

AGENDA HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, NOVEMBER 14, 2006
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *Shier-Burnett, Livengood, Scandura, Dingwall, Farley, Horgan, Dwyer*

AGENDA APPROVAL

A. PROJECT REVIEW (FUTURE AGENDA ITEMS):

- A-1. ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT – Continued from September 12, 2006) – Rosemary Medel
- A-2. CONDITIONAL USE PERMIT NO. 06-23 (HUNTINGTON BEACH BEER COMPANY – Continued from October 10, 2006) – Rami Talleh
- A-3. ZONING TEXT AMENDMENT NO. 06-05 (LARGE FAMILY DAY CARE) – Jennifer Villasenor
- A-4. ZONING TEXT AMENDMENT NO. 06-07 (AMENDING CHAPTER 231 OFF-STREET PARKING AND LOADING PROVISIONS) – Rosemary Medel

B. STUDY SESSION ITEMS:

- B-1. **CONDITIONS OF APPROVAL** – Scott Hess/Leonie Mulvihill
- B-2. **FINDINGS OF APPROVAL** – Scott Hess/Leonie Mulvihill
- B-3. **LATE COMMUNICATIONS** – Scott Hess

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) – Scott Hess

D. PLANNING COMMISSION COMMITTEE REPORTS

E. PUBLIC COMMENTS – Regarding Study Session portion of Meeting

Anyone wishing to speak on Project Review or Study Session items during PUBLIC COMMENTS may do so by filling out a Request To Speak form and giving it to the Secretary. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)
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F. PLANNING COMMISSION COMMENTS

6:30 P.M. – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL: *Shier-Burnett, Livengood, Scandura, Dingwall, Farley, Horgan, Dwyer*

AGENDA APPROVAL

A. ORAL COMMUNICATIONS

Anyone wishing to speak during ORAL COMMUNICATIONS must fill out and submit a form to speak. The Planning Commission can take no action on this date, unless the item is agendaized. Any one wishing to speak on items not on tonight's agenda, a closed public hearing item, or on non-public hearing items may do so during ORAL COMMUNICATIONS. Please note comments on closed public hearing items will not be part of the permanent entitlement record. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)

B. PUBLIC HEARING ITEMS

Anyone wishing to speak during an open PUBLIC HEARING must fill out and submit a form to speak. The public may address the Planning Commission only during the open PUBLIC HEARING items or during ORAL COMMUNICATIONS. Please review the agenda to determine whether the PUBLIC HEARING item is open or closed. If the PUBLIC HEARING on an item is closed, you will not be permitted to speak during that portion of the agenda and may wish to address your concerns during the ORAL COMMUNICATIONS portion of the agenda. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, WITH A MAXIMUM TIME DONATION OF 8 MINUTES, FOR A TOTAL OF 12 MINUTES PER SPEAKER)

PROCEDURE: Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

B-1. ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT – Continued from September 12, 2006) Applicant: City of Huntington Beach.
Request: To amend Huntington Beach Zoning and Subdivision Ordinance, Section 230.14 Affordable Housing Incentives/Density Bonus, to comply with state mandated changes pursuant to Senate Bills 1818 and 435. The existing ordinance allows for up to a 25% density bonus when housing projects restrict 10-20% of the units as affordable or 50% for seniors. The proposed ordinance reduces the number and affordability of the units that must be restricted to qualify for a density bonus. Consistent with the new law, the proposed ordinance includes other provisions regarding incentives, concessions, waiver of development standards and child care facilities. **Location:** Citywide Residential Districts/Mixed Use Zoning. **Project Planner:** Rosemary Medel

STAFF RECOMMENDATION: Motion to "Approve Zoning Text Amendment No. 06-02 with findings for approval and forward Draft Ordinance including the legislative draft to the City Council for adoption."

- B-2. CONDITIONAL USE PERMIT NO. 06-23 (HUNTINGTON BEACH BEER COMPANY – Continued from October 10, 2006) Applicant: Mike C. Adams and Associates Request: To allow the establishment of a 100 sq. ft. dance floor, modified hours of operation and construction of a 224 sq. ft. outdoor dining area with alcohol sales within the public right-of-way. The project also includes a request to participate in the Downtown Parking In-Lieu Fee program for two parking spaces (one parking space for the dance floor and replacing one on-street parking space with outdoor dining). Location: 201 Main Street, Suite E Project Planner: Rami Talleh**

STAFF RECOMMENDATION: Motion to: “Approve Conditional Use Permit No. 06-23 with findings and suggested conditions of approval.”

- B-3. ZONING TEXT AMENDMENT NO. 06-05 (LARGE FAMILY DAY CARE): Applicant: City of Huntington Beach. Request: To amend Chapter 210, Residential Districts, of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to allow large family day care uses in residential zoning districts with an Administrative Permit and Neighborhood Notification (300-foot radius) with no applicable filing fee or required architectural plans. Location: Citywide. Project Planner: Jennifer Villasenor**

STAFF RECOMMENDATION: Motion to “Approve Zoning Text Amendment No. 06-05 with findings for approval and forward Draft Ordinance, including the legislative draft to the City Council for adoption.”

- B-4. ZONING TEXT AMENDMENT NO. 06-07 (AMENDING CHAPTER 231 OFF-STREET PARKING AND LOADING PROVISIONS): Applicant: City of Huntington Beach Request: To amend Chapter 231, Off-Street Parking and Loading Provisions, of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to require Public Work’s approval of Privacy Gates (Section 231.18 D.8.) and Parking Controls (Section 231.18 E.2.) and to require bicycle parking for non-residential uses, multi-family residential uses and amend the design standard (Section 231.20 1a., 1b., 2) Bicycle Parking. Location: Citywide. Project Planner: Rosemary Medel**

STAFF RECOMMENDATION: Motion to “Approve Zoning Text Amendment No. 06-07 with findings for approval and forward Draft Ordinance, including the legislative draft to the City Council for adoption.”

C. CONSENT CALENDAR:

- C-1. PLANNING COMMISSION MINUTES DATED SEPTEMBER 12, 2006**

RECOMMENDED ACTION: Motion to: “Approve the September 12, 2006, Planning Commission Minutes as submitted.”

D. NON-PUBLIC HEARING ITEMS - NONE

E. PLANNING ITEMS

- E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING**
- E-2. CITY COUNCIL ITEMS FOR NEXT MEETING**
- E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING**

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS

Commissioner Shier-Burnett -

Commissioner Livengood -

Vice-Chairperson Scandura -

Chairperson Dingwall -

Commissioner Farley -

Commissioner Horgan –

Commissioner Dwyer -

ADJOURNMENT:

Adjourn to the Holiday Celebration at King's Fish House, Bella Terra Mall, at 6:00 p.m. on Tuesday, December 12, 2006.

NOTE: The regularly scheduled meeting of November 28, 2006, has been tentatively cancelled.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission is final unless an appeal is filed to the City Clerk by you or by an interested party. Said appeal must be in writing and must set forth in detail the action and grounds by which the applicant or interested party deems himself aggrieved. Said appeal must be accompanied by a filing fee of One Thousand Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property or Two Thousand Three Hundred Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. The appeal shall be submitted to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action.

Copies of staff reports and/or written materials on each agenda item are on file in the Planning Department, for inspection by the public. A copy of the agenda packet is also available at the Central Library (7111 Talbert Avenue).

VIDEO TAPES OF MEETINGS AVAILABLE FOR PUBLIC CHECK OUT AT THE CENTRAL LIBRARY, AND FOR DUPLICATION SERVICES IN THE CITY CLERK'S OFFICE.

HUNTINGTON BEACH PLANNING COMMISSION

Public Hearing Procedures

This statement has been prepared to provide a better understanding of the procedures for public hearings before the Planning Commission.

Regular meetings of the Planning Commission are held on the second and fourth Tuesdays of each month beginning at 5:15 p.m. in Room B-8 for a study session and then at 7:00 PM in the Council Chambers. Adjourned meetings, special meetings, and Study Sessions may be scheduled at other times.

Planning Commission proceedings are governed by the Planning Commission By-Laws, Robert's Rules of Order and the Brown Act. The following is the typical sequence of events on public hearing items:

- A. The Chairperson shall announce the item and if the public hearing is open or closed.
- B. The Planning Commission shall disclose any discussions, conversations, etc., with applicants, applicant's representatives or property owners.
- C. The staff report is presented.
- D. Questions by the Planning Commission concerning the staff report may be answered at this time.
- E. The public hearing is opened by the Chairperson.
- F. The applicant or appellant is given an opportunity to address the Commission. Time is not limited but left to the Chairperson's discretion.
- G. Public Comments: Staff will call all speakers by name. Please proceed to the podium. Individuals favoring and opposing the proposal are given an opportunity to address the Commission (up to four (4) minutes), or may choose to donate their time to another speaker if the "Request to Speak" form is filled out and given to the Secretary. A speaker who addresses the Commission on behalf of individuals who donate time are allowed a maximum of 12 minutes. Individuals who donate time must be present when the item is being discussed. Please state your name before addressing the Commission.
- H. The Commission may ask questions of speakers addressing the Commission.
- I. The public hearing is closed.
- J. The Commission will deliberate the matter at this time.
- K. The Commission then acts on the matter by continuing, approving, conditionally approving, or denying the petition.

The Planning Commission receives a staff report packet on the Tuesday preceding the meeting, allowing time to review each case and make further investigations in the field prior to the scheduled meeting.

Staff reports are available in the Planning Department, the Central Library and on the City's website (www.surfcity-hb.org) anytime on Wednesday preceding the Tuesday Planning Commission meeting.



CITY OF HUNTINGTON BEACH

PLANNING COMMISSION COMMUNICATION

TO: Chair and Planning Commission

VIA: Scott Hess, Acting Director of Planning 

FROM: Herb Fauland, Acting Planning Manager

SUBJECT: **PLANNING COMMISSION CONDITIONS OF APPROVAL**

DATE: November 14, 2006

Attached please find excerpts of two chapters from "Curtin's California Land Use and Planning Law", 2005, 25th Edition, titled Zoning (Chapter 4) and Exactions: Dedications and Development Fees (Chapter 13). The two chapters are provided as background material for the study session topic.

ATTACHMENT:

- 1) Chapter 4 Zoning – Curtin's California Land Use and Planning Law, 2005, 25th Edition
- 2) Chapter 13 Exactions: Dedications and Development Fees – Curtin's California Land Use and Planning Law, 2005, 25th Edition

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Zoning

Zoning Defined

In general terms, zoning is the division of a city into districts and the application of different regulations in each district. A zoning regulation is often city-wide, such as a city-wide building height limit. *See Taschner v. City Council*, 31 Cal. App. 3d 48, 62 (1973). Zoning regulations are generally divided into two classes: (1) those that regulate the height or bulk of physical structures within certain designated districts—in other words, those regulations that have to do with structural and architectural design of the buildings; and (2) those that prescribe the use to which buildings within certain designated districts may be put. “[Z]oning is a separation of the municipality into districts, and the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land.” *O’Loane v. O’Rourke*, 231 Cal. App. 2d 774, 780 (1965).

The Legislature has given cities maximum control over zoning matters while ensuring uniformity of, and public access to, zoning and planning hearings. *See Beck Dev. Co. v. Southern Pac. Transp. Co.*, 44 Cal. App. 4th 1160, 1187–88 (1996).

Application to Charter Cities¹

State Zoning Law (Gov’t Code § 65800 *et seq.*) applies to general law cities and all counties. The State Zoning Law does not apply to a charter city, however, except to the extent a city adopts it by charter or ordinance or the Legislature has specifically required its application. Gov’t Code § 65803. For example, Government Code section 65804, requiring cities to implement minimum procedural standards for the conduct of zoning hearings, is specifically applicable to charter cities. *See also* Gov’t Code § 65589.5 (restricting a city’s power to disapprove affordable housing).

PRACTICE TIP

Because the State Zoning Law does not apply to charter cities that have not adopted it by charter or ordinance, the developer should check to see if the city is a charter city by calling the City Clerk or consulting the latest issue of California Planner’s Book of Lists published by the Governor’s Office of Planning and Research.

The State Zoning Law does not apply to a charter city, except to the extent that a city adopts it by charter or ordinance or the Legislature has specifically required its application.

1. For information on charter cities, see the Institute for Local Self Government website, www.ilsg.org/chartercities.

Judicial Review²

Presumption of Validity

A zoning ordinance is valid if it is reasonably related to the public welfare. Such an ordinance is presumed to be constitutional and comes before the court with every presumption in its favor.

A zoning ordinance is a legislative act and, unlike administrative decisions, does not require explicit findings. A zoning ordinance is valid if it is reasonably related to the public welfare. See *Arnel Dev. Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 522 (1980). Such an ordinance comes before the court with every presumption in its favor, including a presumption of constitutionality. See *Lockhard v. City of Los Angeles*, 33 Cal. 2d 453, 460 (1949).

Because zoning is legislative, it is reviewed in ordinary mandate proceedings. Generally, the burden rests with the party challenging the constitutionality of an ordinance to present the evidence and documentation that a court will require in undertaking a constitutional analysis. See *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d 582, 601 (1976). There is an exception, however. When a city adopts an ordinance directly limiting the number of dwelling units, the burden of proof reverts to the city to justify its action. Evid. Code § 669.5. This applies to ordinances adopted by the city council or the voters through the initiative process. See *Lee v. City of Monterey Park*, 173 Cal. App. 3d 798, 806-07 (1985); *Building Indus. Ass'n v. City of Camarillo*, 41 Cal. 3d 810, 818 (1986); but see *Hernandez v. City of Encinitas*, 28 Cal. App. 4th 1048, 1074-75 (1994) (Evidence Code section 669.5 did not apply to challenges to a city's housing element and its implementing regulations).

Limited Role of Court Review— Policy Issue

So long as the ordinance bears a reasonable relationship to the public welfare, courts consistently have refused to substitute judicial judgment for the legislative decisions made by a city.

Because of the broad construction of the police power as it relates to land use regulations, including zoning, the courts consistently have taken a "hands off" approach when reviewing the validity of such regulations. The courts have recognized the separation of powers between the legislative and judicial branches, and so long as the ordinance bears a reasonable relationship to the public welfare, courts consistently have refused to substitute judicial judgment for the legislative decisions made by a city. As the United States Supreme Court stated:

It is not our function to appraise the wisdom of its decision. . . . In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.

Young v. American Mini Theatres, 427 U.S. 50, 71 (1976)

A California court described the judiciary's role in considering the validity of zoning regulations as follows:

[a.] The wisdom of the [zoning regulation] is a matter for legislative determination, and even though a court may not agree with that determination, it will not substitute its judgment for that of the zoning authorities if there is any reasonable justification for their action.

[b.] In passing upon the validity of legislation, . . . the rule is well settled that the legislative determination that the facts exist which make the law necessary, must not be set aside by the courts, unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted. . . .

[c.] In considering the scope . . . of appellate review, . . . [it] must be kept in mind that the courts are examining the act of a coordinate branch of the government—the legislative—in a field in which it has paramount authority and, are not reviewing the decision of a lower tribunal or a fact-finding body.

[d.] Courts have nothing to do with the wisdom of laws and regulations, and the legislative power must be upheld unless manifestly abused so as to infringe on constitutional guaranties. . . .

[e.] The only function of the courts is to determine whether the exercise of legislative power has exceeded constitutional limitations. . . .

[f.] [T]he function of this court is to determine whether the record shows a reasonable basis for the action of the zoning authorities, and, if the reasonableness of the ordinance is fairly debatable, the legislative determination will not be disturbed.

Carty v. City of Ojai, 77 Cal. App. 3d 329, 333 (1978)

Enactment of Zoning Regulations

In General

Every city in California has an existing zoning ordinance. The effect of that zoning ordinance on real property can be changed by a city's adoption of an amending ordinance.

There are two basic types of substantive amendments to zoning ordinances: (1) reclassification of the zoning applicable to a specific property, designating a change from one district to another district, commonly called "rezoning"; and (2) changes in the permitted uses or regulations on property within particular zones or citywide, commonly called "text amendments." The first type of amendment usually involves a change in the zoning map, without any change in the text of the basic zoning ordinance. The second type of amendment usually involves amending the text of the zoning ordinance, but not the zoning map.

Every city in California has an existing zoning ordinance. The effect of that zoning ordinance on real property can be changed by a city's adoption of an amending ordinance.

The Ordinance Must Be Reasonably Related to the Public Welfare

Zoning ordinances, as with other land use regulations, must be reasonably related to the public welfare. See *Arnel Dev. Co. v. City of Costa Mesa*, 126 Cal. App. 3d at 336; *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d 582, 601; *City of Del Mar v. City of San Diego*, 133 Cal. App. 3d 401, 409 (1982). Consistently, courts have construed broadly what constitutes a reasonable relationship. For example, maintaining the character of residential neighborhoods is a proper purpose. In *Ewing*, an ordinance prohibiting transient commercial use of single-family homes was upheld based on the existence of a reasonable relationship to

Under California court decisions, zoning ordinances, as with other land use regulations, must be reasonably related to the public welfare.

The courts have interpreted the relationship to the public welfare to include not only the public welfare of the citizens of the city but also of the affected region, if necessary.

the public welfare. *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579, 1592 (1991).

The courts have interpreted the relationship to the public welfare to include not only the public welfare of the citizens of the city but also of the affected region, if necessary. In *Associated Home Builders v. City of Livermore*, the California Supreme Court set forth the "Livermore test:" a three-step analysis for determining whether a land use regulation bears a reasonable relationship to the regional welfare. First, the court must forecast the probable effect and duration of the restriction. Second, the court must identify the competing interests affected by the restriction, e.g., open space versus affordable housing. Finally, the court must determine whether the regulation, in light of its probable effect, represents a reasonable accommodation of the competing interests. In all cases, the regulation must have a "real and substantial" relationship to the public welfare. *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d at 604.

Numerous courts have applied the *Livermore* test to determine whether a zoning ordinance is valid, reaching varied results. For example, in *Arnel*, the court struck down a rezoning initiative aimed at defeating a multi-family housing project as an improper exercise of the police power. The record demonstrated that the initiative discriminated against a particular piece of property, and failed to consider the competing interest of the community in the development of affordable housing. *Arnel Dev. Co. v. City of Costa Mesa*, 126 Cal. App. 3d at 337-38. Conversely, in *Del Mar*, the court upheld the San Diego North City West Housing Development Plan, concluding that the regulation bore a substantial and reasonable relationship to the public welfare. *Del Mar v. City of San Diego*, 133 Cal. App. 3d at 415.

The California Supreme Court upheld the City of Santa Monica's anti-demolition ordinance against an attack that it operated to deprive a landowner of property without due process of law by restricting his right to go out of the rental business. See *Nash v. City of Santa Monica*, 37 Cal. 3d 97 (1984). The Court stated that the applicable legal test "requires the regulation be 'procedurally fair and reasonably related to a proper legislative goal. The wisdom of the legislation is not at issue in analyzing its constitutionality. . . .'" *Id.* at 108-09. The Court stated that the city's ordinance met the *Livermore* test. *Id.* at 109.

Zoning Must Be Consistent with the General Plan

Zoning ordinances must be consistent with the general plan and any applicable specific plan.

Zoning ordinances must be consistent with the general plan and any applicable specific plan. Gov't Code § 65860(a). This provision does not apply to charter cities, with the exception of Los Angeles. Gov't Code §§ 65803, 65860(d). However, a charter city can, on its own, require consistency by charter or by ordinance. See *Verdugo Woodlands Homeowners Ass'n v. City of Glendale*, 179 Cal. App. 3d 696 (1986); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th 868 (1994) (where the charter city of Irvine required consistency); *Garat v. City of Riverside*, 2 Cal. App. 4th 259 (1991) (the charter of the City of Riverside did not require consistency).

