

**CITY OF CALISTOGA**  
**STAFF REPORT**

**TO: CHAIRMAN MANFREDI AND PLANNING COMMISSIONERS**

**FROM: KEN MACNAB, SENIOR PLANNER**

**MEETING DATE: NOVEMBER 16, 2009**

**SUBJECT: CONDITIONAL USE PERMIT (U 2000-06(A)) TO AMEND USE PERMIT U 2000-06 TO ALLOW AMPLIFIED MUSIC AND LIVE ENTERTAINMENT AT LA PRIMA PIZZA RESTAURANT**

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3 **REQUEST**  
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5 **U 2000-06(A):** Consideration of a Conditional Use Permit application requesting an amendment  
6 to Use Permit U 2000-06 to allow amplified music and live entertainment indoors or outdoors  
7 any time during business hours at property located at 1923 Lake Street (APN 011-535-010)  
8 within the "CC-DD", Community Commercial-Design District Overlay Zoning District. This  
9 proposed action is exempt from the California Environmental Quality Act (CEQA) under Section  
10 15301 of the CEQA Guidelines. *(This item was continued from the Planning Commission*  
11 *Meeting of October 14, 2009.)*  
12

13 **BACKGROUND**  
14

15 Commercial use of the subject property was first authorized on October 15, 1980, when the City  
16 approved a Conditional Use Permit to convert the existing single-family residence into a  
17 restaurant and bar (Lord Derby's Arms). In 1992, Lord Derby's Arms applied for and received  
18 use permit approval for live entertainment / amplified music (Use Permit AU 92-1). This use  
19 permit allowed live entertainment between the hours of 3:00 p.m. and 6:00 p.m., Saturdays and  
20 Sundays only. No indoor live entertainment was authorized under this permit. In January,  
21 1999, Lord Derby's Arms went out of business and the previously approved use permits for the  
22 restaurant and bar use and for outdoor live entertainment subsequently expired.  
23

24 On August 30, 2000, a Use Permit application (U 2000-06) was submitted by Tom Gagetta of  
25 Tomazzo's Steak and Chop House to re-establish the restaurant use. The Planning  
26 Commission approved the requested use permit on November 15, 2000, re-authorizing use of  
27 the building as a restaurant and bar. Use Permit U 2000-06 (Attachment 3) allows outdoor  
28 amplified music (i.e., pre-recorded music unaccompanied by a DJ) provided that it is not audible  
29 from the public right-of-way. Conditions Nos. 12 & 13 of the use permit state that any outdoor  
30 live entertainment event shall require administrative use permit approval. No indoor live  
31 entertainment is authorized under this permit. In late 2001, Tomazzo's Steak and Chop House  
32 went out of business.  
33

34 Following the closure of Tomazzo's, La Prima Pizza moved into the restaurant space and  
35 opened for business in early 2002. A new use permit was not required for La Prima Pizza  
36 because the use permit for Tomazzo's (U 2000-06) was still valid / had not yet expired.

37  
38 In June, 2002, the State Department of Alcoholic Beverage Control (ABC) issued a conditional  
39 license to the applicant to sell alcoholic beverages. Included in the ABC license is a condition  
40 that states "entertainment provided shall not be audible beyond the area under the control of the  
41 licensee."

42  
43 La Prima Pizza applied for a Conditional Use Permit amendment on May 7, 2004, to allow (1)  
44 low volume music inside the bar on a regular basis, and (2) outdoor music up to twice a month  
45 until 10:00 p.m. A public hearing before the Planning Commission was held on June 9, 2004, at  
46 which time the item was continued to a date uncertain with no action on the use request being  
47 taken by the Planning Commission. No further consideration of the use permit application  
48 request was ever made.

49  
50 On July 23, 2009, La Prima Pizza submitted a new Conditional Use Permit application to amend  
51 Use Permit U 2000-06 to allow amplified music and live entertainment indoors or outdoors any  
52 time during business hours. A public hearing was held before the Planning Commission to  
53 consider the applicant's request for live entertainment / amplified music on August 12, 2009. At  
54 this meeting staff recommended that live entertainment be allowed indoors only during specific  
55 days and hours. After receiving a report and presentation from staff and in consideration of oral  
56 and written testimony from members of the public, the Planning Commission appointed a sub-  
57 committee to review the operating parameters recommended by staff and assist the applicant in  
58 working with nearby residents to identify acceptable terms under which live entertainment could  
59 be permitted at the restaurant. The staff report and minutes from the August 12, 2009, Planning  
60 Commission meeting are attached to this report (Attachment 11).

