



## Planning Commission Staff Report

January 12, 2011  
Item 6.a.

**SUBJECT:** PCUP-286

**PROPERTY OWNER:** King's Family Limited Partnership

**APPLICANT:** Marino Sandoval/EI Balazo

**PURPOSE:** Application to modify the approved conditional use permit (PCUP-132) for the operation of EI Balazo Restaurant to allow live music and entertainment.

**GENERAL PLAN:** Retail/Highway/Service Commercial, Business and Professional Offices.

**ZONING:** Planned Unit Development – Commercial (PUD-C) District

**LOCATION:** 5331 Hopyard Road

**EXHIBITS:**

- A. Recommended Conditions of Approval
- B. Proposed Floor Plan and Written Narrative
- C. Letter from Staff Restricting Activities, dated January 12, 2007
- D. Letter from Staff dated September 15, 2010 Approved Some of the Activities Requested by EI Balazo
- E. Planning Commission Resolution No. PC-2005-05
- F. Planning Commission Meeting Minutes of January 26, 2005 (Excerpt)
- G. Public Comments
- H. Staff Report for PCUP-132, dated January 6, 2005
- I. Approved Restaurant Floor Plan and Narrative
- J. Memo to the Planning Commission dated January 18, 2007
- K. Location Map
- L. Public Noticing Map
- M. Police Service Call Log for EI Balazo, 2005-2006 (will be provided later)

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## BACKGROUND

In January 2005, the Planning Commission granted a Conditional Use Permit (Case No. PCUP-132) to allow alcoholic beverages to be served between 10:00 p.m. to 2:00 a.m. daily at the Taqueria El Balazo restaurant. The conditional use permit was approved subject to conditions of approval (see attached Planning Commission Resolution No. PC-2005-05 Exhibit E), including allowing live music until 12:00 midnight, and serving alcohol with meal during business hours (10 a.m. – 2:00 a.m. daily). The live music approved by the original application was a mariachi band playing in the restaurant on holidays and special occasions. No specific area was designated for the band as live music would be played on limited occasions instead of on a regular basis. A dancing area was not proposed or approved.

Shortly after its opening, El Balazo started to have a Wednesday night drink promotion of \$1.00 for a 16 oz. beer. This promotion resulted in the Police Department having to respond to a significant number of alcohol related incidents. Additionally, the restaurant modified the outdoor patio area to serve alcohol without prior City or State Alcohol Beverage Control (ABC) approval. El Balazo later received approvals (from both Planning and Building) to service alcohol with food the patio area.

In August 2005, city staff (Police Department and Code Enforcement) met with the restaurant owner on several occasions to address the importance of public safety. The owner discontinued the Wednesday night drink promotion, but then started the same drink promotion during all football game nights. This game night drink promotion resulted in an increase of alcohol related incidents from one night to potentially several nights during the week. Reports from the Police and Code Enforcement stated that El Balazo imposed an entry cover charge after 9:00 p.m.<sup>1</sup>, hired a DJ, and turned a portion of the restaurant to a dance floor (tables and chairs were moved/removed to create a dance area). None of the above actions received prior City approval, in violation of the existing conditional use permit.

During the following several months, the City's Code Enforcement Officer continued working with the restaurant management to bring its operation into compliance. El Balazo indicated that it would conform, but little had been put into action as the Police Department continued responding to alcohol related incidents.

On January 12, 2007, staff met with the restaurant owner, Marino Sandoval and the restaurant manager stating that if immediate cooperation was not received from El Balazo for compliance with the approved conditional use permit and for discontinuing the alcoholic promotion, staff would have no choice but to take the application to the Planning Commission for a hearing of El Balazo's conditional use permit. Mr. Sandoval then agreed to abide by the conditions of approval as stated in Resolution No. PC-2005-05, and also agreed to following measures (see Exhibit C):

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<sup>1</sup> Charging an entry fee/cover charge is typically done at nightclubs and other entertainment venues, and is not a normal practice for a restaurant, which should serve all patrons present to buy food or beverages.

- No alcoholic beverage service after 12:00 midnight on Wednesday;
- No DJ or live band allowed on the premises;
- No tables and chairs removed to create a dance floor;
- No cover charge imposed to enter the restaurant during business hours;
- No age restriction imposed to enter the restaurant during business hours<sup>2</sup>;
- No karaoke or other forms of entertainment permitted at the restaurant during business hours.

To staff's knowledge, El Balazo restaurant has been abiding by these conditions since January 2007.