A zoning ordinance is consistent with a city's general plan only if:

- The city has officially adopted such a plan, and
- The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such a plan

Gov't Code § 65860(a)

Applying the consistency test set forth in the Governor's Office of Planning and Research, General Plan Guidelines, page 166 (2003), a zoning ordinance is consistent with a city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment. See *City of Irvine v. Citizens Against Overdevelopment*, 25 Cal. App. 4th at 879.

A zoning ordinance is consistent with a city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment.

Any resident or property owner within a city may bring an action in superior court to enforce compliance with the consistency requirement. Such actions or proceedings are governed by Code of Civil Procedure section 1084 *et seq.* Except for certain exceptions in Government Code section 65009(d) expressly relating to housing projects for low-income persons and families, any actions or proceedings must be taken within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance. Gov't Code § 65860(b). The purpose of this remedy is to "compel amendment of a nonconforming zoning ordinance to bring it into compliance with the general plan." *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 785 (1998).

In 1998, the Legislature amended Government Code section 65860(b), to specify that any such action must also be served on a city within the 90-day period. See also *Gonzalez v. City of Tulare*, 65 Cal. App. 4th at 787 (noting that Gov't Code § 65009(c) prescribes a 90-day limitation period for filing and serving actions challenging zoning decisions). Also, a city can avail itself of this statute of limitations period in a pre-election challenge to an initiative or referendum related to zoning. See *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th at 879.

A city's findings that the zoning ordinance is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. See *A Local and Reg'l Monitor (ALARM) v. City of Los Angeles*, 16 Cal. App. 4th 630, 648 (1993).

The courts have stated that a zoning ordinance inconsistent with the general plan at the time of enactment is "void *ab initio*," meaning invalid when passed. See *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 541 (1990); *City of Irvine v. Citizens Against Overdevelopment*, 25 Cal. App. 4th at 879; *Building Indus. Ass'n v. City of Oceanside*, 27 Cal. App. 4th 744, 762 (1994); *deBottari v. City Council*, 171 Cal. App. 3d 1204, 1212 (1985). However, while an inconsistent ordinance is void when adopted, its invalidity still must be determined judicially in an appropriate legal action, and any such action is governed by the appropriate statute of limitations. See *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 785-91 (1998). If a zoning ordinance becomes inconsistent with a general plan by reason of an amendment to the plan, or to any element of the plan, the ordinance must be amended within a reasonable time so that it is consistent with the amended general plan. Gov't Code § 65860(c).

The courts have stated that a zoning ordinance inconsistent with the general plan at the time of enactment is "void ab initio," meaning invalid when passed.

Since general plan consistency is required, the absence of a valid general plan, or the failure of any relevant elements thereof to meet statutory criteria,

precludes the enactment of zoning ordinances and the like. See *Resource Defense Fund v. County of Santa Cruz*, 133 Cal. App. 3d 800, 806 (1982).³ For further discussion of general plan consistency, see chapter 2 (General Plan).

Exactions: Dedications and Development Fees

Overview¹

In nearly all aspects of land use approval, significant controversies arise over the amount and type of exactions a city may impose when approving a development, whether they require dedications of property or the imposition of development fees. The concept is simple in theory: The developer, in return for receiving the city's approval to develop the land and realize a profit, agrees to donate to the city an amount of land or money needed to provide certain services and amenities necessitated by the anticipated influx of new residents or employees into the community as a result of such development. *See Associated Home Builders, Inc. v. City of Walnut Creek*, 4 Cal. 3d 633, 644 (1971); *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317, 328 (1981).

In nearly all aspects of land use approval, significant controversies arise over the amount and type of exactions a city may impose when approving a development.

Cities contend that this arrangement is only fair. Developers create new, sometimes overwhelming, burdens on city services; therefore, they should offset the additional responsibilities required of cities through dedication of land or the payment of fees. Developers, on the other hand, argue that these extra expenses drive up the cost of development and result in higher costs for the home buyer or commercial users, thus eliminating affordable housing and/or driving away needed commerce. In an effort to avoid such costs, developers have challenged such fees by claiming that they are special taxes illegally imposed without a vote of the people, or that the dedications are takings of property without just compensation. Through the exercise of its police power, however, a city has the

1. For a good overview of exactions, see David L. Callies, Daniel J. Curtin, Jr., and Julie A. Tappendorf, *Bargaining for Development: A Handbook on Development Agreements, Annexation Agreements, Land Development Conditions, Vested Rights and the Provision of Public Facilities* (Environmental Law Institute, Wash. D.C. 2003); Daniel J. Curtin, Jr., *Exactions, Dedications & Development Agreements Nationwide and in California: When and How Do Nollan/Dolan Apply*, ch. 2, 33rd Annual Institute of Planning, Zoning and Eminent Domain (Matthew Bender, 2003); William Abbott, *et al.*, *Exactions and Impact Fees in California* (Solano Press 2001); Daniel J. Curtin, Jr., *How the West Was Won: Takings and Exactions—California Style*, Trends in Land Use Law from A to Z, ch. 9 (ABA 2001). *See also* Marla Dresch & Steven M. Shiffren, *Who Pays for Development Fees and Exactions?* (Public Policy Institute of California, June 1997) (providing an overview of recent issues in levying exactions, with emphasis on exactions in Contra Costa County); *also see* Daniel J. Curtin, Jr., *Dolan and Nollan Takings and Exactions, California Style*, 32nd Annual Institute on Planning, Zoning and Eminent Domain (Matthew Bender, October 2002).

authority to impose these exactions, so long as they are reasonable and have the required nexus to the proposed development.

The Proper Exercise of Police Power²

A city relies on its authority to exercise its police power to impose conditions on a development project through the dedication of land or the payment of fees.

A city relies on its authority to exercise its police power to impose conditions on a development project through the dedication of land or the payment of fees. California Constitution art. XI, sect. 7; *California Bldg. Indus. Ass'n v. Governing Bd. of the Newhall Sch. Dist.*, 206 Cal. App. 3d 212, 234 (1988). The California Supreme Court and United States Supreme Court have long held that the regulation of land use does not effect a taking of property if the regulation substantially advances a legitimate governmental interest and does not deny the property owner economically viable use of the land. See *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016 (1992); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 834 (1987); *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980).

Development: A Privilege or a Right?

In California, courts repeatedly have held that there is no right to develop and that development is instead a privilege.

Over the years, there has been a great deal of controversy over whether development is a privilege or a right. In California, courts repeatedly have held that there is no right to develop and that development is instead a privilege. Examples of such decisions are:

- No right to subdivide. *Associated Home Builders Inc. v. City of Walnut Creek*, 4 Cal. 3d 633 (1971)
- Development is a privilege. *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317 (1981)
- No right to go out of business. *Nash v. City of Santa Monica*, 37 Cal. 3d 97 (1984)
- No right to convert an apartment to a condominium. (*Norsco Enters. v. City of Fremont*, 54 Cal. App. 3d 488 (1976); *Griffin Dev. Co. v. City of Oxnard*, 39 Cal. 3d 256 (1985))
- No right to convert residential hotel units to other uses; it is a "privilege." *Terminal Plaza Corp. v. City and County of San Francisco*, 177 Cal. App. 3d 892 (1986)
- Transit fees are "exactd only if the developer voluntarily chooses to create new office space" and are "for the privilege of developing a particular parcel." *Russ Bldg. Partnership v. City and County of San Francisco*, 199 Cal. App. 3d 1496, 1506 (1987)

The United States Supreme Court has sought to clarify this issue: "[T]he right to build on one's own property—even though its exercise can be subjected to legitimate permitting requirements—cannot remotely be described as a 'governmental benefit.'" *Nollan v. California Coastal Comm'n*, 483 U.S. at 833.

The right to build on one's own property—even though its exercise can be subjected to legitimate permitting requirements—cannot be described as a governmental benefit.

2. See Special Issues Under Takings Law: Findings, Fees and Dedications (Institute for Local Self Government 1999).

While the Court's decision in *Nollan* can be interpreted as stating a right to build *something* on one's own property, it cannot be read as recognizing any right to build a particular project:

[Plaintiff] relies in particular on footnote 2 of *Nollan*, where the Court, in responding to Justice Brennan's dissent, said that "the right to build on one's own property—even though its exercise can be subject to legitimate permitting requirements—cannot remotely be described as a 'government benefit.'" [Plaintiff] argues that the reference to building on one's property is a "right" and not a "benefit" is somehow inconsistent with the doctrine that a "right" to build a *particular project* vests only after substantial work is performed in reliance on a government permit. (emphasis in original.)

There are two difficulties with this argument. First, the *Nollan* case dealt only with a property owner's right to build a single-family house, traditionally among the most minimally regulated uses [footnote omitted]. Second, and more important, the *Nollan* court's reference to a landowner's abstract "right" to build in no way suggests that a landowner has an unconditional right under the taking or deprivation clauses of the federal Constitution to build any particular project he chooses. The sentence quoted from the *Nollan* footnote is qualified by its reference to "legitimate permitting requirements." The footnote does not imply that a permitting requirement is "illegitimate" simply because it disallows a previously permitted use. It is well established that there is no federal Constitutional right to be free from changes in land use laws.

Lakeview Dev. Corp. v. City of South Lake Tahoe, 915 F.2d 1290, 1294–95 (9th Cir. 1990)

To date, notwithstanding *Nollan*, California courts have not changed their position that development is merely a privilege. For example, in *Saad*, the court rejected the property owner's "right to build" argument based on footnote 2 of *Nollan* when the city denied a use permit for a home on the grounds that it would impair views and have a towering effect on the neighborhood. *Saad v. City of Berkeley*, 24 Cal. App. 4th 1206 (1994). In another decision also rendered after *Nollan*, the court struck down a school district fee as being an invalid special tax. In so doing, it stated that "[t]ypically, a development fee is an exaction imposed as a precondition for the *privilege* of developing the land." *California Bldg. Indus. Ass'n v. Governing Bd. of the Newhall Sch. Dist.*, 206 Cal. App. 3d 212, 235 (1988) (citing *Candid Enters. v. Grossmont Union High Sch. Dist.*, 39 Cal. 3d 878 (1985) (emphasis added); *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d 633 (1971)); see also *California Bldg. Indus. Ass'n v. Governing Bd. of the Newhall Sch. Dist.*, 206 Cal. App. 3d at 236 (the fee is "triggered by the voluntary decision of the developer [to proceed with his development]"); *Russ Bldg. P'ship v. City and County of San Francisco*, 199 Cal. App. 3d at 1505; *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866, 874 (1997) (it is a "voluntary decision to develop or seek other government benefits or privileges"); *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1178–84 (1996) (a denial of a fair hearing on a development application did not violate the owners' procedural or substantive due process rights, since the owners had no protected property right or interest in an application for a specific residence).

Whether development is a privilege or a circumscribed limited right, it is clear from California cases, as well as from *Nollan* and *Dolan* (discussed further in chapter 12 (Takings) and below) that a dedication or impact fee condition

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will be upheld so long as it does not deny an owner economically viable use of the land, it substantially furthers a legitimate governmental interest, and the required nexus exists.³ For a more detailed discussion on the takings issue, see chapter 12 (Takings).

Test of Reasonableness/ Nexus Requirement

In General

Given the voluntary or "privileged" nature of development, courts have held that cities may impose conditions on development so long as the conditions are reasonable, and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development. See *Ayers v. City Council of Los Angeles*, 34 Cal. 2d 31, 42 (1949); *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d at 644; *Nollan v. California Coastal Comm'n*, 483 U.S. at 834-35.

There is no single, precise rule that is applied by the courts to determine whether a dedication or a fee condition is reasonable and thus valid. Rather, courts use an ad hoc analysis, examining the facts of each case. The determination depends on the size of the development, the demand for services, the burden that will be created by the development, and the development's overall effect on the city and the surrounding community. Courts use a balancing test that examines whether there has been a proper exercise of police power in a reasonable manner such that no taking of property has occurred. As the United States Supreme Court stated in determining what constitutes the required nexus, "no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan v. City of Tigard*, 512 U.S. at 391.

Thus, the major legal issue involving exactions is not whether the dedication or the payment of a fee as a condition precedent to development may be required, but to what extent the dedication or fee may be imposed.

As a general rule, California courts have long required a nexus between project conditions and the impacts of development. See *Ayres v. City Council*, 34 Cal. 2d 31, 42 (1949). In 1971, however, the California Supreme Court moved away from whatever direct nexus requirement previously existed in California. Instead, the Court held that, in the absence of a more restrictive statute, a dedication may be required based on broad public welfare concerns, although some nexus must be present. See *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d at 644. The *Associated Home Builders* test continues to be followed by the California courts. See *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 865 (1996); *Shapell Indus., Inc. v. Governing Bd. of the Milpitas Unified Sch. Dist.*, 1 Cal. App.

3. As is further discussed in chapter 12 (Takings), a city's ability to enact land use regulations, to require dedications, and to impose fees under its police power is limited by the Takings Clause of the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment. The Takings Clause protects private property rights against governmental action by providing that a city shall not appropriate (take) private property for public use without compensating the owner of the property. Private property need not be physically seized to constitute a taking; regulation of property, such as land use regulation, may constitute a taking if it is determined to be excessive. See *Nollan v. California Coastal Comm'n*, 483 U.S. at 841.

There is no single, precise rule that is applied by the courts to determine whether or not a dedication or a fee condition is reasonable and thus valid. Rather, courts use an ad hoc analysis, examining the facts of each case.

The major legal issue involving exactions is not whether the dedication or the payment of a fee as a condition precedent to development may be required, but to what extent the dedication or fee may be imposed.

4th 218, 234 (1991); *Balch Enters. v. New Haven Unified Sch. Dist.*, 219 Cal. App. 3d 783, 793 (1990); *Robn v. City of Visalia*, 214 Cal. App. 3d 1463, 1471 (1989). See also James Longtin, Longtin's California Land Use, § 8.22[3] (Local Government Publications, 2002 supp.).

For example, in one case developers challenged an ordinance adopted by the City of Sacramento that levied fees on nonresidential development to assist in building low-income housing. *Commercial Builders of N. Cal. v. City of Sacramento*, 941 F. 2d 872 (9th Cir. 1991). The court found evidence in the record that the commercial development proposed by the developers indirectly would affect the need for more affordable housing units, and so upheld the ordinance. "A purely financial exaction, then, will not constitute a taking if it is made for the purpose of paying a social cost that is reasonably related to the activity against which the fee is assessed." *Id.* at 876. See also *Garrick Dev. Co. v. Hayward Unified Sch. Dist.*, 3 Cal. App. 4th 320, 337 (1992).

These two cases established the United States Supreme Court's current two-prong Nollan/Dolan nexus test, which was interpreted by California's high court in Ehrlich v. City of Culver City.

The United States Supreme Court also has required a nexus in a line of cases culminating in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). These two cases established the United States Supreme Court's current two-prong *Nollan/Dolan* nexus test, which was interpreted by California's high court in *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 881 (1996). In 1987, California also passed nexus legislation that codified many of the nexus requirements, particularly those laid down by *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d at 640. Gov't Code §§ 66000–66025 (the Mitigation Fee Act).

U.S. Supreme Court Case Law— The *Nollan* and *Dolan* Decisions

Nollan v. California Coastal Comm'n. In *Nollan*, the California Coastal Commission approved the construction of a two-story beachfront house, subject to the condition that the owners dedicate a public access easement across a portion of their property along the beach. The easement purportedly was required to assist the public in viewing the beach and in overcoming a perceived "psychological barrier" to using the beach. The owners challenged the easement, claiming that the condition constituted a taking. The Court held that the dedication requirement constituted a taking. Although protection of the public's ability to see the beach was a legitimate governmental interest, no nexus existed between the identified impact of the project (obstruction of the ocean view) and the easement condition (physical access across the beach). *Id.* at 839.

The *Nollan* Court stressed the importance of a nexus between the dedication condition and the impact of the project. If there is no such connection, the decision to impose the condition would not be proper and could amount to a taking. 483 U.S. at 837.

However, *Nollan* left unanswered a key question: How close must the nexus be for a regulation to "substantially advance" a "legitimate state interest?"⁴ Instead, the *Nollan* court simply said that its previous cases made clear "that a broad range of governmental purposes and regulations satisfies these requirements." *Nollan v.*

Nollan left unanswered a key question: How close must the nexus be for a regulation to substantially advance a legitimate state interest?

4. This issue was addressed seven years later by the United States Supreme Court's decision in *Dolan v. City of Tigard*, 512 U.S. at 386. For a further discussion of *Dolan*, see chapter 12 (Takings).

California Coastal Comm'n, 483 U.S. at 834-35 (citing *Agins v. Tiburon*, 447 U.S. at 260-62 (scenic zoning); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (landmark preservation); *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (residential zoning)).

The Court suggested that the constitutionally required nexus may be tighter where exactions include the actual conveyance of property as opposed to the imposition of fees.

The Court suggested, however, that the constitutionally required nexus may be tighter where exactions include the actual conveyance of property as opposed to the imposition of fees. This approach has been followed by California courts since *Nollan*. See *Blue Jeans Equities W. v. City and County of San Francisco*, 3 Cal. App. 4th 164 (1992) (discussed below).

Other cases have applied *Nollan's* nexus holding with varied results. For example, in one case, a city's requirement for a street widening was struck down since there was no nexus. There was no evidence in the record that the dedication was required to compensate for increased traffic produced by the project. See *Rohn v. City of Visalia*, 214 Cal. App. 3d at 1475. Citing *Associated Home Builders*, the Rohn court held that although the facilities to be dedicated need not solely benefit the project, they at least must serve it in some capacity. This was not the case here, where no nexus existed between the dedication condition and the alleged traffic burden imposed by the project.

The Rohn court held that although the facilities to be dedicated need not solely benefit the project, they at least must serve it in some capacity.

In another case, the court struck down an easement dedication allegedly required to prevent erosion, because there was no specific report or study to justify the dedication. See *Surfside Colony, Ltd. v. California Coastal Comm'n*, 226 Cal. App. 3d 1260 (1991). The Coastal Commission had relied on general studies of other areas to justify the exaction, but the court found they were inadequate to provide a legal nexus. *Id.* at 1269.

However, in *Commercial Builders*, the court upheld a city's ordinance imposing a low-income housing fee on nonresidential development. *Commercial Builders of N. Cal. v. City of Sacramento*, 941 F. 2d 872 (1991). In so doing, the court applied the "reasonable relationship" test of *Associated Home Builders*, and stated that *Nollan* stands only for the proposition that if there is no nexus, there is a taking. *Id.* at 874. The court rejected the builder's argument that under *Nollan* an ordinance that imposes an exaction can be upheld only if it can be shown that the development in question is directly responsible for the social ill that the exaction is designed to alleviate. Rather, the court held that *Nollan* did not create a stricter standard than prior federal law for judging how close the nexus must be. *Id.* at 874; see also *Taboe Reg'l Planning Agency v. King*, 233 Cal. App. 3d 1365, 1400 (1991) (*Nollan* does not alter established law that aesthetic values are an appropriate subject of land use regulations; *Nollan* only requires that there be a nexus).