61  
62 On September 25, 2009, a test live entertainment event was authorized by the Planning and  
63 Building Department for the purpose of providing City staff, the sub-committee, the business  
64 owner and neighborhood residents an opportunity to collectively observe neighborhood  
65 conditions during a live event. Noise measurements were taken at various locations during the  
66 event in an effort to make a general assessment of noise levels/impacts to nearby residences.  
67 Measurement results are summarized in Attachment 8 and discussed further in the analysis  
68 section of this report.

69  
70 On September 29, 2009, a follow-up neighborhood meeting was held to share observations  
71 made during the test live entertainment event and to allow the applicant and neighbors the  
72 opportunity to discuss interests, concerns and issues associated with the proposal for live  
73 entertainment. During the meeting, which was facilitated by Commissioners Creager and Kite,  
74 the applicant proposed significant revisions to their proposal for live entertainment (see  
75 description below). Neighbors in attendance at the meeting expressed continuing concern  
76 about allowing live entertainment at La Prima Pizza and were skeptical that the proposed  
77 revisions would resolve issues of noise, traffic/parking, litter and vandalism. A summary of the  
78 meeting discussion is attached to this report (Attachment 9).

79  
80 On October 14, 2009, the Planning Commission granted a request from the applicant for a  
81 continuance to allow them additional time to pay for accrued and anticipated City expenses in

82 processing this application. The applicant's have since paid the requested amount of funds  
83 and their account is in good standing.

84

85 **PROPOSAL**

86

87 The applicant is proposing an amendment to Use Permit U 2000-06 to allow live entertainment /  
88 amplified music indoors only, one night per weekend (Friday OR Saturday), and going no later  
89 than 10:00 p.m. Live entertainment / amplified music would consist of musical performances by  
90 solo artists, duos, trios and other small acts. A list of the type of acts envisioned by the  
91 applicant is attached (Attachment 7). DJ music and/or karaoke music would not be allowed,  
92 and no live entertainment / amplified music would occur on the outdoor deck area at any time.

93

94 This proposal is a substantial change from the proposal that was initially submitted last July. In  
95 the initial proposal the applicant requested that live entertainment / amplified music be allowed  
96 indoors or outdoors any time during business hours – including DJ music and karaoke music. In  
97 response to concerns expressed by neighboring residents and by members of the Planning  
98 Commission, the applicant has made significant changes, including: elimination of DJ and  
99 Karaoke music from the proposal; limiting the number of nights indoor live entertainment events  
100 would occur to once per week; and elimination of outdoor live entertainment events.

101

102 **STAFF ANALYSIS**

103

104 **A. Noise**

105

106 **Background**

107 The primary source of noise in the vicinity of the subject site is roadway traffic along  
108 Silverado Trail / Highway 29 and Lake Street. Noise studies conducted during the 2003  
109 General Plan update found this area to be noisier than most others in the City. Noise  
110 measurements taken near the subject site on the north side of Highway 29 revealed a 24  
111 hour averaged reading of 68 dBA, which is above levels considered normally acceptable  
112 for residential uses (Attachment 6).

113

114 Goal N-1 of the Noise Element in the General Plan is to “preserve current low levels of  
115 noise in Calistoga to maintain the City’s rural atmosphere.” Objective N-1.4 under this  
116 goal directs that the potential for new development projects to create unacceptable noise  
117 levels at sensitive receptors such as residential areas, hospitals, convalescent homes  
118 and schools should be minimized (NOTE: “unacceptable” noise levels are defined in  
119 Figure N-4 of the Noise Element of the General Plan as noise exceeding 75 dBA).  
120 Policy P.2 under Objective N-1.4 requires that a noise study, including field noise  
121 measurement, be required for any proposed project that would: (1) place a potentially  
122 intrusive noise source near an existing noise sensitive receptor; or (2) place a noise  
123 sensitive land use near an existing potentially intrusive noise source.

