

CITY OF CALISTOGA

STAFF REPORT

TO: CHAIRMAN MANFREDI AND PLANNING COMMISSIONERS

FROM: KEN MACNAB, PLANNING AND BUILDING MANAGER

MEETING DATE: APRIL 25, 2012

**SUBJECT: CONDITIONAL USE PERMIT REQUEST (U 88-05(A)) TO AMEND
USE PERMIT U 88-05 TO ALLOW LIVE ENTERTAINMENT AT
BUSTER'S BARBECUE RESTAURANT**

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3 **REQUEST**
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5 **U 88-05(A):** Consideration of a Conditional Use Permit application requesting an amendment to
6 Use Permit U 88-05 to allow live entertainment at Buster's Barbecue and Bakery, 1207 Foothill
7 Boulevard (APN 011-317-007) within the "DC-DD" Downtown Commercial-Design District
Overlay Zoning District. This proposed action is exempt from the California Environmental
Quality Act (CEQA) under Section 15301 of the CEQA Guidelines.

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11 **BACKGROUND**
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13 Restaurant use of the subject property began in 1957 when a small drive-in hamburger stand
14 was opened. Over the years a number of different restaurants have operated on the property,
15 including the Jolly Cone, the Calistoga Drive Inn and La Cochina Mexicana. Buster's Barbecue
16 opened in 2000 and has now been in operation for over 10 years.

17
18 In 1982, the City approved Conditional Use Permit 82-15 that allowed reactivation of an expired
19 drive-in restaurant use on the property. In 1983, the City approved Conditional Use Permit
20 U 83-11 allowing for the addition of an indoor dining area. In 1988, the City approved
21 Conditional Use Permit U 88-05 which allowed for the expansion of the restaurant's outdoor
22 dining area and the sale of beer and wine on the property. Conditional Use Permit 88-05
23 (Attachment 3) superseded the previously approved use permits and is the current operating
24 use permit for the restaurant use.

25
26 On March 2, 2011, the Planning and Building Department received an application requesting
27 approval of an amendment to Conditional Use Permit U 88-05 to allow indoor live entertainment
28 at the restaurant four times per week.

29
30 On March 23, 2011, a public hearing on the requested Use Permit amendment was held before
31 the Planning Commission. After receiving a report and presentation from staff and in
consideration of oral and written testimony from members of the public, the Planning

33 Commission continued the item to allow the applicant additional time to consider staff's
34 recommendations.

35
36 Following the March 23, 2011, Planning Commission meeting, staff met with Mr. Charles Davis
37 (owner) and Ms. Barbara Jolly (owner's representative) to review the recommendations of the
38 staff report and discuss the process and potential costs associated with pursuing live
39 entertainment as originally proposed. Mr. Davis and Ms. Jolly stated that they understood the
40 process and potential costs and indicated their desire to proceed with conducting a test live
41 entertainment event to evaluate noise levels associated with amplified music in the enclosed
42 patio area.

43
44 On April 4, 2012, a noticed test live entertainment event was conducted at the subject business
45 between the hours of 6:00 p.m. and 8:30 p.m. Results and observations from the test live
46 entertainment are discussed in the analysis section of this report.

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48 **REQUESTED AMENDMENT**

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50 The applicant has proposed an amendment to Conditional Use Permit U 88-05 to allow live
51 entertainment indoors only, up to four days a week and going no later than 10:00 p.m. Live
52 entertainment would consist of musical performances by "low keyed" jazz or blues musical acts
53 (3 to 4 piece bands with acoustic or amplified instruments and an amplified vocalist). The
54 musical acts would perform in the enclosed patio area that is located adjacent to Foothill
55 Boulevard (Attachment 4). Performances would occur on a small stage area located in the
56 northeast corner of the enclosed patio area. The applicant has proposed the following hours for
57 holding entertainment events.

58
59 Monday through Friday : 5 p.m. to 10:00 p.m.
60
61 Saturday and Sunday : 12:00 p.m. to 10:00 p.m.
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63 DJ music and/or karaoke music is not included as part of the applicant's proposal.
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65 **STAFF ANALYSIS**

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67 The subject site is located at the southern end of the downtown commercial area adjacent to the
68 busiest intersection in the city (Foothill Boulevard and Lincoln Avenue). Surrounding land uses
69 include the Craftsman Inn Bed and Breakfast to the west, the Union 76 and Fast and Easy gas
70 stations to the north, private residential units to the east, and a large and relatively undeveloped
71 residential property to the south (see Attachment 5). Areas generally west and south of the
72 subject site are zoned for lower density residential uses. Areas generally north and east of the
73 site are zoned for commercial uses and higher density residential uses. The following analysis
74 is made in consideration of the site's locational context.