In *Blue Jeans*, the court held that the *Nollan* analysis was not applicable to any exaction that did not involve a physical invasion or "possessory taking." *Blue Jeans Equities W. v. City and County of San Francisco*, 3 Cal. App. 4th 164 (1992). In this case, the San Francisco Planning Commission approved a building permit for a five-building office, retail, and residential complex in January 1979, in the northeast waterfront section of San Francisco's Levi Plaza. The permit provided that the owner "make a good-faith effort to participate in future funding mechanisms to assure adequate transit service to the area of the city in which the project is located." *Id.* at 171. In May 1981, before issuance of a certificate of completion for the project, the Board of Supervisors enacted the Transit Impact Development Fee ordinance, which required developers of

downtown buildings with new office space to pay a transit impact development fee not to exceed \$5 per square foot as a condition to receiving a certificate of completion. The project owner argued that this ordinance could not be lawfully applied to its building project and sued, claiming that the heightened scrutiny test alluded to in *Nollan* should be applied to the ordinance.

In upholding the fee, the court concluded that the strict scrutiny test required by *Nollan* to determine whether a government condition violated the Takings Clause of the Fifth Amendment did not apply to this ordinance, since *Nollan* was applicable only to possessory takings, not regulatory takings. *Id.* at 172 (citing *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal. 3d 839 (1988) “[T]he high court appears to make a distinction between ‘regulatory takings’, *i.e.*, economic regulation, most forms of zoning, and other restrictions on land use, and ‘possessory takings’, where the government, or an authorized third person, physically intrudes upon or appropriates the property.” *Id.* at 169. Therefore, the court held any heightened scrutiny test in *Nollan* is limited to possessory rather than regulatory takings. See also *Saad v. City of Berkeley*, 24 Cal. App. 4th at 1212; *City and County of San Francisco v. Golden Gate Heights Invs.*, 14 Cal. App. 4th 1203, 1209 (1993).

Dolan v. City of Tigard. In 1994, the *Dolan* Court addressed the question left unanswered by *Nollan*, adding the second prong of the Court’s nexus test. In *Dolan*, a sharply divided court held that cities must prove that development conditions placed on a discretionary permit have a “rough proportionality” to the development’s impact. If not, this action may constitute a taking. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In this 5–4 decision, the Court held for the first time that in making an adjudicative decision, a city must demonstrate a “required reasonable relationship” between the conditions to be imposed on a development permit and the development’s impact. Even though the Court coined a new term (“rough proportionality”) for the standard, it was basically the same reasonable relationship test that California and a majority of other states had followed for years.

Florence Dolan owned a plumbing and electrical supply store located in the business district of Tigard, Oregon, along Fanno Creek, which flows through the southwestern corner of the lot and along its western boundary. Dolan applied to the city for a building permit to develop the site. Her proposed plans called for nearly doubling the size of the store and paving a 39-space parking lot.

The planning commission granted Dolan’s permit application subject to certain conditions, including the requirement that Dolan dedicate the portion of her property lying within the 100-year flood plain for improvement of a storm drainage system along Fanno Creek. In addition, she was required to dedicate an additional 15-foot strip of land adjacent to the flood plain as a pedestrian/bicycle pathway. In so doing, the city made a series of findings concerning the relationship between the dedicated conditions and the projected impacts on the Dolan property.

The United States Supreme Court granted certiorari “to resolve a question left open” by its decision in *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987): What is the required degree of connection between the exactions imposed by a city and the projected impacts of the proposed development? *Dolan v. City of Tigard*, 512 U.S. at 377. In *Dolan*, the Court acknowledged the standard rule that a land use regulation does not effect a taking if it “substantially advances

In Dolan, a sharply divided court held that cities must prove that development conditions placed on a discretionary permit have a “rough proportionality” to the development’s impact.

a legitimate state interest” and does not “deny an owner economically viable use of his land.” *Id.* at 385 (citing *Agins v. Tiburon*, 447 U.S. 255, 260 (1980)). Significantly, the Court noted that in *Dolan*, it was not dealing with a legislative determination regarding land use regulations, but instead with a city having made “an adjudicative decision to condition an application for a building permit on an individual parcel.” *Id.* Also, the Court observed that “the conditions imposed were not simply a limitation on the use that [the] petitioner might make of her own parcel but a requirement that she deed portions of the property to the city.” *Id.*

In evaluating the takings claim, the Court stated that it first must determine whether an “essential nexus” exists between the “legitimate state interest” and the exaction imposed.

In evaluating the takings claim, the Court stated that it first must determine whether an “essential nexus” exists between the “legitimate state interest” and the exaction imposed. If a nexus exists, the next step is to determine whether the degree of connection is sufficient. The Court noted that in *Nollan*, there had been no nexus; thus, the Court did not move beyond the first step in the analysis. In *Nollan*, the absence of a nexus between the easement and the ocean view left the California Coastal Commission in the position of simply trying to obtain an easement “through gimmickry,” which converted a valid regulation of land use into an “out-and-out plan of extortion.” 512 U.S. at 387. In the *Dolan* situation, however, the Court stated that no such “gimmickry” was evident. Rather, the Court found that the required nexus did, in fact, exist. Therefore, it was necessary for the Court to address the question left unanswered in *Nollan*—whether the *degree of exaction* demanded by the city’s permit conditions bore the *required relationship* to the projected impact of the development.

Since state courts had a long history of dealing with this question, the Court then reviewed several representative state court decisions. The Court noted that the decisions fell into three categories: first, a generalized nexus requirement, which the Court determined to be too lax; second, an exacting nexus described as the “specific and uniquely attributable test” (the so-called *Pioneer Trust* Rule from Illinois), which the Court rejected; and third, an intermediate position of a “reasonable relationship” nexus (highlighted in *Jordan v. Menomonee Falls*, 28 Wisc. 2d 608, 137 N.W. 2d 442 (1965)).

The *Dolan* Court noted that the intermediate “reasonable relationship test” adopted by the majority of states (including California, *see Associated Home Builders*, 4 Cal. 3d 633) was closer to the federal constitutional norm than the other two tests. However, it stated, “we do not adopt [the reasonable relationship test] as such, partly because the term ‘reasonable relationship’ seems confusingly similar to the term ‘rational basis’ which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment.” *Dolan v. City of Tigard*, 512 U.S. at 391. Instead, the Court coined the term “rough proportionality” to summarize what it holds to be required by the Fifth Amendment.⁵ *Id.* It then attempted to provide some meaning to the phrase. “No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Id.*

No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

With the rough proportionality requirement in mind, the Court then reviewed the two required dedications and found that the City had not met its

5. Interestingly, after coining the term “rough proportionality,” the Court, in its majority opinion, never used that term again in applying its analysis to the facts; instead it continued to use the words “required reasonable relationship” or “reasonably related.”

burden of demonstrating the required relationship. After analyzing the findings upon which the City relied, the Court stated that the City had not shown the “required reasonable relationship” between the floodplain easement and the petitioner’s proposed new building. 512 U.S. at 395.

Noting that Dolan’s proposed development would have increased the amount of impervious surface—which in turn would increase the quantity and rate of storm water flowing from the property, the Court determined that the City could have required that Dolan simply keep the area open. But by requiring complete dedication of the land rather than simply restricting Dolan’s ability to build on it, the City limited Dolan’s ability to exclude others, which, the Court stated, is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” *Id.* at 393 (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

In addition, regarding the dedication of the pedestrian/bicycle pathway easement, the Court did not accept the City’s conclusory statement that the creation of the pathway ‘could offset some of the traffic demand . . . and lessen increase in traffic congestion.’” 512 U.S. at 393. “No precise mathematical calculation is required,” the Court repeated, “but a city must make some effort to quantify its findings in support of the dedication of the pedestrian/bicycle pathway beyond the conclusory statement that it could offset some of the traffic demand generated.” *Id.* at 395–96.

The Court concluded by stating:

Cities have long engaged in the commendable task of land use planning, made necessary by increasing urbanization particularly in metropolitan areas such as Portland. The city’s goals of reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but there are outer limits to how this may be done. “A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Id. at 396 (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922))

The dissenting justices stated that the majority had made a serious error by abandoning the traditional presumption of constitutionality, and imposing a novel burden of proof on a city implementing an admittedly valid comprehensive land use plan. “[H]aving assigned the burden, the court concludes that the city loses based on one word (‘could’ instead of ‘would’) and despite the fact that this record shows the connection the court looks for.” *Id.* at 413 (Souter, J., dissenting).

Subsequent case law has clarified that the *Dolan* rough proportionality rule applies when a court is determining whether dedications demanded as a condition of development are proportional to the development’s anticipated impacts and was not intended to address, and is not applicable to, an analysis of whether or not a complete denial of development is a taking. See *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 703 (1999); *Breneric Assocs. v. City of Del Mar*, 69 Cal. App. 4th 166, 175–76 (1998). For further discussion on takings, see chapter 12 (Takings).

What does *Dolan* mean in California? The United States Supreme Court has placed some limitations on a city’s exercise of its police power to require dedication of land as a condition for issuing a development permit. *Dolan* requires a

Subsequent case law has clarified that the Dolan rule was not intended to address, and is not applicable to, an analysis of whether or not a complete denial of development is a taking.

PRACTICE TIP

When a city seeks to require a dedication of land as a condition to development, it has the burden of making affirmative findings to show that the proper nexus exists.

city to document the connection between the dedication and the projected impact of the proposed development. Not only must the required nexus exist, but findings must establish the required reasonable relationship between the required dedication and the impact. Thus, a two-part inquiry must be made to determine whether the essential nexus exists between the project and (1) the type of condition and (2) the burden created by of the condition. The "type of impact" nexus test requires that the type of condition imposed must address the same type of impact caused by the development (*Nollan*) and the "burden created" nexus test requires an assessment of whether this condition is in reasonable proportion to the burden created by the new development (*Dolan's* rough proportionality). See James Longtin, Longtin's California Land Use, §§ 8.22[2], [3] (Local Government Publications 2002 Update). In California, the courts always have required a nexus based on a reasonable relationship. *Dolan* reiterates the need for a reasonable relationship, but emphasizes that there must be something more than generalized or conclusory findings to support that connection.

As a result of *Dolan*, if a city seeks to require a dedication of land as a condition of approval (e.g., building permits, map approvals) as compared to legislative requirements (e.g., a determination applicable to all large development projects, where no individual bargaining is involved), the following rules should be followed:

- A city has the burden of proving a sufficient nexus exists between the required dedication and the impact of the proposed development.
- No precise mathematical calculation is necessary to show the required reasonable relationship, but a city must make some sort of individualized determination that the required dedication is related, both in nature and extent, to the impact of the proposed development (i.e., it is roughly proportional).
- A city has the burden of proving why a dedication is necessary and why a land use regulation restricting the use of the property cannot suffice.
- A city must tailor the conditions it demands to counter only the types of impacts expected from the development.
- To meet the heightened *Nollan-Dolan* standard, a city should quantify its findings as much as possible, rather than relying on conclusory statements.



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: November 14, 2006

**SUBJECT: ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT)
(Continued from the September 12, 2006 Meeting With Public Hearing To Be
Opened)**

LOCATION: Citywide

STATEMENT OF ISSUE:

At the September 12, 2006 meeting, the Planning Commission continued the Density Bonus Amendment to the November 14, 2006 regularly scheduled meeting, with the public hearing to be opened. The item was continued due to the lateness of the meeting. The September 12, 2006 report is attached for your review. No changes to the report have been made and no public comment on this item has been received.

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 06-02 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) including the legislative draft to the City Council for adoption.”

ATTACHMENT:

1. Suggested Findings of Approval - ZTA No. 06-02
2. Draft Density Bonus Ordinance – ZTA No. 06-02
3. Planning Commission Staff Report dated September 12, 2006
4. Density Bonus Legislative Draft – ZTA NO. 06-02 (HBZSO- Chapter 230, Section 230.14)
5. Senate Bill 435

SH:MBB:RM:rk

ATTACHMENT NO. 1

SUGGESTED FINDINGS OF APPROVAL

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 06-02:

1. Zoning Text Amendment No. 06-02, to amend Chapter 230 of the Huntington Beach Zoning and Subdivision Ordinance Site Standards, Section 230.14 Affordable Housing Incentive/Density Bonus is consistent with the objectives, policies, general land uses and programs specified in the General Plan and various specific plans because the proposed amendments would bring the City's Zoning Code in conformance with the State mandated changes to density bonus law and further facilitate the development of affordable housing.
2. The proposed zoning text amendment is compatible with the uses authorized in, and the standards prescribed for the various residential and mixed use zoning districts because the proposed density bonus ordinance does not change the types of permitted uses, i.e. residential, and requires that any concessions or incentives not result in any significant adverse impacts.
3. A community need is demonstrated for the proposed change in the City's Density Bonus provisions in that incentives for affordable housing would be provided consistent with the priorities identified by the State of California. In addition, the density bonus law amendment would provide additional tools to achieve affordable housing at various income levels through increased incentives and concessions available to housing developers.
4. The adoption of this amendment is in conformance with the public convenience, general welfare and acceptable zoning practices, because although a waiver of development standards is offered, the development of density bonus units would generally comply with the development standards for the zone and the City's ordinance would be consistent with the new State law.

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 230 OF THE HUNTINGTON BEACH ZONING AND
SUBDIVISION ORDINANCE TITLED SITE STANDARDS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 230.14 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended as follows:

230.14 Affordable Housing Density Bonus.

- A. When a developer of a residential property which is zoned and general planned to allow five (5) or more dwelling units proposes to provide affordable housing, he or she may request a density bonus and incentives or concessions through a conditional use permit subject to the provisions contained in this section. A density bonus request pursuant to the provisions contained within this section shall not be denied unless the project is denied in its entirety.
- B. Affordability requirements.
1. Percentage of affordable units required. To qualify for a density bonus and incentives or concessions, the developer of a residential project shall elect at least one of the following:
 - a. Provide at least ten percent (10%) of the total units of the housing development for lower income households, as defined in Health and Safety Code section 50079.5; or
 - b. Provide at least five percent (5%) of the total units of the housing development for very low income households, as defined in Health and Safety Code section 50105; or
 - c. Provide a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5; or
 - d. Provide at least ten percent (10) of the total dwelling units in a common interest development as defined in Civil Code Section 1351 for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

The density bonus shall not be included in the total number of the housing units when determining the number of housing units required to be affordable. Remaining units may be rented, sold or leased at "market" rates.

2. Duration of affordability. An applicant shall agree to, and city shall ensure, continued affordability of all low and very low income units that qualified the applicant for the award of the density bonus for thirty (30) years or a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Where there is a direct financial contribution to a housing development pursuant to Government Code Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city will assure continued availability for low- and moderate-income units for 30 years. The affordability agreement required by Section 230.14B.4 shall specify the mechanisms and procedures necessary to carry out this section.

An applicant shall agree to, and the city shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. The City shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source of law. The following shall apply to the equity-sharing agreement:

- a. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.
 - b. The City's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
 - c. The City's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.
3. Affordable unit distribution and product mix. Affordable units shall be located throughout the project and shall include a mixture of unit types in the same ratio as provided throughout the project.
 4. Affordability agreement. Affordability shall be guaranteed through an "Affordability Agreement" executed through the developer and the City. Said agreement shall be recorded on the subject property with the Orange County Recorder's Office prior to the issuance of building permits and shall become effective prior to final inspection of the first unit. The subject agreement shall be legally binding and enforceable on

the property owner(s) and any subsequent property owner(s) for the duration of the agreement. The agreement shall include, but not be limited to, the following items:

- a. The duration of the affordability and the number of the affordable units;
- b. The method in which the developer and the City are to monitor the affordability of the subject affordable units and the eligibility of the tenants or owners of those units over the period of the agreement;
- c. The method in which vacancies will be marketed and filled;
- d. A description of the location and unit type (bedrooms, floor area, etc.) of the affordable units within the project; and
- e. Standards for maximum qualifying household incomes and standards for maximum rents or sales prices.

5. City action. Pursuant to this section the City shall:

- a. Grant a density bonus and at least one of the concessions or incentives identified in Section 230.14D unless the City makes a written finding pursuant to Section 230.14J.

C. Calculation of Density Bonus.

1. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the project's percentage of affordable housing exceeds the percentage established in Section 230.14B.
 - a. For housing developments meeting the low income criteria of Section 230.14B.1.a, the base density bonus of 20 percent shall be increased by one and one-half percent for every one percent increase in the percentage of low income units above 10%. The maximum allowable density bonus shall be 35 percent.
 - b. For housing developments meeting the very low income criteria of Section 230.14B.1.b, the base density bonus of 20 percent shall be increased by two and one-half percent for every one percent increase in the percentage of very low income units above 5%. The maximum density bonus shall be 35 percent.
 - c. For housing developments meeting the senior citizen housing criteria of Section 230.14B.1.c, the density bonus shall be 20 percent.
 - d. For housing developments meeting the moderate income criteria of Section 230.14B.1.d, the base density bonus of five percent shall be increased by one percent for every one percent increase in the percentage of moderate income units over 10%. The maximum density bonus shall be 35 percent.

2. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in Section B, "total units" does not include units permitted by a density bonus awarded pursuant to this section.
3. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required affordable units pursuant to subsection 230.14B.1.

D. Incentives and Concessions.

1. Types of incentives or concessions. The City shall grant an incentive or concession to the developer. An incentive or concession includes, but is not limited to, the following:
 - a. A reduction in site development standards or modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
 - i. At the request of the developer, the City will permit a vehicular parking ratio, inclusive of handicapped and guest parking, for a development meeting the criteria of Section 230.14B at ratios that shall not exceed:
 1. Zero to one bedroom: one onsite parking space.
 2. Two to three bedrooms: two onsite parking spaces.
 3. Four or more bedrooms: two and one-half onsite parking spaces.
 - ii. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section only, a housing development may provide "onsite parking" through tandem parking or uncovered parking but not through on-street parking.
 - b. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

- c. Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.
 - 2. Number of Incentives and Concessions. An applicant for a density bonus shall receive the following number of incentives or concessions:
 - a. One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.
 - b. Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.
 - c. Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.
- E. Waiver or Reduction of Development Standards: An applicant may submit to the city a proposal for the waiver or reduction of development standards. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.
- F. Donation or Transfer of Land. A developer may donate or transfer land in lieu of constructing the affordable units within the project pursuant to Government Code § 65915 (h).
- G. Child Care Facilities.
- 1. When a developer proposes to construct a housing development that includes affordable units that conform to Section 230.14B and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the City shall grant either of the following:
 - a. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
 - b. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
 - 2. A housing development shall be eligible for the density bonus or concession described in this Section if the City makes all of the following findings:

- a. The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to Section 230.14B.2.
 - b. Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are required to be affordable to very low income households, low income households, or moderate income households.
3. "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

H. Procedure.

1. In addition to submitting all documentation required to apply for a conditional use permit, a developer requesting a density bonus pursuant to this section shall include the following in the written narrative supporting the application:
 - a. A general description of the proposed project, general plan designation, applicable zoning, maximum possible density permitted under the current zoning and general plan designation and such other information as is necessary and sufficient. The property must be zoned and general planned to allow a minimum of five (5) units to qualify for a density bonus.
 - b. A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and general plan designations.
 - c. A description of the requested incentive or concessions that the developer requests.
 - d. A calculation of the density bonus allowed.
2. All subsequent City review of and action on the applicant's proposal for a density bonus and/or consideration of any requested incentives or concessions shall occur in a manner concurrent with the processing of the conditional use permit and any other required entitlements, if any. If the developer proposes that the project not be subject to impact fees or other fees regularly imposed on a development of the same type, final approval will be by the City Council.
3. The Planning Commission/City Council shall review the subject Affordability Agreement concurrently with the development proposal. No project shall be deemed approved until the Affordability Agreement has been approved by the City Council. (3710-6/05)

4. The Planning Commission/City Council may place reasonable conditions on the granting of the density bonus and any other incentives as proposed by the applicant. However, such conditions must not have the effect, individually or cumulatively, of impairing the objective of California Government Code Section 65915 et seq., and this section, of providing affordable housing for qualifying residents.
5. A monitoring fee, as established by resolution of the City Council, shall be paid by the applicant to the City prior to issuance of a certificate of occupancy for the first unit. This fee shall be in addition to any other fees required for the processing of the conditional use permit, environmental analysis, and/or any other entitlements required.