124

125 The subject property is located in close proximity to established residential  
126 neighborhoods, with homes located as close as 150 feet from the restaurant building  
127 (see Attachment 8). The applicant’s request for a use permit amendment to allow live  
128 entertainment has the potential to result in the establishment of a potentially intrusive  
129 noise source near these residential homes – which are considered noise sensitive

130 receptors. In accordance with Policy P.2, staff advised the applicant that a professional  
131 noise study would be required to assess potential noise impacts on nearby residences.  
132 Staff estimated that the cost of the noise study (to be paid for by the applicant) would be  
133 approximately \$3,000.

134  
135 Based on financial considerations, the applicant requested that an alternative approach  
136 to a professional noise study be considered. Staff agreed to take sound level  
137 measurements using the Police Department's noise meter. The applicant was advised  
138 that this alternative would not be as precise as a noise study nor would it be as credible  
139 or definitive. Further, the applicant was informed that if any questions were  
140 subsequently raised about the credibility or accuracy of the readings a professional  
141 noise study still might need to be conducted.

#### 142 Noise Level Observations

143 On September 25, 2009, a test live entertainment event was conducted for the purpose  
144 of allowing City staff, the business owner and neighborhood residents an opportunity to  
145 collectively observe neighborhood conditions during a live event. The event consisted of  
146 a live singer/guitarist and percussionist (amplified) on the outdoor patio from 6:00 to 8:00  
147 p.m., and then indoors from 8:00 to 9:00 p.m.

148  
149  
150 Sound levels were measured by Officer Curtis Madrigal using a hand-held sound meter<sup>1</sup>.  
151 Accompanying Officer Madrigal were Vice Chairman Clayton Creager, neighborhood  
152 property owner Chris Ciriacks, John Waters of the Weekly Calistogan, and Senior  
153 Planner Ken MacNab. Attachment 8 shows the measured sound level readings at the  
154 various points identified on the map during the outdoor portion of the event. Sound  
155 levels at the closest residence - 1720 Falleri Drive, located approximately 150 feet from  
156 La Prima's outdoor deck - were measured at approximately 60 decibels (dB).  
157 Measurements at all other locations were below 60 dB.

158  
159 During the indoor portion of the event, sound levels were measured by Senior Planner  
160 MacNab on the outdoor patio. With the door closed, a sound level of 55 dB was  
161 recorded. With the door open, the sound level was 65 dB. No measurements were  
162 taken in the surrounding neighborhood during the indoor portion of the event.

163  
164 On the Saturday following the test live entertainment event, complaints were received by  
165 the Police Department about loud music coming from the subject business. An Officer  
166 was dispatched in response to each call, but no verification of loud music was made in  
167 any of the responses. In response to this incident, Director Gallina and Senior Planner  
168 MacNab conducted an impromptu test of the restaurant's sound system (which includes  
169 indoor speakers and speakers on the outdoor patio) on Monday, September 28, 2009.  
170 The purpose of the test was to play pre-recorded music (e.g., compact discs) at

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<sup>1</sup> Officer Madrigal and Senior Planner 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.

171 maximum volume to evaluate sound levels at the edge of the property and at nearby  
172 residences. Sound levels were also measured at “normal” operating volumes which,  
173 according the owner, are set to serve as background music.  
174

175 Sound measurements were taken by Senior Planner MacNab at two locations during this  
176 test: the parking lot side of the ADA ramp leading up to the outdoor deck area on the  
177 south side of the property (near the edge of the public right-of-way) and from the closest  
178 residence, 1720 Falleri Drive, located approximately 150 feet from La Prima’s outdoor  
179 deck. At “normal” operating volume, the measured sound level at the ADA ramp  
180 entrance was recorded at 50 decibels (dB). At maximum volume, the measured sound  
181 level increased to 60 dB. From the residence located at 1720 Falleri Drive, a sound  
182 level of 50 dB was measured during normal operating volume. At maximum volume, the  
183 measured sound level was 58 dB.  
184

185 On Thursday, October 29, 2009, staff received a phone call in the afternoon from a  
186 neighbor who lives approximately 500 feet from the restaurant building. The neighbor  
187 called to say that he could hear music being played at La Prima. Staff responded  
188 immediately and met the neighbor in his front yard, confirming that the amplified music  
189 being played through the outdoor speakers facing the deck area was in fact audible at  
190 the property. The noise level of the music was not great enough to be heard over  
191 normal conversation, but it could definitely be heard when there was no conversation.  
192

193 Analysis

194 Figure N-4 in the Noise Element of the General Plan (Attachment 5) provides land use  
195 compatibility guidelines for noise exposure in the City. Noise exposure guidelines for  
196 residential compatibility are noted below.  
197

