



staff report

Agenda Item No. D-1

To: City of Imperial Planning Commission

From: Othon Mora, Community Development Director

Date: July 21, 2022

**Subject: Conditional Use Permit Request #22-03
Saltcedar BBQ
297 S. Imperial Avenue**

Summary:

Applicant:	Daniel Hughes
Project Location:	297 S. Imperial Avenue
Project Description:	Conditional Use Permit (CUP) to allow the onsite sale and consumption of alcoholic beverages and onsite live entertainment
Zoning:	V-C (Village Commercial)
General Plan:	Commercial Village
Environmental:	Categorically Exempt – 15301 Existing Facilities
Recommendation:	Approve, subject to conditions

Background

Applicant, Daniel Hughes, is the owner and has been operating Saltcedar BBQ Restaurant since February 19, 2022. Currently, his limited hours of operation are 5 p.m. to sell out on Saturdays. Mr. Hughes' barbecued plates have become popular with residents as he regularly sells out. Effective June 25, 2022, Mr. Hughes will close his restaurant for the Summer, but will be diligently working on site improvements with funds he obtained from the California Dream Grant Program to create an inviting Texas barbecue style setting. In hopes of expanding and growing his business, Mr. Hughes would like to include the sale of alcoholic beverages and live entertainment at his establishment. Because the property is located within the Village Commercial Zone, he must obtain a Conditional Use Permit for the sale and consumption of alcoholic beverages and onsite live entertainment to acquire a Type 41 California Alcoholic Beverage Control License. Saltcedar BBQ will reopen in the Fall with expanded operating hours Thursday through Saturday 10:00 a.m. to 10:00 p.m.

Diane Johnson, the apartment complex's owner, to the South of the project submitted a letter on July 13, 2022, requesting placing conditions on patrons' alcoholic purchases. Ms. Johnson requests the restaurant only serve beer and/or wine and only with food orders. In her letter, Ms. Johnson also stated her opposition to the proposed onsite live entertainment that will negatively impact her tenants' peace. Noise attenuation from the onsite live entertainment in the form of the building's walls serve as a noise buffer to lessen the noise impact to the apartment complex to the south of the project site. As referenced in the City of Imperial's Noise Element, the building's walls are considered appropriate noise mitigation measures. In addition, the proposed stage is located against the building's North facing wall. The proposed acoustic music will project to the North and in the opposite direction of the apartment complex.

The project's public hearing, originally scheduled July 13, 2022, was continued to July 27, 2022, due to lack of quorum.

Vicinity Map



Aerial View



Discussion/Analysis

The project site is zoned V-C Village Commercial. The Village Commercial zone is intended as the social and civic heart of the City of Imperial with small retail shops, outdoor dining, parks and civic facilities in a vibrant, pedestrian friendly and family-oriented atmosphere.

Environmental Compliance

The project is categorically exempt from the California Environmental Quality Act (CEQA) under Section 15301-Existing Facilities of the Guidelines.

Evaluation

The Zoning Ordinance provides flexibility in the regulation of uses to ensure that unusual characteristics of certain uses are properly addressed in furtherance of the Imperial Zoning Ordinance. Section 24.19.340 of the City of Imperial Zoning Ordinance requires that the Commission make specific findings be made when reviewing a CUP. The required findings are listed below in ***bold italics***, followed by an evaluation:

1. ***That the proposed location, size, design, and operating characteristics of the proposed use is in accord with the Title and Purpose of this Ordinance, the Purpose of the zone in which the site is located, the Imperial General Plan, and the development policies and standard of the City.***

The subject site is located within a Commercial Village zone, which is intended to provide restaurants, retail and business uses located within the Downtown Core area.

