

TO: JIM APP, CITY MANAGER

FROM: RON WHISENAND, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: APPEAL OF CONDITIONAL USE PERMIT 07-001 - APN: 009-106-015, 016, 017 & 009-103-012, 013 (APPLICANT: DOWNTOWN BREW)

DATE: AUGUST 5, 2008

Needs: For the City Council to consider an application filed by Timothy L. Hodge on behalf of Downtown Brewing Co., appealing conditions of approval associated with Conditional Use Permit 07-001 (Resolution 08-020).

- Facts:**
1. This item is a continued open public hearing from the July 1, 2008 Council meeting.
 2. The Downtown Brew restaurant is located at 1108 Pine Street.
 3. Conditional Use Permit (CUP) 07-001 (Res. 07-040) was originally approved by the Planning Commission on March 27, 2007, allowing after hours amplified music and dancing as an accessory use to the restaurant. The Commission conditioned the CUP to restrict the hours of music and dancing activities to Friday, Saturday, Sunday nights and national holidays, and with music ending at 12:00am.
 4. Another condition of approval required the Planning Commission review the CUP after a 6-month time period to determine whether potential nuisance issues were being adequately addressed. See Resolution 08-020, Attachment 2.
 5. CUP 07-001 was reviewed by the Commission on April 22, 2008. The Commission allowed the continuance of the CUP, however they added new conditions related to sound mitigation and security that was proposed by the applicants as a way to address complaints that had been filed.
 6. As noted in the attached e-mail from Tim Hodge, Attachment 1, Downtown Brew is appealing Conditions No. 1, which is related to hours of operation of "nightclub" activities, and Condition No. 9 regarding noise restrictions.
 7. Downtown brew is specifically requesting that the City Council amend the Condition No. 1 to read as follows, with additions noted in underline text and deletions noted in ~~double strike through text~~.

This conditional use permit (CUP) authorizes the use of entertainment including amplified music which would include ~~the "house" sound system~~ and by live music, bands, DJs and dancing (collectively, the "Nightclub

Activities”) as an accessory to the restaurant use. ~~The amplified music and dancing is restricted to 12:00 midnight cutoff on Friday, Saturday and Sunday nights and national holidays. All activities shall be kept indoors). Background music during typical restaurant activities is permitted and not subject to a Conditional Use Permit.~~

In essence, the applicants would like the freedom to have entertainment on nights and hours that were originally restricted.

8. Downtown Brew is also requesting that Condition No. 9 be deleted, since it seems to be redundant with other conditions. Condition No. 9 currently reads as follows:

Noise level restrictions. The music generated from inside of the applicant’s business should not be audible to the surrounding/neighborhood businesses. The applicant shall submit a sound mitigation plan to be prepared and implemented prior to the commencement of the night club operations to the satisfaction of the Community Development Director.

**Analysis
and
Conclusions:**

The City’s General Plan and Economic Strategy provides policy direction on this matter. Policy LU-2H of the General Plan is specific to the downtown, it states as follows:

Downtown. Continue to revitalize the historic Downtown. Focus efforts on developing Downtown Paso Robles as a specialty retail, government, office, cultural, conference, and entertainment center of the City and the North County region.

Additionally, the Economic Strategy states an objective to “*enhance and expand the downtown to a mixed-use dining, entertainment, culture, and shopping destination...*”.

It is anticipated that there will be on-going requests for entertainment-type uses including restaurants, bars/cocktail lounges and nightclub activities. Such uses, including Downtown Brew’s restaurant and nightclub, are consistent with these policies.

Policy LU-2I also encourages a variety of uses in the downtown including mixed-use/residential development. Residential and other noise sensitive land uses, if not carefully designed, can be negatively impacted by surrounding downtown noises. The purpose of the conditional use permit, therefore, is to evaluate potential land use conflicts, and establish standards or limits that would allow potentially incompatible uses to coexist in a thriving downtown location.

Figure N-1 of the Noise Element of the General Plan, Noise Compatibility Index, identifies a noise exposure of 70db as “conditionally acceptable” for residential and transient lodging land uses and 77db acceptable for commercial and office uses. Figure N-1 is attached to this staff report as Attachment 3.

In order to comply with Figure N-1, noise levels created by the noise source, in this case Downtown Brew, should be measured from the property line of the nearest sensitive receptor (or complaining land use). If the db levels do not exceed the levels indicated in Figure N-1, then the noise source would be in compliance with the noise ordinance, and if the levels are above the limits of Figure N-1, enforcement is necessary.

