

TO: HONORABLE CHAIRMAN AND PLANNING COMMISSION

FROM: RON WHISENAND, COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT: CONDITIONAL USE PERMIT 08-006 - APN: 009-103-004
(APPLICANT: THE CROOKED KILT)**

DATE: OCTOBER 28, 2008

Needs: For the Planning Commission to consider an application filed by Donovan Schmit & Troy Larkin on behalf of The Crooked Kilt, requesting to allow amplified live music and dancing as an accessory use to the existing bar/restaurant.

Facts:

1. The Crooked Kilt is located at 1122 Pine Street.
2. The site is located within the C1-PD (General Commercial, Planned Development Overlay) Zoning District, and within the Community Commercial (CC) General Plan Land Use category.
3. Table 21.16.200 of the Zoning Code requires the approval of a Conditional Use Permit (CUP) for “dance halls” in the C1 Zoning District.
4. Historically, this building has had a bar and restaurant establishment for many years (previously Busi’s). While the operation of a bar and restaurant has been an on-going permitted use, the amplified music and dancing at this location has been done without having an approved Conditional Use Permit (CUP).
5. A letter was submitted to the City by the applicants and received on October 20, 2008. The letter outlines the proposed activities being requested for the Crooked Kilt. The activities in the letter seem to comply with the proposed CUP and conditions, except the letter indicates the request to have night club activities until 1:30 am on Friday and Saturday nights. In order to be consistent with other Conditional Use Permits in the downtown, all activities would need to end by 1:00 am. The Conditions of approval within the attached resolution indicate a requirement to end at 1:00 am.
6. Approval of this CUP as conditioned would bring the nightclub activities into conformance with the zoning code (subject to complying with the conditions of approval).

**Analysis
and**

Conclusions: On August 5, 2008, the City Council approved Conditional Use Permit 07-001, allowing amplified music and dancing “night-club activities” as an accessory use for Downtown Brew restaurant located at 1108 Pine Street. With the approval of CUP 07-001 conditions of approval were adopted that addressed hours of operation of the night-club activities, as well as, establishing security, surveillance and noise requirements. It was the intent of the Planning Commission and Council with the approval of the Downtown Brew CUP, that the conditions of approval would be used consistently for bars/nightclubs in the downtown area.

The conditions allow for nightclub activities to commence on any night of the week with a requirement to terminate at 1:00 am. Standard conditions for security, surveillance and noise mitigation were also included.

The attached resolution for the Crooked Kilt includes the same conditions that are applied to Downtown Brew.

One of the main issues with the Downtown Brew CUP, was noise impacts to neighboring businesses. The Crooked Kilt is requesting to have nightclub activities both inside the building and outdoors on the patio at the rear of the building. The following noise thresholds will be required to be met, consistent with what was established with the Downtown Brew CUP:

Noise from the night club activities of the 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.

The Building and the Fire Departments have been to the site to assess the use of the back outdoor patio area for the assembly type use. It has been determined that it will be necessary for the Crooked Kilt to submit the building tenant improvement plans and an application for these improvements to bring the area into compliance with the building and fire codes. The necessary improvements would include improvements to allow for proper exiting and handicap access. A condition of approval has been added to the CUP that requires all building and fire codes to be complied with prior to commencing nightclub activities.

With the conditions of approval required with this CUP, the City will have the ability to regulate the entertainment activities and to enforce the conditions as necessary. The request to allow the entertainment activities would seem reasonable at this downtown location, since it would meet the intent of the Economic Strategy by enhancing the downtown to a mixed use dining, entertainment, culture and shopping destination. The applicants should understand that noise standards referenced above will be enforced. It needs to be emphasized that attenuating patio noise may be difficult based on prior complaints that were received from as far away as east of the Salinas River. The applicants should be aware of this potential operational issue which may limit amplified music on the patio.

Reference: Paso Robles General Plan and EIR, Paso Robles Zoning Ordinance, Economic Strategy and CEQA.

Fiscal Impact: None.

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

- A. Adopt the attached Resolution approving Conditional Use Permit 08-006;
- B. Amend, modify, or reject the above-listed action;

Attachments:

1. Letter from Donovan Schmit & Troy Larkin
2. Resolution to Approve the Conditional Use Permit 08-006
3. Newspaper and Mail Notice Affidavits

H:\darren\cup\08-004TheKilt/PCReport

October 17, 2008

City of EL PASO DE ROBLES

Dear Planning Division:

The intention of this letter is to modify existing conditions of the use permit for The CROOKED KILT. The main focus is for outside entertainment.

