

AYES: 5 COMMISSIONERS: Diep, Capelle, Desai, Schoales, and McGuire

NOES: 0 COMMISSIONER:

ABSENT: 1 COMMISSIONER: Chung

ABSTAIN: 0 COMMISSIONER:

===== END OF CONSENT CALENDAR =====

PUBLIC HEARING:

NEW BUSINESS:

3. CONDITIONAL USE PERMIT REVOCATION NO. CU-716 RVK

A request to modify or revoke Conditional Use Permit No. CU-716 to operate and maintain a hotel and schedule a public hearing for final action for a property located at 7762 Beach Blvd. within the ECSP (Entertainment Corridor Specific Plan) zone. The project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Section 15301, Class 1 (Existing Facilities).

PROPERTY OWNER: Golden Hotel, LLC / Golden Capital Venture, LLC
 DBA: Radisson Suites
 C/o Hieu Minh Bui
 9357 Andalusia Avenue
 Fountain Valley, CA 92708

RECOMMENDED ACTION: To continue item to a date certain

In reply to Acting Chair McGuire, Ms. Santos stated that staff had received no written communication on the item.

The staff report was presented by Gregory P. Palmer, City Prosecutor.

The subject property is located on the east side of Beach Boulevard, and maintains a total land area of approximately 3.55 acres. It carries a General Plan designation of TE (Tourist Entertainment), a Zoning classification of ECSP (Entertainment Corridor Specific Plan), and is currently developed as a Radisson Suites Hotel.

On October 9, 2019, Planning Commission set December 11, 2019, as the hearing date to consider revoking or modifying Conditional Use Permit CU-716 for the Radisson Hotel due to numerous Municipal Code (Code) violations. On December 4, 2019, an inspection was conducted by City staff to determine the extent of progress towards abating the Code violations. Although the results of the inspection indicate substantial progress has been made, violations still remain including structural repair or replacement of the large chiller unit and failing roof system at the northeast corner of the property. Consequently, staff is recommending that the hearing be continued to January 22, 2020, to provide the property

owner additional time to abate the remaining Code violations before considering revoking or modifying CU-716.

Vice Chair Chung asked if there were any questions for staff.

There being no questions for staff, Vice Chair Chung stated that this is a public hearing; if there is anyone wishing to speak on the item, please come forward and state their name and address for the record.

Michael Reiter, attorney for the owner, reported that the majority of the work has been done; regarding the chiller, it was the decision of the City's Building and Safety Division's not to red tag the structure because there is no immediate danger; the area under the cooling tower is not occupied; temporary shoring is in progress, awaiting completion before the installation of the cooling tower.

Commissioner Desai asked if a structural engineer has approved the integrity of the structure.

Mr. Woods said the applicant is present at this meeting to respond to questions.

Acting Chair McGuire reiterated his concern about the chiller, which he brought up during the last meeting on this item two months ago, and asked if the chiller will be fixed.

Mr. Rosen said the Building Division did not red tag that portion of building because the space underneath is not occupied.

Mr. Palmer clarified that although there is a potential danger to the chiller, there has to be an imminent risk to life and property in order for a structure to be red tagged.

Oscar C. Juat, Manager, Radisson Suites, recalled when he last stood before Planning Commission on this item, he had been working with Radisson for 85 days; it has been 150 days and a lot of accomplishments have taken place – engineers and architects have been working on plans; shoring is in progress with no imminent danger as there is nothing under the cooling structure; when Code Enforcement Inspector Raul Berroteran and Building Inspector Alex Lester last did a two-hour inspection, they went through 45 pending items, which have since then been accomplished except for two items that are in progress; by the next Planning Commission meeting, all will be completed.

Commissioner Diep asked if the chiller will be fixed or replaced and asked for the timeline on the chiller.

Mr. Juat said the chiller is an old system and will have to be replaced; at this stage, there is no timeline for replacing the chiller - it is currently being built; shoring is being done for safety.

Mr. Rosen said the replacement plan is to put the new chiller on the ground to tie in to the system.