Staff would recommend adding the following new condition to the CUP (whether the appeal is approved or not) that requires the noise compatibility with sensitive receptors:

Noise from the night club activities of the Downtown Brew establishment shall not exceed the following noise exposure thresholds as measured at the property line of the nearest sensitive receptor (or complaining land use):

- *70db for residential and transient lodging uses*
- *77db for general office and commercial uses*

In the event there are other noise sources that conflict with obtaining an accurate reading for the night club, such as noise from a nearby business or pedestrians, the officer performing the test will need to use judgment relative to the noise source generating the complaint, how to best obtain the most accurate decibel reading, or waiting for a more appropriate time to perform the test.

In reviewing the conditional use permit for Downtown Brew, the Planning Commission attempted to establish reasonable restrictions to keep the downtown vital. These restrictions limited entertainment to Friday through Sunday ending at midnight. The applicants would like more latitude to be allowed to be able to have entertainment activities during all hours of operation. They feel they can better address compatibility with noise sensitive uses through on-site sound mitigation. Specific programs and improvements they have agreed to and/or already installed include keeping doors and windows to the exterior closed when amplified music is operating and by adding double-paned windows to the balcony. It is the Council’s discretion whether to uphold the Commission’s limitations on the hours of operation, or to allow more flexibility and replace Condition No. 1 with the suggested language from Tim Hodge, noted above.

The Planning Division, along with the Police Department, would prefer establishing consistent conditions of approval for all bars/nightclubs, so that all establishments are consistently regulated.

It is important to remember goal is that the downtown remain active and expand. It is therefore important for Council to consider the future of downtown that will need to accommodate both additional entertainment and noise sensitive uses. Whether the Council denies the appeal and upholds the Planning Commission's existing time limits, or if the Council wishes to change the time limits, Staff will apply the time limits consistently to future CUPs dealing with nightclub activities.

Options: After opening the public hearing and taking public testimony, the City Council is requested to take one of the actions listed below:

- A. Deny the appeal and uphold the Planning Commission's action of approving CUP 07-001 (Res. 08-020) including the hours of operation restrictions noted in Condition No. 1 of the resolution;
- B. Approve the appeal with the revised conditions as noted in the attached resolution.
- C. Amend, modify, or reject the above-listed action;

Staff Report Prepared by: Darren Nash, Associate Planner

Attachments:

- 1. E-mail from Tim Hodge dated May 21, 2008
- 2. Planning Commission Resolution 08-020
- 3. Figure N-1 from Noise Element
- 4. Draft Resolution denying Appeal
- 5. Draft Resolution approving the Appeal
- 6. Newspaper and Mail Notice Affidavits

H:\darren\cup\DowntownBrew\2008ReviewAppeal\PCReport

5-21-08

Darren,

Thank you for your patience with this matter. We have been busy, but do not want to stall this process

In general, what we are appealing is the wording of Section 1 and its apparent redundancy in connection with Section 9. While I am sure my viewpoint on this matter is slightly skewed, it appears that Section 1, and the limitation therein, is the result of Hotel Cheval's initial protest about *the possibility* of our operations having an adverse effect on their guests, as they had yet to open when they first raised this issue. You had left me a voicemail on or about March 15, 2007 telling me that we may do better at the Commission meeting if we limited the days we would have live music or DJs (the "Nightclub Activities"), and my email response was that we wanted the ability to do it any night of the week (which was and is consistent with the other bar/nightclubs in town). While I never was informed of the genesis of your question, my only conclusion is that Planning had already heard from Hotel Cheval (even though we were unaware of their issue until 3 hours before the meeting) and was trying to address their concerns. I am unwilling to believe that Planning actually wanted to control the scope of our operations in a vacuum, as that makes little sense unless there was/is a push in the city of Paso to limit all Nightclub Activities to Friday, Saturday and Sunday nights (which seems inconsistent with what the public is demanding based on the number of patrons we see at the surrounding bars on weekday nights).

From the point of the original CUP hearing on March 27, 2007, until January 12, 2008, there were seven complaints filed by Hotel Cheval. However, as these complaints were discussed in detail at the April 22, 2008 meeting (and in my meeting with Judy Hudson and Robert Gilson prior to the April 22 hearing), it became apparent that the Downtown Brew patrons on the balcony were the major source of the noise issues Hotel Cheval was having, not the music inside. In addition, since we have completed the items that were listed on our "sound mitigation plan", we have not had a single complaint from the Hotel Cheval (they have my cell number as well as the number of our General Manager and have told us that they would call if they had a complaint—we have not heard anything from them). I believe we have been able to control the noise so that no more than a reasonable amount of noise is heard outside of our premises, which is all we should have been required to do in the first place.

