

<b>Conditional Use Permit</b>	<b>126 S Guadalupe Street</b>
<b>CUP-25-61</b>	<b>Rooftop on the Square</b>



### Summary

<b>Request:</b>	Renewal of a Conditional Use Permit		
<b>Applicant:</b>	Rob Espinosa 126 S. Guadalupe St. San Marcos, TX 78666	<b>Property Owner:</b>	San Marcos Assets LLC 126 S. Guadalupe St. San Marcos, TX 78666
<b>CUP Expiration:</b>	November 26, 2025	<b>Type of CUP:</b>	CBA Restaurant Mixed Beverages
<b>Interior Floor Area:</b>	3,000 sf	<b>Outdoor Floor Area:</b>	2,500 sf
<b>Parking Required:</b>	N/A	<b>Parking Provided:</b>	Yes
<b>Days &amp; Hours of Operation:</b>	Monday – Sunday: 12pm – 2am		

### Notification

<b>Posted:</b>	November 21, 2025	<b>Personal:</b>	November 21, 2025
<b>Appeal Posted:</b>	January 16, 2026	<b>Appeal Personal:</b>	January 16, 2026
<b>Response:</b>	None as of the date of this report		

### Property Description

<b>Legal Description:</b>	Original Town of San Marcos, Block 12, Lot 4A		
<b>Location:</b>	Approx. 150 ft. south of the Guadalupe St & San Antonio St intersection		
<b>Acreage:</b>	0.166 acres	<b>PDD/DA/Other:</b>	N/A
<b>Existing Zoning:</b>	Character District 5-Downtown (CD-5D)	<b>Proposed Zoning:</b>	Same
<b>Existing Use:</b>	Restaurant	<b>Proposed Use:</b>	Restaurant
<b>Preferred Scenario:</b>	Mixed Use Medium	<b>Proposed Designation:</b>	Same
<b>CONA Neighborhood:</b>	Downtown	<b>Sector:</b>	8
<b>Utility Capacity:</b>	Adequate	<b>Floodplain:</b>	No
<b>Historic Designation:</b>	N/A	<b>My Historic SMTX Resources Survey:</b>	Not Historic Age

### Surrounding Area

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	Character District - 5 Downtown (CD-5D)	Loans and Auto Insurance	Mixed Use Medium
<b>South of Property:</b>	Character District - 5 Downtown (CD-5D)	Parking	Mixed Use Medium
<b>East of Property:</b>	Character District - 5 Downtown (CD-5D)	Law Office and Research Center	Mixed Use Medium
<b>West of Property:</b>	Character District - 5 Downtown (CD-5D)	Vacant Building & Parking	Mixed Use Medium

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### Staff Recommendation

#### **Consistency with the Land Development Code:**

- 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 5.1.5.5 and Section 2.8.3.4**
- Staff had a **neutral** finding on the following:
  - **Criteria 6 in Section 2.8.3.4.**

**If the City Council chooses to overturn the decision of the Planning and Zoning Commission to deny the renewal of the CUP, 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. 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;
3. The permit shall be posted in the same area and manner as the Certificate of Occupancy; &
4. No live music and no speakers are permitted in the outdoor patio areas.

<b>Staff:</b> Craig Garrison, CFM	<b>Title:</b> Planner	<b>Date:</b> December 3, 2025
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### Commission Recommendation

Approval as Submitted	Approval with Conditions / Alternate	<b><u>X</u></b>	<b><u>Denial</u></b>
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#### **Speakers in favor or opposed**

There were no speakers who spoke during the public hearing.

#### **Recommendation from the Planning and Zoning Commission Meeting held December 9, 2025.**

A motion was made by Vice-Chair Spell, second by Commissioner Costilla to recommend denial of the request.

The vote passed with a 9-0 vote

**For: 9** (Commissioner Agnew, Commissioner Costilla, Commissioner Burleson, Commissioner Meeks, Commissioner Spell, Commissioner Case, Commissioner Dunn, Commissioner Van Oudekerke, and Commissioner Paselk)

**Against: 0**

**Absent: 0**

#### **Meeting Summary Discussion:**

Corporal Pierce and Commander Poorboy of the San Marcos Police Department provided an overview of Police comments and an overview of recent events. Commissioner Burleson had inquiries into fake and valid State Identification requirements.