Mr. Juat added that at this point, they are making sure that the work in progress does not interfere with business. He thanked staff and Planning Commission for the time given to

them which made the accomplishments possible. He said ratings received by the hotel have gone up due to the improvements.

There being no one else wishing to speak on the matter, Acting Chair McGuire advised that the item requires a Minute Action to approve continuance to January 22, 2020.

The MOTION CARRIED unanimously.

AYES:	6	COMMISSIONERS:	Diep, Schoales, Capelle, Desai, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	1	COMMISSIONER:	Chung
ABSTAINED:	0	COMMISSIONER:	

4. CONDITIONAL USE PERMIT NO. CU19-13

A request to allow the sale of beer and wine for off-site consumption at a convenience store (7-Eleven). The subject tenant space is attached to a self storage facility at ground level on the southwest corner of Noritsu Avenue and Knott Avenue at 6950 Noritsu Avenue in the Light Industrial (ML) zone. The project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Section 15301, Class 1 (Existing Facilities).

APPLICANT: 7-Eleven, Inc.
 5932 Bolsa Avenue, Suite 107
 Huntington Beach, CA 92649

PROPERTY OWNER: CH SS Fund Baranof LA Buena Park LP
 2305 Cedar Springs Road, Suite 220
 Dallas, TX 75201

RECOMMENDED ACTION: To continue item to a date certain

Acting Chair McGuire announced that Planning Commission received a memo from staff recommending continuance of this item to the January 8, 2020 Planning Commission meeting.

Acting Chair McGuire stated that this is a public hearing. If there is anyone wishing to speak on the item, please come forward and state their name and address for the record.

There being no one wishing to speak on the matter, Acting Chair McGuire advised that this item requires a Minute Action to approve continuance to the January 8, 2020, Planning Commission meeting.

The MOTION CARRIED unanimously.

AYES:	6	COMMISSIONERS:	Capelle, Diep, Desai, Schoales, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	1	COMMISSIONER:	Chung
ABSTAINED:	0	COMMISSIONER:	

5. CONDITIONAL USE PERMIT NO. CU19-23

A request to modify previously approved Conditional Use Permit CU06-006 to change hours of permitted live entertainment from 8:00 PM - 11:00 PM Friday through Sunday and federally observed holidays, to 11:00 AM - 11:00 PM Sunday through Thursday and 11:00 AM - 1:00 AM Friday and Saturday; as well as allow outdoor live entertainment/amplified music in the patio area at an existing full service restaurant (Golden Rose Mediterranean Grill) at 7115 Beach Boulevard in the ECSP (Entertainment Corridor Specific Plan). The project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Section 15301, Class 1 (Existing Facilities).

APPLICANT: Golden Rose Entertainment
7115 Beach Boulevard
Buena Park, CA 90620

PROPERTY OWNER: La Jolla Funding
8051 Main Street
Stanton, CA 90680

RECOMMENDED ACTION: Adopt Resolution of Approval

In reply to Acting Chair McGuire, Ms. Santos stated that staff had received and distributed copies of a letter from Javier Solis, General Manager, Holiday Inn Buena Park, stating that there have not been noise issues with Golden Rose Restaurant in the past year; prior to that, noise on weekends was a concern, but not recently.

The staff report was presented by Brady M. Woods, Planning Manager.

The property under application is located on the west side of Beach Boulevard, approximately 220 ft. north of the Artesia (91) Freeway, with a street frontage of 115 ft. and a total land area of 39,709 sq. ft.

SURROUNDING LAND USE CHARACTERISTICS:

	General Plan	Zoning	Existing Land Use
North	Tourist Entertainment	ECSP	Restaurant
South	Tourist Entertainment	ECSP	Hotel
East	Tourist Entertainment	ECSP	Hotel
West	Tourist Entertainment	ECSP	Commercial Retail

On January 8, 2003, the Planning Commission approved Conditional Use Permit No. CU-1316(RDA) for the 4,150 sq. ft. full service restaurant, with outdoor dining, on-site sale and consumption of alcoholic beverages, and limited live entertainment with associated parking lot improvements at 7115 Beach Boulevard. The entertainment was limited to musical groups with a maximum of three members providing background dinner music. Live entertainment was limited to 12 days per year for the first 12 months of operation of the restaurant with no dancing permitted.