75
76 **A. Land Use**

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78 **Background**

79 The subject property has a zoning designation of Downtown Commercial-Design District
80 overlay (DC-DD). The DC-DD Zoning District is intended to provide for a broad range of

81 uses which generate high pedestrian traffic and which do not have large space
82 requirements. The overarching goal in the City's commercial zoning scheme is to
83 preserve and protect the predominantly residential character of the community by
84 providing a balanced mix of commercial and residential uses in accordance with the
85 General Plan.
86

87 Restaurants are allowed in the DC-DD Zoning District as a permitted use pursuant to
88 Section 17.22.040(A)(9) of the Zoning Code. However, Conditional Use Permit approval
89 was required for restaurant uses at the time the restaurant use was re-established on
90 the property in 1982. Consequently, the subject business is currently subject operating
91 under Conditional Use Permit U 88-05 (Attachment 3), which authorizes use of the
92 property as a restaurant and also authorizes sale of beer and wine.
93

94 Section 17.28.020 (B)(1) of the Design District overlay requires Design Review approval
95 for all uses requiring a Use Permit in the DC zoning district. Because there are no
96 proposed exterior modifications, there are no substantial design issues to be reviewed,
97 staff is recommending that the requirement for Design Review approval be waived per
98 Section 17.06.020(B)(2) of the Zoning Code.
99

100 Analysis

101 The applicant is requesting authorization to have live entertainment at the restaurant.
102 Live entertainment, defined below, is an allowable use in the DC-DD Zoning District with
103 use permit approval by the Planning Commission (Section 17.22.040(B)(16)).
104

105 *"Live entertainment facilities" means any form of entertainment whether or not*
106 *aided by amplification which is created or presented by an individual or group of*
107 *individuals or, in some cases, by animals including, but not limited to: musical*
108 *performances, comedic performances, theatrical or dance performances,*
109 *speeches and other oratory performances, etc. The presentation of recorded or*
110 *transmitted music or entertainment performances unaccompanied by a "DJ" shall*
111 *not be considered to be live entertainment. (Ord. 558 § 3(A)(2), 1999)."*
112

113 As stated in the definition above, the presentation of recorded or transmitted music
114 unaccompanied by a DJ shall not be considered to be live entertainment and does not
115 require use permit approval.
116

117 Music created by an individual or group of individuals is considered "live entertainment"
118 and is subject to use permit review and approval. Therefore, an amendment to the
119 current use permit is required to allow live entertainment on the premises. Compliance
120 with the required findings for use permit approval is discussed in Section C of this report.
121

122 **B. Noise**

123 Background

124 The primary source of noise in the vicinity of the subject site is roadway traffic at the
125 controlled intersection of Foothill Boulevard and Lincoln Avenue (State Hwy's 29 and
126 128). Noise levels taken at points east and west of the subject site during preparation of
127

128 the 2003 General Plan Update were measured at 68 to 73 dBA – a level considered to
129 be disruptive to a conversation between two people.

130
131 Goal N-1 of the Noise Element in the General Plan is to “preserve current low levels of
132 noise in Calistoga to maintain the City’s rural atmosphere.” Objective N-1.4 under this
133 goal directs that the potential for new development projects to create unacceptable noise
134 levels at sensitive receptors such as residential areas, hospitals, convalescent homes
135 and schools should be minimized. “Unacceptable” noise levels are defined in Figure N-4
136 of the Noise Element of the General Plan as noise exceeding 75 dBA (Attachment 6).
137 Policy P.2 under Objective N-1.4 requires that a noise study, including field noise
138 measurement, be required for any proposed project that would: (1) place a potentially
139 intrusive noise source near an existing noise sensitive receptor; or (2) place a noise
140 sensitive land use near an existing potentially intrusive noise source.

141
142 The City’s Noise Ordinance (Municipal Code Section 8.20.020) establishes that it shall
143 be unlawful for any person or business to cause to be used or operated any mechanical
144 device or instrument for the intensification or amplification of the human voice or any
145 sound or noise, in any public or private place, in such a manner that the peace and good
146 order of the neighborhood are disturbed, unless approved through an established permit.

