

MEXICAN RESTAURANTS INC

FORM 10-K/A (Amended Annual Report)

Filed 04/13/06 for the Period Ending 01/01/06

Address	1135 EDGEBROOK HOUSTON, TX 77034
Telephone	7139437574
CIK	0001009244
Symbol	CASA
SIC Code	5812 - Eating Places
Industry	Restaurants
Sector	Services
Fiscal Year	12/28

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
(Amendment No. 1)

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED]

For the Fiscal Year Ended January 1, 2006

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from _____ to _____

Commission file number: 0-28234



MEXICAN RESTAURANTS, INC.

(Exact name of registrant as specified in its charter)

Texas

(State or other jurisdiction of
incorporation or organization)

76-0493269

(IRS Employer Identification Number)

1135 Edgebrook, Houston, Texas

(Address of Principal Executive Offices)

77034-1899

(Zip Code)

Registrant's telephone number, including area code: **713-943-7574**

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$.01 par value

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes
No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes
No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes
No

The aggregate market value of the Registrant's Common Stock held by non-affiliates of the Registrant, based on the sale trade price of the Common Stock as reported by the Nasdaq Small Cap Market on July 3, 2005, the last business day of the Registrant's most recently completed second quarter, was \$14,026,756. For purposes of this computation, all officers, directors and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed an admission that such officers, directors or 10% beneficial owners are, in fact, affiliates of the Registrant.

Number of shares outstanding of the Registrant's Common Stock, as of March 28, 2006: 3,356,977 shares of Common Stock, par value \$.01.

AMENDMENT NO. 1 EXPLANATORY NOTE

We are filing Amendment No. 1 (this "Amendment") to the Mexican Restaurants, Inc. Annual Report on Form 10-K for the year ended January 1, 2006 (the "2005 Form 10-K"), which was originally filed on March 30, 2006, to amend Part IV, Item 15 of the Mexican Restaurants, Inc.'s 2005 Form 10-K for the sole purpose of amending and restating (i) Exhibit 23.1, Consent of UHY Mann Frankfort Stein & Lipp CPAs, LLP ("UHY") and (ii) Exhibit 23.2, Consent of KPMG LLP ("KPMG").

Exhibit 23.1 to the Mexican Restaurants, Inc.'s 2005 Form 10-K inadvertently contained UHY's report with respect to Mexican Restaurants, Inc.'s financial statements for its 2005 fiscal year, and Exhibit 23.2 to the Mexican Restaurants, Inc.'s 2005 Form 10-K inadvertently contained KPMG's report with respect to the consolidated balance sheet of Mexican Restaurants, Inc. and subsidiaries as of January 2, 2005, and the related consolidated statements of operations, stockholders' equity and cash flows for the each of the years in the two-year period ended January 2, 2005. Revised Exhibits 23.1 and 23.2 now include the executed consents of the respective independent registered public accounting firms.

No other revisions or amendments have been made to Part IV, Item 15 or to any other portion of the Mexican Restaurants, Inc.'s 2005 Form 10-K. This Amendment does not reflect events occurring after March 30, 2006, the date of the original filing of the Mexican Restaurants, Inc.'s 2005 Form 10-K, or modify or update those disclosures that may have been affected by subsequent events. In addition, currently-dated certifications from the Mexican Restaurants, Inc.'s Chief Executive Officer and Chief Financial Officer have been included as exhibits to this Amendment.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Report:

1. Financial Statements:

The Financial Statements are listed in the index to Consolidated Financial Statements on page F-1 of this Report.

2. The following exhibits are filed as part of this report. The exhibits designated with a cross are management contracts and compensatory plans and arrangements required to be filed as exhibits to this report.

3. Exhibits:

3.1 Articles of Incorporation of the Company, as amended (incorporated by reference to the corresponding Exhibit number of the Company's Form 8-K filed on May 25, 1999 with the Securities and Exchange Commission).

‡3.2 Bylaws of the Company.

‡4.1 Specimen of Certificate of Common Stock of the Company.

4.2 Articles of Incorporation of the Company (see 3.1 above).

‡4.3 Bylaws of the Company (see 3.2 above).

‡ 10.1 Employment Agreement by and between the Company and Louis P. Neeb dated February 28, 1996.