2. ***That the location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect or be materially detrimental to adjacent uses, residents, buildings, structures, or natural resources with consideration given to those items listed in Section 24.19.340.B of the Imperial Zoning Ordinance.***

The location is ideal for the restaurant as it is surrounded by other downtown restaurants, retail and businesses. The project site abuts a multi-family apartment complex to the South within the Village Commercial Zone as well. The project is compatible with the adjacent land uses and it will not adversely affect the apartment complex’s tenants with the established conditions of approval and Mr. Hughes’ mitigation efforts addressing Ms. Johnson’s concerns.

3. ***That the proposed location, size, design, and operating characteristics of the proposed 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 properties or improvements in the vicinity.***

With the Conditions of Approval put in place, the proposed project will not be detrimental to the public health, safety or welfare of those within the vicinity of the project site.

4. ***That the proposed Conditional Use will comply with each of the applicable provisions of the Zoning Ordinance, except for any approved Variance.***

The proposed project complies with all provisions of the Zoning Ordinance.

Public Notification

The public hearing scheduled for July 13, 2022 was duly noticed in the Holtville Tribune and Calexico Chronicle, newspapers of general circulation on June 30, 2022. A Notice of Public Hearing was sent to all property owners within 300-feet of the property. Due to lack of quorum, the public hearing was continued to July 27, 2022.

Recommendation

Staff recommends the Planning Commission conduct a public hearing to receive comments for and against the project. Unless sufficient evidence to the contrary is presented at the public hearing, Staff recommends that the Planning Commission approve Conditional Use Permit 22-03 to allow for the use and operation of a restaurant with onsite sale and consumption of alcoholic beverages an onsite live entertainment.

Attachments

- RESO PC 2022-04
- Conditions of Approval
- Diane Johnson's Opposition Letter

Respectfully submitted,

Othon Mora, MCM, CBO
Community Development Director

RESOLUTION NO. PC2022-04

**A RESOLUTION OF THE PLANNING COMMISSION, OF THE CITY OF IMPERIAL,
APPROVING A CONDITIONAL USE PERMIT FOR THE ONSITE SALE AND
CONSUMPTION OF ALCOHOLIC BEVERAGES AND ONSITE LIVE
ENTERTAINMENT AT SALT CEDAR BBQ LOCATED AT 297 S. IMPERIAL AVENUE
SUBJECT TO THE ATTACHED CONDITIONS**

WHEREAS, Daniel Justus Hughes submitted an application for the onsite sale and consumption of alcoholic beverages and onsite live entertainment for Saltcedar BBQ located at 297 S. Imperial Avenue; and

WHEREAS, the subject site is located within the V-C Village Commercial Zone and eating and drinking establishments with alcoholic beverages and/or entertainment are conditionally allowed uses within that zone; and

WHEREAS, a duly notified public hearing was held by the Planning Commission on July 13, 2022, to hear testimony for and against the proposed Conditional Use Permit; and

WHEREAS, upon hearing and considering all testimony and arguments, examining the environmental study, analyzing the information submitted by staff and considering any written and oral comments received, the Planning Commission considered all facts relating to the project; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Imperial as follows:

- A) That the foregoing recitations are true and correct; and
- B) That based on the evidence presented at the public hearing, the Planning Commission hereby **APPROVES Conditional Use Permit #22-03** subject to the conditions of approval outlined in Exhibit A and based on the following findings:
 - 1. The project has been reviewed in accordance with the requirements set forth by the City of Imperial for implementation of the California Environmental Quality Act.
 - 2. The initial environmental assessment shows that there is no substantial evidence that the proposed land use will have a significant impact on the environment.
 - 3. The project meets all the requirements per section 24.19.340 of the Imperial Zoning Ordinance for granting said conditional use permit as follows:
 - a) That the proposed location, size, design, and operating characteristics of the proposed use is in accord with the Title and Purpose of this Ordinance, the Purpose of the zone in which the site is located, the

Imperial General Plan, and the development policies and standard of the City.

The subject site is located within a Commercial Village zone, which is intended to provide restaurants, retail and business uses located within the Downtown Core area.