198 **Table 2 – Noise Exposure Guidelines for Residential Uses**

199	Acceptable	: < 60 dB
200	Conditionally Acceptable	: 60 to 75 dB
201	Unacceptable	: > 75 dB
202		

203  
204 The noise levels observed in the surrounding neighborhoods by staff while live  
205 entertainment was occurring at La Prima were measured at or under 60 dB. The  
206 averaged increase in noise levels during the test live entertainment event was  
207 approximately 6 dB. This increase would be (and has been) noticeable to nearby  
208 residents, but does not result in noise levels that exceed the levels identified as  
209 acceptable for residential areas in the General Plan. Staff recognizes that these findings  
210 are based on unscientific measurement methods. However, staff believes that even if  
211 one were to assume that professional measurement would have resulted in higher  
212 readings the readings would still be within the range considered to be “conditionally  
213 acceptable” (less than 75 dB). For perspective, 75 to 80 dB is the noise level one would  
214 experience when standing 100 feet away from a freeway – a distance that is shorter than  
215 the distance between the subject restaurant and nearest residence.  
216

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

222  
223 Staff suggests that the Planning Commission proceed with this review under the  
224 assumption that allowing live entertainment at La Prima Pizza could result in  
225 conditionally acceptable noise levels (noise levels at or above 60 dB) in the surrounding  
226 neighborhoods as an alternative to requiring additional noise study (which is  
227 unquestionably within the City’s right). The basis for this recommendation is as follows:

- 228  
229 - The noise measurements taken by staff were at or below the threshold of  
230 “normally acceptable” and “conditionally acceptable” as opposed to  
231 “conditionally acceptable” and “unacceptable”. As stated above, staff does  
232 not believe that professional measurement would result in a finding of  
233 “unacceptable” noise levels.  
234  
235 - The applicant has revised their proposal to eliminate the elements that have  
236 the greatest potential to result in noise impacts (i.e., outdoor entertainment,  
237 DJ’s and karaoke music, entertainment any time during business hours). The  
238 proposal is now for indoors only, one night per week, no later than 10:00 p.m.  
239  
240 - As a project that could result in conditionally acceptable noise levels, the  
241 Planning Commission has a basis for imposing conditions to effectively  
242 mitigate potential noise impacts. Such conditions could include:  
243  
244 o Restricting the days and hours when live entertainment would occur.  
245 o Restricting the type of live entertainment allowed.  
246 o Restricting the location of live entertainment.  
247 o Imposition of certain operational requirements (e.g., keeping windows  
248 and doors closed).

249  
250 If the Planning Commission accepts this recommendation, staff would suggest the  
251 following provisions be considered to minimize the impacts of live entertainment /  
252 amplified music events:

- 253  
254 1. Live entertainment / amplified music should only be allowed one night per  
255 weekend (Friday OR Saturday) and no later than 9:00 p.m.  
256  
257 2. Live entertainment should be restricted to acoustical music acts only (with  
258 minimal amplification).  
259  
260 3. Music accompanied by a DJ and karaoke music should be prohibited.  
261  
262 4. Live entertainment anywhere outdoors on the subject property should be  
263 prohibited.

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5. Windows should be kept shut during live entertainment performances and doors should not be left open.
  6. Live entertainment shall be conducted in a manner that is ancillary and complementary to the primary permitted use as a restaurant and bar.
  7. Live entertainment performances should not be audible from the public right-of-way.
  8. The performance of the owner in conducting live entertainment events should be periodically reviewed by staff and reported to the Planning Commission.

278 **B. Land Use**

279  
280 Background

281 The subject property is located at the northern end of Lincoln Avenue and has a zoning  
282 designation of Community Commercial-Design District overlay (CC-DD). The CC-DD  
283 Zoning District is applied in transitional areas between the more intense uses in the  
284 commercial core and less intense uses in residential areas. The overarching goal in the  
285 City's commercial zoning scheme is to preserve and protect the predominantly  
286 residential character of the community by providing a balanced mix of commercial and  
287 residential uses in accordance with the General Plan.

288  
289 Restaurants and bars are allowed in the CC-DD Zoning District as conditionally  
290 permitted uses pursuant to Section 17.22.060(B)(13) of the Zoning Code. The subject  
291 business is operating under Use Permit U 2000-06 (Attachment 3), which authorizes use  
292 of the property as a restaurant and bar.