10.2 Indemnity Agreement by and between the Company and Louis P. Neeb dated as of April 10, 1996 (incorporated by reference to Exhibit 10.4 of the Company's Form S-1 Registration Statement filed under the Securities Act of 1933, dated April 24, 1996, with the Securities and Exchange Commission (Registration Number 333-1678) (the "1996 Form S-1")).

10.3 Indemnity Agreement by and between the Company and Larry N. Forehand dated as of April 10, 1996 (incorporated by reference to Exhibit 10.5 of the 1996 Form S-1).

10.4 Indemnity Agreement by and between the Company and John C. Textor dated as of April 10, 1996 (incorporated by reference to Exhibit 10.6 of the 1996 Form S-1).

10.5 Indemnity Agreement by and between the Company and Michael D. Domec dated as of April 10, 1996 (incorporated by reference to Exhibit 10.8 of the 1996 Form S-1).

10.6 Indemnity Agreement by and between the Company and J. J. Fitzsimmons dated as of April 10, 1996 (incorporated by reference to Exhibit 10.10 of the 1996 Form S-1).

10.7 Indemnity Agreement by and between the Company and Richard E. Rivera dated as of April 10, 1996 (incorporated by reference to Exhibit 10.11 of the 1996 Form S-1).

10.8 Corrected Warrant Agreement by and between the Company and Louis P. Neeb dated as of February 26, 1996 (incorporated by reference to Exhibit 10.12 of the 1996 Form S-1).

10.9 Corrected Warrant Agreement by and between the Company and Tex-Mex Partners, L.C. dated as of February 26, 1996 (incorporated by reference to Exhibit 10.13 of the 1996 Form S-1).

10.10 Form of the Company's Multi-Unit Development Agreement (incorporated by reference to Exhibit 10.14 of the 1996 Form S-1).

10.11 Form of the Company's Franchise Agreement (incorporated by reference to Exhibit 10.15 of the 1996 Form S-1).

† 10.12 1996 Long Term Incentive Plan (incorporated by reference to Exhibit 10.16 of the 1996 Form S-1).

† 10.13 Mexican Restaurants, Inc. 2005 Long Term Incentive Plan (incorporated by reference to Exhibit 99.1 of the 2005 Form S8 filed December 1, 2005).

† 10.14 Stock Option Plan for Non-Employee Directors (incorporated by reference to Exhibit 10.17 of the 1996 Form S-1).

10.15 Corrected Warrant Agreement by and between Larry N. Forehand and Louis P. Neeb dated as of February 26, 1996 (incorporated by reference to Exhibit 10.31 of the 1996 Form S-1).

10.16 Corrected Warrant Agreement by and between Larry N. Forehand and Tex-Mex Partners, L.C. dated as of February 26, 1996 (incorporated by reference to Exhibit 10.32 of the 1996 Form S-1).

10.17 Corrected Warrant Agreement by and between Larry N. Forehand and Patrick A. Morris dated as of February 26, 1996 (incorporated by reference to Exhibit 10.33 of the 1996 Form S-1).

10.18 Corrected Warrant Agreement by and between Larry N. Forehand and Stacy M. Riffe dated as of February 26, 1996 (incorporated by reference to Exhibit 10.34 of the 1996 Form S-1).

10.19 Indemnification letter agreement by Larry N. Forehand dated April 10, 1996 (incorporated by reference to Exhibit 10.35 of the 1996 Form S-1).