147
148 Noise Level Observations
149 The applicant’s request for a use permit amendment to allow live entertainment has the
150 potential to result in the establishment of a potentially intrusive noise source near two
151 noise sensitive receptors: the Craftsman Inn, located approximately 75 feet from the
152 enclosed patio structure; and the private residential units located on the property
153 immediately east of the site (1101 Foothill Boulevard), which are approximately 170 feet
154 from the patio structure (see Attachment 5).

155
156 On April 4, 2012, a test live entertainment event was conducted for the purpose of
157 allowing City staff, the business owner and neighborhood residents an opportunity to
158 collectively observe neighborhood conditions during a live event. The event consisted of
159 two live singers/electric guitarists, an electric bass player, and a drummer. The event
160 was held indoors on a Wednesday evening, between the hours of 6:00 to 8:30 p.m.

161
162 Sound levels were measured by Officer Mike Perreault and Planning Manager MacNab
163 using a hand-held sound meter¹. Table 1 below shows the measured sound level
164 readings at the various points identified on the map during the outdoor portion of the
165 event. Sound levels at the Craftsman Inn were measured at an approximate range of 57
166 to 67 decibels (dB). Sound levels at the nearby residences located east of the site were
167 measured at an approximate range of 57 to 62 decibels (dB).

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¹ Officer Perreault and Planning Manager MacNab are not professionally trained or educated in the field of acoustics. The measurements presented in this report do not take into consideration the scientific variables that are known to contribute to actual and perceived noise levels that would have otherwise been factored in had the measurements been conducted by a professional acoustical engineer. Staff believes that the measurements provide a general representation of noise levels experienced during this event, but acknowledge that they are not precise and should not be considered as definitive.

Table 1 – Noise Level Readings – April 4th Test Live Entertainment Event

	5:15 p.m. <i>Rush Traffic</i>	6:15 p.m. <i>Rush Traffic/Music</i>	7:15 p.m. <i>Light Traffic/Music</i>
Craftsman Inn	62-67 dBA	60-65 dBA	57-62 dBA
1101 Foothill	57-62 dBA	59-61 dBA	53-55 dBA
1104 Elm	65-70 dBA	60-66 dBA	57-60 dBA

Analysis

Figure N-4 in the Noise Element of the General Plan (Attachment 5) provides land use compatibility guidelines for noise exposure in the City. Noise exposure guidelines for residential compatibility are noted below. For perspective, 75 to 80 dB is the noise level one would experience when standing 100 feet away from a freeway.

Table 2 – Noise Exposure Guidelines for Residential Uses

Acceptable	: < 60 dB
Conditionally Acceptable	: 60 to 75 dB
Unacceptable	: > 75 dB

Outdoor noise levels observed by staff at surrounding properties while live entertainment was occurring at Busters BBQ were measured in the “conditionally acceptable” range. Staff found noise levels generated by rush hour traffic alone to be higher than the noise levels measured when music and rush hour traffic were occurring simultaneously. Measurements taken when traffic was lighter showed noise levels near or below 60 dB, which by General Plan standards is considered to be an acceptable range.

Indoor noise levels during the live entertainment event were measured at 95 to 101 dB, above what staff would consider to be a “background level”. Consequently, it was necessary to speak with a raised voice in order to have a table conversation.

It should be noted that these findings are based on unscientific measurement methods. However, staff believes that even if one were to assume that professionally conducted measurements would have resulted in higher readings the readings would still be within the range considered to be “conditionally acceptable” (less than 75 dB).

It should also be noted that some neighbors may find noise objectionable even if it is at a level that is identified as “acceptable” by the compatibility standards contained in the General Plan. This is not to suggest that neighbor concerns are not legitimate, but that the level at which noise is considered disruptive can be subjective and may vary from person to person.