I. Required findings for approval.

1. Density bonus. In granting a conditional use permit for a density bonus, the Planning Commission/City Council shall make all of the following findings:
 - a. The proposed project, which includes a density bonus, can be adequately serviced by the City and County water, sewer, and storm drain systems without significantly impacting the overall service or system.
 - b. The proposed project, which includes a density bonus, will not have a significant adverse impact on traffic volumes and road capacities, school enrollments, or recreational resources.
 - c. The proposed project, which includes a density bonus, is compatible with the physical character of the surrounding area.
 - d. The proposed project, which includes a density bonus, is consistent with the overall intent of the General Plan.
 - e. If located within the coastal zone, the proposed project which includes a density bonus will not result in the fill, dredge, or diking of a wetlands. (3334-6/97)

J. Required findings for denial.

1. Concessions or Incentives. The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of either of the following:
 - a. The concession or incentive is not required in order to provide affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c).
 - b. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there

is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households.

SECTION 2. All other sections of Chapter 230 of the Huntington Beach Zoning and Subdivision Ordinance not amended hereby remain in full force and effect.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jennifer M. [Signature]
8/15/06 City Attorney *JMM 8/15/06*

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:

Director of Planning



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: September 12, 2006

SUBJECT: ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT)

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: Citywide

STATEMENT OF ISSUE:

- ◆ Zoning Text Amendment No. 06-02 request:
 - Amend Chapter 230.14 Affordable Housing Incentives/Density Bonus to comply with state mandated changes pursuant to SB 1818 and SB 435

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 06-02 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) including the legislative draft to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Zoning Text Amendment No. 06-02 with findings for denial.”
- B. “Continue Zoning Text Amendment No. 06-02 and direct staff accordingly.”

PROJECT PROPOSAL:

Zoning Text Amendment No. 06-02 represents a request to amend Chapter 230.14 Affordable Housing Incentives/Density Bonus of the Huntington Beach Zoning and Subdivision Ordinance in order to comply with State mandated law regarding Density Bonus provisions.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Citywide	RL (Residential Low Density), RM (Residential Medium Density), RMH (Residential Medium High Density), RH (Residential High Density), MU (Mixed Use)	RL (Residential Low Density), RM (Residential Medium Density), RMH (Residential Medium High Density), RH (Residential High Density), Various Specific Plans	Single Family Multiple Family, Mixed Use

General Plan Conformance:

The proposed action impacts all residential and mixed-use land use designations throughout the city. The proposed project is consistent with the following goals, objectives and policies of the City's General Plan.

A. Housing Element

Objective 3.1: Facilitate the development of housing for low and moderate income households which is compatible with and complements adjacent uses and is located in close proximity to public and commercial services.

The purpose of the density bonus is to encourage the development of affordable housing. The new density bonus law provides further incentives and concessions for the development of this housing as well as waivers of development standards.

Policy 3.1.2: Support both the private and public sectors to produce or assist in the production of affordable housing to lower income households, as well as the needs of the handicapped, the elderly, large families and female-headed households.

A developer would have the option of entering into a partnership with the City's Redevelopment Agency to develop affordable housing by developing varying income housing products, or obtaining financial assistance from the agency.

Objective 4.1: Mitigate any potential governmental constraints to housing production and affordability.

The density bonus law provides a number of options to encourage the production of affordable housing by providing incentives, concessions, and waiver of the various development standards.

Policy 4.1.2: Provide for a wide variety of housing types for different income levels and household needs.

The proposed density bonus law would encourage developers to produce housing of varying income types by increasing the number of incentives or concessions to developers, depending on the income level of the proposed housing product.

B. Land Use Element

Goal 3.4.2.5.1: To provide and maintain a quality living environment so that members of all economic, social, and ethnic groups may reside in Huntington Beach. This can be attained by providing a variety of housing types in all areas of the City.

Density bonus projects would require affordable housing agreements to provide for the monitoring of income eligibility criteria. The City Neighborhood Preservation Program ensures that the City maintains a quality environment for all its citizens.

Goal 3.4.2.7.2: To encourage and maintain a well balanced variety of residential density and uncrowded living environments. This can be attained by encouraging development of neighborhoods that are available and attractive to diverse economic groups.

The proposed ordinance would allow affordable units within a housing development, which would be designed to inter-mix with market rate units, throughout the city. This mix of unit type would provide the opportunity for various income level families to reside within and interact with other economic groups in the same neighborhoods.

Urban Design Guidelines Conformance: Not applicable

Environmental Status: The proposed project is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

Coastal Status: Not applicable

Redevelopment Status: Not applicable

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

As requested by the Planning Commission, the proposed ordinance was submitted to the Department of Economic Development on August 23, 2006 for review and comment. As of the drafting of this report, the Department of Planning has not received comments from the Economic Development Department.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on August 31, 2006, and notices were published in the newspaper at 1/8 page and sent to individuals/organizations requesting notification (Planning Department’s Notification Matrix), as well as other interested parties. As of September 5, 2006, no communication supporting or opposing the request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION: MANDATORY PROCESSING DATE(S):
Not applicable Not applicable

ANALYSIS:

The State of California enacted significant changes to the state’s density bonus law, which went into effect on January 5, 2005, via Senate Bill, SB 1818. Subsequently in October 2005, SB 435, was adopted which included clarifying legislation that supercedes SB 1818. Chapter 230.14 of the Huntington Beach Zoning and Subdivision Ordinance is being amended to be consistent with the new State Density Bonus Law.

In accordance with the new State Law provisions, all California cities must now amend their ordinances to bring them into conformance with the new state mandates. The previous law allowed for up to a 25% density bonus when housing projects provided between 10-20% of the units affordable to various income levels or 50% for seniors. The new law reduces the number and affordability level of the units, which a developer must provide in order to receive a density bonus. It further requires that a city provide between one to three concessions or incentives to a developer, depending upon the percentage of affordable units that the developer intends to provide. The analysis section of this report provides tables to facilitate the review of the key concepts and principal areas of the legislation. The legislative draft of the proposed ordinance is attached (Attachment No. 3).

Density Bonus

A density bonus is defined as a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan. A project must propose a minimum of five or more units in order to be eligible to be considered for a density bonus. A density bonus is intended to facilitate the development of affordable housing, in exchange for greater density, some of the units within a project must be restricted as affordable or for seniors either for-sale or rent for a specified period of time.

Required Amount of Affordable Units

The following table summarizes the percentage and type of units a project has to provide to qualify for a density bonus. The non-qualifying units within each project can be either sold or rented at market rates. As shown in the table, under existing code 20% of the units in a project would have to be restricted to low income households in order for the project to qualify for a density bonus. Under the new state law, only 10% of the units would need to be so restricted.

TABLE 1: TYPE OF QUALIFYING HOUSING

Type of Housing	Existing Code	New State Requirement
Lower Income	20%	10 %
Very Low Income	10%	5%
Senior Citizen Housing or Mobilehome Park (<i>that limits residency based on age requirements for the elderly</i>)	50%, for qualifying senior residents	Any senior housing or mobilehome park (<i>that limits residency based on age requirements for the elderly</i>)
Moderate Income - Common Interest Development	NA	10%

Amount of Density Bonus

Unlike previous State law, the new density bonus provisions establish a base density bonus that a project is entitled to if it meets the affordability requirements summarized above. However, a developer may elect a lesser density bonus. The minimum base density bonus for low income, very low income, and senior housing/mobilehome park is 20 percent; the minimum for moderate income housing is five percent as illustrated on the table below.

The new law also creates a sliding scale, which allows the amount of the density bonus to increase, up to a certain maximum, as the number of affordable units that are provided increase. Although the law identifies a maximum density bonus, it also stipulates that a jurisdiction could allow higher density bonuses if they choose. Staff recommends that the density bonus be capped at 35%. This cap would apply even if a combination of affordable units at varying income levels were proposed.

Table 2 summarizes the sliding scale allowances that are illustrated in the legislation on Attachment 2.4-2.7.

TABLE 2: SLIDING SCALE DENSITY BONUS

Type of Qualifying Housing	Base Density Bonus	Sliding Scale Density Bonus
Lower Income	20%	1.5% increase in density bonus for each 1% increase in lower income affordable units <u>above the initial 10% threshold</u> to a maximum density bonus of 35%
Very Low Income	20%	2.5% increase in density bonus for each 1% increase in very low income affordable units <u>above the initial 5% threshold</u> up to a maximum density bonus of 35%
Senior Citizen Housing or Mobilehome Park Developments	20%	No sliding scale increase

TABLE 2: SLIDING SCALE DENSITY BONUS (continued)

Type of Qualifying Housing	Base Density Bonus	Sliding Scale Density Bonus
Moderate Income Common Interest Development	5%	1% increase in density bonus for each 1% increase in moderate income affordable units above the <u>initial 10% threshold</u> up to a maximum density bonus of 35%

Table 3 provides examples of how the base density bonus and sliding scale increase apply to a project. Thus, in a RM zone where the General Plan allowed density is 15 units per acre a developer proposing 10% of the units as low income (the minimum to qualify for a density bonus) would be allowed to construct an additional 3 units per acre for a total of 18 unit per acre.

TABLE 3 BASE DENSITY BONUS WITH SLIDING SCALE

General Plan Density	Percentage of Affordable Units Provided	Density Bonus	Total Units Allowed with Density Bonus
15 Units/AC	10% Low	20%= 3 Units	18 Units/AC
15 Units/AC	15% Low	27.5%= 5 Units	20 Units/AC

Duration of Affordability

Under Density Bonus Law, the required duration of affordability for lower income units is limited to 30 years unless a longer period of time is required by construction or mortgage assistance program or rental subsidy program. As an example, California Redevelopment Law requires affordability covenants of at least 55 years for rental units and 45 years for owner-occupied units, if a redevelopment agency offers loans or other financial subsidies to an affordable development. Therefore, density bonus developments assisted with redevelopment agency funding could have durations of longer than 30 years. It should be noted that the City’s Inclusionary Housing requirement for projects of three or more units is still required in addition to meeting the affordability criteria for a density bonus. The current 60 year inclusionary housing affordability requirement is not superceded by the density bonus criteria.

As to moderate income units, a density bonus or other incentive is required if 10% or more of the total number of units in a common interest development are offered to moderate income persons and families for purchase at a moderate housing cost. The new density bonus law requires that only the initial occupant of the moderate unit directly related to the density bonus be a person or family of moderate income and that the units initially are offered at an affordable housing cost. Upon fair market resale of the moderate unit, the City is required to enforce an equity-sharing agreement that permits the seller to retain the value of any improvements, the initial down payment, and the seller’s proportionate share of appreciation while the City recaptures any initial subsidy and a proportionate share of appreciation. The city is required to use the recaptured equity share within three years for any of same purposes authorized for the use of Housing Fund monies by redevelopment agencies under California Redevelopment Law. Subsequently, all density bonus moderate units have no minimum affordability period.

Incentives and Concessions

The City's current ordinance requires that a minimum of one concession or incentive is provided for a density bonus development. Under the amended density bonus law, the City must grant more concessions or incentives, depending on the percentage of affordable units provided. The required number of incentives and concessions are as follows:

TABLE 4: INCENTIVES AND CONCESSIONS

Percentage Affordable by Affordability Category	Number of Incentives or Concessions Required
10% Lower Income, or 5% Very Low Income, or 10% Moderate Income (common interest development)	1
20% Lower Income, or 10% Very Low Income, or 20% Moderate Income (common interest development)	2
30% Lower Income, or 15% Very Low Income, or 30% Moderate Income (common interest development)	3

As defined in the new State law and the City's proposed ordinance, Concessions or Incentives means any of the following:

1. A reduction in site development standards or modification of zoning code requirements or architectural design requirements that exceed the minimum building standards but not limited to a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
3. Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable, financially sufficient, and actual cost reductions.

Once an applicant requests a particular concession or incentive the City will evaluate the potential impacts of a request on surrounding properties and the future residents of the project. Requests for reduction in standards are compared to the City's adopted Urban Design Guidelines and development standards for the zone and evaluated in terms of impacts. It is the responsibility of the applicant to prove the granting or

not granting of a particular concession or incentive is necessary to either accommodate the number of proposed units or reduce the financial impact of a density bonus project. Nothing in the law shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

The law further requires that the City establish procedures for carrying out the incentive/concession section of the ordinance that shall include legislative body approval of the means of compliance with the section. Simply, a City may require a discretionary permit and must make the required findings in order to approve requests for concessions or incentives. The City requires that all density bonus projects obtain a conditional use permit from the Planning Commission.

Parking Standards

The revised state law enacts reduced parking standards that may be requested for density bonus projects. These onsite standards are inclusive of guest parking and handicapped parking and may be tandem or uncovered. The change preempts the City’s current standard parking requirements. The density bonus revised standards are as follows:

TABLE 5: PARKING STANDARDS FOR PROJECTS MEETING AFFORDABLE REQUIREMENTS

Number of Bedrooms in Unit	Existing City of Huntington Beach Parking Standards	State Maximum Required Parking Spaces (inclusive of handicapped and guest parking)
Studio to 1 bedroom	1 enclosed space per unit plus 0.5 guest parking per unit	1 onsite space
2 to 3 bedrooms	<i>2 bedrooms:</i> 2 spaces (1 enclosed) per unit plus 0.5 guest parking per unit. <i>3 or more bedrooms:</i> 2.5 spaces (1 enclosed) per unit plus 0.5 guest parking per unit.	2 onsite spaces
4 or more bedrooms	<i>See 3 or more bedroom requirement above.</i>	2.5 onsite parking spaces

All density bonus calculations resulting in fractional units shall be rounded up to the next whole number.

Parking Requirements in the Coastal Zone:

At the August 22, 2006 Planning Commission study session, the Planning Commission requested that staff review the proposed density bonus law’s parking standards for the possibility of including language

related to the Coastal Zone parking standards. The HBZSO states that in the Coastal Zone parking is required to be enclosed and can be tandem when parking exceeds the minimum requirement.

The new provisions in State Law do not require enclosed parking and allow for tandem parking. Staff believes there is not an internal conflict within the code that would create an inconsistency in parking standards between the Density Bonus Law and Chapter 231 Off Street Parking-Coastal Zone. Therefore, the Coastal Zone parking standards could be referenced in the density bonus ordinance. The reference would lead the reader to Chapter 231 Off-Street Parking, Section 231.18. D.6 Coastal Zone, HBZSO. However, the elimination of any enclosed parking stall or tandem parking stall could be a negotiated concession.

Waiver and Modification of Development Standards

The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of an unlimited number of development standards by showing that the waivers are needed to make the project economically feasible.

Child Care Facilities

A developer that proposes construction of a housing development that includes affordable units pursuant to 230.14 B (Affordability Requirements) and includes a childcare facility that is located onsite, adjacent to or a part of the development is eligible for concessions that include the following:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.
2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

A housing development shall be eligible for the density bonus or concession provided it meets certain findings stated within Chapter 230.14 .J. Of the children who attend the child care facility, the children of very low income households, low income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required to be affordable. Thus if 15 percent of a project's units are restricted as affordable, then 15 percent of the children who attend the child care facility must come from very low, low or moderate income households.

The Economic Development Department provides monitoring for all of the City's affordable units. This applies to density bonus units as well as any child care facilities that might be built in association with these projects.

ATTACHMENTS:

1. ~~Suggested Findings of Approval-ZTA No. 06-02~~
2. ~~Draft Density Bonus Ordinance~~
3. ~~Density Bonus Legislative Draft - ZTA NO. 06-02 (HBZSO Chapter 230, Section 230.14)~~
4. ~~Senate Bill 435~~

DENSITY BONUS AMENDMENT

230.14 Affordable Housing Incentives-Density Bonus

A. When a developer of a residential property which is zoned and general planned to allow five (5) or more dwelling units proposes to provide affordable housing, he or she may request a density bonus and/or other incentives **or concessions** through a conditional use permit subject to the provisions contained in this section. A density bonus request pursuant to the provisions contained within this section shall not be denied unless the project is denied in its entirety.

DB. Affordability requirements.

1. Percentage of affordable units required. To qualify for a density bonus and/or other incentives **or concessions**, the developer of a residential project must agree to **shall elect at least** one of the following:
 - a. Provide at least ~~ten~~ **twenty percent (10% 20%)** of the total units of the housing development for lower income households, **as defined in Health and Safety Code section 50079.5;** or
 - b. Provide at least ~~five~~ **ten percent (5% 10%)** of the total units of the housing development for very low income households, **as defined in Health and Safety Code section 50105;** or
 - c. **Provide a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5; or Provide at least fifty percent (50%) of the total units of the housing development for qualifying senior residents.**
 - d. **Provide at least ten percent (10%) of the total dwelling units in a common interest development for moderate income households as defined in Civil Code Section 1351 for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.**

The density bonus shall not be included **in the total number of the housing units** when determining the number of housing units required to be affordable. Remaining units may be rented, sold, or leased at "market" rates.

~~If a developer is granted a density bonus in excess of twenty-five percent (25%), those additional units above the twenty-five percent (25%) may be required to be maintained affordable for "moderate income" households.~~

2. Duration of affordability. **An applicant shall agree to, and city shall ensure, continued affordability of all low and very low income units that qualified the applicant for the award of the density bonus** ~~Units required to be affordable as a result of the granting of a density bonus and other incentives shall remain affordable for thirty (30) years or If the City does not grant at least one concession or incentive pursuant to this chapter in~~

addition to the density bonus, or provides other incentives in lieu of the density bonus, those units required to be affordable shall remain so for ten (10) years - a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Where there is a direct financial contribution to a housing development pursuant to Government Code Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city will assure continued availability for low- and moderate-income units for 30 years. The affordability agreement required by Section 230.14B.4 shall specify the mechanisms and procedures necessary to carry out this section.