293  
294 Section 17.28.020 (B)(1) of the Design District overlay requires Design Review approval  
295 for all uses requiring a Use Permit in the CC zoning district. Because there are no  
296 proposed exterior modifications, there are no substantial design issues to be reviewed,  
297 staff is recommending that the requirement for Design Review approval be waived per  
298 Section 17.06.020(B)(2) of the Zoning Code.

299  
300 Analysis

301 The applicant is requesting authorization to have live entertainment at the restaurant.  
302 Live entertainment, defined below, is an allowable use in the CC-DD Zoning District with  
303 use permit approval by the Planning Commission (Section 17.22.060(B)(14)).

304  
305 *"Live entertainment facilities" means any form of entertainment whether or not*  
306 *aided by amplification which is created or presented by an individual or group of*  
307 *individuals or, in some cases, by animals including, but not limited to: musical*  
308 *performances, comedic performances, theatrical or dance performances,*  
309 *speeches and other oratory performances, etc. The presentation of recorded or*  
310 *transmitted music or entertainment performances unaccompanied by a "DJ" shall*  
311 *not be considered to be live entertainment. (Ord. 558 § 3(A)(2), 1999)."*

312  
 313 Currently, La Prima Pizza plays pre-recorded music amplified by a sound system with  
 314 indoor and outdoor speakers. As stated in the definition above, the presentation of  
 315 recorded or transmitted music unaccompanied by a DJ shall not be considered to be live  
 316 entertainment and does not require use permit approval. (NOTE: There are conditions  
 317 addressing amplified music in the active use permit for the restaurant and in the  
 318 restaurant's alcoholic beverage license. These conditions are discussed in the following  
 319 section of this report).

320  
 321 Music created by an individual or group of individuals is considered "live entertainment"  
 322 and is subject to use permit review and approval. Past use permits authorizing live  
 323 entertainment on the premises have expired, and the current use permit does not  
 324 authorize any live entertainment – indoors or outdoors. Therefore, an amendment to the  
 325 current use permit is required to re-establish live entertainment on the premises.  
 326 Compliance with the required findings for use permit approval is discussed in Section D  
 327 of this report.

328  
 329 **C. Neighborhood Concerns**

330  
 331 Parking

332 Neighboring residents have shared anecdotal stories about patrons of the restaurant  
 333 parking in their neighborhoods when the site's off-street parking spaces have filled.  
 334 Some neighbors have expressed concern about the disruption (e.g., loud talking, car  
 335 doors opening and closing, loud stereos) that occurs in the late evening hours when  
 336 patrons leave the restaurant and walk back through their neighborhood to their parked  
 337 cars.

338  
 339 **Table 1 – Off Street Parking Requirements**

<u>Use</u>	<u>Requirement</u>	<u>Square Feet</u>	<u>Required Spaces</u>
Restaurant	1 space per 100 sq. ft.	2,697 (Indoors)	27
		2,634 (Outdoors)*	26
		<b>SUB-TOTAL :</b>	<b>53</b>
Resident Serving Reduction**	-25%		[-13]
		<b>Total Required Spaces:</b>	<b>40</b>

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 351 **NOTES:**

352 \*Section 17.36.015(F) of the Zoning Code states that in addition to building square footage, the square  
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359 Section 17.36 of the Zoning Code establishes off-street parking and loading  
360 requirements for commercial uses. More specifically, Section 17.36.140 establishes a  
361 minimum parking requirement of 1 space for every 100 square feet of floor area for  
362 restaurant uses. The minimum required number of off-street parking spaces for the  
363 existing use is calculated in Table 1 above.

364  
365 The minimum number of spaces required by City parking standards is 40. Currently,  
366 there are 22 off-street parking spaces located on the subject property. Nineteen spaces  
367 (including one ADA parking stall) are located on the south side of the property and are  
368 accessed from Falleri Drive. Three spaces are located on the northern side of property  
369 and are accessed from Highway 29. The substandard number of off-street parking  
370 spaces is considered a legally non-conforming condition. When the restaurant use was  
371 established in 1980, 21 parking spaces were proposed and accepted as adequate  
372 (based on a then-existing restaurant parking requirement of 1 space per 200 square  
373 feet). Use Permit U 2000-06, which re-established the restaurant use on the property  
374 and is the current operating use permit for the property, was approved with a specific  
375 finding noting that 21 spaces were available to serve the full service restaurant use.

