

**Update on case file no. CM10301 for 211 Foothill Blvd, Suite B (alcoholic beverage sales at Rockin Crawfish restaurant) approved by Planning Commission on February 2, 2011**

**Condition of Approval # 26 stipulates staff shall provide a status report to the Planning Commission detailing the restaurant's adherence to requirements including site cleanliness, reduced odor, and repair of a trash enclosure prior to commencing sale of alcoholic beverages**

## **BACKGROUND**

On February 2, 2011 the Planning Commission approved a Major Conditional Use Permit to allow a full-service restaurant located on a restricted street to serve beer and sake. Conditions of approval included site improvements prior to commence sale of alcoholic beverages and for staff to return in approximately 90 days to report on the business' progress in meeting conditions of approval (**Attachment A**).

## **SUMMARY**

Staff has worked with the business operator and property owner on meeting conditions of approval and has been in touch with neighbors. Staff was informed that the sale of alcoholic beverages commenced prior to completion of required conditions of approval; staff informed the applicant that such sale must cease until conditions are met. The applicant later contacted staff to indicate conditions had been met. Staff conducted an unannounced visit of the premises during business hours (Saturday April 9, 2011 at 8:30pm). Staff observed adherence to conditions as described below and indicated to the applicant that sale of alcohol could resume.

Following are conditions of approval relevant to this report and staff's comments (*shown in italics*) regarding adherence:

### **11. Maintenance of Full-Service Restaurant**

#### ***Ongoing***

The establishment must operate as a full-service restaurant to sell alcohol

*Staff observed seated customers including families receiving table service (no alcohol was being served/consumed)*

### **15. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities**

#### ***Ongoing***

#### **a. Signage**

Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to bar. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

*The applicant is posting both signs.*

#### **b. Graffiti**

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

*Graffiti has been removed – new graffiti has been applied and must be removed*

**16. Trash and litter**

***Ongoing***

The licensees/property owners shall clear the gutter and sidewalks along Foothill Boulevard plus twenty feet beyond the property lines along this street of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

*Litter has been removed – a small amount of new litter has accumulated on site and primarily in the public right-of-way (gutter) – the business operators will remove litter from on and off site twice daily*

**PROJECT SPECIFIC CONDITIONS**

**17. Signage**

***Prior to commencing sale of alcoholic beverages***

A nonconforming mural sign and related illumination located above the restaurant establishment (Suite B) shall be removed.

*The mural has been reduced to 58 square feet and the site's signage now conforms to the Planning Code for aggregate area.*

**20. Trash enclosure**

***Within 30 days of approval***

The site trash enclosure shall be rebuilt with a solid wood enclosure with a decorate top edge and maintained so that receptacles are not readily visible and odors are not discernible at the nearest adjacent residential property. Trash shall be double-bagged. Spent frying oil shall not be stored in the enclosure. Absorbent products shall not be applied to the enclosure floor. The applicant shall present a design to the Planning & Zoning Department for approval and proceed to apply for a Building Permit. The design shall not include gates that must encroach upon the public right-of-way during utilization.

*An attractive wooden trash enclosure had been built to replace the original enclosure. The property owner and their contractor worked with staff on an acceptable design and obtained Building Permits prior to construction and inspection.*

**21. Phone booth**

***Within 30 days of approval***

The inactive phone booth located on site shall be removed.

*The inactive pay phone had been removed from the parking lot*

**22. Restaurant odor**

***Within 30 days of approval***

The restaurants deep fryer shall be improved and maintained as follows:

- (a) Frying oil shall be replaced daily and written records shall be kept for a minimum period of 6 months and made available to city staff upon request.
- (b) Spent frying oil shall be collected by a private service weekly and shall not be stored in the trash enclosure between removal and collection.
- (c) The deep fryer shall be cleaned at regular and recommended intervals and written records shall be kept for a minimum period of 6 months and made available to city staff upon request.
- (d) Deep fryer ventilation filters shall be replaced with new filters and cleaned at regular and recommended intervals.
- (e) The rooftop vent shall be extended at a forty-five degree angle toward the site parking lot.

*A rooftop vent had been installed. Staff suggests that it be modified to extend to the front roofline. A neighbor has indicated site odor has decreased but remains.*

**23. Fire inspection**

***Within 30 days of approval and prior to sale of alcoholic beverages***

The applicant shall request an inspection from the Fire Department (510-238-3851x1). A Fire inspection is required every six months for all restaurants.