216 If the Planning Commission accepts the premise that based on unscientific
217 measurements it is likely that noise generated by indoor live entertainment events at
218 Busters BBQ would result in conditionally acceptable noise levels at surrounding
219 properties (i.e., noise levels between 60 and 75 dB), staff would suggest the following
220 provisions be considered to minimize the impacts of live entertainment / amplified music
221 events:
222

- 223 1. Live entertainment / amplified music should only be allowed as follows:
224
225 A) One night per weekday (Monday through Thursday) between the
226 hours of 5:00 p.m. and 8:00 p.m.;
- 227
228 B) One night per weekend (Friday or Saturday) between the hours of
229 5:00 p.m. and 9:00 p.m., OR one afternoon per weekend (Saturday or
230 Sunday) between the hours of 12:00 p.m. and 4:00 p.m.
- 231
- 232 2. Music accompanied by a DJ and karaoke music should be prohibited.
- 233
- 234 3. Live entertainment anywhere outdoors on the subject property should be
235 prohibited.
- 236
- 237 4. Code compliant doors should be installed at both entry/exit points into the
238 enclosed patio area so that doors can be kept closed during live
239 entertainment events (*Note: the current doors do not meet code
240 requirements and must be kept open at all times when the enclosed patio
241 area is occupied*).
- 242
- 243 5. Windows should be kept shut during live entertainment performances and
244 doors should not be left open.
- 245
- 246 6. Live entertainment shall be conducted in a manner that is ancillary and
247 complementary to the primary permitted use as a restaurant.
- 248
- 249 7. Live entertainment performances should not exceed a noise level of 60
250 dB as measured from any property line of the subject property.
- 251
- 252 8. The performance of the owner in conducting live entertainment events
253 should be periodically reviewed by staff and reported to the Planning
254 Commission.
- 255

256 If the Planning Commission does not accept the premise that noise levels resulting from
257 live entertainment events at Busters are likely to fall within the "conditionally acceptable
258 range", than it is within the Commission's discretionary authority to request that the
259 applicant a submit a professionally prepared noise study.
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C. Correspondence

Staff received one e-mail in response to the request for live entertainment from the owner of the Craftsman Inn (Attachment 8). The owner expressed their support for the request provided that restrictions on the frequency (no more than three days per week) and hours (no later than 8 p.m.) of events are conditioned as part of the approval. It was also suggested that any approval identify a measurable noise level limit.

D. Findings for Use Permit Approval

If the Planning Commission concurs with staff's opinion that noise levels from live entertainment events at Buster's are likely to be within the considered "conditionally acceptable" (i.e., 60 to 75 dB) and the applicant is agreeable to the revisions discussed in Section B above, the following findings can be made pursuant to Section 17.40.070 of the Calistoga Municipal Code:

1. The proposed development, together with any provisions for its design and improvement, is consistent with the General Plan, any applicable specific plan and other applicable provisions of the Zoning Code including the finding that the use as proposed is consistent with the historic, rural, small-town atmosphere of Calistoga;

Response: The project site is zoned for commercial land uses. The existing restaurant has been operating as a restaurant establishment since 1957. Calistoga is determined in Municipal Code Section 17.02.040 to be primarily, essentially and predominantly a residential community wherein business and commerce are an enhancement and supportive to the quality of life and City's residential character. Efforts to expand activities at an existing restaurant that could adversely affect the adjoining residential quality of life could potentially be inconsistent with the General Plan. However, incorporation of the measures below as conditions of project approval would ensure that potential impacts will be kept to a minimum and that the project would not significantly detract from the rural, small-town atmosphere of the area.

- (A) Live entertainment / amplified music should only be allowed as follows:
 1. One night per weekday (Monday through Thursday) between the hours of 5:00 p.m. and 8:00 p.m.;
 2. One night per weekend (Friday or Saturday) between the hours of 5:00 p.m. and 9:00 p.m., OR one afternoon per weekend (Saturday or Sunday) between the hours of 12:00 p.m. and 4:00 p.m.
- (B) Music accompanied by a DJ and karaoke music should be prohibited.
- (C) Live entertainment anywhere outdoors on the subject property should be prohibited.

- 311 (D) Prior to the commencement of live entertainment events, code compliant
312 doors shall be installed at both entry/exit points into the enclosed patio
313 area so that doors can be kept closed during live entertainment events.
314
- 315 (E) Windows should be kept shut during live entertainment performances and
316 doors should not be left open.
317
- 318 (F) Live entertainment shall be conducted in a manner that is ancillary and
319 complementary to the primary permitted use as a restaurant.
320
- 321 (G) Live entertainment performances should not exceed a noise level of 60
322 dB as measured from any property line of the subject property.
323
- 324 (H) The performance of the owner in conducting live entertainment events
325 should be periodically reviewed by staff and reported to the Planning
326 Commission.
327