Further, it seems that a better tool for the city to control the noise issues from our operations (without overly interfering with our business plan and providing an economic advantage to our neighboring competitors who continue to operate activities without a CUP that we are restricted from) is with the provision found in Section 9, which simply states that we cannot bother our neighbors with our noise. Really, it does not matter what activities we are conducting inside our establishment if they do not bother our neighbors. This is the direction we feel the Commission should have taken on our initial CUP rather than trying to proscribe how we run our business.

That being said, we believe that Section 1 should be amended as follows:

This conditional use permit (CUP) authorizes the use of entertainment including amplified music which would include live music, bands, DJs and dancing (collectively, the "Nightclub Activities") as an accessory to the restaurant use. All Nightclub Activities shall be kept indoors.

As we have been told by several city officials that the city is attempting to standardize the Nightclub Activities by the various bars in town, our request would make sense unless the city also desires to limit Nightclub Activities at the other bars in town to Friday, Saturday and Sunday nights also.

We do not want to be a thorn in the city's side, but, and I think the police officers that patrol the downtown area in the evening will confirm this, at midnight on Friday, Saturday and Sunday, when we have to shut down our entertainment, 90% of our patrons leave and go down the street

Attachment 1

E-mail from Tim Hodge

CUP 07-001

08/05/2008 Agenda Item No. 1, Page 5 of 19

(Downtown Brew, Co.)

to the Kilt and/or Level 4, who are allowed to continue their Nightclub Activities until 2am. So in an effort to appease Hotel Cheval and their claim that they have had a negative economic impact from our operations (which did not sound very large when they presented it at the April 22 hearing), the city has placed restrictions on us which have a negative economic impact on us. We would even venture to guess that we have spent more on remedial measures than the Hotel Cheval claims they have lost due to noise from our facility. Further, we see the crowds enjoying Nightclub Activities at the other bars on weekdays and feel the negative economic impact of not being able to compete on even footing with our competitors on those nights, too.

I hope this addresses your question as to what and why we are appealing. If there is a way to have Section 1 amended without the appeal, we would be interested in that information.

If you have any questions, I invite you or Ron to call me to discuss them.

Tim Hodge
Downtown Brewing Co.
(805) 748-4396

RESOLUTION NO.: 08-020

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF EL PASO DE ROBLES
TO APPROVE CONDITIONAL USE PERMIT 07-001
(Downtown Brewing Co.)
APN: 009-106-015, 016, 017 & 009-103-012, 013

WHEREAS, The Planning Commission adopted Resolution 07-040 approving CUP 07-001 on March 27, 2007; and

WHEREAS, condition No. 4 of the resolution required that the CUP be reviewed by the Planning Commission after a 3-month time period, to determine whether the intent of loitering and noise nuisance is being deterred/controlled; and

WHEREAS, condition No. 5 of the resolution requires the addition of the following condition in the instance that the activities become a nuisance and complaints are made:

Doors and windows are to remain closed at all times while any type of music or entertainment is playing

and;

WHEREAS, the Police Department has received complaints related to excessive noise from Downtown Brew; and

WHEREAS, a public hearing was conducted by the Planning Commission on April 22, 2008, to consider the facts as presented in the staff report prepared for this project, and to accept public testimony regarding this conditional use permit request, and

WHEREAS, this application is Categorically Exempt from environmental review per Section 15301c of the State's Guidelines to Implement CEQA; and

WHEREAS, based upon the facts and analysis presented in the staff report, and public testimony received and subject to the conditions of approval listed below, the Planning Commission finds that the establishment, maintenance or operation for the requested use or building applied for, will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of El Paso de Robles does hereby continue to allow Conditional Use Permit 07-001 subject to the following conditions:

1. This conditional use permit (CUP) authorizes the use of entertainment including amplified music which would include the "house" sound system and by DJs and dancing as an accessory to the restaurant use. The amplified music and dancing is restricted to 12:00

Attachment 2

PC Resolution 08-020

CUP 07-001

(Downtown Brewing Co.)

midnight cutoff on Friday, Saturday and Sunday nights and national holidays. All activities shall be kept indoors. Background music during typical restaurant activities is permitted and not subject to this Conditional Use Permit.