An applicant shall agree to, and the city shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section ~~50052.5~~50093 of the Health and Safety Code. The eCity shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following shall apply to the equity-sharing agreement:

- a. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.
 - b. The eCity's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
 - c. The eCity's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.
3. Affordable unit distribution and product mix. Affordable units shall be located throughout the project and shall include a mixture of unit types in the same ratio as provided throughout the project.
 4. Affordability agreement. Affordability shall be guaranteed through an "Affordability Agreement" executed between the developer and the City. Said agreement shall be recorded on the subject property with the Orange County Recorder's Office as provided in Section 65915, et seq. of the California Government Code, prior to the issuance of building permits and shall become

effective prior to final inspection of the first unit. The subject agreement shall be legally binding and enforceable on the property owner(s) and any subsequent property owner(s) for the duration of the agreement. The agreement shall include, but is not **be** limited to, the following items:

- a. The ~~number of and~~ duration of the affordability **and the number of** for the affordable units;
 - b. The method in which the developer and the City are to monitor the affordability of the subject affordable units and the eligibility of the tenants or owners of those units over the period of the agreement;
 - c. The method in which vacancies will be marketed and filled;
 - d. A description of the location and unit type (bedrooms, floor area, etc.) of the affordable units within the project; and
 - e. Standards for maximum qualifying household incomes and standards for maximum rents or sales prices.
5. City action. Pursuant to this section the City shall:
- a. Grant a density bonus and at least one of the concessions or incentives identified in Section 230. ~~14CD 18B~~ unless the City makes a written finding **pursuant to Section 230.14J.** ~~that the additional concession or incentive is not required in order for rents or mortgage payments to meet the target rates; or~~
 - b. ~~Provide other incentives of equal value to a density bonus as provided in Section 65915, et seq. of the California Government Code. The value of the other incentives shall be based on the land cost per dwelling unit.~~

C. Calculation of Density Bonus

1. **The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the project's percentage of affordable housing exceeds the percentage established in Section 230.14 B.**
 - a. **For housing developments meeting the low income criteria of Section 230.14B.1.a, the base density bonus of 20 percent shall be increased by one and one-half percent for every one percent increase in the percentage of low income units above 10%. The maximum allowable density bonus shall be 35 percent.**
 - b. **For housing developments meeting the very low income criteria of Section 230.14 B.1.b, the base density bonus of 20 percent shall be increased by two and one-half percent for every one percent increase in the percentage of very low income units above 5%. The maximum density bonus shall be 35 percent.**

- c. For housing developments meeting the senior citizen housing criteria of Section 230.14B.1.c, the density bonus shall be 20 percent.
- d. For housing developments meeting the moderate income criteria of Section 230.14B.1.d, the base density bonus of five percent shall be increased by one percent for every one percent increase in the percentage of moderate income units over 10%. The maximum density bonus shall be 35 percent.

2. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in Section B, "total units" does not include units permitted by a density bonus awarded pursuant to this section.

3. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required affordable units pursuant to subsection 230.14B.1.

C. Target rents/mortgage payments.

- 1. ~~For the purpose of this section, units designated for moderate income household shall be affordable at a rent or mortgage payment that does not exceed twenty-five percent (25%) of the gross family income.~~
- 2. ~~For the purpose of this section, units designated for lower income households shall be affordable at a rent or mortgage payment that does not exceed thirty percent (30%) of sixty percent (60%) of the Orange County median income as defined by the State of California Department of Housing and Community Development.~~
- 3. ~~For the purpose of this section, those units designated for very low income households shall be affordable at a rent or mortgage payment that does not exceed thirty percent (30%) of fifty percent (50%) of the Orange County median income as defined by the State of California Department of Housing and Community Development.~~

DB. Incentives and Concessions

- 1. **Types of incentives or concessions.** The City ~~may~~ **shall** grant an incentives **or** concessions to the developer. An incentive **or** concession includes, but is not limited to, the following:
 - 1. ~~A density bonus as follows:~~
 - a2. A reduction in site development standards or **modification of zoning code requirements or** architectural design requirements ~~which~~ **that** exceed the minimum building standards ~~contained within~~ **approved by the California**

~~Uniform~~ Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, ~~Code as adopted by the City including, but not limited to,~~ a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions. ~~, lot coverage, floor area ratio, parking and open space requirements.~~

- i. At the request of the developer, the City will permit a vehicular parking ratio, inclusive of handicapped and guest parking, for a development meeting the criteria of Section 230.14B at ratios that shall not exceed:
 1. Zero to one bedroom: one onsite parking space.
 2. Two to three bedrooms: two onsite parking spaces.
 3. Four and more bedrooms: two and one-half onsite parking spaces.
 - ii. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section only, a housing development may provide "onsite parking" through tandem parking or uncovered parking but not through on-street parking.
- 2b. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
4. ~~A reduction in development and/or processing fees.~~
- ~~c5.~~ Other regulatory incentives or concessions proposed by the developer or the City which **that** result in identifiable, **financially sufficient, and actual** cost reductions.
6. ~~Financial assistance by the City, i.e., housing set-aside funds.~~
7. ~~Other incentives mutually agreeable to the City and developers consistent with all City, State and Federal laws, rules, standards, regulations and policies.~~
2. **Number of Incentives and Concessions.** An applicant for a density bonus shall receive the following number of incentives or concessions:
- a. One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

- b. **Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.**
- c. **Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.**

E. Waiver or Reduction of Development Standards: An applicant may submit to the city a proposal for the waiver or reduction of development standards. Nothing in this section shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

F. Donation or Transfer of Land. A developer may donate or transfer land in lieu of constructing the affordable units within the project pursuant to Government Code § 65915 (h).

G. Child Care Facilities.

- 1. **When a developer proposes to construct a housing development that includes affordable units that conform to Section 230.14 B and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the City shall grant either of the following:**
 - a. **An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.**
 - b. **An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.**
- 2. **A housing development shall be eligible for the density bonus or concession described in this Section if the City makes all of the following findings:**
 - a. **The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to Section 230.14 B.2.**

b. Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are ~~proposed~~ required to be affordable to very low income households, low income households, or moderate income households.

3. Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

E-H. Procedure.

1. In addition to submitting all documentation required to apply for a conditional use permit, a developer requesting a density bonus ~~or other incentive~~ pursuant to this section shall include the following in the written narrative supporting the application:

a. A general description of the proposed project, general plan designation, applicable zoning, maximum possible density permitted under the current zoning and general plan designation and such other information as is necessary and sufficient. The property must be zoned and general planned to allow a minimum of five (5) units to qualify for a density bonus.

~~b.~~ A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and general plan designations.

c. A description of the requested incentive or concessions ~~In the case that the developer requests. the City to modify development standards as another incentive, a statement providing a detailed explanation as to how the requested incentive will enable the developer to provide housing at the target rents or mortgage payments. Modification of development standards will be granted only to the extent necessary to achieve the housing affordability goals set forth herein.~~

~~b.~~ A calculation of the density bonus allowed.

2. All subsequent City review of and action on the applicant's proposal for a density bonus and/or consideration of any requested ~~other incentives~~ **or concessions** shall occur in a manner concurrent with the processing of the conditional use permit and any other required entitlements, if any. If the developer proposes that the project not be subject to impact fees or other fees regularly imposed on a development of the same type, final approval will be by the City Council.

3. The Planning Commission/City Council shall review the subject Affordability Agreement concurrently with the development proposal. No project shall be deemed approved until the Affordability Agreement has been approved by the City Council. (3710-6/05)

4. The Planning Commission/City Council may place reasonable conditions on the granting of the density bonus and any other incentives as proposed by the

applicant. However, such conditions must not have the effect, individually or cumulatively, of impairing the objective of California Government Code Section 65915 et seq., and this section, ~~of to providing~~ affordable housing for qualifying residents, ~~lower or very low income households in residential projects.~~

5. A monitoring fee, as established by resolution of the City Council, shall be paid by the applicant to the City prior to issuance of a certificate of occupancy for the first unit. This fee shall be in addition to any other fees required for the processing of the conditional use permit, environmental analysis, and/or any other entitlements required.

FI. Required findings for approval.

1. Density bonus. In granting a conditional use permit for a density bonus, the Planning Commission/City Council shall make all of the following findings:
 - a. The proposed project, which includes a density bonus, can be adequately serviced by the City and County water, sewer, and storm drain systems without significantly impacting the overall service or system.
 - b. The proposed project, which includes a density bonus, will not have a significant adverse impact on traffic volumes and road capacities, school enrollments, or recreational resources.
 - c. The proposed project, which includes a density bonus, is compatible with the physical character of the surrounding area.
 - d. The proposed project, which includes a density bonus, is consistent with the overall intent of the General Plan.
 - e. If located within the coastal zone, the proposed project which includes a density bonus will not result in the fill, dredge, or diking of a wetlands. (3334-6/97)
2. ~~Other incentives.~~ A request for an additional incentive shall not be denied by the Planning Commission or City Council unless a finding is made that the incentive is not necessary to the establishment of affordable units.

~~In granting any other incentives as defined in this section, the Planning Commission/City Council shall be required to make all of the following findings:~~

- ~~a. The granting of the proposed other incentive(s) will not have an adverse impact on the physical character of the surrounding area.~~
- ~~b. The granting of the proposed other incentive(s) is consistent with the overall intent of the General Plan.~~
- ~~c. The granting of the proposed other incentive(s) will not be detrimental to the general health, welfare, and safety of persons working or residing in the vicinity.~~
- ~~d. The granting of the proposed other incentive(s) will not be injurious to property or improvements in the vicinity.~~

- ~~e. The granting of the proposed other incentive(s) will not impose an undue financial hardship on the City.~~
- ~~f. If the other incentive is a modification of development standards, the granting of the other incentive is necessary to achieve the target affordable rents/mortgage payments for the affordable units.~~
- ~~g. The granting of the proposed other incentive will not result in the filling or dredging of wetlands. (3334-6/97)~~

J. Required findings for denial.

- 1. Concessions or Incentives. The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of either of the following:**
 - a. The concession or incentive is not required in order to provide affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c).**
 - b. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households.**

BILL NUMBER: SB 435 CHAPTERED
BILL TEXT

CHAPTER 496
FILED WITH SECRETARY OF STATE OCTOBER 4, 2005
APPROVED BY GOVERNOR OCTOBER 4, 2005
PASSED THE SENATE AUGUST 30, 2005
PASSED THE ASSEMBLY AUGUST 22, 2005
AMENDED IN ASSEMBLY AUGUST 18, 2005
AMENDED IN ASSEMBLY JUNE 21, 2005
AMENDED IN SENATE APRIL 13, 2005
AMENDED IN SENATE MARCH 29, 2005

INTRODUCED BY Senator Hollingsworth

FEBRUARY 17, 2005

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, Hollingsworth Housing: density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would include within those eligibility requirements the construction of a mobilehome park that limits residency based on age requirements for housing for older persons and the construction, for persons and families of moderate income, of a community apartment project and a stock cooperative.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that local governments encourage, to the maximum extent practicable, the location of housing developed pursuant to Section 65915 of the Government Code in urban areas with adequate infrastructure to serve the housing.

SEC. 2. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing

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development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which

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shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5,

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upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

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13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8

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14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total

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units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

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(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period

ATTACHMENT NO. 5.8

of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct

ATTACHMENT NO. 59

financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

ATTACHMENT NO. 5.10



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rami Talleh, Associate Planner 
DATE: November 14, 2006

SUBJECT: CONDITIONAL USE PERMIT NO. 06-23 (HB BEER COMPANY) (Continued from October 10, 2006 with Public Hearing Closed)

APPLICANT: Michael C. Adams Associates, 21190 Beach Blvd., Huntington Beach, CA 92648

PROPERTY

OWNER: Sheryl and Tom Caverly, 553 Temple Hills Dr., Laguna Beach, CA 92651

LOCATION: 201 Main Street, Suite E (Northwest corner of Main St. and Walnut Ave.)

STATEMENT OF ISSUE:

At the October 10, 2006 Planning Commission meeting, the project was continued to the November 14, 2006 meeting with the public hearing closed. The item was continued to give the applicant an opportunity to respond to issues identified by the Planning Commission. Included in the analysis section of this report are responses to the Commission's concerns.

RECOMMENDATION:

Motion to:

“Approve Conditional Use Permit No. 06-23 with findings and suggested conditions of approval (Attachment No. 1).”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Conditional Use Permit No. 06-23 with findings for denial.”
- B. “Continue Conditional Use Permit No. 06-23 and direct staff accordingly.”

ANALYSIS:

The following is a list of issues identified by the Planning Commission at the October 10, 2006 meeting followed by staff analysis. In response to the issues raised by the Commission, the applicant submitted revised plans for the proposed outdoor dining area, narrative, and response to the Planning Commission's concerns (Attachment Nos. 2 and 5).

Outdoor Dining

Issue: *Location and layout of proposed outdoor dining area conflicts with pedestrian traffic forcing pedestrians to spill out into Main Street.*

To address the issue of the conflict with pedestrian traffic, the applicant has modified the location and layout of the outdoor dining area (Attachment No. 2). The applicant's revised site plan relocates the outdoor dining area adjacent to the building storefront eliminating the 12-foot separation between the restaurant entrance and outdoor dining area under the original plan. Relocating the outdoor dining area adjacent to the building's storefront eliminates the cross traffic created by employees and customers across the sidewalk area thus minimizing conflicts with pedestrian traffic. In addition the revised location does not create a bottleneck scenario forcing pedestrians to walk on Main Street.

Staff supports the revised site plan on the basis that the plan eliminates cross traffic and congestion of pedestrian traffic. The Police Department has reviewed the applicant's revised site plan and supports the request. However, staff recommends two modifications to the revised plan that have been included in the conditions of approval: 1) relocation of the existing palm tree adjacent to the outdoor dining area, and 2) provision of a minimum eight ft. wide walkway free from any obstruction between the adjacent parking space (not including the two-foot vehicle overhang) and outdoor dining area. The applicant concurs with staff's recommended changes.

Issue: *Consideration of security personnel/restaurant staff to enforce regulations pertaining to the sales and consumption of alcoholic beverage within outdoor dining area, maintenance of outdoor dining area, and removal of chairs and tables when the outdoor dining area is not in use.*

Consistent with other restaurants located within the public right-of-way along the second block of Main Street, the property owner of the subject site is required to enter into a License and Maintenance Agreement with the City of Huntington Beach for use of public property (Attachment No. 7). The agreements include standard conditions established by the City regarding use of the public right-of-way for outdoor dining with alcohol. The standard conditions address the issue of security and alcohol beverage control within the outdoor dining area. The standard conditions require a 36-inch tall barrier surrounding the outdoor dining area to prohibit passing of alcohol from the outdoor dining area to the public right-of-way, License Education on Alcohol and Drugs (L.E.A.D.) training by the Department of Alcoholic Beverage Control (ABC) for all servers employed in serving alcoholic beverages within the outdoor dining area, and continuous supervision of the outdoor dining area by management or employees. The standard requirements also include provisions to maintain the public right-of-way in a clean manner and remove chairs and tables when the outdoor dining area is not in use. The applicant has indicated that the chairs and tables will be brought inside the restaurant when the outdoor dining area is not in use.

Dancing/Live entertainment

Issue: Hours of operation for live entertainment extend half an hour beyond that for dancing. During the last half hour of live entertainment (1:00 a.m. to 1:30 a.m.) it may be difficult to enforce the Conditional Use Permit and prohibit dancing after 1:00 a.m.

To address the issue of inconsistent closing times for live entertainment and for dancing, the applicant has submitted a revised narrative modifying the proposed hours of operation for live entertainment to between 6:00 p.m. and 1:00 a.m. daily. As a Result, live entertainment and dancing will now end at the same time thus eliminating potential issues with enforcement of the Conditional Use Permit conditions of approval. The current and proposed hours of operation for the restaurant, outdoor dining, live entertainment, and dancing are as follows:

	Current Hours of Operation	Proposed Hours of Operation
Restaurant (second floor dining area and terraces)	Sunday through Thursday: - Between 11:00 a.m. and 12:00 a.m. Friday and Saturday: - Between 11:00 a.m. and 2:00 a.m.	Monday through Friday: - Between 11:00 a.m. and 2:00 a.m. Saturday, Sunday, and holidays: - Between 7:00 a.m. and 2:00 a.m.
Outdoor Dining	Not Applicable	Monday through Friday: - Between 11:00 a.m. and 9:00 p.m. Saturday, Sunday, and holidays: - Between 7:00 a.m. and 9:00 p.m.
Live Entertainment	Coincides with hours of operation established for the restaurant.	Between 6:00 p.m. to 1:00 a.m. daily
Dancing	Not Applicable	Thursday through Sunday: - Between 9:00 p.m. and 1:00 a.m. Monday through Wednesday: - No dancing proposed

Staff supports the proposed hours of operation and determined that the proposed hours are generally consistent with other similar uses in the Downtown.

Issue: Clarification of the dance floor size and location.

The applicant has submitted revised floor plans depicting the size and location of the dance floor within the restaurant (Attachment No. 2). The dance floor is located to the side of the elevator on the second floor. In addition, the applicant has submitted a revised narrative requesting a 100 sq. ft. dance floor. The original request consisted of a 200 sq. ft. dance floor. The revision reduces the parking requirement for dance floor to one parking space. Therefore, the applicant is requesting to participate in the Downtown Parking In-Lieu Fee Program for the two parking spaces (\$16,408.54 per space or \$32,817.08 total) – one to satisfy the dance floor parking requirement and one for the removal of an on-street parking space to allow for the outdoor dining area.

Offsite Improvements

Issue: Consideration for relocating/reconstructing the bicycle racks, newspaper racks, and catch basin as a result of the proposed outdoor dining area construction.

The applicant's revised plan proposes to locate the outdoor dining area within the public right-of-way in an area occupied by a sidewalk. As a result, the applicant proposes to reconstruct the sidewalk in an area occupied by one metered on-street parking space, newspaper racks, bicycle rack, and storm drain. Standard code requirements identified by the Public Works Department (Attachment No. 3) indicate that the bicycle rack and catch basin shall be removed and relocated outside of the proposed improvements to a suitable area determined by the Public Works Department. In addition, the applicant has identified a possible location for the newspaper racks. The suggested area is located on the sidewalk adjacent to the existing planter perpendicular to Main Street. The proposed area is located outside of the required eight-foot wide walkway area. A condition of approval requiring the applicant to coordinate with the city to relocate the newspaper rack is recommended (Attachment No. 1). The applicant concurs with the code requirements and suggested condition of approval.

Issue: The outdoor dining area may be vulnerable to vehicular traffic and may require the installation of additional traffic bollards along the edge of the proposed outdoor dining area.

The proposed revisions to the site plan places the outdoor dining area adjacent to the building storefront. An eight-foot wide walkway separates the proposed outdoor dining area from the nearest metered parking space. Furthermore, the proposed outdoor dining area will be approximately 15 feet away from Main Street. Under the original proposal, the outdoor dining area was abutting Main Street. Bollards were proposed on the side of the outdoor dining area closest to vehicular traffic. Staff and the applicant agree that the revised plan provides adequate distance from Main Street thus limiting the need for traffic bollards.

Issue: Consideration of a bond for reconstruction of the parking stall and catch basin in the event that the outdoor dining area ceases operation.

The Public Works Department originally recommended a condition requiring that the sidewalk, curb, gutter, and parking space be returned to its original state if the outdoor dining area were to cease operation. Subsequently, the Planning Commission questioned if a bond were needed to reconstruct the sidewalk, curb, and gutter and return the parking space. The condition of approval was recommended because, under the original proposal, if the outdoor dining area were to cease operation the proposed 15-foot by 14-foot pad created for outdoor dining would remain unused and may create a "dead space" undermining the City's goal of enhancing and stimulating pedestrian activity along the sidewalks. The revised site plan addresses this issue by placing the outdoor dining area adjacent to the building frontage and designing a "flexible" space, which can be used as part of the pedestrian walkway if the outdoor dining area were to cease operation. Therefore, staff determined that the recommended condition of approval is no longer applicable and a bond not necessary. Furthermore, the applicant requests to participate in the Downtown Parking In-Lieu Fee Program for the removal of the parking space. The in-lieu fee payment will be combined with previously collected fees for future parking opportunities within the Downtown. Therefore, the parking would not need to be reconstructed in the event that the outdoor dining area was to cease operation.

Additional Issues

Issue: Use of elevator for delivering food between the second floor kitchen and the ground floor outdoor dining area may conflict with handicapped accessibility and County of Orange Health Care Agency requirements.

Planning staff met with the Building and Safety Department and the County of Orange Health Care Agency to review and discuss the issue. The Building and Safety Department and the County of Orange Health Care Agency determined that the use of the elevator to deliver food and drink to and from the proposed outdoor dining area complies with all applicable building and health codes. Furthermore, the outdoor dining area may be subject to review and inspection by the County of Orange Health Care Agency.