On August 11, 2004, the Planning Commission approved Conditional Use Permit No. CU04-026 for a minor modification of CU-1316 to modify the exterior design of the restaurant building. While maintaining the original building layout and design, the modification included additional architectural enhancements and materials.

On January 26, 2005, the Planning Commission approved Conditional Use Permit No. CU05-001 to further revise the exterior design of the restaurant building as well as the outdoor patio dining area.

On January 11, 2006, the Planning Commission approved Conditional Use Permit No. CU05-025 to further modify the exterior of the full service restaurant building to include architectural neon lighting and an increase in outdoor dining area as well as reduce the maximum number of guest rooms to 129 for the adjacent motel located at 7121 Beach Boulevard, in conjunction with re-stripping of the shared parking lot and a new integrated ground sign to include the restaurant and motel.

On April 12, 2006, the Planning Commission approved Conditional Use Permit No. CU06-006 to further modify the previously approved restaurant to include new patio covers within the outdoor dining area. This approval also allowed the expansion of the live entertainment to include a live music band and "Middle Eastern Dancers" dancers during the hours of 8:00 PM to 11:00 PM Friday through Sunday, and on federally observed holidays. The live music and dancing entertainment was approved to take place within the interior of the building only.

On September 16, 2019, the Zoning Administrator conducted a public hearing to consider Entertainment Permit No. ENT19-2 to allow live entertainment including live music, belly dancers, and disc jockeys during the hours of 8:00 PM to 11:00 PM Friday through Sunday and on federally observed holidays at the existing restaurant. Staff had received numerous nuisance complaints regarding the applicant's business operations; more specifically, the noise generated by live entertainment occurring beyond the hours allowed under CU06-006. At the conclusion of the hearing, the Zoning Administrator voted to continue the item to a date certain to allow more time to consider arguments and evidence presented by the City Prosecutor and the applicant's attorney.

On September 30, 2019, the Zoning Administrator conducted a public hearing to consider Entertainment Permit No. ENT19-2 to allow live entertainment including live music, belly dancers, and disc jockeys during the hours of 8:00 PM to 11:00 PM Friday through Sunday and on federally observed holidays at the existing restaurant. At the conclusion of the hearing, the Zoning Administrator voted to approve ENT19-2 pursuant to the following conditions:

- a) Live entertainment provided at the establishment, including performance type, location within the establishment, allowable days and times, etc., shall remain in accordance with conditions of approval for Conditional Use Permit No. CU06-006 (Resolution No. 5503).
- b) This Entertainment Permit may be revoked in accordance with Sections 5.24.100 and 19.132.030 of the Zoning Ordinance if three (3) verifiable calls for service related to noise and/or code enforcement violations are received by the City regarding this establishment.

- c) Zoning Administrator shall conduct a four-month (120 days) review of this Entertainment Permit to evaluate compliance with these conditions or any applicable statute, law, or regulation. Four month period shall commence immediately upon approval of Entertainment Permit No. ENT19-2.

Currently under CU06-006, limited live entertainment at the restaurant is permitted in the form of a small live music band and “Middle Eastern Dancers” dancers during the hours of 8:00 PM to 11:00 PM Friday through Sunday, and on federally observed holidays. The live music and dancing entertainment is to take place within the interior of the building only. All requests for live entertainment on days other than Friday, Saturday, Sunday, and federally observed holidays shall be submitted to the Community Development Director a minimum of 7 days prior to the date of the performance provided that the maximum number of such events shall not exceed 30 events per year.

The submitted application and plans propose modifying the hours of permitted live entertainment to 11:00 AM - 11:00 PM Sunday through Thursday, and 11:00 AM - 1:00 AM Friday and Saturday. Live entertainment will consist of live music bands, choreographed dance performers, and disc jockeys. The applicant also seeks to provide outdoor live entertainment/amplified music in the patio area. The applicant has stated that the current hours of permitted live entertainment and the inability to utilize the outdoor patio for live entertainment are too limiting to the business operations.

