22.020](#) (Safety Enhancement Zone Penalties and Violations), to protect the public health, safety, and welfare.

Due to constitutional concerns regarding government interference into private residences, relationships, and associations, staff does not recommend adding or revising a condition to limit the *type* of people in private residences. This appeal issue is addressed through incorporation of Condition No. 14 as well as requirements and enforcement actions detailed in [Chapter 9.12](#) (Noise Control), [Chapter 9.13](#) (Unruly Gatherings), and [Chapter 9.22](#) (Safety Enhancement Zones).

Appeal Issue No. 4 – Re-review of Conditional Use Permit

The Appellant is requesting either an additional condition, or revision to Condition No. 3, to require re-review of the Conditional Use Permit by the Planning Commission once a certain number of violations is received within a specified timeframe, similar to older Conditional Use Permit approvals for other fraternities issued in the past (Attachment B – Page 4 of Appeal Statement, Condition No. 10 of Resolution No. 5323-01).

Staff Response

As proposed, Condition No. 3 does not identify a minimum number of violations within a specified timeframe to require re-review by the Planning Commission. The lack of an established threshold would allow staff to refer the Conditional Use Permit to the Planning Commission for re-review upon receipt of *any* substantiated violation or frequency of violations. As written, Condition No. 3 allows staff to refer the Use Permit for re-review upon receipt of one (1) violation, which is more restrictive than the requested revision to establish a threshold. Additionally, staff does not recommend identifying a minimum number of violations to require re-review by the Planning Commission as that may signal that certain violations within that number are excusable. Therefore, this appeal issue has been addressed through incorporation of Condition No. 3.

Appeal Issue No. 5 – Written Complaints

The Appellant is requesting a revision to Condition No. 3 to not require written complaints in order for a reporting party to maintain anonymity (Attachment B – Page 4 of Appeal Statement).

Staff Response

In order for staff to determine whether a violation has occurred, written complaints provide and document critical information regarding a potential violation (e.g., details related to the date, time, description of activity, etc.). As proposed in Condition No. 3, the City may receive written complaints from any citizen or City staff member (e.g., Code Enforcement Division, Fire Department, Police Department, etc.). If substantiated complaints which result in violations are received, staff will refer the Conditional Use Permit to the Planning Commission for re-review. Re-reviews are initiated by staff and supported by documented violations (i.e., Notices of Violations). The contact information of a reporting party from the general public is not included as part of supporting documentation for the re-review and would be redacted from public records. Therefore, staff does not recommend revising the condition to not require written complaints.

Appeal Issue No. 6 – Accumulation of Violations

The Appellant is requesting an added condition that states violations are accumulated against the parcel, instead of individual addresses (Attachment B – Page 4 of Appeal Statement).

Staff Response

The scope of this Conditional Use Permit is to establish a fraternity for up to 24 residents throughout all six (6) units, inclusive of individual addresses, located on the parcel. As such, there would be one (1) Conditional Use Permit to regulate fraternity activities for the entire premises. Any violations would be documented as part of, and assessed against, the Use Permit. Therefore, this appeal issue has been addressed through the scope of the Conditional Use Permit application.

Appeal Issue No. 7 – Compliance with Conditions of Approval and Requirements of Federal, State, and Local Law

The Appellant is requesting to include the following statement as an additional condition (Attachment B – Page 4 of Appeal Statement):

“Failure to comply with any of the above conditions or code requirements, or the conduct of the use so as to constitute a violation of Federal, State, or local law, or so as to constitute a public nuisance or so as to cause adverse impacts on the health, safety, or welfare of persons in the vicinity of this use is prohibited and may constitute grounds for the revocation of this permit.”

Staff Response

As indicated in Condition No. 3, the Conditional Use Permit may be re-reviewed by the Planning Commission if a complaint containing information and/or evidence to support a conclusion that a violation of the conditions or City Ordinances or regulations, which are intended to protect the health, safety, and welfare of the general public, has occurred. In addition, [Section 17.02.050](#) (General Relationship to Other Regulations) states that any uses authorized by Title 17 (Zoning Regulations) must comply with all other applicable regulations and requirements imposed by the State and relevant Federal agencies, including application of the more restrictive provision if a conflict occurs between different provisions from different agencies. Re-review of any Use Permit may result in added, modified, and/or removed conditions of approval, or revocation of the Use Permit. It is noted that procedures detailed in [Chapter 17.132](#) (Enforcement), specifically [Section 17.132.020\(B\)](#) (Time Limits for and Revocation of Use Permits, Variances, and Home Occupation Permits), allow the Use Permit approval to be revoked if the conditions of approval have been violated. Therefore, this appeal issue has been addressed through incorporation of Condition No. 3 and implementation of requirements and enforcement actions in [Section 17.02.050](#) (General Relationship to Other Regulations) and [Chapter 17.132](#) (Enforcement).

Public Engagement

The project has been noticed in compliance with the City’s notification requirements for Development Projects for each public hearing associated with the project. Newspaper legal advertisements were posted in the New Times ten (10) days prior to the Planning Commission and City Council hearings. Additionally, postcards were sent to both owners and occupants of properties, located within 300 feet of the project site, ten (10) days prior to each hearing.

CONCURRENCE

The project has been reviewed by the Planning Division, Engineering Division, Building Division, and Fire Department. Any conditions of approval from these departments and divisions have been incorporated into the Draft Resolution (Attachment A).

ENVIRONMENTAL REVIEW

The project is exempt from environmental review under Section 15301 (Existing Facilities) of the CEQA Guidelines because it includes the operation, maintenance, permitting, licensing, and minor alteration of an existing residential development. The fraternity would continue the residential use with minor site improvements related to parking (e.g., parking space restriping, installation of wheel stops, etc.) and landscaping (e.g., pruning, maintenance, etc.). The project does not include construction of a new building or additional building square footage. Therefore, the project involves no expansion of the former residential use.

FISCAL IMPACT

Budgeted: No

Budget Year: 2024-25

Funding Identified: No

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$0	\$0	\$0	\$0
State				
Federal				
Fees				
Other:				
Total	\$0	\$0	\$0	\$0

Consideration by the City Council of an appeal of a decision made by the Planning Commission does not directly result in expenditure of funds and thus has no fiscal impact to the City. Staff resources committed to the review of appeals are included in the annual budget appropriation for the Community Development Department.

ALTERNATIVES

1. **Continue review of the appeal and the Conditional Use Permit.** The City Council may continue the review of the appeal and the Conditional Use Permit with direction to staff if additional information or analysis is required to make a decision.
2. **Uphold the appeal and deny the Conditional Use Permit.** The City Council may uphold the appeal and deny the project with direction to staff for findings that cite the basis for denial and reference inconsistency with the General Plan, Zoning Regulations, or other policy documents.
3. **Partially uphold the appeal and approve the Conditional Use Permit with revised findings and/or conditions.** The City Council may partially uphold the appeal on one (1) or more appeal issues and approve the project with revised findings and/or conditions of approval.

ATTACHMENTS

- A - Draft Resolution denying the appeal and upholding the Planning Commission's decision to approve the Conditional Use Permit to establish a fraternity (USE-0331-2023, APPL-0365-2024)
- B - Appeal Form and Statement (APPL-0365-2024)
- C - Project Description (USE-0331-2023)
- D - Project Plans (USE-0331-2023)