376  
377 Adding live entertainment indoors one weekend night per week could potentially cause  
378 an increase in parking demand that exceeds the number of available off-street spaces  
379 on nights when live entertainment occurs. Staff suggests the following be considered to  
380 minimize the impacts of parking and parking-related concerns in the neighborhood:

- 381  
382 1. The vacant area west of the restaurant building should be improved so  
383 that additional customer parking can be provided.

384  
385 History of Noise Violations

386 In oral and written testimony there have been complaints about the history of repeated  
387 noise violations at La Prima Pizza. Some have suggested that the applicant should not  
388 be rewarded with a use permit for live entertainment given the perceived disregard of  
389 City noise regulations and neighborhood concern.

390  
391 *Background*

392  
393 Unaccompanied amplified music does not require use permit approval but is still subject  
394 to the regulations of the City's Noise Ordinance. The City's Noise Ordinance (Municipal  
395 Code Section 8.20.020) establishes that it shall be unlawful for any person or business  
396 to cause to be used or operated any mechanical device or instrument for the  
397 intensification or amplification of the human voice or any sound or noise, in any public or  
398 private place, in such a manner that the peace and good order of the neighborhood are  
399 disturbed, unless approved through an established permit.

400  
401 *Analysis*

402  
403 The operating use permit for La Prima Pizza contains a condition (Condition No. 12)  
404 addressing outdoor amplified music. This condition states that "outdoor amplified music  
405 shall not be audible from the public right-of-way." A similarly restrictive condition exists  
406 in the owner's alcoholic beverage license from the State Department of Alcoholic

407 Beverage Control (Attachment 4), which states that “Entertainment provided shall not be  
408 audible beyond the area under the control of the licensee.”  
409

410 A review of Police Department records (through August 3, 2009) reveals that there have  
411 been eight reported noise incidents since the current owners took over operation of the  
412 restaurant in 2002 (Attachment 10). The majority of the complaints involve loud music  
413 on the outdoor deck. The reports show that owner has cooperated in some instances  
414 and has been less cooperative in others. Comparing to other establishments that have  
415 live entertainment and are located in close proximity to residential areas, Calistoga Inn  
416 has had 23 disturbance-related incidents reported to the Police department over the  
417 same time period. Pacifico Restaurant has had 0.  
418

419 The reported police incidents, in combination with observations that outdoor amplified  
420 music on the deck is audible 500 feet away from the site – even when being played at  
421 lower “background” volumes – are evidence that the owner is operating in violation of the  
422 operating use permit and may also be in violation of the terms of his alcoholic beverage  
423 license.  
424

425 The existence of a condition in the owner’s ABC license regarding noise levels during  
426 live entertainment events significantly limits the ability of staff to modify use permit  
427 Condition No. 12 to address this issue. Specifically, any effort to modify Condition No.  
428 12 needs to be done in a way that maintains consistency with the conditions of the ABC  
429 license, otherwise the applicant may be placed at risk of operating in violation of its  
430 requirements. Therefore, staff suggests that the following be considered to minimize  
431 noise-related impacts on nearby residents:  
432

- 433 1. The existing outdoor speakers should be removed and outdoor amplified  
434 music should be prohibited.  
435

#### 436 Vandalism

437 Neighborhood residents have complained that customers of La Prima Pizza have  
438 vandalized their properties when leaving the establishment. The most notable example  
439 is damage that was done to perimeter fencing on the Spencer property located on the  
440 south side of Falleri Drive. The damage was caused by a car pulling out of one of the  
441 parking spaces on the south side of the subject site. Staff does not have any record of  
442 reported incidents of vandalism to private property specifically perpetrated by a customer  
443 of La Prima Pizza.  
444

445 Although not observed during the test live entertainment event, it is plausible that on  
446 busy nights customers of La Prima Pizza do park in nearby neighborhoods as a matter  
447 of convenience, bringing visitors into the neighborhoods and increasing the potential for  
448 problems to occur. Staff believes that providing additional parking on the site (as  
449 suggested earlier) would reduce the need for customers to park in nearby  
450 neighborhoods and the associated potential for vandalism of private property. As for the  
451 damage to Ms. Spencer’s fencing, it should be noted that Falleri Drive is not a fully  
452 improved street and maneuvering space may be more limited than drivers are  
453 accustomed too. It should also be noted that the owners of La Prima Pizza have since  
454 repaired the damaged fencing.