- 328 2. The site is physically suitable for the type and density of development;
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330 Response: The patio area is a mostly enclosed space with adequate facilities and space
331 for live entertainment. The installation of doors at all entry points into the patio area will
332 help to attenuate noise. Windows and doors will be kept closed during indoor live
333 entertainment events to minimize noise levels outside of the restaurant.
334

- 335 3. The proposed development has been reviewed in compliance with the California
336 Environmental Quality Act (CEQA) and the project will not result in detrimental or
337 adverse impacts upon the public resources, wildlife or public health, safety and
338 welfare;
339

340 Response: This project is exempt from CEQA under Section 15301 (Class 1 – Existing
341 Facilities).
342

- 343 4. Approval of the use permit application will not cause adverse impacts to
344 maintaining an adequate supply of public water and an adequate capacity at the
345 wastewater treatment facility;
346

347 Response: The City's water system and wastewater treatment facility is adequate to
348 serve this project.
349

- 350 5. Approval of the use permit application shall not cause the extension of service
351 mains greater than 500 feet;
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353 Response: Approval of this use permit application shall not cause the extension of
354 service mains greater than 500 feet;
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- 356 6. An allocation for water and/or wastewater service pursuant to Chapter 13.16
357 CMC (Resource Management System) shall be made prior to project approval.
358 Said allocation shall be valid for one year and shall not be subject to renewal.

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Response: The current allocation for water and wastewater is sufficient to accommodate the addition of live entertainment one night per week to the existing use. No additional allocation for water and/or wastewater is required.

7. The proposed development presents a scale and design which are in harmony with the historical and small-town character of Calistoga;

Response: No new structures are being proposed as part of the project. Replacement of the existing doors at the entry points into the enclosed patio area will require administrative review and approval prior to construction. Through this process staff will ensure that the design does not impact or detract from existing neighborhood qualities.

8. The proposed development is consistent with and will enhance Calistoga's history of independent, unique, and single location businesses, thus contributing to the uniqueness of the town, which is necessary to maintain a viable visitor industry in Calistoga and to preserve its economy; and

Response: Approval of the request for live entertainment will help to sustain an established business in the community. It also will increase opportunities for residents and visitors to enjoy music performed by local and area musicians.

9. The proposed development complements and enhances the architectural integrity and eclectic combination of architectural styles of Calistoga.

Response: This proposal does not alter the architectural character of the existing structure or other structures in Calistoga. Therefore, this finding is not applicable.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301, Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the addition of live entertainment as part of an existing restaurant establishment is found to be exempt from the environmental review requirements of Chapter 19.10 of the Calistoga Municipal Code, implementing the California Environmental Quality Act of 1979, as amended, in that the proposed use will occur within an existing commercial facility, will not result in a significant source of noise near a noise sensitive receptor, and involves a negligible expansion of use in an existing facility.

RECOMMENDATIONS

- A. Staff recommends the filing of a Notice of Exemption for the project pursuant to Section 15301 of the CEQA Guidelines.
- B. Based upon the above findings and pursuant to Section 17.06.020(B)(2) of the Zoning Ordinance, staff recommends that the requirement for Design Review approval be waived because there are no substantial design issues to be reviewed.

- 406 C. Based on the above findings, staff recommends adoption of PC Resolution 2011-09
407 approving an amendment to Conditional Use Permit U 88-05 (U 88-05(A)) to allow live
408 entertainment indoors at Buster's Barbecue and Bakery, 1207 Foothill Boulevard (APN
409 011-317-007) within the "DC-DD" Downtown Commercial-Design District Overlay Zoning
410 District, subject to conditions of approval.
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412 **ATTACHMENTS**
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- 414 1. Vicinity Map
415 2. Draft Planning Commission Resolution PC 2011- 09
416 3. Conditional Use Permit U 88-05
417 4. Site Plan and Floor Plan
418 5. Neighborhood Context Map
419 6. Figure N-4: Land Use Compatibility Guidelines for Noise Exposure; 2003 General Plan
420 Noise Element
421 7. Applicant's proposal for live entertainment events
422 8. Communication dated April 12, 2012 from Gillian Kite, owner of the Craftsman Inn
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426 **NOTE:** The applicant or any interested person is reminded that the Calistoga Municipal Code
427 provides for a ten (10) calendar day appeal period. If there is a disagreement with the Planning
428 Commission, an appeal to the City Council may be filed. The appropriate forms and applicable
429 fee must be submitted prior to 5:00 p.m. on or before the tenth calendar day following the
430 Commission's final determination.
431