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### History

Rooftop has held a “Restaurant (Eating Establishment)” Conditional Use Permit (CUP) since 2012. In accordance with the Development Code, a “Restaurant (Eating Establishment)” located within the Central Business Area (CBA) must meet certain standards related to kitchen equipment, meal periods, advertisement, and cleanliness outlined in Section 5.1.5.5.B.4.b.

**2012:** The business submitted a Restaurant CUP which was approved by the Planning and Zoning Commission for one year. During 2012, the business received enforcement/citation letters for violations regarding the restaurant requirements associated with the CUP and Certificate of Occupancy requirements. These violations were subsequently resolved by the business.

**2013:** The business received two violations for serving alcoholic beverages to intoxicated customers. As a result, renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for two periods of three months, with conditions, to monitor the business followed by an approval of six months, with conditions.

**2014:** The renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for six months, with conditions, followed by an approval with conditions later that year for one year.

**2015:** The renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for three years with conditions.

**2018:** The renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for three years with conditions.

**2021:** The renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for three years with conditions.

**2025 (September):** The renewal of the Restaurant CUP was approved by the Planning and Zoning Commission for three months with conditions. The business received Health Code Violations that resulted in the restaurant being shut down.

**2025 (December):** The renewal of the Restaurant CUP was denied by the Planning and Zoning Commission.

### Additional Analysis

The previous CUP renewal was approved by the Planning and Zoning Commission in September 2025 for three months. The short approval was intended to allow the establishment to demonstrate continued conformance with all City codes and ordinances, including the continued operation of an associated restaurant. To staff’s knowledge, Bagel Bros. was hired after the previous Planning and Zoning Commission approval and was later replaced by the Rooftops’ own restaurant. Rooftop has shown conformance with Section 5.1.5.5.B.4.b that outlines the requirements for a restaurant within the CBA boundaries, but due to the criteria analysis of Section 2.8.3.4 & 5.1.5.5 and Rooftop’s nine police calls within a three-month period, staff provided a neutral recommendation at the December 9, 2025 Planning and Zoning Commission meeting.

Senate Bill 1008 provides provisions on the city’s ability to prohibit amplified sound at a restaurant. Per this bill and staff’s analysis, the City can enforce the existing noise ordinance.

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### Comments from Other Departments

Police	The SMPD strongly recommends Denial for this CUP. See attached Police Report and attached memorandum.
Fire	See attached Fire Department and attached memorandum.
Public Services	No Comment
Engineering	No Comment
Health/Code Compliance	No Comment

Evaluation			Criteria for Approval (Sec. 2.8.3.4 & 5.1.5.5)
Consistent	Inconsistent	Neutral	
<u>X</u>			The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive plan.
	<u>X</u>		The proposed use is consistent with any adopted neighborhood character study for the area. <b>A goal of the Downtown Area Plan is to, "Provide an inclusive, welcoming, safe place for people of all ages, incomes, abilities, religious beliefs, and cultures." The high amount of police calls to Rooftop within a three-month period is not in line with goal for safety within the downtown area.</b>
<u>X</u>			The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.
<u>X</u>			The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.
<u>X</u>			The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
		<u>X</u>	The proposed use incorporates roadway adjustments, traffic control devices or mechanisms and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.
	<u>X</u>		The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties. <b>Based on the high volume of police calls and the attached police memorandum, staff finds that the business needs to incorporate features to minimize adverse effects of its clientele on the downtown community.</b>
<u>X</u>			The proposed use meets the standards for the applicable district, or to the extent variations from such standards have been requested that such variations are necessary to render the use compatible with adjoining development and the neighborhood.
<u>X</u>			The proposed use is not within 300 ft. of a detached single-family residence located in a zoning district that only permits detached single-family residences.
<u>X</u>			The proposed use is not within 300 ft. of a church, public or private school, or public hospital.
<u>X</u>			The proposed use is not within 1,000 ft. of a public or private school as outlined within section 5.1.5.5.