Issue: Question of how many other second floor restaurants located in the downtown have street level outdoor dining?

The following table identifies six restaurants in the downtown located within second floor units:

Restaurant	Location	Outdoor dining at ground level
HB Beer Co.	201 Main Street, Suite 201	None
Hurricanes Bar and Grill	200 Main Street, Suite 201	None
Fred's Mexican Cantina	300 Pacific Coast Hwy. Suite 201	None
Aloha Grill	221 Main Street, Suite F	None
Silvera's Steakhouse (under remodeling)	126 Main Street, Suite 201	None
Sparks Woodfire Cooking	300 Pacific Coast Hwy # 202	None

Issue: Queuing of people waiting in line to enter the restaurant may obstruct pedestrian traffic on the public sidewalk.

Condition No. 2-b of Conditional Use Permit No. 99-55 which established live entertainment at the restaurant prohibits the formation of lines to enter the restaurant. The condition also states that should lines form, an official security guard shall prevent the formation of lines from obstructing access on the public sidewalk. After chairs and tables are cleared from the outdoor dining area after 9 p.m., the proposed outdoor dining area may serve as a waiting area for customers if lines form. Furthermore, the railings will prevent customers waiting to enter the restaurant during hours of live entertainment from obstructing pedestrian traffic along the walkway.

ATTACHMENTS:

1. Revised suggested Findings and Conditions of Approval – CUP No. 06-23
2. Revised site plan dated October 20, 2006 and floor plans dated October 27, 2006
3. Code Requirements Letter dated November 2, 2006 (informational purposes only)
4. Police Department memorandum dated October 31, 2006
5. Applicant's response to issues and revised narrative dated October 27, 2006
6. Planning Commission Staff Report dated October 10, 2006
7. Draft License and Maintenance Agreement and Standard Requirements

ATTACHMENT NO. 1

REVISED **SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL**

CONDITIONAL USE PERMIT NO. 06-23

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

SUGGESTED FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 06-23:

1. Conditional Use Permit No. 06-23 to permit dancing in a designated area within the restaurant totaling 100 square feet of dance floor area, expand the hours of operation to between 11:00 a.m. and 2:00 a.m. Monday thru Friday and between 7:00 a.m. to 2:00 a.m. Saturday and Sunday and live entertainment to between 6:00 p.m. and 1:00 a.m. daily, establish an outdoor dining area with alcohol service within the public right-of-way removing one existing on-street parking, and participate in the Downtown Parking In-Lieu Fee program for two additional parking spaces will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the restrictions on hours of operation and the conditions of approval regulating noise generation in the entertainment permit. The proposed dance floor is ancillary to that of the restaurant operation. The outdoor dining area will be separated from the adjoining sidewalk by a 36-inch high barrier to protect pedestrians and to prevent the outdoor dining areas and alcohol service from expanding beyond the approved area. In addition, the availability of a variety parking opportunities currently exist along Main Street and surrounding streets as well as within public parking structures in proximity to the subject site.
2. The conditional use permit will be compatible with surrounding uses. The live entertainment and dance floor will be located within the restaurant and will be required to comply with conditions of approval imposed by the Planning Commission and monitored by the Police Department to assure impacts to surrounding properties are minimized. In addition, the proposed use would not result in noise impacts based on the mixed-use character of commercial developments in the downtown. The outdoor dining area will enhance the pedestrian character and scale of the street scene surrounding the project. The removal of one parking space is consistent with other projects within the same block that involved constructing outdoor dining within the public right-of-ways.

3. The proposed restaurant will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed use will comply with parking in the Downtown Parking Master Plan and will be accommodated through payment of parking in-lieu fees based on the size of the proposed dance floor. There is no physical expansion of the restaurant except for the outdoor dining area, which complies with all applicable development standards including sidewalk widths and separation from pedestrian walkways.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use on the subject property including the following policies and objectives identified in the General Plan:

A. Land Use Element

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian overlay district be sited and designed to enhance and stimulate pedestrian activity along the sidewalks.

Policy LU 15.2.2(a) Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The proposed dancing in association with existing live entertainment and amended hours of operation will allow the establishment to expand on its services to its patrons and surrounding residents. The proposal also provides visitors and tourists an additional activity consistent with other similar businesses within the primary commercial Downtown core. The project is located in a mixed-use district of the downtown area and within walking distance of several downtown parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining area is designed to provide the minimum required eight ft. wide sidewalk to ensure that the area is physically accessible to pedestrians consistent with the remainder of the second block of Main Street. The removal of one on-street parking space for the construction of outdoor dining will promote pedestrian activity as envisioned by the Downtown Specific Plan.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

LCP/DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed dancing in association with existing live entertainment and the amended hours of operation increases the commercial viability of the existing restaurant use allowing for its continued success within the Downtown and expands its available amenities to its patrons. The proposed outdoor dining will create a more lively pedestrian oriented use consistent with the other restaurant uses with outdoor dining along Main Street. The removal of one on-street parking space for the construction of outdoor dining will promote a lively, active commercial district at the street level. The provision of parking by participation in the In-Lieu Fee Program will not impact the Downtown Parking Master Plan, Downtown Specific Plan, or coastal resources because it is consistent with the adopted Coastal Element.

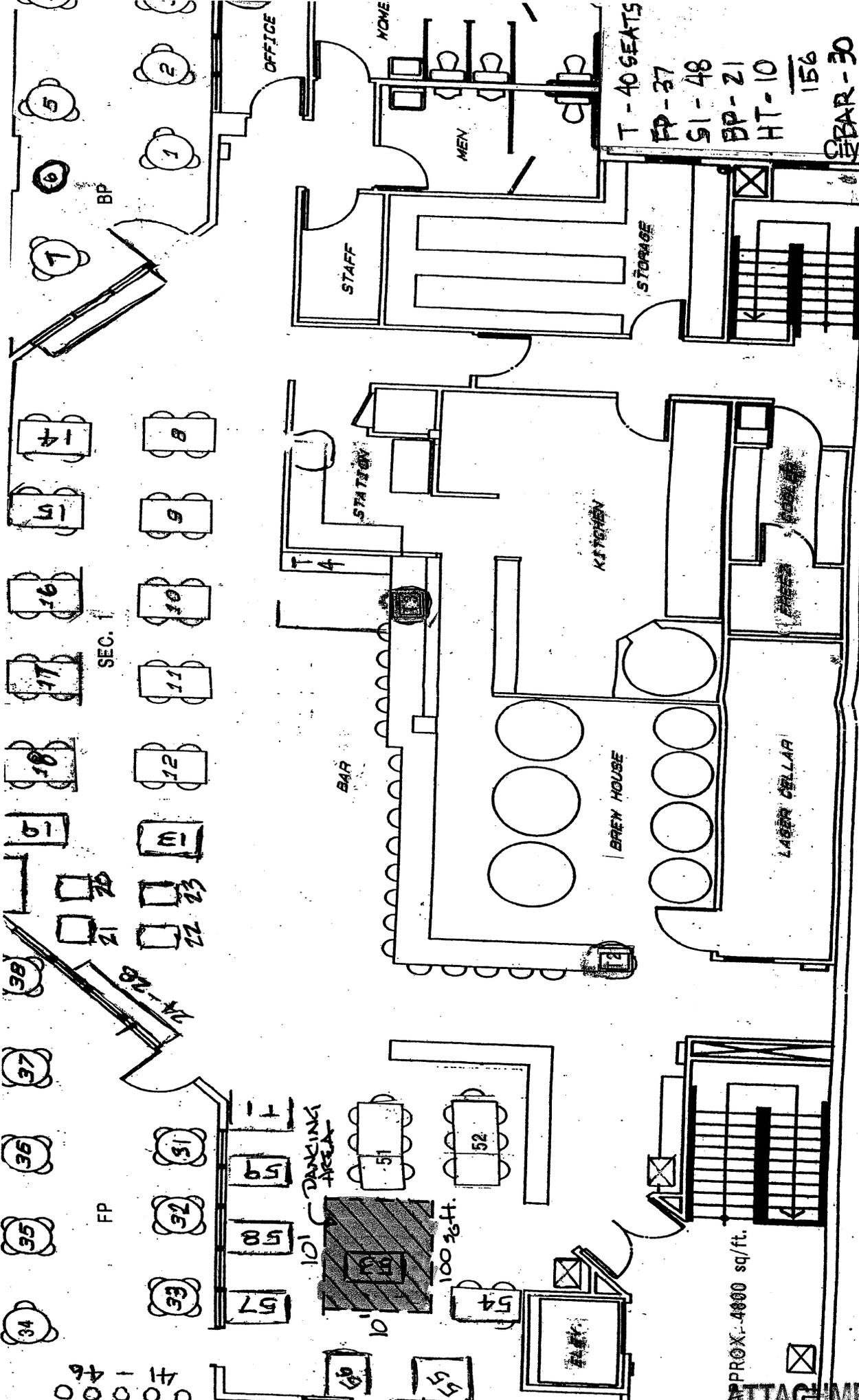
SUGGESTED CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 06-23:

1. The site plan received and dated October 20, 2006 and floor plan received and dated October 27, 2006, shall be the conceptually approved design with the following modifications:
 - a. The existing palm tree adjacent to the outdoor dining area shall be removed to provide a minimum eight-foot wide walkway and relocated to an area approved by the Public Works Department.
 - b. A minimum eight-foot wide walkway free from any obstruction shall be provided between the adjacent parking space (not including the two-foot vehicle overhang) and outdoor dining area.
2. Prior to commencing of the outdoor dining and dancing, the following shall be provided:
 - a. A copy of an approved Entertainment Permit, as issued by the Police Department, shall be submitted to the Planning Department.
 - b. A Certificate of Occupancy must be approved by the Planning Department and issued by the Building and Safety Department.
 - c. The property owner shall submit an In-Lieu Parking Fee Participation Agreement to the Planning Department for the \$32,817.08 total in parking fees. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of the Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
 - d. A copy of the recorded In-Lieu Parking Fee Participation Agreement and proof of full lump sum or first installment payment to the City Treasurer shall be submitted to the Planning Department.

- e. The applicant shall coordinate with the Planning Department and Public Works Department to relocate the newspaper racks in front of the entrance to restaurant/microbrewery.
3. Prior to issuance of an encroachment permit for construction within the public right-of-way, the following shall be complied with:
 - a. A License Agreement including all applicable fees and payment for funding of a code enforcement officer, as approved by the City Council, shall be obtained from the City for outdoor dining located on public property. The License Agreement shall be subject to termination pursuant to the terms of the License Agreement.
 - b. The applicant shall provide a Maintenance Agreement with the City for maintenance of all portions of the public property used and approved by the Planning Commission for the outdoor dining with alcohol service. Said agreement shall be submitted to and approved by the Department of Public Works prior to commencement of the use.
 - c. The applicant shall provide a public liability insurance policy as specified in all current insurance resolutions within 60 days from this approval (January 14, 2006). Such liability insurance shall be provided in a form acceptable to the City Attorney. The policy shall name the City of Huntington Beach as an additional insured and shall be maintained at all times.
 4. The use shall comply with the following:
 - a. The hours of operation for the restaurant (second floor dining area and terraces) shall be limited to between 11:00 a.m. and 2:00 a.m. Monday through Friday and between 7:00 a.m. and 2:00 a.m. Saturday, Sunday, and holidays.
 - b. The hours for operation for the outdoor dining area shall be limited to between 11:00 a.m. and 9:00 p.m. Monday through Friday and between 7:00 a.m. and 9:00 p.m. Saturday, Sunday, and holidays.
 - c. The operating hours for live entertainment shall be limited to between 6:00 p.m. and 1:00 a.m. daily.
 - d. The operating hours for dancing shall be limited to between 9:00 p.m. and 1:00 a.m. Thursday through Sunday.
 - e. All conditions of the Entertainment Permit as approved by the Police Department.
 - f. All conditions of approval under Conditional Use Permit No. 92-13 with the exception of Condition 2 which limits hours of operation and Conditional Use permit No. 99-55 shall remain in effect.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



T - 40 SEATS
 FP - 37
 SI - 48
 BP - 21
 HT - 10
 156
 BAR - 30

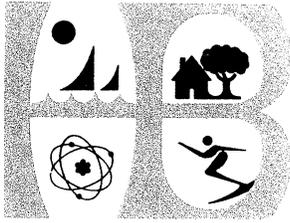
City of Huntington Beach

OCT 27 2006

☒ Potential
 Dumpster
 Locations

APPROX. 4800 sq/ft.

ATTACHMENT NO. 2.2



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone 536-5271
Fax 374-1540

November 6, 2006

Michael C. Adams
21190 Beach Blvd.
Huntington Beach, CA 92648

**SUBJECT: CONDITIONAL USE PERMIT NO. 06-23 (HB BEER COMPANY – 201 MAIN #E)
REVISED DEVELOPMENT AND USE REQUIREMENTS**

Dear Mr. Adams,

In order to assist you with your development proposal, staff has reviewed the project and identified applicable city policies, standard plans, and development and use requirements, excerpted from the City of Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes. This preliminary list is intended to help you through the permitting process and various stages of project implementation.

It should be noted that this requirement list is in addition to any "conditions of approval" adopted by the Planning Commission. Please note that if the design of your project changes or if site conditions change, the list may also change based upon modifications to your project and the applicable city policies, standard plans, and development and use requirements.

If you would like a clarification of any of these requirements, an explanation of the Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes, or believe some of the items listed do not apply to your project, and/or you would like to discuss them in further detail, please contact me at 714-374-1682 and/or the respective source department (abbreviation in parenthesis at end of each condition – contact person below).

Sincerely,

Rami Talleh
Associate Planner

Enclosures

cc: Gerald Caraig, Building and Safety Department – 714-374-1575
Eric Engberg, Fire Department – 714-536-5564
Terri Elliott, Public Works – 714-536-5580
Herb Fauland, Principal Planner
Jason Kelley, Planning Department
Sheryl and Tom Caverly, 555 Temple Hills Dr. Laguna Beach, CA 92651

ATTACHMENT NO. 3.1

PLANNING DEPARTMENT

DRAFT CODE REQUIREMENTS, POLICIES, AND STANDARD PLANS OF THE HUNTINGTON BEACH ZONING & SUBDIVISION ORDINANCE AND MUNICIPAL CODE

PROJECT: Conditional Use Permit No. 06-23 – HB Beer Company – 201 Main #E
ADDRESS: 201 Main Street Unit E, HB CA 92648

The draft list is intended to assist the applicant by identifying a preliminary list of code requirements applicable to the proposed project, which must be satisfied during the various stages of project implementation. Any conditions of approval adopted by the Planning Commission would also be applicable to your project. A final list of requirements will be provided upon approval by the applicable discretionary body. If you have any questions regarding these requirements, please contact the Project Planner and the applicable Department Representative.

CONDITIONAL USE PERMIT NO. 06-23:

1. Prior to commencing the live entertainment, dancing, and outdoor dining the following shall be approved and completed:
 - a. The property owner shall submit an In-Lieu Parking Fee Participation Agreement to the Planning Department. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of the Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach. **(City Council Resolution Nos. 6720 and 6721)**
 - b. A copy of an approved Entertainment Permit, approved by the Police Department and issued by the Business License Department, shall be submitted to the Planning Department. All conditions of the Entertainment Permit shall be observed.
 - c. A copy of the recorded In-Lieu Parking Fee Participation Agreement and proof of full payment or first installment payment to the City Treasurer shall be submitted to the Planning Department.
 - d. A Certificate of Occupancy must be approved by the Planning Department and issued by the Building and Safety Department.
2. The Planning Commission reserves the right to revoke Conditional Use Permit No. 06-23 pursuant to a public hearing for revocation, if any violation of the conditions of approval, Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs.
3. The project shall comply with all applicable requirements of the Municipal Code, Building & Safety Department and Fire Department, as well as applicable local, State and Federal Fire Codes, Ordinances, and standards, except as noted herein.
4. Construction shall be limited to Monday – Saturday 7:00 AM to 8:00 PM. Construction shall be prohibited Sundays and Federal holidays.
5. The applicant shall submit a check in the amount of \$43.00 for the posting of the Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Planning Commission's/ Zoning Administrator's action.



CITY OF HUNTINGTON BEACH

PUBLIC WORKS DEPARTMENT INTERDEPARTMENTAL COMMUNICATION

TO: Rami Talleh, Associate Planner

FROM: James Wagner, Associate Civil Engineer

DATE: November 1, 2006

SUBJECT: CUP 06-23 (201 Main Street, Unit E)–HB Beer Company Restaurant
Planning Application No. 2006-0116 - Development Requirements REVISED

This memo shall replace and supersede the memo dated July 11, 2006.

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO ISSUANCE OF AN ENCROACHMENT PERMIT:

1. The site plan received and dated October 20, 2006 shall be the conditionally approved layout.
2. A Street Improvement Plan prepared by a Licensed Civil Engineer shall be submitted to the Public Works Department for review and approval. (MC 17.05/ ZSO 230.84) The plans shall comply with Public Works plan preparation guidelines and include the following improvements on the plan:
 - a. The catch basin within the parking stall shall be removed and relocated outside of the proposed dining area. (ZSO 230.84)
 - b. The bicycle parking shall be relocated to a suitable location on the plan. (ZSO 230.84)
 - c. Curb, gutter and sidewalk along the Main Street frontage, per City Standard Plan Nos. 202 and 207. (ZSO 230.84)
 - d. ADA Pedestrian access along the Main Street frontage is required, per City of Huntington Beach Standard Plans 104 and 207. (ZSO 230.84)
 - e. The existing irrigation water service(s) currently serving the existing landscape shall be relocated. (ZSO 230.84)
 - f. Show all existing features including catch basin, gutter, hardscape, parking meter and bike rack.
3. A Landscape and Irrigation Plan for the tree relocation prepared by a Licensed Landscape Architect shall be submitted to the Public Works Department for review and approval by the Public Works and Planning Departments. (ZSO 232.04)
4. All landscape planting, irrigation and maintenance shall comply with the City Arboricultural and Landscape Standards and Specifications. (ZSO 232.04B)
5. The Landscape Architectural plans shall utilize the existing “as-built” landscape plans as base information that shall be modified to accommodate the new landscape additions that will be required by the City of Huntington Beach to make the installation acceptable for City crews to maintain.

6. All hardscape shall be designed to match the existing enriched paving and shall be shown on both the Engineers Street Improvement plan and the Landscape Architects plans. Hardscape shall include but not be limited to the paving and pavers, the curbs, the relocation of the existing catch basin, the bollards, the bike rack, the cordon fencing, the tree grate and any other elements.

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH DURING CONSTRUCTION OPERATIONS:

1. The construction disturbance area shall be kept as small as possible. (EC1)
2. Comply with appropriate sections of AQMD Rule 403, particularly to minimize fugitive dust and noise to surrounding areas. (AQMD Rule 403)
3. Remediation operations, if required, shall be performed in stages concentrating in single areas at a time to minimize the impact of fugitive dust and noise on the surrounding areas.

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO FINAL INSPECTION OR OCCUPANCY:

1. Complete all improvements as shown on the approved Landscape and Street Improvement plans. (MC 17.05)
2. Existing curb, gutter and sidewalk shall be removed and replaced per City Standard Plan Nos. 202 and 207. Existing street tree(s) to be inspected by the City Inspector during removal of concrete and prior to replacement thereof. Tree replacement or root/tree protection, will be specified upon the inspection of the root system. (Resolution 4545)
3. All landscape irrigation and the Landscape Architect of record shall certify planting installation to be in conformance to the City approved landscape plans in written form to the City Landscape Architect prior to the final landscape inspection and approval. "Smart irrigation controllers" and/or other innovative means to reduce the quantity of runoff shall be installed. (ZSO 232.04D)
4. Applicant shall provide City with CD media TIFF images (in City format) and CD (AutoCAD only) copy of complete City Approved landscape construction drawings as stamped "Permanent File Copy" prior to starting landscape work. Copies shall be given to the City Landscape Architect for permanent City record.