To address issues related to nuisance complaints generated by live entertainment occurring beyond the hours allowed under CU06-006, the applicant commissioned a Decibel Level Test report prepared by Avalon Audio Recording. According the report, decibel meter readings from the existing sound system and under the existing building conditions were taken at different times of the day both inside the restaurant and the patio area:

	3:00 PM	10:00 PM	12:00 AM
Restaurant, Indoor	96 decibels	112 decibels	100 decibels
Restaurant, Outdoor Patio Area	85 decibels	86 decibels	79 decibels

Additionally, the report includes sound measurements taken at the adjacent Days Inn and Holiday Inn hotels. The following table indicates the decibel levels generated from inside the restaurant as well as ambient traffic noise:

	3:00 PM	10:00 PM	12:00 AM
Days Inn Hotel (7121 Beach)	70 decibels	--	72 decibels
Holiday Inn Hotel (7000 Beach)	79 decibels	73 decibels	71 decibels

The report concluded that the music from the Golden Rose Restaurant is minimal in its impact to the area surrounding the restaurant and a non-issue to either the adjacent Days Inn or Holiday Inn hotels.

The applicant is not proposing any modifications to the existing building or site with this request.

Pursuant to Conditional Use Permit No. CU06-006, any change of hours shall require modification of CU06-006 by the Planning Commission. In reviewing the applicant’s

proposal, plans, and supporting documentation, staff is of the opinion that the proposed change in hours for live entertainment at the Golden Rose restaurant is appropriate for the full service restaurant use within the ECSP zone.

However, staff remains concerned with the potential for nuisance complaints from noise generated by the live entertainment. Per the applicant's submitted audio report, noise generated by the restaurant's sound system measured between 70 and 79 decibels at the adjacent hotels. According to the Noise and Land Use Compatibility Matrix of the City's General Plan Noise Element, a CNEL (Community Noise Exposure Level) between 70 and 80 decibels impacting Transient Lodging (i.e. Hotel and Motels) is considered "Normally Unacceptable". If Normally Unacceptable conditions exist, a detailed analysis of the noise reduction requirements must be made and needed noise-insulation features must be included in the design.

As sound from the restaurant would fall within the Normally Unacceptable range, staff recommends including conditions of approval requiring a noise abatement study as well as the implementation of adequate sound control measures. These measures may include installation of sound absorptive walls, acoustical doors and windows, audio compressors and limiters, etc., in compliance with the Noise Element.

Nuisance complaints filed against the restaurant have historically been attributed to loud music generated from the outdoor patio. As previously stated, music played inside the restaurant falls within the "Normally Unacceptable" range when measured from the adjacent Tourist Lodging establishments. Therefore, it can be reasonably assumed that amplified music generated from the outdoor patio area will be louder thus increasing the level of unacceptability. Staff is of the opinion the allowing this request absent the implementation appropriate sound attenuating measures, which may include the installation of sound panels or walls, will not adequately address the issue of excessively loud music and would result in continuous calls for service. Should the Planning Commission consider approving this request, staff recommends including a condition of approval requiring that the applicant install sound attenuation encompassing the outdoor patio area to ensure noise can be controlled to an acceptable level.

Staff recommends the inclusion of additional conditions of approval to mitigate deleteriously impacts to and ensure compatibility with surrounding land uses. These conditions include but are not limited to:

- Allow the proposed changes to hours of live entertainment to commence immediately upon a positive determination made by the Zoning Administrator on or shortly after January 28, 2020, consistent with provisions of the recently approved Entertainment Permit No. ENT19-2.
- Outdoor live entertainment and/or amplified music in the patio area shall be prohibited, unless the applicant obtains building permits for the installation of sound abatement encompassing the patio area.
- The entertainment shall be limited to small bands, choreographed dance performances, and disc jockeys. No other form of live entertainment is permitted. Any modification to the type of entertainment shall require modification of this approval by the Planning Commission.