In September 2010, El Balazo restaurant contacted City staff requesting permission to resume some of the activities that were restricted in 2007 and to expand its current activities. The request included extending the hours to serve alcoholic beverages from 12:00 midnight up to 1:15 a.m. Monday through Wednesday up to 1:25 a.m. Thursday through Saturday, and up to 1:00 a.m. on Sunday<sup>3</sup>, allowing special alcoholic beverage promotions with prior approval from the Police Department, and having live music and entertainment, etc. Staff (both Community Development Department and Police Department) allowed a 12-month probation period for some of the requested activities, such as allowing alcohol to be served until 1:15 a.m. daily; however, it was determined that the requested live music and karaoke was a substantial change to the conditional use permit and would require Planning Commission review and approval at a public hearing (see Exhibit D).

On November 1, 2010, Marino Sandoval submitted an application to the Planning Division requesting a live band, karaoke, jukebox, trivia night, and football game night be allowed at the restaurant.

## **SITE DESCRIPTION**

The subject property is located on the east side of Hopyard Road, south of Interstate 580. The restaurant is a 5,500 square feet freestanding building. A total of 52 parking spaces are provided on site.

The property is bordered on the south by Burger King restaurant, Conroy's Florist and a variety of other retail businesses and restaurants; on the east by Super Frank's, on the north by Pleasanton Inn and Interstate 580, and on the west by Hopyard Road, Candlewood Hotel and Pleasanton Park Business Park. Shared driveways connect the subject site with adjacent sites where Super Franks', Pleasanton Inn and other commercial establishments are located.

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<sup>2</sup> An age restriction for entry is typical of a bar or nightclub. Children under the age of 18 or 21 are normally allowed to enter any restaurant when they are buying food and beverages.

<sup>3</sup> Staff notes that the letter issued by staff on January 12, 2007, did not allow alcohol service after 12:00 midnight on Wednesdays, but did not change the original conditional use permit approval to serve alcohol until 2:00 a.m. on other days.



Project Location

## **PROJECT DESCRIPTION**

The applicant requests that the following scheduled activities be allowed during business hours:

- Monday – Monday Night Football
- Tuesday – Jukebox
- Wednesday – Trivia Night
- Thursday – Karaoke (9:00 p.m. – 12:00 midnight)
- Friday – Live Music (9:00 p.m. – 12:00 midnight)
- Saturday – Jukebox
- Sunday – Football

The applicant indicated to staff that the proposal to have a live band, a karaoke machine and other game activities is to increase patron volume and therefore to boost restaurant sales. The music/songs played by the band would be mostly 80s music/songs.

The existing restaurant layout would not be changed to accommodate the proposed karaoke area, i.e. tables and chairs would not be moved and/or removed to create a

stage area. The band would be located behind the bar area (see attached floor plan). This area would also be used for the jukebox and karaoke machine.

No other changes to the business operations are proposed (e.g. the proposed Karaoke on Thursdays and "Live Music" on Fridays will not include creating a dance floor and dancing would not be allowed).

## **ANALYSIS**

Conditional uses are those uses which, by their nature, require special consideration so that they may be located properly with respect to the objectives of the Municipal Code and their effects on surrounding properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for modifications to an existing use permit that has been referred by the Director of Community Development.

### Land Use

El Balazo restaurant would not be the first restaurant that would have live music on a regular basis if this conditional use permit is approved. There are existing restaurants who were approved to have live music.

There have been missteps in the operation of El Balazo. When the conditions were restricted by staff in 2007, the restaurant was able to control its patrons. Over the past three years, incidents due to over drinking have significantly decreased. Staff finds that it is acceptable to reconsider El Balazo's request to resume music and add additional services, such as karaoke, to its patrons. However, to ensure that the previously frequent intoxication, fights on premises, etc. will not re-occur, staff has added a condition to allow live music and karaoke for one year (proposed Condition No. 4). During this one-year probationary period, staff would be able to revoke the approval for live music and karaoke due to any violation. At the end of the probation period, the Community Development Director has the discretion to either extend the use permit period or return this item to the Planning Commission for review and action.

As for the proposed football nights, trivia night and jukebox, many eateries have big screens broadcasting sporting events. In the past, El Balazo had incidents on game nights due to alcohol promotions and/or over-serving. El Balazo agrees and it was stated in the letter from the Police Chief (see Exhibit D) that alcohol promotion must receive prior approval by the chief. Staff believes that with this agreement, alcohol promotion at El Balazo would be controlled. Therefore, having a big screen showing games, playing trivia games and operating a jukebox in conjunction with regular restaurant operations would not be subject to the one-year probation period (applying only to the live music and the use of the karaoke machine).