INFORMATION ON SPECIFIC CODE REQUIREMENTS

These code requirements are provided for reference. This is not a complete list of all code requirements applicable to this project.

1. Standard landscape code requirements apply. (ZSO 232)
2. City Arboricultural and Landscape Standards and Specifications apply. (Resolution 4545)
3. All applicable Public Works fees shall be paid. Fees shall be calculated based on the currently approved rate at the time of payment unless otherwise stated. (ZSO 250.16)
4. An Encroachment Permit is required for all work within the City's right-of-way. (MC 14.36.020)



HUNTINGTON BEACH

CITY OF HUNTINGTON BEACH

INTER-DEPARTMENT COMMUNICATION

From: Daniel Lee

Ext.: 5679

Date: 7/19/06

To: Rami Talleh

Project Location: 201 Main Street

Re: 224 S.F. Outdoor Dining Addition

(Revised)

PETITION: _____

File No.: 2006-0116

The following are comments to the file (petition) identified above. This list is not a plan check correction list. General information is provided to help facilitate the development by giving you up front information on building code issues, City policies, and other codes or laws as they apply to your project. Please review the comments below before you submit for plan check. Allow 20 working days for first corrections.

If you incorporated the information below, you must next submit for plan check of structural and building code requirements. You may obtain all required forms and information for plan check review and permit applications on the 3rd floor of City Hall.

M/E/P plan checking is a separate plan check process.

Please include the following issues in the design of your project to reduce plan check corrections and improve turn around time.

Note to Planner: Please remind applicant to attach a copy of this list to the Plan Check Submittal Documents to help expedite plan check response and reduce corrections.

Comments:

1. A new certificate of occupancy is required as the occupant load will increase.
2. There is no such thing as a 'City standard railing'. However if this railing/fence does not exceed 42" in height, no building permit is required.
3. Verify that an accessible parking stall is not eliminated by the addition of this dining area.
4. Outdoor dining area shall show an accessible dining space.
5. Outdoor dining area gate shall swing outward and satisfy accessibility requirements.
6. Restaurant staff may use the elevator to transport food to the outdoor dining area.



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

TO: Rami Talleh, Associate Planner

FROM: C. Thomas, Captain 
Uniform Division Commander

SUBJECT: Conditional Use Permit 06-23

DATE: October 31, 2006

I have reviewed the updated plans, dated 10/20/06, for the proposed modifications to the Huntington Beach Beer Company (CUP 06-23). With the exception of the tree that is immediately adjacent to the outdoor dining area, the Police Department does not have concerns regarding the proposed modifications. With the outdoor dining now directly adjacent to the building and the 8 ft. wide sidewalk, the concerns regarding pedestrian congestion is minimized.

CT/kc

City of Huntington Beach

OCT 31 2006

ATTACHMENT NO. 4.1

OCT 27 2006

REVISED
NARRATIVE
(10/27/2006)

Location: 201 Main Street, Suite E

Business: Huntington Beach Beer Company

Request: To permit a 220 sq. ft. outdoor dining area and indoor live entertainment with dancing (100 sq. ft. dance floor) and DJ. The applicant also requests an amendment to the existing hours of operation to be open at 7:00 am Saturday, Sunday and holidays and be allowed the same hours for both upstairs patios. The outdoor dining request also includes the removal of one parking space located on Main St. to accommodate the outdoor dining. Request participation in the Downtown In-Lieu Parking Fee Program for the addition of dancing.

Hours of Operation Business:
11:00 am to 2:00 am (Monday thru Friday)
7:00 am to 2:00 am (Saturday/Sunday/Holidays)

Live Entertainment:
6:00 pm to 1:00 am (daily)

Dancing:
9:00 pm to 1:00 am (Thursday thru Sunday)

Outdoor Dining:
11:00 am to 9:00 pm (daily)
7:00 am to 9:00 pm (Saturday/Sunday/Holidays)

Zoning and
General Plan:

The property is zoned SP-5 and the General Plan is MV F6/25-sp-pd

Suite Size: 4,800 sq. ft.

Surrounding Uses: North- Commercial
East-Commercial
South-Commercial
West-Commercial

Environmental Status: There are no significant environmental impacts associated with This project. The project site is not within a known hazardous waste and substance site.

Land Use
Compatibility: The proposed project is compatible with existing commercial development within the area because the use is similar to other businesses in the area and will not generate additional noise that could be heard by adjacent businesses.

MICHAEL C. ADAMS ASSOCIATES

City of Huntington Beach

OCT 27 2006

October 25, 2006

Mr. Robert Dingwall
Planning Commission
2000 Main Street
Huntington Beach, Ca 92648

Re: Huntington Beach Beer Co. (Outdoor Dining)

Dear Mr. Dingwall:

On October 10, 2006, the Planning Commission and Police Chief Small raised a number of issues and concerns on the proposal for outdoor dining at the Huntington Beach Beer Co. The original idea was to simply propose a layout and design consistent with other businesses in the block, however that proposal is apparently not acceptable at this location. After listening to the Planning Commission concerns and a follow-up meeting with the Police and Planning Departments, we have prepared an alternative layout for consideration.

The new design places the outdoor dining area adjacent to the building, relocating the sidewalk around the dining area and adjacent to the curb. The reconfigured sidewalk will provide the same clearances as exists along the current pathway (8' wide with a reduction adjacent to the existing street trees of 4').

This alternative provides a better connection between the restaurant and the outdoor dining area, and removes the cross circulation conflict experienced by other restaurants. The new design will also limit the need for additional traffic bollards and allows for a larger bicycle parking area. The size of the outdoor dining area is approximately the same as previously proposed (220 sq. ft. vs. 224 sq. ft) and will accommodate the same number of diners.

The hours of operation requested are attached in matrix, with a comparison to the original hours approved in 1992 with CUP No. 92-13. We are also exploring the possibility of incorporating a dumb waiter system to provide service to the

P.O. BOX 382
HUNTINGTON BEACH, CA 92648
PHONE 714.374.5678 FAX 714.374.2211
e-mail: AdamsAssoc@socal.rr.com

ATTACHMENT NO. 5.2

outdoor dining area, although we do not believe that sharing the elevator space with patrons will create any substantial conflict. Ultimately, we will comply with the regulations imposed by the Orange County Health Agency.

Other issues raised by the Planning Commission are addressed in the current regulations for outdoor dining outlined in the 1999 Amendment to the Downtown Specific Plan. The Huntington Beach Beer Company request for outdoor dining will comply with all existing regulations including:

- Minimum 8' clear passage area for pedestrian access
- A physical barrier of 36" in height surrounding the area
- All tables and chairs when not in use shall be removed from the area

In addition, the applicant will enter into a License Agreement with the City for the encroachment into the public right of way, which will assure adequate maintenance of the area.

Hopefully the revised layout and design addresses all of the Planning Commissions concerns. We feel that the proposed alternative is a better design and will minimize potential conflicts along the sidewalk. Outdoor dining along Main Street has become an important aspect of the Downtown revitalization, the Huntington Beach Beer Company simply wants an opportunity to participate like other restaurants in the block.

Thank you for your consideration, if you have any questions or concerns please call me.

Sincerely,


Mike Adams

Attachments

cc: Rami Talleh
Cesar Pena

ATTACHMENT NO. 5.3

Huntington Beach Beer Company
Hours of Operation

	Approved CUP No. 92-13	Request CUP No. 06-23
Dining Room, including Upstairs Balconies	Sun. – Thur. 11:00 am to 12:00 am Fri. – Sat. 11:00 am to 2:00 am	Mon. – Fri. 11:00 am to 2:00 am Sat. – Sun. 7:00 am to 2:00 am (Holidays)
Outdoor Sidewalk	-	Mon. – Fri. 11:00 am to 9:00 pm Sat. – Sun. 7:00 am to 9:00 pm (Holidays)
Live Entertainment	-	Daily 6:00 pm to 1:00am
Dancing	-	Thur. – Sun. 9:00 pm to 1:00 am



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Planning Director
BY: Rami Talleh, Associate Planner 
DATE: October 10, 2006

SUBJECT: CONDITIONAL USE PERMIT NO. 06-23 (HB BEER COMPANY)

APPLICANT: Michael C. Adams Associates, 21190 Beach Blvd., Huntington Beach, CA 92648

PROPERTY

OWNER: Sheryl and Tom Caverly, 553 Temple Hills Dr., Laguna Beach, CA 92651

LOCATION: 201 Main Street, Suite E (Northwest corner of Main St. and Walnut Ave.)

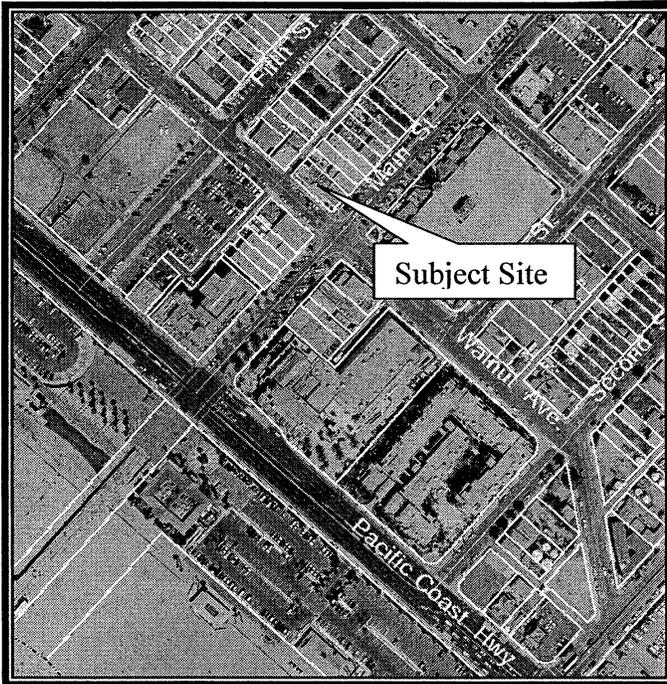
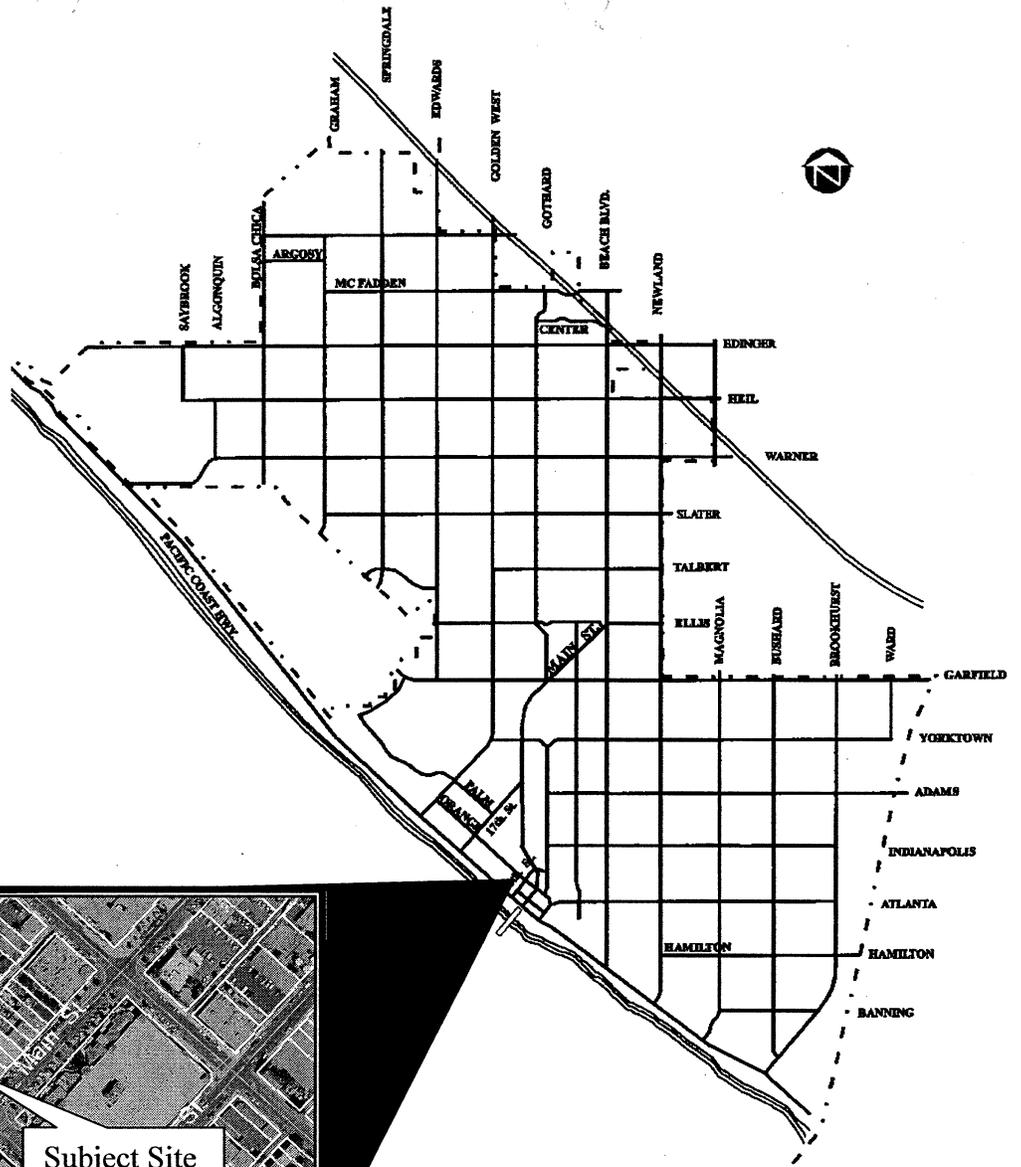
STATEMENT OF ISSUE:

- ◆ Conditional Use Permit No. 06-23 request:
 - Amend existing approved hours of operation to allow expanded hours for the restaurant/microbrewery from 11:00 am to 2:00 am Monday thru Friday and from 7:00 am to 2:00 am Saturday and Sunday and to permit live entertainment from 6:00 pm to 1:30 am daily
 - Permit dancing within the restaurant/microbrewery in conjunction with existing approved live entertainment
 - Permit construction of an outdoor dining area with alcohol sales within the public right-of-way and removing one existing on-street public parking space
 - Permit participation in the Downtown Parking In-Lieu Fee Program for three parking spaces (2 spaces - dance floor, 1 space - on-street public parking)

- ◆ Staff's Recommendation:

Approve Conditional Use Permit No. 06-23 based upon the following:

 - Dancing within the restaurant and outdoor dining on Main Street will comply with the Downtown Specific Plan
 - Dancing with live entertainment and amended hours of operation will not impact surrounding properties
 - Downtown Specific Plan promotes outdoor uses to foster pedestrian activity
 - Outdoor dining promotes the long-range goal of a pedestrian mall
 - Required parking will be provided by participation in the Parking In-Lieu Fee Program and no impacts to downtown parking are anticipated



VICINITY MAP
CONDITIONAL USE PERMIT NO. 06-23
(HB BEER COMPANY – 201 MAIN STREET #E)

RECOMMENDATION:

Motion to:

- A. "Approve Conditional Use Permit No. 06-23 with findings and suggested conditions of approval (Attachment Nos. 1 and 2)."

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Deny Conditional Use Permit No. 06-23 with findings for denial."
- B. "Continue Conditional Use Permit No. 06-23 and direct staff accordingly."

PROJECT PROPOSAL:

Conditional Use Permit No. 06-23 represents a request for the following:

- A. To permit dancing in a designated area within the restaurant totaling 200 square feet of dance floor area pursuant to Section 4.7.01 (b) Permitted Uses of the Downtown Specific Plan (SP-5).
- B. To amend Conditional Use Permit No. 92-13 which limits the hours of operation for the restaurant/microbrewery. The approved hours are from between 11:00 am and 12:00 am Sunday thru Thursday and between 11:00 am and 2:00 am Friday and Saturday. The amendment is to have hours between 11:00 am and 2:00 am Monday thru Friday and between 7:00 am to 2:00 am Saturday and Sunday. In addition, the hours for live entertainment are requested to be between 6:00 pm and 1:30 am daily. The request is pursuant to Section 241.18 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).
- C. To establish an outdoor dining area with alcohol service within the public right-of-way pursuant to the Downtown Specific Plan Section 4.2.33.
- D. To participate in the Downtown Parking In-Lieu Fee program for three additional parking spaces (two required for the proposed dance floor use and one replacing an existing on-street open parking space).

The existing restaurant/microbrewery has been in operation since 1992 and was approved for live entertainment in 1999. The restaurant/microbrewery occupies the entire second level of the building. The entrance to the restaurant/microbrewery is located on the first floor of the unit on Main Street. The first floor consists of an entrance hall, elevator, and staircase leading to the second floor. The dining area, bar, brewery, and kitchen are located on the second floor of the unit. Two outdoor dining terraces are also located on the second floor facing Main Street and Walnut Avenue.

The applicant requests to amend the previously approved hours of operation for the restaurant and live entertainment. The existing hours of operation are limited to between the hours of 11:00 am and 12:00 am Sunday thru Thursday and between 11:00 am and 2:00 am Friday and Saturday. The applicant proposes to expand the hours of operation for the restaurant to between 11:00 am and 2:00 am Monday thru Friday and between 7:00 am to 2:00 am Saturday and Sunday. Live entertainment is proposed to be expanded to between 6:00 pm and 1:30 am daily.

The applicant proposes a 200 sq. ft. dance floor in association with existing live entertainment at the restaurant/microbrewery between the hours of 9:00 pm and 1:00 am Thursday thru Sunday. The dance floor will be located on the second floor of the restaurant in a designated area adjacent to the elevator. The applicant proposes to convert existing floor area within the restaurant to dance floor. The parking requirement for dance floor is one parking space for every 50 sq. ft. of dance floor area (4 spaces total). The area was previously parked for restaurant at one parking space for every 100 sq. ft. of restaurant gross floor area (2 spaces total). Therefore, conversion of the dining area to dance floor will require only two additional parking spaces.

In addition, the applicant requests a 224 sq. ft. outdoor dining area with alcohol service in the public right of way directly across from the entrance to the restaurant on the ground floor. Currently, the area in front of the restaurant does not provide an adequate area for outdoor dining. The area includes an 8 ft. wide public sidewalk, a landscape planter, and on-street public parking. Therefore, the applicant proposes to locate the outdoor dining area within the public right-of-way in an area occupied by one metered on-street parking space and bicycle rack. The applicant proposes to replace the parking space and bicycle rack with the outdoor dining area. The sidewalk, curb, and gutter will be expanded to create a pad level with the existing sidewalk for the outdoor dining area. The bicycle rack will be relocated next to the proposed outdoor dining area in a similar configuration as currently exists and designed. Furthermore, the outdoor dining area will be provided with city standard rails along the perimeter and bollards along Main Street. An 8-foot wide sidewalk with an additional 4 feet of building setback on private property (total 12 ft. wide walkway) will be available for pedestrian access. The food service will be provided to the ground level outdoor dining area via the elevator and staircase. The project will be conditioned to remove and relocate the existing newspaper racks located within the sidewalk.