- Permitted live entertainment shall at all times be incidental to the restaurant use. All entertainment activities shall be conducted only in conjunction with regular dining or banquet activities. Entertainment shall not be offered at any time food service is not available.
- Any time that patron dancing is allowed within the premises, the establishment shall have present at all times one or more security employees who are readily identifiable as per Section 5.24.130 of the Buena Park Municipal Code.
- There shall be no direct tipping between any of the live entertainers, including the band members, singers, or dance performers, and the restaurant patrons.
- All existing building and site improvements in place as of the date of application, including architecture features, water features, patio covers signage, and lighting, may remain shall be maintained in good working condition.
- All existing parking lot and driveway striping shall be sandblasted or slurry sealed at the discretion of the Planning Division, and re-striped (in compliance with Code Section No. 19.536.070F). A total of 291 parking spaces shall be maintained for the restaurants and motel at 7111, 7115, and 7121 Beach Boulevard. All parking areas shall be striped with white double lines separating stalls, with minimum 4 in. wide stripes and a minimum 8 in. separation. Installation of speed bumps shall not be permitted within required fire lanes, access drives, or driveways of the proposed project.
- Applicant shall maintain a valid Entertainment Permit for the provision of live entertainment.

The Buena Park Police Department has reviewed the request and recommends including a condition of approval that the Planning Commission conduct a six-month review to evaluate compliance with the Conditions of Approval. This review should be conducted for a period of 2 years beginning on July 28, 2020.

The project is Class 1, Section 15301 (Existing Facilities), categorically exempt from CEQA.

Notice of public hearing was posted at City Hall, the Buena Park website, the Buena Park Library, and Ehlers Event Center on November 26, 2019, and 9 notices were mailed to property owners within a 300 ft. radius of the subject property on November 26, 2019.

Staff recommends that the Planning Commission adopt a Resolution approving Conditional Use Permit No. CU19-23 based on the facts and findings herein.

Acting Chair McGuire asked if there were any questions for staff.

Commissioner Capelle noted, from Mr. Woods' presentation, the unacceptable range from the noise study commissioned by the proponents of this project. She commented that at present, halfway through the 120-day review period, it is not possible to make a decision on the recommended action at tonight's meeting, without the results of the 120-day review period.

Mr. Woods said staff will send a memo to the Planning Commission, with the results of the 120-day review, which will end on January 8, 2020.

Commissioner Capelle explained that the unacceptable sound range resulting from the sound study is a concern to the Planning Commission, and taking action at tonight's meeting might be premature because the 120-day review has not ended. She said she is not comfortable adding additional flexibility to this plan without a full understanding of the results or the actual effects of current operations, which will be obtained after the 120-day study period.

Commissioner Diep noted that the unacceptable sound range from the study that was done was from the sound emanating from within the restaurant, and not yet amplified outside. She said she will be more comfortable taking action after the results are obtained from another sound study done based on a typical operating day in the restaurant.

Mr. Woods clarified that the recommended extension of hours will not take place until after the Zoning Administrator has conducted the review, and mitigation measures have been proposed. He said staff is also recommending that the entitlement be brought back to the Planning Commission every six months for the next two years, for evaluation.

Commissioner Diep said she is concerned that the Planning Commission is being asked to take action while improvements are going on or because improvements have happened.

Mr. Woods stated that improvements have not taken place,

Commissioner Diep asked, and Mr. Woods confirmed that improvements have to happen in order to comply with the revised Conditional Use Permit (CUP) to expand music to outdoors. She said she is concerned about allowing outdoor music until 1:00 a.m. Friday and Saturday with the sound at an unacceptable range; until 11:00 p.m. for outdoor music seems more reasonable especially with guests booked in adjacent hotels, not knowing about the outdoor music nearby or across the street.

Commissioner Desai said he has the same concern – noting the difference between classical and rock, he said certain types of live music, when amplified, can have an impact when played until 1:00 a.m.