Requested hours of operation and type of entertainment requested are to be as follows:

Monday: None

Tuesday: Live Music from 6pm to 9pm

Wednesday: DJ from 9pm to 12am on outdoor patio in rear

Thursday: Live Music on Outdoor Stage from 9pm to 12am

Friday: Live Music on Outdoor Stage from 6pm to 9pm
DJ from 9pm to 1:30am

Saturday: Live Music on Outdoor Stage from 6pm to 9pm
DJ from 9pm to 1:30am

Sunday: None

Now with this request we know there are some existing issues with noise so we have been monitoring and will continue to monitor the level of noise and how it travels away from this establishment to keep within the 77db noise element threshold. We feel that in the location we are in we don't have any immediate problems with our level of sound. We have been limiting volume levels and keeping the front doors of our establishment closed so that the sound is contained in our general vicinity. We also have very large buildings and trees surrounding us that help deflect the noise from traveling North or South from our Business. In the past year we have had very little if any problem with noise complaints from anyone because of our efforts to keep the noise to a minimum while operating at these times.

We also know that with these hours and type of business that there are other issues other than noise like security and surveillance which we already have taken into consideration. Our Staff has had the Police department come in and talk about rights and limitations and are very concerned about safety. All of our security staff wear uniforms to be properly identified and have a very personal relationship with the police department and if there are any issues they feel comfortable with contacting the police with any questions or problems that may arise. We also have a surveillance system to record all activities. All indoor and outdoor areas are very well lit for the safety of the public and our patrons.

Sincerely,

Donnovan Schmit & Troy Larkin
Owners

Attachment 1
Letter from Applicant's
CUP 08-006
(Crooked Kilt)

RESOLUTION NO. 08-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PASO
ROBLES APPROVING CONDITIONAL USE PERMIT 08-006
APPLICANT – CROOKED KILT.

WHEREAS, on July 18, 2008, Donovan Schmit & Troy Larkin on behalf of the Crooked Kilt, submitted an application for Conditional Use Permit (CUP) 08-006, requesting to operate night club activities as an accessory to the existing restaurant & bar located at 1122 Pine Street (APN: 009-103-004); and

WHEREAS, the entertainment would include amplified music, consisting of live music, bands, DJs and dancing (collectively, the “Nightclub Activities”); and

WHEREAS, restaurant and bar activities have been operating at this location for many years, however, there has never been a use permit to allow nightclub activities; and

WHEREAS, the approval of this CUP along with the conditions of approval would bring the nightclub activities for the Kilt into conformance with the zoning, building and fire codes; 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 approve Conditional Use Permit 08-006 subject to the following conditions:

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. The Nightclub activities may take place inside the enclosed facility or on the outdoor patio, and shall end no later than 1:00AM.
2. Prior to commencing the Nightclub Activities, the applicants shall apply for a Building Permit for tenant improvements, to make any necessary changes to bring the building into compliance with all necessary Building and Fire Codes related to the proposed change in use.
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 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 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 shall be in place 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 shall be in place along 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 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 THIS 28th day of October, 2008 by the following Roll Call Vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHAIRMAN, ED STEINBECK

ATTEST:

RON WHISENAND, SECRETARY OF THE PLANNING COMMISSION

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL
PROJECT NOTICING

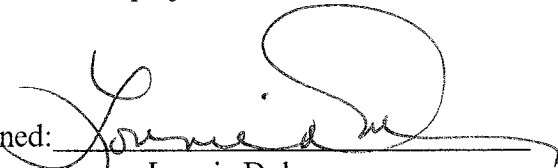
Newspaper: Tribune

Date of Publication: October 15, 2008

Hearing Date: October 28, 2008
Planning Commission

Project: Conditional Use Permit 08-006
(Crooked Kilt)

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 Planning Commission of the City of El Paso de Robles will hold a Public Hearing to consider Conditional Use Permit 08-006, a request filed by Donovan Schmit & Troy Larkin on behalf of The Crooked Kilt, to establish the ability to have amplified music and dancing as an accessory to the existing restaurant. The site is located at 1122 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, October 28, 2008, at which time all interested parties may appear and be heard.

Comments on the proposed Conditional Use Permit 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.

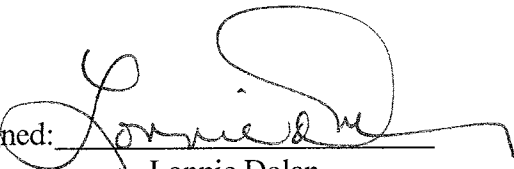
If you challenge the Conditional Use Permit application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Darren R. Nash, Associate Planner
October 15, 2008 6769568

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 Conditional Use Permit 08-006 (Crooked Kilt) on this 10th day of October 2008.

City of El Paso de Robles
Community Development Department
Planning Division

Signed: 
Lonnie Dolan

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