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Trash

In testimony before the Planning Commission and at the September 29, 2009, neighborhood meeting, neighborhood residents complained that La Prima customers are dropping litter along adjacent roadways. While it is virtually impossible for a business owner or anyone else to control an individual's decision to litter, there are neighborly practices that can be employed to minimize the visual impact of litter on the aesthetic qualities of the subject area.

Condition No. 3 of the applicant's alcoholic beverage license requires that the applicant maintain the area adjacent to the site free of litter. Staff suggests the following be considered to in effort to maintain the aesthetic quality of the area:

1. The owner or owner's employees should pick up litter on and in the vicinity of the site on a weekly basis.

Weekly litter patrol in the vicinity of the site in combination with providing more parking on the site will help to reduce and minimize the visual impact of any restaurant related litter in the surrounding neighborhood.

**D. Findings for Use Permit Approval**

In addition to the above discussion, the analysis of this project includes reference to the Findings for Use Permit Approval (CMC 17.40.070). These are discussed generally as follows:

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 1982. 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. Indoor live entertainment / amplified music shall only be allowed one night per weekend (Friday OR Saturday) and no later than 9:00 p.m.
- B. Indoor live entertainment shall be restricted to acoustical music acts only (with minimal amplification).

- 503  
504 C. Music accompanied by a DJ and karaoke music shall be prohibited.  
505  
506 D. Live entertainment anywhere outdoors on the subject property shall be  
507 prohibited.  
508  
509 E. Windows shall be kept shut during indoor live entertainment  
510 performances and doors should not be left open.  
511  
512 F. Indoor live entertainment shall be conducted in a manner that is ancillary  
513 and complementary to the primary permitted use as a restaurant and bar.  
514  
515 G. Indoor live entertainment performances should not be audible from the  
516 public right-of-way.  
517  
518 H. Prior to commencing indoor live entertainment events, the vacant area  
519 west of the restaurant building shall be made accessible and available for  
520 customer and employee parking.  
521  
522 I. Prior to commencing indoor live entertainment events, the existing  
523 outdoor speakers shall be removed.  
524  
525 J. Outdoor amplified music is prohibited anywhere on the subject property.  
526  
527 K. The owner or owner's employees shall pick up litter on and in the vicinity  
528 of the site on a weekly basis.  
529  
530 L. The performance of the owner in conducting indoor live entertainment  
531 events shall be reviewed quarterly by staff during the first year (and semi-  
532 annually thereafter) year and reported to the Planning Commission.  
533 Should there be a violation of the terms of the use permit at any time,  
534 staff shall bring the use permit back to the Planning Commission for  
535 reconsideration.

536  
537 2. The site is physically suitable for the type and density of development;  
538

539 Response: The restaurant and bar is an enclosed space with adequate facilities and  
540 space for live entertainment or amplified music. Windows and doors will be kept closed  
541 when live entertainment or amplified music occurs to minimize noise levels outside of the  
542 restaurant. A sufficient amount of undeveloped land exists on the site to accommodate  
543 the provision of additional parking spaces for customers.  
544

545 3. The proposed development has been reviewed in compliance with the California  
546 Environmental Quality Act (CEQA) and the project will not result in detrimental or  
547 adverse impacts upon the public resources, wildlife or public health, safety and  
548 welfare;  
549

550            Response: This project is exempt from CEQA under Section 15301 (Class 1 – Existing  
551            Facilities).

552  
553            4.        Approval of the use permit application will not cause adverse impacts to  
554            maintaining an adequate supply of public water and an adequate capacity at the  
555            wastewater treatment facility;

556  
557            Response: The City’s water system and wastewater treatment facility is adequate to  
558            serve this project.

559  
560            5.        Approval of the use permit application shall not cause the extension of service  
561            mains greater than 500 feet;

562  
563            Response: Approval of this use permit application shall not cause the extension of  
564            service mains greater than 500 feet;

565  
566            6.        An allocation for water and/or wastewater service pursuant to Chapter 13.16  
567            CMC (Resource Management System) shall be made prior to project approval.  
568            Said allocation shall be valid for one year and shall not be subject to renewal.

569  
570            Response: The current allocation for water and wastewater is sufficient to  
571            accommodate the addition of live entertainment one night per week to the existing use.  
572            No additional allocation for water and/or wastewater is required.