Mr. Woods said staff agrees, and that is why conditions to ensure mitigation of excessive noise will be proposed, but the discretion is up to the body - to allow the proposed extended hours to take place not immediately but until an evaluation of the sound is done. He reiterated that this entitlement will come back to the Planning Commission for compliance review.

Commissioner Capelle said that while there are restaurants that serve meals with background music adjunct to the meal, the subject restaurant is an entertainment venue that can well exceed past dinner; thus, the need to exercise more caution; six-month reviews will possibly include review of complaints; anticipating community concerns and addressing possible complaints with mitigation measures is better. Commissioner Capelle said she is uneasy with what is being proposed at this meeting.

Commissioner Schoales said he has the same concerns – a bona fide restaurant, with ABC license, that serves meals until 1:00 a.m. poses a question - does it become a night club at some point?

Acting Chair McGuire stated that this is a public hearing. If there is anyone wishing to speak on the item, please come forward and state their name and address for the record.

Fouad Yacoub, co-owner, said they misrepresented the nature of the sound study that was done. He clarified that the study was done with the doors and windows open on purpose, while music played at the loudest possible - 112 decibels, because they wanted to prove that under those circumstances, from across the street, the noise coming from the cars is louder. Mr. Yacoub explained that they never play music that loud – their music is Middle Eastern, not rock and roll; they will put speakers outside, in the patio area – three speakers strategically facing the restaurant; the sound will be muffled, which will lower the volume to a third; their sound engineer had tested it twice; some speakers will be installed behind the stage for the entertainers, with the sound bouncing off the walls; the walls will absorb the sound. Mr. Yacoub said they will not do any improvements yet until they get permission from the City.

Commissioner Capelle thanked Mr. Yacoub for the clarification – that they will only be piping in music to the outside area. She asked if they expect customers to stay longer, past dinner.

Mr. Yacoub said yes, the customers usually stay past dinner; that is the Middle Eastern style- they come in late, normally start dinner at 9:00 p.m., the venue is built on entertainment; they did not do well last year because of the constraints; they would like to have weddings, engagements, quincianeras, and the likes during the day.

Ram Elmasey, co-owner, described the business as a legitimate restaurant, not a nightclub; the customers are people of various ages, from children to adults; the format is Mediterranean style sit-down dinner with seven-course meals and entertainment that usually starts later at night, at 9:00 p.m. or 10:00 p.m.; lunch is usually at 2:00 p.m. He said they would like to extend the hours of entertainment but could not to do so without the City's approval; in the meantime, they have turned down a lot of weddings and other events. Mr. Elmasey said they own a similar restaurant, the Rose Café in Anaheim, which has been in operation for six years now, open until 2:00 a.m., and without any problems from the city. He said staff and Planning Commission are welcome to visit the Rose Café to see for themselves how the restaurant operates. He said customers drive all the way from Los Angeles to enjoy the entertainment in their restaurants; reiterated that the sound test was purposely done with maximized sound, as described by Mr. Yacoub; and confirmed Mr. Yacoub's description of plans such as location of speakers, etc., to mitigate possible noise problems.

Commissioner Capelle thanked Mr. Yacoub and Mr. Elmasey for explaining in detail the nature of the sound test done and what they were trying to accomplish; however, she explained that what Planning Commission saw from the result of the test was how bad it could get, so she would be more comfortable making a decision after obtaining the results of a sound study under normal operations of the restaurant. Commissioner Capelle said she had attended a Middle Eastern wedding where the celebration went beyond three hours; she is not completely against the requested extension but she is concerned about possible noise disturbance to visitors booked in adjacent hotels such as Days Inn. She said she would not

want this project to come back to Planning Commission every six months with the possibility of discussing Police Department and neighbors' complaints.

Mr. Elmasey said they received three letters from the managers of Days Inn and Holiday Inn indicating that the hotels have not had any problems with noise for the for past year.

Mr. Rosen said a report on the results of the sound study, with more detailed readings at various times of the day, is attached to the staff report.