2. Doors and windows are to remain closed at all times while any type of music or entertainment is playing. Additionally the following noise mitigation measures shall be implemented to reduce noise levels from the balcony as described in the Noise Mitigation Plan provided by the applicant on April 22, 2008, see attachment A:
 - a. Locking and/or monitoring doors to the balcony which face south on Pine Street to minimize the impact of any noise to Hotel Cheval. See attached diagram.
 - b. Installing sound absorbent material in awning over balcony.
 - c. Installing glass paneling on the south facing portion of the balcony. See attached diagram.
(Note: conditions above are subject to any necessary building code requirements as determined by the Building Official. Conditions 2b & 2c shall be completed by June 24, 2008)
3. Any condition imposed by the Planning Commission in granting this conditional use permit may be modified or eliminated, or new conditions may be added, provided that the Planning Commission shall first conduct a public hearing in the same manner as required for the granting of the original permit. No such modification shall be made unless the Commission finds that such modification is necessary to protect the public interest and/or neighboring properties, or, in the case of deletion of an existing condition, that such action is necessary to permit reasonable operation and use under the conditional use permit.
4. All new and/or existing site and building mounted lighting shall be fully shielded so that light is directed downward and stays on-site. Cut sheets for new lighting fixtures or shields shall be submitted to the Community Development Department for approval prior to installation.
5. This CUP shall be reviewed informally by the Planning Commission after a 30 day period and again after a 90 day period from the time the entertainment activities have commenced, to determine whether the intent of loitering and noise nuisance is being deterred/controlled. In the event that it is determined during this review that a nuisance exists, the Planning Commission can direct that a public hearing be scheduled to consider additional measures.
6. Designated in-house or contracted private security guards to be onsite during the hours of operation when entertainment is occurring. Entertainment consists of live or amplified music, paid events, dancing or other forms of live entertainment. A minimum of two uniformed and identifiable security guards shall be employed by the business owner. The security guards shall stay on duty until 1 hour after the business has closed to help control loitering within and outside the business.
7. Interior and exterior surveillance cameras to record activities in areas open to the public and patrons. The recorded activities shall be saved for seven (7) days and available to the Police Department for investigations related to criminal activity. The location and

number of cameras shall be mutually agreed upon by the both the Police Department and business owner.

8. Security lighting in the exterior perimeter and parking area to protect patrons and their vehicles from vandals and other types of crime. Prior to the installation of any exterior lighting, a lighting plans shall be submitted for review and approval by the Police Chief and the Planning Department. Any new and existing exterior lighting shall be fully shielded.
9. Noise level restrictions. The music generated from inside of the applicant's business should not be audible to the surrounding/neighborhood businesses. The applicant shall submit a sound mitigation plan to be prepared and implemented prior to the commencement of the night club operations to the satisfaction of the Community Development Director.
10. All existing and new signage (including temporary signs) shall comply with the City Sign Ordinance.
11. A security plan which includes a management training plan, employee and security resource placement, crowd control and security measures, and provisions for overflow customers shall be submitted to the Community Development Department for review, and shall be approved by the Community Development Director and the Police Chief. All server training shall be approved by the Department of Alcoholic Beverage Control. The business owner shall be responsible for on-going training to accommodate changes in personnel.
12. Prior to the commencement of the entertainment activities, all of the Departments involved (Building, Fire, Police & Planning) shall insure that all of the conditions of approval listed in this resolution have been satisfied to the satisfaction of each department representative.


PASSED AND ADOPTED THIS 22nd day of April 2008, by the following roll call vote:

AYES: Treatch, Flynn, Holstine, Johnson, Peterson, Steinbeck

NOES: None

ABSENT: Hodgkin

ABSTAIN: None



CHAIRMAN ED STEINBECK

ATTEST:



for RON WHISENAND, PLANNING COMMISSION SECRETARY

DOWNTOWN BREWING CO.

1108 PINE STREET
PASO ROBLES, CALIFORNIA 93446
PHONE: (805) 237-8444
FAX: (805) 474-7013

MEMORANDUM

TO: Mr. Darren Nash, Associate Planner
FROM: Timothy L. Hodge, Owner
DATE: April 22, 2008
RE: Sound Mitigation Plan

The purpose of this memorandum is to outline the steps Downtown Brewing Co. has undertaken and would be willing to undertake in accordance with Section 9 of our Conditional Use Permit.