## Noise

The proposed activities would be required to comply with the noise regulations of the City's Municipal Code that were designed to protect the peace, health, safety, and welfare of the citizens (Proposed Condition No. 12). The Municipal Code does not allow a commercial property to exceed a noise level of 70 decibels (dBA) at the property line. The "Daytime Exceptions" section in the Municipal Code permits noise levels of 70 dBA or less at a distance of 25 feet from the noise source to occur between the hours of 8:00 a.m. and 8:00 p.m. daily, except Sundays and holidays, when the exception applies between 10:00 a.m. to 6:00 p.m. Staff believes that compliance with these adopted regulations provide the level of noise protection to other businesses and tenants consistent with community values.

The applicant indicated that when a live band is playing at the restaurant, music would not be heard 100 feet away the building. To control noise level especially when the band is playing or the karaoke machine is in use, staff recommends that the doors to the restaurant and to the outdoor patio dining area should remain closed but unlocked. A condition of approval has been added to address this item. Additionally, staff recommends that live music and karaoke be limited to indoors only (see Condition 6.) Staff has also included a "standard" use permit condition of approval that allows the City to review the project again to add mitigating conditions should any future complaints regarding noise levels occur.

## Parking

The adjoining property owner (see email in Exhibit G) informed staff that in the recent past parking by El Balazo's patrons has over flowed onto his property, thus impacting his commercial tenants and their customers. As there are no physical boundaries between the properties to separate parking lots, it would be appropriate for El Balazo to inform its patrons on a regular basis via posting inside the restaurant not to utilize the parking spaces o the adjacent properties. Staff has added condition to address this item (see Condition No. 10).

## **PUBLIC NOTICE**

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property.

Walter Wallner, owner of the adjoining property where Burger King and Nations are located, wrote to staff addressing objection to the proposed due to traffic, parking and operation concerns. A copy of Mr. Wallner's email is attached as Exhibit G.

## FINDINGS

The Commission needs to make the following findings prior to the granting of a use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

Objectives of the zoning ordinance include: protecting existing land uses from inharmonious influences and harmful intrusions; fostering harmonious, convenient, workable relationships among land uses; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff believes that the proposed activities at the existing restaurant would not adversely impact the surrounding businesses and would be consistent with these objectives.

The restaurant is located in a commercial area on Hopyard Road, a major thoroughfare in the City and near the I-580 on/off ramp. Allowing live music and karaoke activities inside the El Balazo Restaurant is in accordance with the purposes of the approved Planned Unit Development plan and commercial zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The existing and proposed conditions of approval give the City the appropriate controls to ensure that the use does not have any negative impacts on the surrounding businesses. If necessary, the application could be brought back to the Planning Commission for additional conditions to mitigate and/or prevent any nuisances that were identified. In summary, staff recommends that this finding be made.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

The proposed live music and karaoke activities at El Balazo Restaurant are not anticipated to generate adverse impacts on any of the surrounding properties due to the existing and proposed conditions of approval that will ensure that the safety and general welfare of the surrounding properties is maintained. The proposed activities would also need to comply with the City's noise regulations, which were designed to protect the peace, health, safety, and welfare of the citizens of the City. Conditions have been included that would require the applicants to mitigate any future nuisances as a result of the proposed use. Therefore, staff recommends that this finding be made.

**C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.**

The site's zoning conditionally allows restaurants which sell alcohol past 10:00 p.m. Staff believes that the recommended conditions of approval will help to integrate the expanded activities without detrimentally affecting the surrounding properties and the City in general. As with any use permit, this use can be suspended or revoked if the conditions are not met. As conditioned, the proposed modification to the existing use permit would comply with all applicable provisions of the Zoning Ordinance. Therefore, staff recommends that this finding be made.

**ENVIRONMENTAL ASSESSMENT**

Projects of this nature are categorically exempt (Section 15301, Existing Facilities, Class 1) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

**CONCLUSION**

With the improvements made in managing the restaurant and its patrons, staff finds that it is acceptable to reconsider the request from El Balazo to allow live music and karaoke as part of its operation. However, based on El Balazo's prior history, staff is cautious in allowing the requested activities. With the conditions of approval and the applicant's commitment to comply with the municipal code, to train its employees not to over-serve, and to control its clientele, staff believes that the requested activities are supportable on a probationary basis.

**STAFF RECOMMENDATION**

Staff recommends that the Commission approve Case PCUP-286 by taking the following actions:

- 1) Make the conditional use findings as listed in the staff report; and
- 2) Approve Case PCUP-286 subject to the conditions listed in Exhibit A.

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