

**RESOLUTION NO. 2010-003**

**RESOLUTION OF THE CITY OF CALISTOGA CITY COUNCIL DENYING AN APPEAL (A 2009-02) AND SUSTAINING THE PLANNING COMMISSION'S DECISION TO APPROVE AN AMENDMENT TO CONDITIONAL USE PERMIT U 2000-06 (U 2000-06(A)) ALLOWING 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**

**WHEREAS**, on July 23, 2009, an application was submitted by restaurant owner Betty Nunez requesting approval to amend Use Permit U 2000-06 to allow live entertainment and amplified music to occur at the subject property; and

**WHEREAS**, the Planning Commission has reviewed and considered this application at its regular meetings on August 12, 2009, and November 16, 2009, and prior to taking action on the application, the Commission received written and oral reports from staff and received written and oral testimony from the public. After consideration of the proposal, the Planning Commission adopted PC Resolution 2009-19 approving Conditional Use Permit Amendment U 2000-06(A), subject to seventeen (17) Conditions of Approval; and

**WHEREAS**, on November 23, 2009, Mr. Mitch Hawkins filed an appeal of the Planning Commission's action to the City Council; and

**WHEREAS**, the City Council reviewed the request for an appeal at its regularly scheduled meeting of December 15, 2009, and took action to schedule a public hearing to consider the appeal at its regularly scheduled meeting of January 19, 2010; and

**WHEREAS**, a public notice of the City Council public hearing of January 19, 2010, to consider appeal of the Planning Commission's decision to approve an amendment to Conditional Use Permit U 2000-06 (U 2000-06(A)) was published in the local newspaper, sent to neighboring property owners and interested persons, and posted on the City's web site; and

**WHEREAS**, the City Council reviewed the appeal during its regularly scheduled meeting on January 19, 2010. During its review the Council considered the public record of the August 12, 2009 and November 16, 2009, Planning Commission meetings, including the staff report, findings, minutes, and written materials presented by the appellant; and

**WHEREAS**, the City Council has reviewed and affirms the Planning Commission's determination that the project is Categorically Exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines; and

**WHEREAS**, the City Council, pursuant to Chapter 17.40, has made the following Conditional Use Permit findings for the project:

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;

**FINDING:** 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. Conditions of approval have been incorporated into the project approval that will ensure potential impacts are kept to a minimum and that the project will not significantly detract from the rural, small-town atmosphere of the area.

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

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

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

**FINDING:** This project is exempt from CEQA under Section 15301 of the CEQA Guidelines (Existing Facilities).

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

**FINDING:** The City's water system and wastewater treatment facility is adequate to serve this project.

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

**FINDING:** Approval of this use permit application shall not cause the extension of service mains greater than 500 feet;

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

**FINDING:** 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;

**FINDING:** No new structures or alterations to existing structures are being proposed as part of the project. Improvement of the undeveloped area to be made accessible for customer parking 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

**FINDING:** Approval of the request for live entertainment will help to sustain an established and locally-owned 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.

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

**NOW, THEREFORE, BE IT RESOLVED,** that the City of Calistoga City Council hereby denies Appeal A 2009-02 and sustains the Planning Commission's decision to approve an amendment to Conditional Use Permit U 2000-06 (U 2000-06(A)) allowing 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, based on the above findings and subject to the following sixteen (16) conditions of approval:

1. This permit authorizes an Amendment to Conditional Use Permit U 2000-06 to allow amplified music and/or live entertainment indoors within La Prima Pizza Restaurant located at 1923 Lake Street. Live entertainment shall be permitted indoors one night per week on Friday or Saturday night only between the hours of 5:00 and 9:00 p.m. No live entertainment is permitted outdoors.
2. All applicable conditions of Conditional Use Permit U 2000-06 remain in effect, except as may be modified by the conditions below.
3. Indoor live entertainment shall be restricted to acoustical music acts only (with minimal amplification).
4. Music accompanied by a DJ and karaoke music shall be prohibited.
5. Windows shall be kept shut during live entertainment performances and doors shall not be left open.
6. Indoor live entertainment shall be conducted in a manner that is ancillary and complementary to the primary permitted use as a restaurant and bar.
7. Indoor live entertainment performances and outdoor amplified music shall not exceed a decibel level of 50 as measured from the public right-of-way.
8. Indoor live entertainment performances shall be conducted consistent with the approved "live entertainment management plan" required by Condition No. 10.
9. Prior to commencement of indoor live entertainment events, a live entertainment management plan shall be submitted for review and approval by the Planning and Building Director. The live entertainment management plan shall identify: (1) permanent and temporary physical improvements or alterations to be made in effort to minimize off-site noise impacts, including relocation / re-direction of the outdoor speakers at the deck; (2) operational procedures that will be employed during live entertainment events; and (3) a notification plan for

communications between the business owner and city staff regarding live entertainment dates.


10. No outdoor amplified music shall be allowed until the live entertainment management plan required by Condition No. 10 has been approved by the Planning and Building Director.
11. The owner or owner's employees shall pick up litter on and in the vicinity of the site on a weekly basis.
12. This Conditional Use Permit shall be administratively reviewed on a quarterly basis during the first year (and on a semi-annual basis thereafter) to assess operations (including parking). Administrative review shall also be initiated upon receipt of two verified substantive complaints to determine whether any violations of the Conditions of Approval for this Use Permit have occurred. Should it be determined that modifications are needed or that a violation of the Conditions of this Use Permit has occurred, staff shall bring the Use Permit back to the Planning Commission for reconsideration.
13. Posted occupancy limits in the restaurant/bar areas shall not be exceeded.
14. Installation of entertainment-related fixtures in the restaurant or bar area (such as a dance floor, DJ booth, special lighting or sound system) shall not be permitted prior to review and approval by the Planning and Building Department.
15. The Planning Commission may revoke this use permit in the future if the Commission finds that the use to which the permit is put is detrimental to the health, safety, comfort and welfare of the public, or constitutes a nuisance.
16. This permit shall be null and void if not used by January 19, 2011, or if the use is abandoned for a period of 180 days.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this 19<sup>th</sup> day of January, 2010, by the following vote:

**AYES:** Mayor Gingles, Councilmembers Garcia, Stusser, and Vice Mayor Dunsford  
**NOES:** None  
**ABSTAIN:** Councilmember Kraus  
**ABSENT:** None

ATTEST:

  
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SUSAN SNEDDON, City Clerk

  
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JACK GINGLES, Mayor