573  
574            7.        The proposed development presents a scale and design which are in harmony  
575            with the historical and small-town character of Calistoga;

576  
577            Response: No new structures or alterations to existing structures are being proposed  
578            as part of the project. Improvement of the undeveloped area to be made accessible for  
579            customer parking will require administrative review and approval prior to construction.  
580            Through this process staff will ensure that the design does not impact or detract from  
581            existing neighborhood qualities.

582  
583            8.        The proposed development is consistent with and will enhance Calistoga’s  
584            history of independent, unique, and single location businesses, thus contributing  
585            to the uniqueness of the town, which is necessary to maintain a viable visitor  
586            industry in Calistoga and to preserve its economy; and

587  
588            Response: Approval of the request for live entertainment will help to sustain an  
589            established and locally-owned business in the community. It also will increase  
590            opportunities for residents and visitors to enjoy music performed by local and area  
591            musicians.

592  
593            9.        The proposed development complements and enhances the architectural  
594            integrity and eclectic combination of architectural styles of Calistoga.

595  
596            Response: This proposal does not alter the architectural character of the existing  
597            structure or other structures in Calistoga. Therefore, this finding is not applicable.

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**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 and amplified music as part of an existing restaurant and bar 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**

The recommendations below are based on the assumption that the Planning Commission is willing to accept staff’s suggestion about acting on this use permit request without further noise studies. If the Planning Commission does not concur with this approach and believes that further noise studies are warranted, the Planning Commission should continue the item to a date uncertain and direct staff to have a professional noise study prepared at the expense of the applicant.

- A. Based on the above findings, 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.
- C. Based on the above findings, staff recommends adoption of a Resolution approving an amendment to Conditional Use Permit U 2000-06 (U 2000-06(A)) to allow amplified music and live entertainment indoors within La Prima Pizza Restaurant located at 1923 Lake Street (APN 011-535-010) within the “CC-DD”, Community Commercial-Design District Overlay Zoning District, subject to conditions of approval.

**SUGGESTED MOTIONS**

**Categorical Exemption**

I move that the Planning Commission direct Staff to file a Notice of Exemption for the Project pursuant to Section 15301 of the CEQA Guidelines.

**Design Review**

I move that the Planning Commission accept staff’s recommendation to waive the requirement for Design Review approval pursuant to Section 17.06.020(B)(2) of the Calistoga Municipal Code.

646 Conditional Use Permit

647  
648 I move that the Planning Commission adopt Resolution PC 2009-19 approving an amendment to  
649 Conditional Use Permit U 2000-06 (U 2000-06(A)) to allow amplified music and live  
650 entertainment indoors within La Prima Pizza Restaurant located at 1923 Lake Street (APN 011-  
651 535-010) within the "CC-DD", Community Commercial-Design District Overlay Zoning District,  
652 subject to the findings in the Staff Report and conditions of approval.

653  
654 NOTE: The applicant or any interested person is reminded that the Calistoga Municipal  
655 Code provides for a ten (10) calendar day appeal period. If there is a disagreement with  
656 the Planning Commission, an appeal to the City Council may be filed. The appropriate  
657 forms and applicable fee must be submitted prior to 5:00 p.m. on or before the tenth  
658 calendar day following the Commission's final determination.

659  
660  
661 **ATTACHMENTS**

- 662  
663 1. Vicinity Map  
664 2. Draft Conditional Use Permit Amendment for Live Entertainment  
665 Resolution PC 2009-19  
666 3. Conditions of Approval – U 2000-06  
667 4. Alcoholic Beverage License – La Prima Pizza  
668 5. Figure N-4: Land Use Compatibility Guidelines for Noise Exposure; 2003 General Plan  
669 Noise Element  
670 6. Noise Survey, 2003 General Plan Noise Element  
671 7. Applicant's Listing of the Type of Musical Acts to be Hosted  
672 8. Map and Summary of Sound Level Measurements – September 25, 2009 test Live  
673 Entertainment Event  
674 9. Summary of September 29, 2009 Neighborhood Meeting  
675 10. Police Report Incident Reports RE: La Prima Pizza Noise Complaints  
676 11. Staff Report and Minutes from August 12, 2009, Planning Commission Meeting  
677 12. Excerpted General Plan Objective N-1.4 and Implementing Policies regarding  
678 preparation of Noise Studies  
679 13. Correspondence  
680