- b) That the location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect or be materially detrimental to adjacent uses, residents, buildings, structures, or natural resources with consideration given to those items listed in Section 24.19.340.B of the Imperial Zoning Ordinance.

The location is ideal for the restaurant as it is surrounded by other downtown restaurants, retail shops and businesses. The project is compatible with the adjacent land uses and it will not adversely affect residents living in the apartment complex within the abutting the restaurant with the established conditions of approval and the applicant's mitigation efforts.

- c) That the proposed location, size, design, and operating characteristics of the proposed 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 properties or improvements in the vicinity.

With the Conditions of Approval put in place, the proposed project will not be detrimental to the public health, safety or welfare of those within the vicinity of the project site.

- d) That the proposed Conditional Use will comply with each of the applicable provisions of the Zoning Ordinance, except for any approved Variance.

The proposed facility complies with all provisions of the Zoning Ordinance.

PASSED, ADOPTED AND APPROVED by the Planning Commission of the City of Imperial, this 27th day of July, 2022.

Planning Commission Chairman

ATTEST:

City Clerk

**CONDITIONS OF APPROVAL
FOR
SALTCEDAR BBQ CONDITIONAL USE PERMIT 22-03
FOR THE USE OF ONSITE CONSUMPTION, SALE OF ALCOHOLIC
BEVERAGES AND ONSITE LIVE ENTERTAINMENT
AT 297 S. IMPERIAL AVENUE; IMPERIAL, CA 92251 (APN 064-103-005)**

1. This Conditional Use Permit is granted for the use, onsite consumption, sale of alcoholic beverages and onsite live entertainment at 297 South Imperial Avenue; Imperial, CA 92251. This Conditional Use Permit shall only be valid so long as a Type 41 California Alcoholic Beverage Control Licenses are valid.
2. Hours of operation shall be limited to 10:00 AM to 10:00 PM Monday through Sunday.
3. Onsite live entertainment will mirror the hours of operation for the business outlined in condition of approval #2 within this document. The onsite live entertainment must meet all the requirements outlined in the City of Imperial's Noise Element. If complaints arise, the City of Imperial may impose noise pollution mitigation measures on the business.
4. There shall be no sales or service to intoxicated patrons.
5. California Fire Code occupant load is limited to under 100 occupants for establishments without an automatic fire sprinkler system installed. Applicant shall be responsible to maintain and post the establishment's occupant load. All outdoor events will be subject to occupant load requirements based on events' size information submitted for approval to the Imperial County Fire Department Fire Prevention Division.
6. Any outdoor event shall require approval from Imperial County Fire Department Fire Prevention Division prior to the event by submitting a detailed site plan and description specified by the Fire Prevention Division.
7. Prior approval for the use of fireworks and/or pyrotechnics shall be obtained by Imperial County Fire Department and conducted by a California licensed Professional Public Display Pyrotechnics in accordance with California Fire Code Chapter 56. Pyrotechnics include fireworks (including California Safe and Sane), sky lanterns and any open flame devices.
8. Any tents, canopies and special event structures shall comply with the California Fire Code Chapter 31 and be approved by the State of California Fire Marshall's office flame-retardant rating.

