



# **Public Hearing**

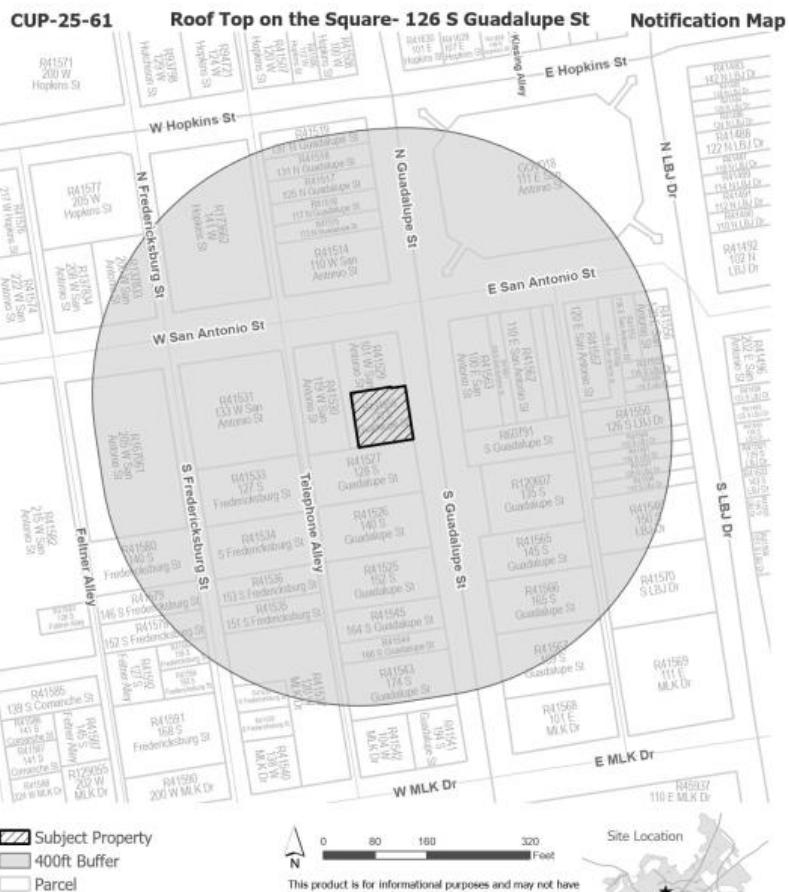
## **CUP-25-61**

### **Rooftop on the Square Appeal**

Hold a public hearing and consider a request by Robert Espinosa, on behalf of Rooftop on The Square, to appeal the decision of Planning and Zoning Commission that denied a Conditional Use Permit in Case No. CUP-25-61 for renewal of a Conditional Use Permit to allow on premise consumption of Mixed Beverages, located at 126 S. Guadalupe St.

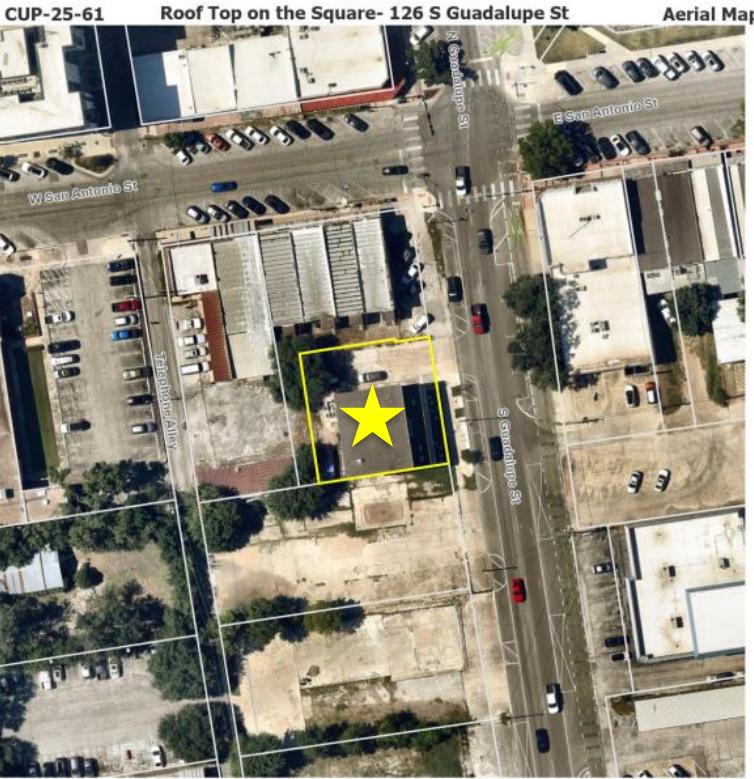
# Property Information

- Approximately 0.166 acres
- Located: Approximately 150 ft south of the Guadalupe Street and San Antonio Street intersection.