Acting Chair McGuire asked how many times the Police Department was called regarding noise disturbances in the past two years.

Mr. Rosen he does not currently have the information but he is aware that the restaurant, under the former ownership, had quite a few calls.

Acting Chair McGuire asked about the number of PD calls for service under the new ownership.

Mr. Elmasey said there were calls from February to April, most of which were fictitious, and a letter sent to the Police Chief that alleged that the Anaheim location had instances of drug dealings, which was not true. He said that to his recollection, the PD was called twice to the Anaheim location. He said from April 30 to September, there was not a single call for service on their Buena Park restaurant following their April meeting with the City.

Acting Chair McGuire asked staff to go over what transpired in the Zoning Administrator meetings.

Mr. Woods said that in September of this year, the Zoning Administrator considered an entertainment permit application at the hours allowed under the current Conditional Use Permit (CUP) - 8:00 to 11:00 p.m. Friday, Saturday, Sunday, and holidays. The Chief had concerns that the restaurant, under the prior owners, had calls for service, including some proactive patrols where excessive noise was heard beyond the allowable hours when the manager was told to turn the volume down. The Zoning Administrator conducted an evaluation of the entertainment permit based on PD concerns and objections.

Commissioner Capelle asked if the Zoning Administrator can approve an extension of hours.

Mr. Rosen said the Zoning Administrator has the authority to modify the CUP at a noticed public hearing.

Acting Chair McGuire commented that it would be best to continue this item to a date following the completion of the 120-day review period.

Commissioner Capelle said she agrees with Acting Chair McGuire's recommendation that the item be continued after the results of the 120-day review period are obtained by Planning Commission to enable Planning Commission to make a thorough study of the detailed results as well as mitigations measures proposed by staff. She also asked for a report on calls for service on the Rose Café in Anaheim. She said the restaurant in Anaheim may have a different physical configuration but the feedback will help Planning Commission in making a decision.

Commissioner Diep stated that she would be more comfortable making a decision based on the results of a sound study under a realistic setting, instead of the circumstances of the study presented at tonight's meeting which was based on the maximum volume. She said she has no concerns with music played during earlier hours but she is concerned about the late hours.

Commissioner Schoales asked, and Mr. Woods confirmed, that the Director, under the current CUP, can approve special performances in the restaurant outside of the days established, as requested by the applicant.

Mr. Elmasey said they requested that sound tests be done on Christmas or New Year's Eve but the request was turned down. He added that if permission is granted, the test would have more accurate results.

Commissioner Diep stated, and Mr. Woods confirmed that such test will be done outside the parameters of the CUP and the owners will have to obtain the services of a consultant to conduct the sound test.

Acting Chair McGuire asked if it is feasible to continue this item to January 8, 2020.

At the request of Mr. Rosen, Acting Chair McGuire recessed the meeting at 8:20 p.m.

The meeting was reconvened at 8:25 p.m.

Mr. Rosen explained that in order to allow the business to operate on New Year's/Christmas Eve for the purpose of doing a sound test, Planning Commission has to take action at tonight's meeting to modify the CUP by adopting a resolution, as recommended by staff, with that one additional condition; depending on the findings of the noise study, which will be considered at a noticed public hearing in January, a revocation is possible. Mr. Rosen explained that taking away a right will place a bigger burden on the City.

Commissioner Capelle commented that the suggested sound test on Christmas or New Year's Eve is a conciliatory gesture on the part of Planning Commission, but if it is not practicable, the Commission will not recommend it.

Mr. Lam advised that if the one-time sound test involves operating the business on an evening that is outside the terms of the CUP, it will be problematic; Planning Commission taking action to amend the CUP for a particular day only means allowing them to operate outside the CUP; the problem is when unfavorable results of that one night returns, the rights granted the business will have to be reversed; it is a bigger burden on the City to revoke rights that have been granted.

Commissioner Diep asked, and Mr. Lam confirmed, that an approval of a sound test, even if for one day only, will be in perpetuity.