Mitigation Steps Already Implemented:

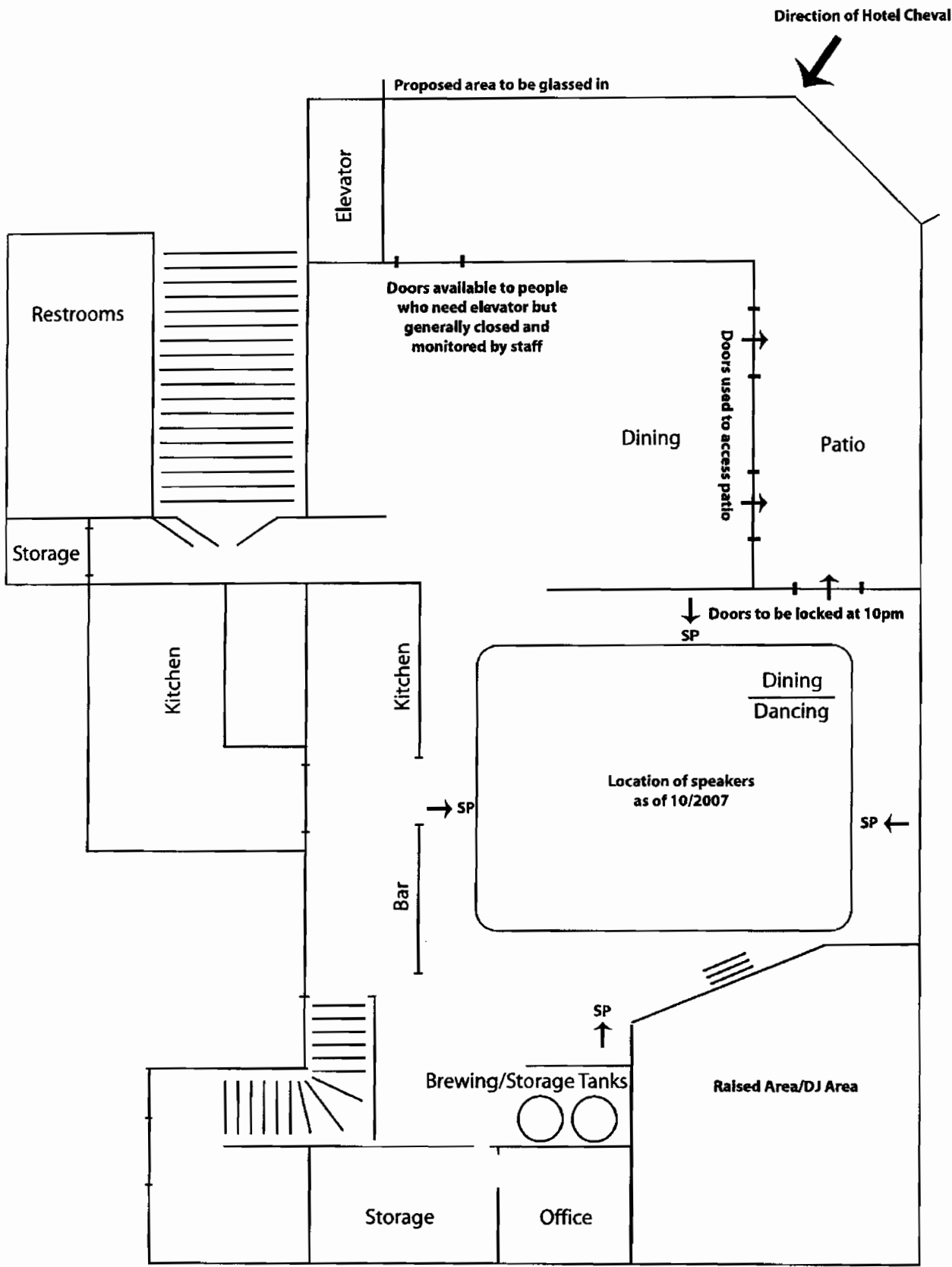
1. Doors to the balcony are kept closed as much as possible. Patrons still, however, use them for access to the balcony. They are never propped open.
2. Solid panels were installed on the railing of the balcony to create a solid surface to help with noise.
3. As of October of last year all speakers were reoriented to that they would not directly face any of the doors to the balcony. See attached diagram.
4. Sound absorbent material was added to the interior of the premises to keep the sound from "bouncing". This in conjunction with the reorientation of the speakers has helped keep sound from the interior from getting outside.
5. Utilizing doors to the balcony that are not facing south down Pine Street for access to the balcony. See attached diagram.