# Context & History

- Currently a **“Restaurant (Eating Establishment)”** use with on-premise consumption of alcohol.
- Located within the Central Business Area (CBA)
  - “Restaurant (Eating Establishment)” uses within the CBA are required to meet certain standards related to kitchen equipment, meal periods, advertisement, and cleanliness outlined in Section 5.1.5.5.B.4.b.
- The business has held a **“Restaurant (Eating Establishment)” CUP** since 2012.
- Surrounding Uses including personal services, law office, parking, bars

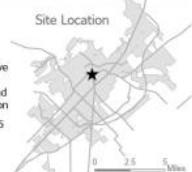


Subject Property  
Parcel

0 30 60 120  
Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.  
Date: 11/3/2025

SAN MARCOS Planning and Development Services

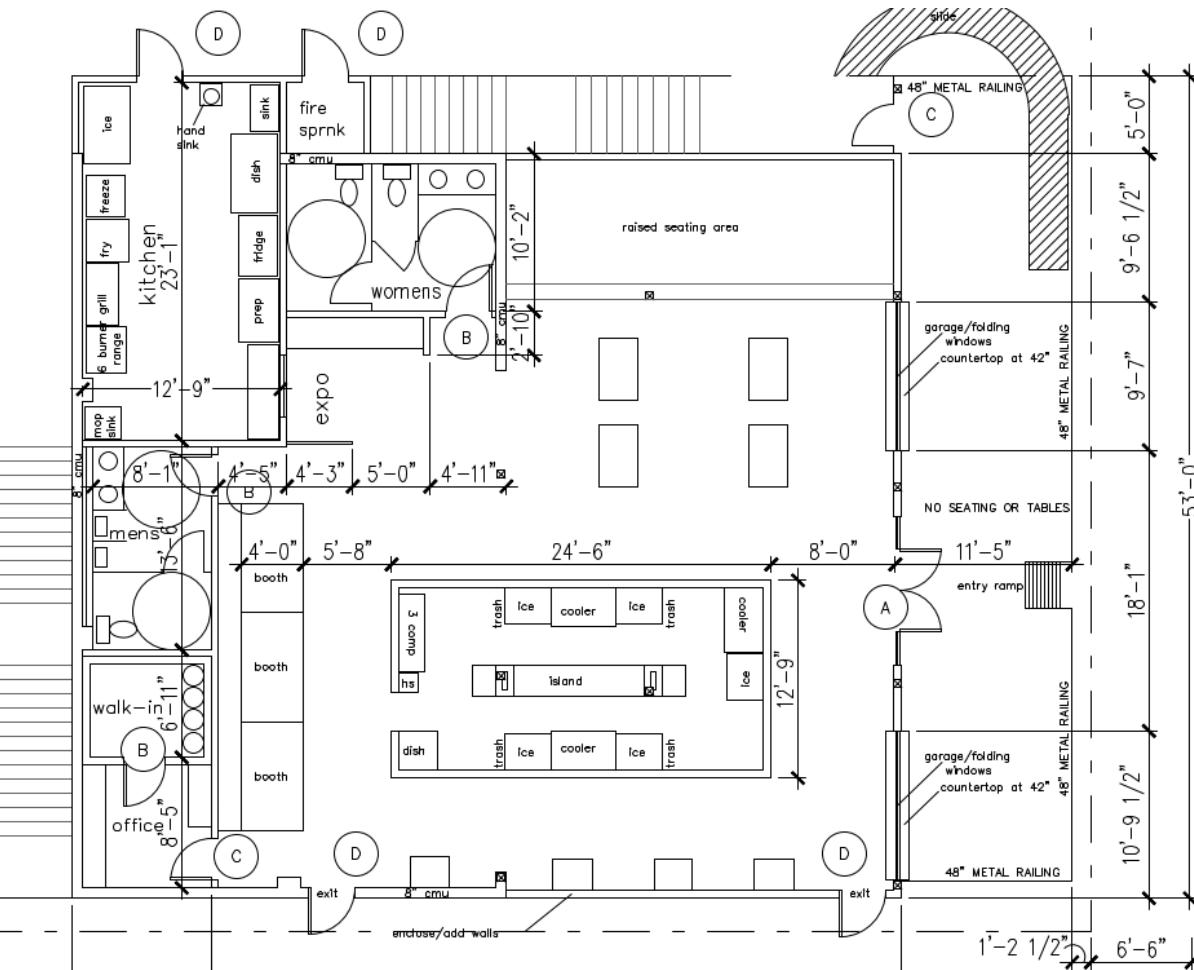


# Context & History

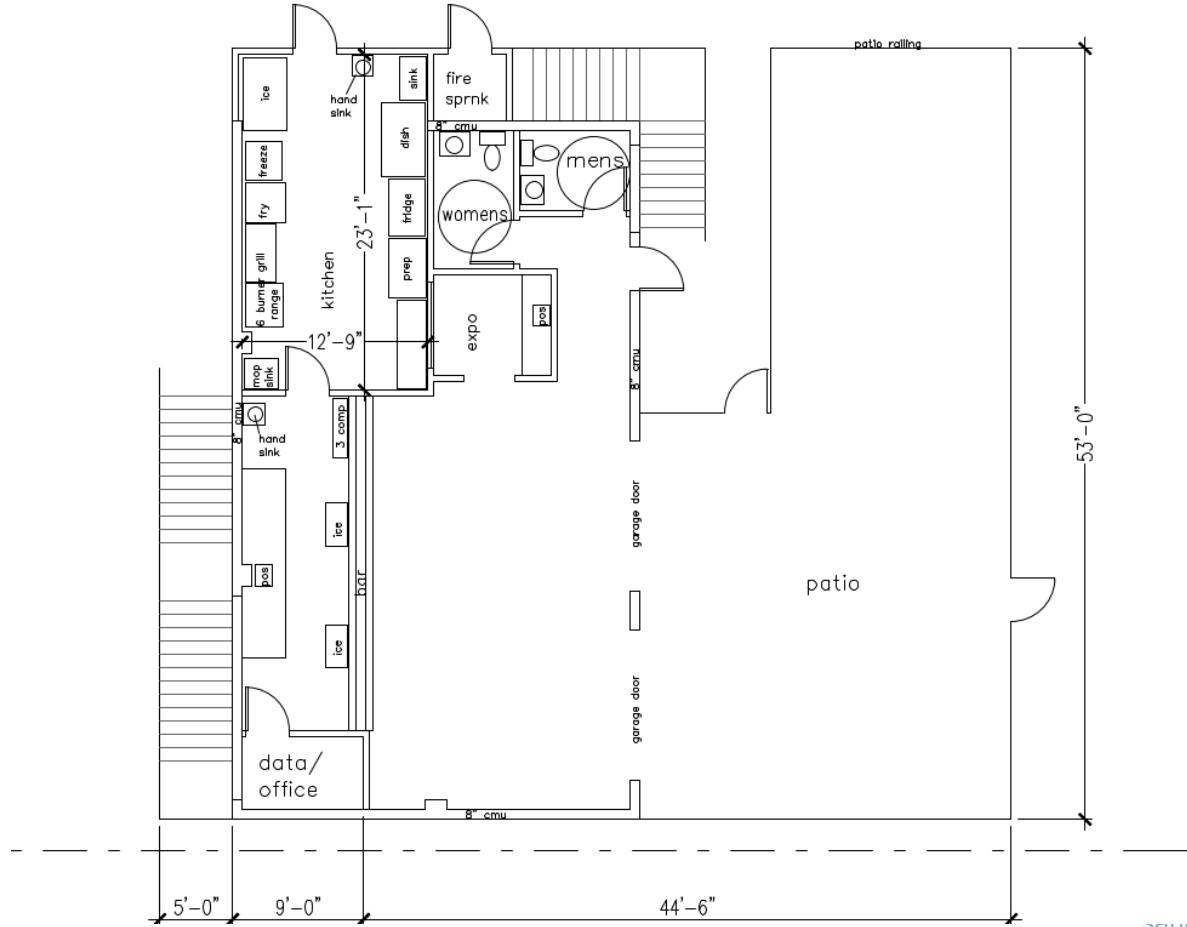
- **Existing Zoning:**  
Character District-5 Downtown (CD-5D)
- **Proposed Use:** “Restaurant (Eating Establishment)
  - Hours of Operation:
  - Monday-Sunday: 12pm-2am
- **CUP Expiration Date:** November 26, 2025
  - The applicant submitted an application to renew their CUP. The CUP was denied by the Planning and Zoning Commission on December 9.



# Floor Plan



# Floor Plan





# Staff Analysis

## Consistency with Land Development Code

Section 2.8.3.4 & 5.1.5.5 *Criteria for Approval* is to be applied when reviewing a Conditional Use Permit request.

- Staff finds the request **consistent** with the following:
  - **Criteria 1, 3, 4, and 5 in Section 2.8.3.4 and Criteria 8, 9, 10, and 11 in Section 5.1.5.5.**
- Staff finds the request **inconsistent** with the following:
  - **Criteria 2 and 7 in Section 2.8.3.4**
- Staff had a **neutral** finding on the following:
  - **Criteria 6 in Section 2.8.3.4.**



## Past Action / Appeal Overview

In accordance with the Development Code criteria, staff provided a neutral recommendation of the Conditional Use Permit renewal request.

The Planning and Zoning Commission considered this CUP renewal request at their December 9, 2025 meeting and voted to deny the Conditional Use Permit renewal in a 9-0 vote.

In accordance with Section 2.8.3.6 the applicant may appeal the decision of the Planning and Zoning Commission to the City Council.

- **Per Section 2.2.4.2, a super majority vote (6 members) of the City Council is required to reverse the decision of the Planning and Zoning Commission**



# Potential Conditions for Consideration

**If the City Council chooses to overturn the decision of the Planning and Zoning Commission, staff recommends the following conditions be placed on the CUP:**

1. The permit shall be valid for one (1) year, provided standards are met;
2. No live music and no speakers are permitted on the outdoor patio areas;
3. Food shall be available to patrons in all areas of the restaurant in a manner that meets the requirements of Section 5.1.5.5(4)(b), Eating Establishments – Downtown CBA Boundary; and
4. The permit shall be posted in the same area and manner as the Certificate of Occupancy.