Mr. Lam further explained that allowing that one day, will mean granting them that right. When the item is continued to a date after the 120-day review period, that right continues with the amended hours; a possible alternative is to have them operate for a short period of time with the mitigation plans in place, in order to obtain more accurate results. Mr. Lam explained that granting them that one day will be done through a modification of the existing CUP which means renoticing for the more permanent type of modification.

Mr. Rosen added that the existing CUP has the allowed hours of operation; thus, a modification is needed to allow them to do that test on that particular night.

Commissioner Diep reiterated that it would be better to do a separate sound study based on a typical realistic set-up of the restaurant.

Mr. Rosen said it is better to measure the sound of actual events instead of using an artificially created condition; it is the Planning Commission's discretion to allow the test to be done on Christmas or New Year's eve, but in his opinion, it is better to wait until the end of the 120-day review period by the Zoning Administrator.

Commissioner Diep said that if Planning Commission had to take action tonight based on what was presented at this meeting, her answer would be no; it is best to continue the item to a meeting in January after the results of the 120-day review period have been presented to Planning Commission. She said she will be amenable to extending the earlier hours if Planning Commission will defer the item to an upcoming meeting.

Commissioner Capelle clarified that she has no reason to believe that the business is not a reputable operation but would prefer to continue this item after Planning Commission has obtained the results of the 120-day review which will have a more realistic depiction of the sound study.

Commissioner Capelle said she will recommend a continuance to the next regularly scheduled Planning Commission meeting of January 8, 2019, after the following are obtained by the Commission: 1) results of the Zoning Administrator's report on the 120-day review; 2) mitigation measures proposed by staff; and 2) calls for service report on Rose Café in Anaheim.

Commissioner Diep commented that a continuance to the January 8, 2020, meeting is not feasible because the 120-day review period ends on that day and staff would have to prepare a packet for the January 8th meeting by January 3.

Mr. Woods agreed. He said continuing the item to the January 22, 2019, meeting will give staff enough time to evaluate the Zoning Administrator report, to be included in the packet for the January 22nd meeting.

There being no one else wishing to speak on the matter, Acting Chair McGuire advised that the item requires a motion to continue this item to a date certain.

Commissioner Capelle moved, and Commissioner Schoales seconded, the motion to continue this item to the January 22, 2019, Planning Commission meeting after Planning Commission has obtained 1) the results of 120-day review; 2) the mitigation measures proposed by staff; and 3) the calls for service report on the Rose Café in Anaheim.

AYES:	6	COMMISSIONERS:	Capelle, Schoales, Desai, Diep, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	1	COMMISSIONER:	Chung
ABSTAIN:	0	COMMISSIONER:	

ORAL COMMUNICATIONS:

None

AGENDA FORECAST:

Mr. Woods said the Planning Commission of January 8, 2020, will consider the continued items from tonight's meeting, and a request for entitlement modifications for West Coast Sand and Gravel on Orangethorpe Avenue.

STAFF REPORTS:

Mr. Rosen reported that at the City Council meeting of December 10, 2019, City Council re-appointed Commissioner Schoales to the Planning Commission. He also announced that at the same meeting, City Council selected Fred Smith as the new Mayor and Connor Traut as Mayor Pro Tem.

Mr. Rosen presented Acting Chair McGuire with a token of recognition for his past tenure as Planning Commission Chair.

Mr. Rosen announced the resignation of Larry Barstow from the Planning Commission due to medical reason.

COMMISSION REPORTS:

Commissioner Diep asked if formal action needs to be taken to elect a Chair.

Mr. Rosen said no formal action to elect a Chair is required until the scheduled election of Chair and Vice Chair in July 2020; Vice Chair Chung will continue to preside over the Planning Commission meetings; an election for the position of Acting Chair for a particular Planning Commission meeting will be conducted if the Vice Chair is not available.

ADJOURNMENT: At 8:40 p.m., Acting Chair McGuire adjourned to the Planning Commission meeting on Wednesday, December 25, 2019, in the City Council Chamber.

Richard McGuire
Acting Chair

ATTEST:

Joel W. Rosen, AICP
Secretary