Mitigation Steps to be Considered:

1. Locking and/or monitoring doors to the balcony which face south on Pine Street to minimize the impact of any noise to Hotel Cheval. See attached diagram.
2. Installing sound absorbent material in awning over balcony.
3. Installing glass paneling on the south facing portion of the balcony. See attached diagram.


Please contact me with any questions or comments.


Attachment A
Sound Mitigation Plan
CUP 07-001
(Downtown Brew)





Downtown Brewing Co. PASO ROBLES • 1108 Pine Street., Paso Robles, Ca

LAND USE CATEGORY	COMMUNITY NOISE EXPOSURE						
	Ldn or CNEL, dBA						
	55	60	65	70	75	80	85
RESIDENTIAL - LOW DENSITY SINGLE FAMILY, DUPLEX, MOBILE HOMES		Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable		
RESIDENTIAL - MULTI-FAMILY			Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable		
TRANSIENT LODGING - MOTELS, HOTELS			Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable		
SCHOOLS, LIBRARIES, CHURCHES, HOSPITALS, NURSING HOMES			Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable		
AUDITORIUMS, CONCERT HALLS, AMPHITHEATRES		Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable			
SPORTS ARENA, OUTDOOR SPECTATOR SPORTS		Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable			
PLAYGROUNDS, NEIGHBORHOOD PARKS				Normally Unacceptable	Clearly Unacceptable		
GOLF COURSES, RIDING STABLES, WATER RECREATION, CEMETERIES					Normally Unacceptable	Clearly Unacceptable	
OFFICE BUILDINGS, BUSINESS COMMERCIAL AND PROFESSIONAL				Normally Unacceptable	Clearly Unacceptable		
INDUSTRIAL, MANUFACTURING, UTILITIES, AGRICULTURE					Normally Unacceptable	Clearly Unacceptable	

 **NORMALLY ACCEPTABLE**
 Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

 **NORMALLY UNACCEPTABLE**
 New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design

 **CONDITIONALLY ACCEPTABLE**
 New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.

 **CLEARLY UNACCEPTABLE**
 New construction or development should generally not be undertaken.

Source: *Guidelines for the Preparation and Content of Noise Elements of the General Plan, California Office of Planning and Research, 1998.*

RESOLUTION NO. 08-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
DENYING AN APPEAL OF CONDITIONAL USE PERMIT 07-001
APPLICANT – DOWNTOWN BREW, INC.

WHEREAS, on March 27, 2007, the Planning Commission adopted Resolution 07-040 approving Conditional Use Permit 07-001, allowing after hours amplified music and dancing “night club activities” as an accessory use to the existing Downtown Brew restaurant located at 1108 Pine Street; and

WHEREAS, condition No. 4 of Res. 07-040 required the CUP to be reviewed by the Planning Commission to determine whether the intent of controlling loitering and noise nuisance’s are being adequately controlled; and

WHEREAS, on April 22, 2008, CUP 07-001 was reviewed by the Planning Commission, and as a result the Commission adopted Res. 08-020, allowing the continuance of the night club activities with added conditions related to sound mitigation and security; and

WHEREAS, on May 6, 2008, Timothy L. Hodge on behalf of Downtown Brew Co. filed an application appealing conditions No. 1 and No. 9 of Res. 08-020, regarding the hours of operation and noise restrictions related to the night club activities; and

WHEREAS, this application is Categorically Exempt from environmental review per Section 15301c of the State’s Guidelines to Implement CEQA.

WHEREAS, the item was continued from the July 1, 2008 City Council meeting, in order to allow staff additional time to refine the conditions of approval for the project; and

THEREFORE BE IT HEREBY RESOLVED, that based on the City Council of the City of El Paso de Robles, independent judgment, and based on the finding that it is better to address compatibility with noise sensitive uses through sound mitigation and limiting hours of operation, the City Council does hereby deny the applicant’s request to appeal Resolution 08-020, thereby upholding the Planning Commission’s actions on April 22, 2008 adopting Resolution 08-020, with the addition of the following condition of approval:

Noise from the night club activities of the Downtown Brew establishment shall not exceed the following noise exposure thresholds as measured at the property line of the nearest sensitive receptor (or complaining land use):

- 70db for residential and transient lodging uses
- 77db for general office and commercial uses

In the event there are other noise sources that conflict with obtaining an accurate reading for the night club, such as noise from a nearby business or pedestrians, the officer performing the test

will need to use judgment relative to the noise source generating the complaint, how to best obtain the most accurate decibel reading, or waiting for a more appropriate time to perform the test.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 5th day of August 2008 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

RESOLUTION NO. 08-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING AN APPEAL OF CONDITIONAL USE PERMIT 07-001
APPLICANT – DOWNTOWN BREW, INC.