9. Any type of stage, musical equipment and/or production equipment shall not impede on the egress routes, exit doors, aisle way width. All fire protection equipment shall not be blocked or covered by any means.
10. Access for fire department apparatus is required to be a minimum of twenty (20) feet at all times. Fire lanes shall not be blocked by vehicles, products, or displays.
11. No alcoholic beverages shall be consumed outside of the enclosed building or the designated outdoor patio area. The City, at its sole discretion, may issue a Temporary Use Permit and/or Special Events Permit to allow for special events where alcoholic beverages may be consumed outdoors in areas not approved/designated by this Conditional Use Permit.
12. The provisions of this Conditional Use Permit are to run with the business (Saltcedar BBQ) and shall bind the current and future owner(s) successor(s) in interest, assignee(s) and/or transferor(s) of said project. This Conditional Use Permit is only valid for 297 South Imperial Avenue; Imperial, CA. More specifically Assessor Parcel Number: 064-103-005.
13. A copy of these Conditions of Approval and the California Department of Alcoholic Beverage Control (ABC) license are required to be kept on the premises and presented to any law enforcement officer or authorized City official upon request.
14. The proprietor/owner shall be responsible for the removal of all graffiti from the walls, fences, pavement, or buildings within seventy-two (72) hours of its appearance on the property.
15. The proprietor/owner shall be responsible for maintaining the parking lot and adjacent areas free of debris at all times.
16. Applicant must implement sound maintenance and housekeeping procedures.
17. Applicant must ensure a grease interceptor is installed and in working condition at all times to protect the integrity of City's sewer service.
18. Applicant shall comply with all local, State and Federal laws, regulations, rules, ordinances, and standards as they pertain to this project, whether specified herein or not. Where conflicts occur, the most stringent shall apply.
19. The conditional approval of the Conditional Use Permit shall not constitute the waiver of any requirement of the City's Ordinances or regulations, except where a condition set forth herein specifically provides for a waiver.
20. The Applicant shall pay all impact and capacity fees as required by the city.
21. All applicable Conditions of Approval shall be completed prior to opening for business.

- 22. If the Community Development Department finds and determines that the Permittee or successor-in-interest has not complied or cannot comply with the terms and conditions of the Conditional Use Permit, or the Planning/Building Department determines that the permitted activities constitute a nuisance, the City shall provide Permittee with notice and opportunity to comply with the enforcement or abatement order. If after receipt of the order (1) Permittee fails to comply, and/or (2) Permittee cannot comply with the conditions set forth in the CUP, then the matter shall be referred to the Planning Commission for permit modification, suspension, or termination, or to the appropriate enforcement authority.
- 23. Permittee shall not be permitted to maintain a nuisance, which is anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and/or (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and/or (3) occurs during or as a result of the approved project.
- 24. As between the City and the Permittee, any violation of this permit may be a nuisance per se. The City may enforce the terms and conditions of this permit in accordance with its Codified Ordinances and/or State law. The provisions of this paragraph shall not apply to any claim of nuisance per se brought by a third party.

The undersigned hereby declare and certify that under penalty of perjury that I accept all conditions imposed by the Planning Commission in their approval as outlined above. As the project applicant, I agree to comply with these conditions and all other applicable laws and regulations at all times.

Daniel Hughes, Applicant
Saltcedar BBQ

Date

JOHNSON PROPERTIES
303 & 305 S. IMPERIAL AVE.
IMPERIAL, CA 92251
760-765-2255

July 13, 2022

Dennis Morita, City Clerk of Imperial
420 S. Imperial Avenue
Imperial, CA 92251

Dear Mr. Morita,

It has been brought to my attention that the Saltcedar BBQ has applied for a conditional use permit for their location at 297 S. Imperial Avenue. The applicant is requesting this permit to allow for the onsite sale and consumption of alcoholic beverages and on-site live entertainment.

The Saltcedar BBQ is located directly across the street from our townhouses at 303 & 305 S. Imperial Avenue. While it is understood that the serving of alcoholic beverages increases revenue to not only the proprietor, but to the City as well, we thus have no objections to its serving of them with two conditions:

- 1) only wine and/or beer to be served *and*,
- 2) these 2 classes of alcoholic beverages may only be purchased with a food order

As presented, we are **not in favor of on-site live entertainment.** Live, on-site entertainment will be a detriment to the neighborhood and its quality of life. This type of entertainment will directly and negatively impact my tenants' peace and quiet enjoyment to which they are entitled in a residentially-zoned property. Their home's tranquility will very likely be lost to loud voices trying to talk over louder music. Thus, as such, we are against any type of on-site live entertainment.

Thank you for your time and consideration.



Diane Johnson
Johnson Properties