- †10.201996 Manager's Stock Option Plan (incorporated by reference to Exhibit 99.2 of the Company's Form S-8 Registration Statement filed under the Securities Act of 1933, dated February 24, 1997 filed with the Securities and Exchange Commission).
- †10.22Employment Agreement by and between the Company and Andrew J. Dennard dated May 20, 1997 (incorporated by reference to Exhibit 10.45 of the Company's Form 10-K Annual Report filed on March 30, 1998 with the Securities and Exchange Commission).
- 10.23Fleet Revolving Credit and Term Loan Agreement between Mexican Restaurants, Inc., as the Borrower, and Fleet National Bank, as the Bank, for \$10,000,000 dated June 29, 2001 and as amended on January 7, 2004 and April 1, 2005 (incorporated by reference to Exhibit 10.22 of the Company's Form 10-K Annual Report filed on April, 2005 with the Securities and Exchange Commission).
- #10.24Amendment No. 2 to Amended and Restated Revolving Credit and Term Loan Agreement dated November 15, 2005 (effective June 30, 2005) between Mexican Restaurants, Inc., as the Borrower, and Bank of America, as the Bank, for \$10,000,000 dated June 29, 2001 and as amended on January 7, 2004 and April 1, 2005.
- #†10.25Performance Unit Agreement by and between Mexican Restaurants, Inc. and Andrew Dennard dated August 16, 2005.
- #†10.26Performance Unit Agreement by and between Mexican Restaurants, Inc. and Curt Glowacki dated August 16, 2005.
- #†10.27Performance Unit Agreement by and between Mexican Restaurants, Inc. and Louis P. Neeb dated August 16, 2005.
- #†10.28Performance Unit Agreement by and between Mexican Restaurants, Inc. and Dennis Vegas dated August 16, 2005.
- 21.1List of subsidiaries of the Company (incorporated by reference to Exhibit 22.1 of the Company's Form S-1 Registration Statement Under the Securities Act of 1933, dated April 24, 1996, filed by the Company with the Securities and Exchange Commission).
- *23.1Consent of UHY MANN FRANKFORT STEIN & LIPP CPAs, LLP, Independent Registered Public Accounting Firm.
- *23.2Consent of KPMG, LLP, Independent Registered Public Accounting Firm.
- #24.1Power of Attorney (included on the signature page to this Form 10-K).
- *31.1Certification filed pursuant to Rule 13a-14(a) or Rule 15d-14(a).
- *31.2Certification filed pursuant to Rule 13a-14(a) or Rule 15d-14(a).
- **32.1Certification of Chief Executive Officer furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- **32.2Certification of Chief Financial Officer furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

*Filed herewith.

**Furnished herewith.

‡Incorporated by reference to corresponding Exhibit number of the Company's Form S-1 Registration Statement under the Securities Act of 1933, dated April 24, 1996, with the Securities and Exchange Commission (Registration number 333-1678) (the "1996 Form S-1").

†Management contract or compensatory plan or arrangement.

#Previously filed as an exhibit to the Company's 2005 Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on April 12, 2006.

MEXICAN RESTAURANTS, INC.

By: /s/ Louis P. Neeb

Louis P. Neeb,
Chairman of the Board of Directors

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Mexican Restaurants, Inc. and Subsidiaries

We consent to incorporation by reference in the registration statements on Form S-8 (Nos. 333-22271 and 333-130053 of Mexican Restaurants, Inc. of our report dated March 27, 2006 relating to the consolidated financial statements of Mexican Restaurants, Inc. and subsidiaries for the year ended January 1, 2006, which appears in the January 1, 2006 Annual Report on Form 10-K of Mexican Restaurants, Inc.

/s/ UHY MANN FRANKFORT STEIN & LIPP CPAs, LLP

Houston, Texas
April 11, 2006

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Mexican Restaurants, Inc.:

We consent to the incorporation by reference in the previously filed registration statements (No. 333-22271 and 333-130053) on Form S-8 of Mexican Restaurants, Inc. of our report dated March 28, 2005, except for Note 1, as to which the date is March 30, 2006, relating to the consolidated balance sheet of Mexican Restaurants, Inc. and subsidiaries as of January 2, 2005, and the related consolidated statements of operations, stockholders' equity and cash flows for the each of the years in the two-year period ended January 2, 2005, which report appears in the January 1, 2006 Annual Report on Form 10-K of Mexican Restaurants, Inc.

/s/KPMG LLP
Houston, Texas
April 11, 2006

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Curt Glowacki, certify that:

1. I have reviewed this report on Form 10-K/A of Mexican Restaurants, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) for the Registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

April 12, 2006

/s/ Curt Glowacki

By: Curt Glowacki,
Chief Executive Officer

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Andrew J. Dennard, certify that:

1. I have reviewed this report on Form 10-K/A of Mexican Restaurants, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) for the Registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

April 12, 2006

/s/ Andrew J. Dennard

By: Andrew J. Dennard,
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Mexican Restaurants, Inc. (the Company) on Form 10-K/A for the period ending January 1, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Curt Glowacki, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Curt Glowacki

Curt Glowacki
Chief Executive Officer
April 12, 2006

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code).

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Mexican Restaurants, Inc. (the Company) on Form 10-K/A for the period ending January 1, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Andrew J. Dennard, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (3) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (4) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Andrew J. Dennard

Andrew J. Dennard
Chief Financial Officer
April 12, 2006

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code).