WHEREAS, on March 27, 2007, the Planning Commission adopted Resolution 07-040 approving Conditional Use Permit 07-001, allowing after hours amplified music and dancing “night club activities” as an accessory use to the existing Downtown Brew restaurant located at 1108 Pine Street; and

WHEREAS, condition No. 4 of Res. 07-040 required the CUP to be reviewed by the Planning Commission to determine whether the intent of loitering and noise nuisance is being determined/controlled; and

WHEREAS, on April 22, 2008, CUP 07-001 was reviewed by the Planning Commission, and as a result the Commission adopted Res. 08-020, allowing the continuance of the night club activities with added conditions related to sound mitigation and security; and

WHEREAS, on May 6, 2008, Timothy L. Hodge on behalf of Downtown Brew Co. filed an application appealing conditions No. 1 and No. 9 of Res. 08-020 relating to the hours of operation and noise restrictions in relation to the night club activities; and

WHEREAS, this application is Categorically Exempt from environmental review per Section 15301c of the State’s Guidelines to Implement CEQA; and

WHEREAS, the item was continued from the July 1, 2008 City Council meeting, in order to allow staff additional time to refine the conditions of approval for the project; and

WHEREAS, based upon the facts and analysis presented in the staff report, and public testimony received and subject to the conditions of approval listed below, the City Council finds that the establishment , maintenance or operation for the requested use or building applied for, will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City.

THEREFORE BE IT HEREBY RESOLVED that based on the City Council of the City of El Paso de Robles, independent judgment, and based on the finding that the necessary conditions of approval addressing impacts of noise from the night club activities have been adequately addressed the City Council does hereby approve the applicant’s request to appeal Resolution 08-020, thereby not limiting the hours of operation of the night club activities, subject to the addition of the following condition of approval:

1. This conditional use permit (CUP) authorizes the use of entertainment including amplified music which would include live music, bands, DJs and dancing (collectively, the “Nightclub Activities”) as an accessory to the restaurant use. All activities shall be conducted indoors.

2. Doors and windows are to remain closed at all times while any type of music or entertainment is playing. Additionally the following noise mitigation measures shall be implemented to reduce noise levels from the balcony as described in the Noise Mitigation Plan provided by the applicant on April 22, 2008. (See attachment A)
 - a. Close doors and windows on the balcony to minimize the noise impact. See attached diagram.
 - b. Install sound absorbent material in awning over balcony.
 - c. Install glass paneling on the south facing portion of the balcony. See attached diagram.
(Note: conditions above are subject to any necessary building code requirements as determined by the Building Official. Conditions 2b & 2c shall be completed by August 1, 2008)
3. Any condition imposed by the City Council or Planning Commission in granting this conditional use permit may be modified or eliminated, or new conditions may be added, provided that the Planning Commission shall first conduct a public hearing in the same manner as required for the granting of the original permit. No such modification shall be made unless the Commission finds that such modification is necessary to protect the public interest and/or neighboring properties, or, in the case of deletion of an existing condition, that such action is necessary to permit reasonable operation and use under the conditional use permit.
4. All new and/or existing site and building mounted lighting shall be fully shielded so that light is directed downward and stays on-site. Cut sheets for new lighting fixtures or shields shall be submitted to the Community Development Department for approval prior to installation.
5. This CUP shall be reviewed informally by the Planning Commission after a 30 day period and again after a 90 day period from the time the entertainment activities have commenced, to determine whether the intent of loitering and noise nuisance is being deterred/controlled. In the event that it is determined during this review that a nuisance exists, the Planning Commission may direct a public hearing be scheduled to consider additional mitigation measures.
6. Designated in-house or contracted private security guards are to be onsite during the hours of operation when entertainment is occurring. Entertainment consists of live or amplified music, paid events, dancing or other forms of live entertainment. A minimum of two uniformed and identifiable security guards shall be employed by the business owner. The security guards shall stay on duty until 1 hour after the business has closed to help control loitering within and outside the business.
7. Interior and exterior surveillance cameras to record activities in areas open to the public and patrons. The recorded activities shall be saved for seven (7) days and available to the Police Department for investigations related to criminal activity. The location and number of cameras shall be mutually agreed upon by the both the Police Department and business owner.
8. Security lighting in the exterior perimeter and parking area to protect patrons and their vehicles from vandals and other types of crime. Prior to the installation of any exterior lighting, lighting plans shall be submitted for review and approval by the Police Chief and the Planning Department. Any new and existing exterior lighting shall be fully shielded.