*The establishment has obtained a fire inspection – Zoning staff reminded the applicant to confirm and adhere to the Fire Department's permitted capacity.*

**24. Screening**

***Within 30 days of approval and prior to sale of alcoholic beverages***

Glass doors located on the building's northeast (left) side facing Foothill Boulevard shall be fully screened.

*Glass doors had been tinted and are not transparent during daylight hours – the tinting is not adequate during evenings if a light is on inside the building at this location – that light is motion-sensing and is usually not activated – the applicant agreed to remove all items from the interior to improve appearances during evenings when the light may be activated*

**25. Bulky waste**

***Within 30 days of approval and prior to sale of alcoholic beverages***

Dispose of bulky waste items located behind gate on northeast (left) side of building facing Foothill Boulevard.

*A 42-gallon drum (spent cooking oil awaiting pick-up) was observed by staff at this location – staff indicated this to the applicant who agreed to relocate the drum to an inconspicuous location*

**CONCLUSION**

Staff suggests the applicant has demonstrated adequate adherence to Conditions of Approval. Staff requests the Planning Commission accept this report and allow CEDA staff to handle any future issues with the establishment and neighbors through standard compliance procedures.

Prepared by:



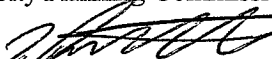
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Approved by:



SCOTT MILLER  
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Community and Economic Development Agency

Approved for forwarding to the  
City Planning Commission:



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**ATTACHMENTS:**

A. Conditions of Approval, case file no. CM10301 (approved by Planning Commission on February 2, 2011)

**Attachment A:**  
**Conditions of Approval, case file no. CM10301 (Approved by Planning Commission on February 2, 2011)**

**1. Approved Use**

***Ongoing***

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans submitted on **August 2, 2010** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes:
  - i) *1 Major Conditional Use Permit with one set of additional findings to allow an existing full-service restaurant to serve alcoholic beverages (beer and sake only) on Foothill Boulevard, a restricted street*

**2. Effective Date, Expiration, Extensions and Extinguishment**

***Ongoing***

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

**3. Scope of This Approval; Major and Minor Changes**

***Ongoing***

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

**4. Conformance with other Requirements**

***Prior to issuance of a demolition, grading, P-job, or other construction related permit***

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

**5. Conformance to Approved Plans; Modification of Conditions or Revocation**

***Ongoing***

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

**6. Signed Copy of the Conditions**

***With submittal of a demolition, grading, and building permit***

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

**7. Indemnification**

***Ongoing***

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

**8. Compliance with Conditions of Approval**

***Ongoing***

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

**9. Severability**

***Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

**10. Job Site Plans**

***Ongoing throughout demolition, grading, and/or construction***

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

**SPECIFIC CONDITIONS FOR PROJECTS INVOLVING SALE OF ALCOHOLIC BEVERAGES**

**11. Maintenance of Full-Service Restaurant**

***Ongoing***

The establishment must operate as a full-service restaurant to sell alcohol as defined as follows:

**A) Planning Code Definition**

"Full-service restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant.

**B) Planning Code Use Classification**

17.10.272 - Full service restaurant commercial activities.

Restaurants providing food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods. Also, see 17.102.180 and 17.156.070 for definitions of a full-service restaurant in relation to Alcoholic Beverage Sales. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

**C) Planning Code Deemed Approved establishment definition**

1. A "full service restaurant" shall serve "meals" to guests at all times the establishment is open for business. An establishment shall not be considered a "full-service restaurant" if it served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two hours after meal service has ceased to allow guests to comfortably complete their meals.

2. There shall be a real offer or holding out to sell "meals." Premises shall make an offer or holding out of sales of "meals" to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of "meals" without actual sales shall not be deemed sufficient.

3. The "offer" of "meals" is not adequate to meet the above criteria. A "full service restaurant" shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty (60) percent of total revenue shall be generated from food service and no more than forty (40) percent of revenue from the sales of alcohol.

4. "Meals" means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. "Meals" shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.

5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve "meals" to the public.

6. A full service restaurant shall comply with all local health department standards.

7. A full service restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.

8. To the extent that ABC regulations do not conflict with the above criteria, a full service restaurant shall comply with all State Department of Alcoholic Beverage Control regulations related to "Bona fide public eating place, meals."

**12. Sale of Alcoholic Beverages**

***Ongoing***

**a. Location and manner of alcohol consumption**

Alcohol sale is on-sale, for on-site consumption only, and is intended to be served with meals.

