

**CITY OF CALISTOGA
PLANNING COMMISSION
RESOLUTION PC 2017-__**

**APPROVING A USE PERMIT TO ALLOW OUTDOOR LIVE ENTERTAINMENT
ASSOCIATED WITH THE RESTAURANT LOCATED AT 1207 FOOTHILL
BOULEVARD (APN 011-310-006 & -007)**

1 **WHEREAS**, on April 25, 2012, the Planning Commission adopted
2 Resolution PC 2011-09 allowing live entertainment indoors within the Buster's
3 Barbecue restaurant located at 1207 Foothill Boulevard; and

4 **WHEREAS**, on September 24, 2014, the Planning Commission adopted
5 Resolution PC 2014-22 approving amendments to the indoor live entertainment
6 use permit; and

7 **WHEREAS**, on July 18, 2016, Charles Davis and Barbara Jolly submitted
8 a request to conduct outdoor live entertainment; and

9 **WHEREAS**, a noise assessment was conducted on April 2, 2017, during a
10 publicly-noticed live entertainment event between the hours of 3:00 p.m. and
11 6:00 p.m.; and

12 **WHEREAS**, the results of the noise assessment of April 2, 2017 were
13 summarized in a noise assessment and mitigation report prepared by Paul
14 Carlsen dated May 1, 2017; and

15 **WHEREAS**, the Planning Commission considered the request at a public
16 hearing on May 10, 2017, and prior to taking action on the application, received
17 written and oral reports by the staff, and public testimony; and

18 **WHEREAS**, this action has been reviewed for compliance with the
19 California Environmental Quality Act (CEQA) and is exempt from the
20 requirements of the CEQA pursuant to Section 15301 of the CEQA guidelines.
21 and

22 **WHEREAS**, the Planning Commission pursuant to CMC Section
23 17.40.030(D) has made the following findings for the project:

- 24 1. Finding: Is in accord with the General Plan and any applicable planned
25 development.

26 Substantial evidence: Goal N-1 of the Noise Element in the General Plan
27 is to "preserve current low levels of noise in Calistoga to maintain the
28 City's rural atmosphere." Policy, P1.4-3 under this goal stipulates that new
29 development shall not be approved unless generally consistent with the
30 Noise Compatibility Guidelines contained in Figure N-4. "Conditionally
31 acceptable" noise levels are defined for residential and transient
32 occupancy areas in Figure N-4 as noise levels between 60 and 75 dBA.
33 Conditions of approval have been incorporated into the project approval
34 that will ensure noise levels will be kept to a acceptable level and that the

35 project will not significantly detract from the rural, small-town atmosphere
36 of the area. As such, the use is found to be consistent with the General
37 Plan.

38 2. Finding: Is in accord with all applicable provisions of the Zoning Code.

39 Substantial evidence: The project site is zoned for commercial land uses.
40 A restaurant has been operating on the subject property since 1957.
41 Section 17.02.030(B) of the Zoning Code indicates that its purpose is to
42 protect the established character of the City and the social and economic
43 stability of agriculture, residential, commercial, industrial, historical and
44 other resource areas within the City which assures the orderly and
45 beneficial development of such areas. Efforts to expand activities at an
46 existing restaurant that could adversely affect the adjoining residential
47 quality of life could potentially be inconsistent with the Zoning Code.
48 However, conditions of approval have been incorporated into the project
49 approval that would ensure potential impacts are kept to a minimum and
50 that the project would not significantly detract from the small-town
51 atmosphere of the area.

52 3. Finding: Will not substantially impair or interfere with the development, use
53 or enjoyment of other property in the vicinity.

54 Substantial evidence: The outdoor patio area is a controlled space with
55 adequate facilities and space for live entertainment. The installation of
56 fencing and professional sound equipment would attenuate noise,
57 reducing the impact on adjoining properties to an acceptable level.

58 4. Finding: Is consistent with and enhances Calistoga's history of
59 independently-owned businesses, thus contributing to the uniqueness of
60 the town, which is necessary to maintain a viable visitor industry and
61 promote its economy.

62 Substantial evidence: Approval of the request for outdoor live
63 entertainment would help to sustain an established business in the
64 community. The use would also increase opportunities for residents and
65 visitors to enjoy music performed by local and area musicians.

66 5. Finding: Is resident-serving, in the case of a formula business.

67 Substantial evidence: The proposed use is not considered a formula
68 business as defined by Title 17.

69 **NOW, THEREFORE, BE IT RESOLVED** by the City of Calistoga Planning
70 Commission that based on the above findings, the Planning Commission
71 approves the subject use permit application, subject to the following conditions of
72 approval.

- 73 1. This permit authorizes outdoor live entertainment three days a week
74 consistent with the narrative and plans received by the City on July 18,
75 2016. The band hours shall be limited to 3 pm to 7 pm Sunday through
76 Thursday and from 3 pm to 8 pm Friday and Saturday. The conditions
77 listed below are particularly pertinent to this permit.
- 78 2. This permit shall be null and void if not used within a year, or if the use is
79 abandoned for a period of one hundred and eighty (180) days. Once the
80 use is initiated, this permit shall be valid until it expires or is revoked
81 pursuant to the terms of this permit and/or Chapter 17.40 of the Calistoga
82 Municipal Code.
- 83 3. This use permit does not abridge or supersede the regulatory powers or
84 permit requirements of any federal, state or local agency, special district or
85 department which may retain regulatory or advisory function as specified by
86 statute or ordinance. The applicant shall obtain permits and licenses as may
87 be required from each agency.
- 88 4. Prior to the initiation of outdoor live entertainment, a 7 foot high, solid wood
89 board fence with vegetation shall be installed along the eastern property
90 line subject to the review and approval of the Planning and Building
91 Department prior to its installation.
- 92 5. Prior to the initiation of outdoor live entertainment, a professional sound
93 system shall be installed on the property as described by Paul Carlsen in
94 his noise assessment dated May 1, 2017, subject to the review and
95 approval of the Planning and Building Department.
- 96 6. Prior to and throughout the life of the outdoor live entertainment, a sound
97 meter shall be kept on-site to monitor noise.
- 98 7. In the event of substantiated ongoing noise complaints, the Planning and
99 Building Department shall determine if noise is being generated in excess
100 of 75 decibels at adjoining receptors. If so, the Planning and Building
101 Department may incorporate additional mitigation measures or a public
102 hearing shall be held for the Planning Commission to consider modifying
103 the conditions of the use permit to address noise-related issues.
- 104 8. Prior to and throughout the life of the outdoor live entertainment,
105 occupancy limits shall be posted on the property subject to the review and
106 approval of the Building Official.
- 107 9. Outdoor live entertainment shall not occur simultaneously with indoor
108 entertainment.

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Use Permit UP 2016-5
Outdoor Live Entertainment
Buster's Barbecue and Bakery
May 10, 2017
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110 **ADOPTED** on May 10, 2017 by the following vote of the Calistoga
111 Planning Commission:

112 **AYES:**

113 **NOES:**

114 **ABSENT:**

115 **ABSTAIN:**

116

117

Paul Coates, Chair

118

119

120

121 **ATTEST:** _____

122 Lynn Goldberg

123 Secretary to the Planning Commission

124