9. Noise from the night club activities of the Downtown Brew establishment shall not exceed the following noise exposure thresholds as measured at the property line of the nearest sensitive receptor (or complaining land use):

- 70db for residential and transient lodging uses
- 77db for general office and commercial uses

In the event there are other noise sources that conflict with obtaining an accurate reading for the night club, such as noise from a nearby business or pedestrians, the officer performing the test will need to use judgment relative to the noise source generating the complaint, how to best obtain the most accurate decibel reading, or waiting for a more appropriate time to perform the test.

10. All existing and new signage (including temporary signs) shall comply with the City Sign Ordinance.

11. A security plan which includes a management training plan, employee and security resource placement, crowd control and security measures, and provisions for overflow customers shall be submitted to the Community Development Department for review, and shall be approved by the Community Development Director and the Police Chief. All server training shall be approved by the Department of Alcoholic Beverage Control. The business owner shall be responsible for on-going training to accommodate changes in personnel.

12. Prior to the commencement of the entertainment activities, all applicable Departments (including Building, Fire, Police & Planning) shall insure that all of the conditions of approval listed in this resolution have been satisfied to the satisfaction of each department representative.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 5th day of August 2008 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

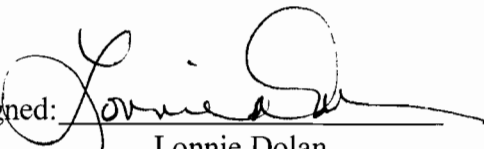
ATTEST:

Deborah Robinson, Deputy City Clerk

AFFIDAVIT
OF MAIL NOTICES
PLANNING COMMISSION/CITY COUNCIL PROJECT NOTICING

I, Lonnie Dolan, employee of the City of El Paso de Robles, California, do hereby certify that the mail notices have been processed as required for Appeal of Conditional Use Permit 07-001 (Hodge/Downtown Brewing Co., 1108 Pine Street) on this 16th day of June 2008.

City of El Paso de Robles
Community Development Department
Planning Division

Signed: 
Lonnie Dolan

forms\mailaffi.691

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL
PROJECT NOTICING

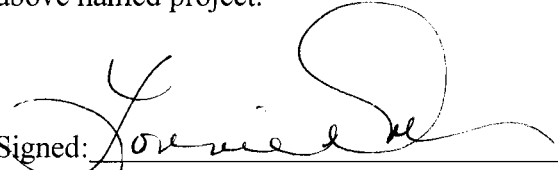
Newspaper: Tribune

Date of Publication: June 18, 2008

Hearing Date: July 1, 2008

Project: Appeal of Conditional Use
Permit 07-001 (Hodge -
Downtown Brewing Co.)

I, Lonnie Dolan, employee of the Community
Development Department, Planning Division, of the City
of El Paso de Robles, do hereby certify that this notice is
a true copy of a published legal newspaper notice for the
above named project.

Signed: 
Lonnie Dolan

forms/newsaffi.691

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of El Paso de Robles will hold a Public Hearing to review an appeal of the Planning Commissions April 22, 2008 action of approving Conditional Use Permit 07-001. The use permit would allow for amplified music and dancing as an accessory to the existing Downtown Brew restaurant. The application of appeal was filed by Timothy L. Hodge on behalf of Downtown Brew Company. The Downtown Brew site is located at 1108 Pine Street.

This hearing will take place in the City Hall/Library Conference Room, 1000 Spring Street, Paso Robles, California, at the hour of 7:30 PM on Tuesday, July 1, 2008, at which time all interested parties may appear and be heard.

Comments on the appeal may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93446 provided that such comments are received prior to the time of the hearing.

If you challenge the appeal application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

Darren R. Nash, Associate Planner
JUNE 18, 2008 6736458