**b. Types of Alcohol Permitted**

Beer and sake only may be sold. Should the proprietor desire sale of distilled spirits, an application must be submitted to and approved by the Planning & Zoning Division.

**c. Additional Permits Required**

Necessary ABC permits must be obtained prior to commencement of activity.

**d. Hours of Alcohol Sale**

The proprietor voluntarily agrees to limit hours of alcohol sales to no later than 11:00pm.

**e. Nuisances**

Crime, litter, noise, or disorderliness conduct associated with alcohol sales at the establishment will result in a revocation of the Major Conditional Use Permit or a review to revoke.

**13. Inclusion of conditions in State Department of Alcoholic Beverage Control license**

***Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit***

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions of their ABC license to conform to all of the conditions and requirements in this approval. The letter shall request the ABC restrict its license to only those uses allowed under City permits. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the Applicant fails to include the above conditions in the ABC license.

**14. Conformance with State Department of Alcoholic Beverage Control regulations**

***Ongoing***

This use shall conform to all provisions of the State ABC license. The State license and State conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in



the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

**15. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities**

**Ongoing**

**a. Signage**

Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to bar. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

**b. Graffiti**

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

**c. Pay Phones**

No new pay phones are permitted outside the building.

**d. Loitering**

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

**e. Securing Site**

Applicant shall conform to Ordinance 12390 related to securing sites after hours to discourage loitering and crime in parking lots.

**f. Deemed Approved Alcoholic Beverage Sale Regulations**

The applicant and proprietor voluntarily agree to conform to the Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

**16. Trash and litter**

**Ongoing**

The licensees/property owners shall clear the gutter and sidewalks along Foothill Boulevard plus twenty feet beyond the property lines along this street of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

**PROJECT SPECIFIC CONDITIONS**

**17. Signage**

**Prior to commencing sale of alcoholic beverages**

A nonconforming mural sign and related illumination located above the restaurant establishment (Suite B) shall be removed.

**18. Immediate removal of trash and graffiti**

**Prior to commencing sale of alcoholic beverages**

Trash and graffiti at the site must be removed prior to any sale of alcoholic beverages – this requirement affects the entire site and refers in particular to trash located in a landscaped area on the north side of the site facing Foothill Boulevard and graffiti located on the north side of the building facing Foothill Boulevard – the site must be maintained free of trash and graffiti as stipulated by Conditions of Approval #15b and 16.

**19. Performance standards**

***Ongoing***

The establishment shall adhere to performance standards for noise, odor, and all environmental effects of the restaurant activity as regulated under OMC Chapter 17.120.

**20. Trash enclosure**

***Within 30 days of approval***

The site trash enclosure shall be rebuilt with a solid wood enclosure with a decorative top edge and maintained so that receptacles are not readily visible and odors are not discernible at the nearest adjacent residential property. Trash shall be double-bagged. Spent frying oil shall not be stored in the enclosure. Absorbent products shall not be applied to the enclosure floor. The applicant shall present a design to the Planning & Zoning Department for approval and proceed to apply for a Building Permit. The design shall not include gates that must encroach upon the public right-of-way during utilization.

**21. Phone booth**

***Within 30 days of approval***

The inactive phone booth located on site shall be removed.

**22. Restaurant odor**

***Within 30 days of approval***

The restaurant's deep fryer shall be improved and maintained as follows:

- (a) Frying oil shall be replaced daily and written records shall be kept for a minimum period of 6 months and made available to city staff upon request.
- (b) Spent frying oil shall be collected by a private service weekly and shall not be stored in the trash enclosure between removal and collection.
- (c) The deep fryer shall be cleaned at regular and recommended intervals and written records shall be kept for a minimum period of 6 months and made available to city staff upon request.
- (d) Deep fryer ventilation filters shall be replaced with new filters and cleaned at regular and recommended intervals.
- (e) The rooftop vent shall be extended at a forty-five degree angle toward the site parking lot.

**23. Fire inspection**

***Within 30 days of approval and prior to sale of alcoholic beverages***

The applicant shall request an inspection from the Fire Department (510-238-3851x1). A Fire inspection is required every six months for all restaurants.

**24. Screening**

***Within 30 days of approval and prior to sale of alcoholic beverages***

Glass doors located on the building's northeast (left) side facing Foothill Boulevard shall be fully screened.

**25. Bulky waste**

***Within 30 days of approval and prior to sale of alcoholic beverages***

Dispose of bulky waste items located behind gate on northeast (left) side of building facing Foothill Boulevard.