The applicant's request includes participation in the Parking In-Lieu Fee Program for three parking spaces to satisfy the parking requirement for the dance floor and the removal of one on-street parking space. The Parking In-Lieu Fee is \$16,408.54 per space for a total of \$49,225.62. The fees can be paid in installments or a onetime lump sum payment. The applicant will be required to provide an in-lieu participation agreement for review and approval by the Planning Department and City Attorney's office prior to commencement of the use. The City previously approved a similar request for the removal of four on-street parking spaces within the second block of Main Street.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	MV-F6/25-sp-pd (Mixed Use Vertical-specific plan-pedestrian overlays)	SP-5 (Mixed Use: Commercial/Office/Residential)	Restaurant/retail
North of Subject Property:	MV-F6/25-sp-pd (Mixed Use Vertical-specific plan-pedestrian overlays)	SP-5 (Mixed Use: Commercial/Office/Residential)	retail
East of Subject Property (across Main St.):	MV-F6/25-sp-pd (Mixed Use Vertical-specific plan-pedestrian overlays)	SP-5 (Mixed Use: Commercial/Office/Residential)	restaurant
South of Subject Property:	MV-F6/25-sp-pd (Mixed Use Vertical-specific plan-pedestrian overlays)	SP-3 (Visitor Serving Commercial)	Retail
West of Subject Property:	MV-F6/25-sp-pd (Mixed Use Vertical-specific plan-pedestrian overlays)	SP-5 (Mixed Use: Commercial/Office/Residential)	Restaurant/retail/Parking structure

General Plan Conformance:

The General Plan Land Use Map designation on the subject property is Mixed Use – Vertical. The proposed project is consistent with this designation and the goals, objectives, and policies of the City’s General Plan as follows:

A. Land Use Element

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian overlay district be sited and designed to enhance and stimulate pedestrian activity along the sidewalks.

Policy LU 15.2.2(a) Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The proposed dancing in association with existing live entertainment and amended hours of operation will allow the establishment to expand its services to its patrons and surrounding residents. The proposal also provides visitors and tourists an additional activity consistent with other similar businesses within the primary commercial core of Downtown. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining area is designed to provide the minimum code required eight ft. wide sidewalk to ensure that the area is physically accessible to pedestrians consistent with the remainder of the second block of Main Street. The removal of one on-street parking space for the construction of outdoor dining will promote pedestrian activity as envisioned by the Downtown Specific Plan.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

LCP/DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed dancing in association with existing live entertainment and the amended hours of operation increases the commercial viability of the existing restaurant by allowing for its continued success within the Downtown while expanding its available amenities to its patrons. The proposed outdoor dining will create a more lively pedestrian oriented use consistent with the other restaurant uses along Main Street. The removal of one on-street parking space for the construction of outdoor dining will help promote a lively, active commercial district at the street level. The provision of parking by participation in the In-Lieu Fee Parking Program will not impact the Downtown Parking Master Plan, Downtown Specific Plan, or coastal resources because it is found to be consistent with the adopted Coastal Element.

Zoning Compliance:

This project is located in the Downtown Specific Plan, District No. 5 (Mixed-Use) and complies with all of the requirements of that zone. The applicant proposes to participate in the City's Downtown In-Lieu Fee Parking Program to satisfy the code requirement for the additional parking spaces for the dance floor and the removal of one on-street parking space.

Environmental Status:

The proposed project is Categorically Exempt pursuant to Class 1, Existing Facilities, Section 15301 of the California Environmental Quality Act that states that minor alterations and operation to existing structures are exempt from further environmental review.

Coastal Status:

The proposed project is located within a non-appealable portion of the Coastal Zone. A coastal development permit (CDP No. 95-13) was previously approved for the establishment of two small outdoor dining areas for the site. The proposed use is exempt from the requirements of a coastal development permit because the coastal issues were addressed by the previously approved coastal development permit.

Redevelopment Status:

The project is located in the Huntington Beach Redevelopment Project, Main-Pier subarea. The Economic Development Department has reviewed the proposal and supports the request to establish the restaurant with dancing and outdoor dining with alcohol service.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

The Departments of Public Works and Building and Safety have reviewed the proposal and have identified the code requirements applicable to the request. The Public Works Department has provided several conditions of approval pertaining to the construction of the outdoor dining area (Attachment No. 2). The code requirements pertaining to the project have been incorporated into the code requirements list and previously provided to the applicant for the purpose of facilitating the plan check and implementation phases of the project (Attachment No. 4). The Police Department has indicated that they have concerns with the proposed outdoor dining area and do not support the proposal due to potential conflicts with pedestrian traffic (Attachment No. 5).

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on September 28, 2006, and notices were sent to property owners of record and tenants within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Department's Notification Matrix), applicant, and interested parties. As of October 3, 2006, one letter opposing the request has been received (Attachment No. 7).

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

MANDATORY PROCESSING DATE(S):

Conditional Use Permit: September 1, 2006

October 30, 2006

ANALYSIS:

Land use/Compatibility

The proposal to permit dancing within the restaurant will be compatible with the surrounding properties because the dance floor is small and dancing is ancillary to the primary use of the building as a restaurant/microbrewery. The project site is located in a highly urbanized area and is consistent with the mixed-use character of the Downtown. The existing building is adjacent to primarily commercial uses with the nearest residential use located approximately 35 feet from the subject site above a restaurant on 5th Street. In addition, as with any downtown use, the proposed restaurant is required to comply with standard noise requirements identified in the City's Municipal Code as well as any requirements imposed by the Police Department on the entertainment permit. The adherence to the Noise Ordinance and entertainment permit will ensure that the proposed use will be compatible with the mixed-use nature of the development and not have a negative noise impact on the adjacent residential uses.

Staff has determined that the expanded hours of operation would not result in noise levels above that allowed in the Downtown. The project will be subject to the noise ordinance and entertainment permit issued by the Police Department. Furthermore the proposed hours of operation will be consistent with that of other similar business in the Downtown.

Staff has determined that the addition of dancing to existing live entertainment activities within the restaurant, would not result in noise impacts based on the small and ancillary nature of the dance floor. In addition, the restaurant is located in a mixed-use area and the primary commercial core of Downtown. Staff recommends approval of the dancing within the restaurant in conjunction with existing live entertainment, subject to the recommended conditions in the Conditional Use Permit and the Entertainment Permit.

Outdoor Dining

The existing design of the building and location to the sidewalk provides little space that is adequate to accommodate outdoor dining opportunities consistent with other restaurants along the second block of Main Street. Based upon these physical constraints and to be competitive with other downtown merchants, the applicant is pursuing the request to remove one adjacent on-street public parking space. As part of the redevelopment efforts of the downtown area, the public improvements along Main Street, and goals of the Downtown Specific Plan (Village Concept), outdoor dining is a vital part of downtown activity. To continue to promote pedestrian and outdoor activity, the removal of one space will create the area necessary and consistent with the outdoor dining areas along the first two blocks of Main Street. A similar request has been granted for another restaurant on this block of Main Street.

Staff supports the request for outdoor dining due to the adequate space provided for pedestrian traffic. The outdoor dining area is proposed to provide the minimum code required eight-foot wide sidewalk in addition to four feet of area in front of the storefront as a result of the building setback. Therefore a total of 12 ft. of area will be maintained for pedestrian access between the outdoor dining area and the building storefront. A minimum thirty-six inch high railing is required in compliance with City design standards and will be provided along the perimeter of the outdoor dining area. The railings will separate patrons of

the outdoor dining area from pedestrians walking along Main Street. The outdoor dining area is located approximately 40 ft. from the intersection of Main Street and Walnut Avenue leaving an area of approximately 700 sq. ft. at the corner to accommodate pedestrians waiting at the crosswalk to cross the street. Furthermore, the existing bicycle racks are proposed to be relocated north of the outdoor dining area to further eliminate any potential pedestrian conflicts.

Consistent with other restaurants located within the public right-of-way along the second block of Main Street, the property owner will enter into a License and Maintenance Agreement with the City of Huntington Beach for use of public property. The agreement will include standard requirements established by the City regarding use of the public right of way and alcohol on public property.

Parking

The existing building has been determined to be parked pursuant to the Downtown Parking Master Plan. A total of thirty-six parking spaces were required for the use of the restaurant on the second floor pursuant to CUP No. 92-13. A condition of approval required the property owner to provide the required parking through payment of parking in-lieu fees. Because the project involves the introduction of a 200 square foot dance floor and the removal of one on-street parking space, the project would require three additional parking spaces. As part of this project, the applicant is requesting to participate in the Downtown Parking In-Lieu Fee Program for the 3 parking spaces (\$16,408.54 per space or \$49,225.62 total). The in-lieu fee payment will be combined with previously collected fees for future parking opportunities within the Downtown. The participation and use of the collected fees is consistent with past projects where on-street parking was removed for the establishment of outdoor dining.

Staff is in support of the request for participation in the parking in-lieu fee program because the request is minimal (3 space) and it continues to be used as an option for businesses that cannot provide parking on-site and allows continued business expansion and retention in the Downtown. In addition, removal of one on-street parking space will create an area for outdoor dining to benefit the business consistent with other restaurant uses along the second block of Main Street, continue to promote the pedestrian and outdoor dining atmosphere in the downtown, and promote the long range goal of a possible pedestrian mall.

An In-lieu Parking Fee Participation Agreement is required to be submitted. The agreements shall be reviewed and approved by the Planning Department and City Attorney as to form and content and recorded with the County of Orange prior to commencement of the dancing or outdoor dining area whichever occurs first. A lump sum payment or first installment payment of the in-lieu fees shall be made to the City Treasurer prior to commencement of the uses.

ATTACHMENTS:

1. Suggested Findings and Conditions of Approval – CUP No. 06-23
2. Public Works Department Conditions of Approval dated September 28, 2006
3. Site Plan and Floor Plans dated May 10, 2006
4. Code Requirements Letter dated September 1, 2006, (informational purposes only)
5. Police Department memorandum dated September 27, 2006
6. Conditions of Approval – Conditional Use Permit No. 92-13 and Conditional Use Permit No. 99-55.
7. Letters received in support/opposition

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 06-23

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

SUGGESTED FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 06-23:

1. Conditional Use Permit No. 06-23 to permit dancing in a designated area within the restaurant totaling 200 square feet of dance floor area, expand the hours of operation to between 11:00 am and 2:00 am Monday thru Friday and between 7:00 am to 2:00 am Saturday and Sunday and live entertainment to between 6:00 pm and 1:30 am daily, establish an outdoor dining area with alcohol service within the public right-of-way removing one existing on-street parking, and participate in the Downtown Parking In-Lieu Fee program for three additional parking spaces will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the restrictions on hours of operation and the conditions of approval regulating noise generation in the entertainment permit. The proposed dance floor will be ancillary to that of the restaurant operation. The outdoor dining area will be separated from the adjoining sidewalk by a 36-inch high barrier to protect pedestrians and to prevent the outdoor dining areas and alcohol service from expanding beyond the approved area. In addition, the availability of a variety of parking opportunities currently exist along Main Street and surrounding streets as well as within public parking structures in proximity to the subject site.
2. The conditional use permit will be compatible with surrounding use. The dance floor will be located within the restaurant and will be required to comply with conditions of approval imposed and monitored by the Planning Commission, Alcoholic Beverage Control (ABC) and Huntington Beach Police Department to assure impacts to surrounding properties are minimized. In addition, the proposed use would not result in noise impacts based on the mixed-use character of commercial developments in the downtown. The outdoor dining area will enhance the pedestrian character and scale of the street scene surrounding the project. The removal of one parking space is consistent with other projects within the same block that involved constructing outdoor dining within the public right-of-ways.

3. The proposed restaurant will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed use will comply with parking in the Downtown Parking Master Plan and will be accommodated through payment of parking in-lieu fees based on the size of the proposed dance floor. There is no physical expansion of the restaurant except for the outdoor dining area, which complies with all applicable development standards including sidewalk widths and separation from pedestrian walkways.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use on the subject property including the following policies and objectives identified in the General Plan:

A. Land Use Element

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian overlay district be sited and designed to enhance and stimulate pedestrian activity along the sidewalks.

Policy LU 15.2.2(a) Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The proposed dancing in association with existing live entertainment and amended hours of operation will allow the establishment to expand on its services to its patrons and surrounding residents. The proposal also provides visitors and tourists an additional activity consistent with other similar businesses within the primary commercial Downtown core. The project is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining area is designed to provide the minimum required eight ft. wide sidewalk to ensure that the area is physically accessible to pedestrians consistent with the remainder of the second block of Main Street. The removal of one on-street parking space for the construction of outdoor dining will promote pedestrian activity as envisioned by the Downtown Specific Plan.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

LCP/DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed dancing in association with existing live entertainment and the amended hours of operation increases the commercial viability of the existing restaurant use allowing for its continued success within the Downtown and expands its available amenities to its patrons. The proposed outdoor dining will create a more lively pedestrian oriented use consistent with the other restaurant uses with outdoor dining along Main Street. The removal of one on-street parking space for the construction of outdoor dining will promote a lively, active commercial district at the street level. The provision of parking by participation in the In-Lieu Fee Program will not impact the Downtown Parking Master Plan, Downtown Specific Plan, or coastal resources because it is consistent with the adopted Coastal Element.

SUGGESTED CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 06-23:

1. The site plan, floor plans, and elevations received and dated May 10, 2006, shall be the conceptually approved design.
2. Prior to commencing of the outdoor dining and dancing, the following shall be provided:
 - a. A copy of an approved Entertainment Permit, as issued by the Police Department, shall be submitted to the Planning Department.
 - c. A Certificate of Occupancy must be approved by the Planning Department and issued by the Building and Safety Department.
 - d. The property owner shall submit an In-Lieu Parking Fee Participation Agreement to the Planning Department for the \$49,225.62 total in parking fees. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of the Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
 - e. A copy of the recorded In-Lieu Parking Fee Participation Agreement and proof of full lump sum or first installment payment to the City Treasurer shall be submitted to the Planning Department.
 - f. The newspaper racks in front of the entrance to restaurant/microbrewery shall be removed.
3. Prior to issuance of an encroachment permit for construction within the public right of way, the following shall be complied with:

on public property. The License Agreement shall be subject to termination pursuant to the terms of the License Agreement.

- b. The applicant shall provide a Maintenance Agreement with the City for maintenance of all portions of the public property used and approved by the Planning Commission for the outdoor dining with alcohol service. Said agreement shall be submitted to and approved by the Department of Public Works prior to commencement of the use.
 - c. The applicant shall provide a public liability insurance policy as specified in all current insurance resolutions within 60 days from this approval (May 14, 2001). Such liability insurance shall be provided in a form acceptable to the City Attorney. The policy shall name the City of Huntington Beach as an additional insured and shall be maintained at all times.
4. The use shall comply with the following:
- a. All conditions of the Entertainment Permit as approved by the Police Department.
 - b. All conditions of approval under Conditional Use Permit No. 92-13 with the exception of Condition 2 which limits hours of operation and Conditional Use permit No. 99-55 shall remain in effect.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



CITY OF HUNTINGTON BEACH

PUBLIC WORKS DEPARTMENT INTERDEPARTMENTAL COMMUNICATION

TO: Rami Talleh, Associate Planner

FROM: James Wagner, Associate Civil Engineer *→RW*

DATE: September 28, 2006

SUBJECT: CUP 06-23 (201 Main Street, Unit E)—HB Beer Company Restaurant
Planning Application No. 2006-0116 - Conditions REVISED

This memo shall replace and supercede the memo dated July 11, 2006. (Deleted "Prior to Grading Permit" items 1(a) and 1(e) both involving parking which shall be handled in other Department development requirements for the project)

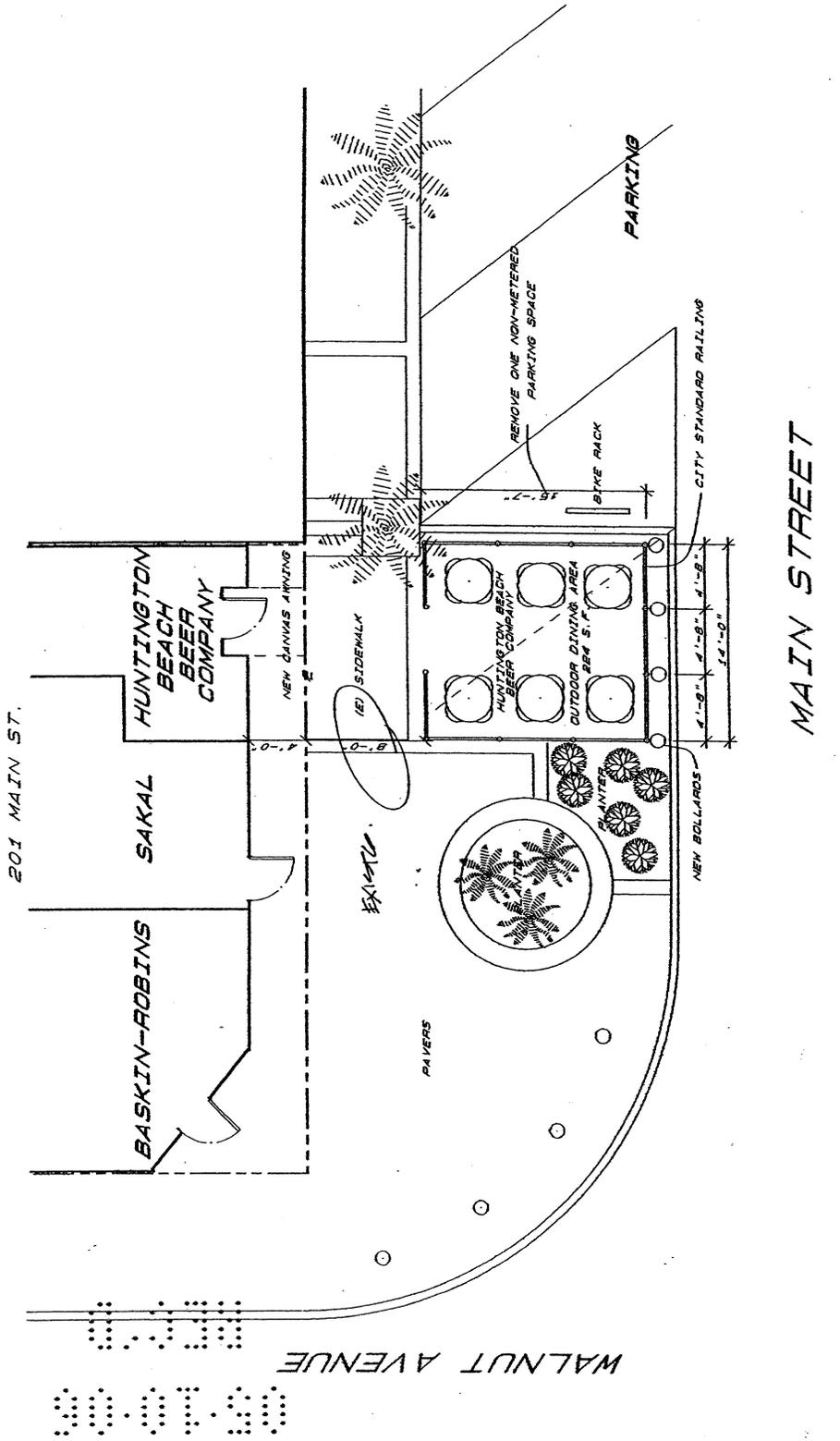
Public Works has reviewed the subject project and site plan received and dated May 10, 2006 for the request to permit a 224 square-foot outdoor dining area within the Public Right-of-Way. The following are the Conditions for the project:

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO ISSUANCE OF A GRADING PERMIT:

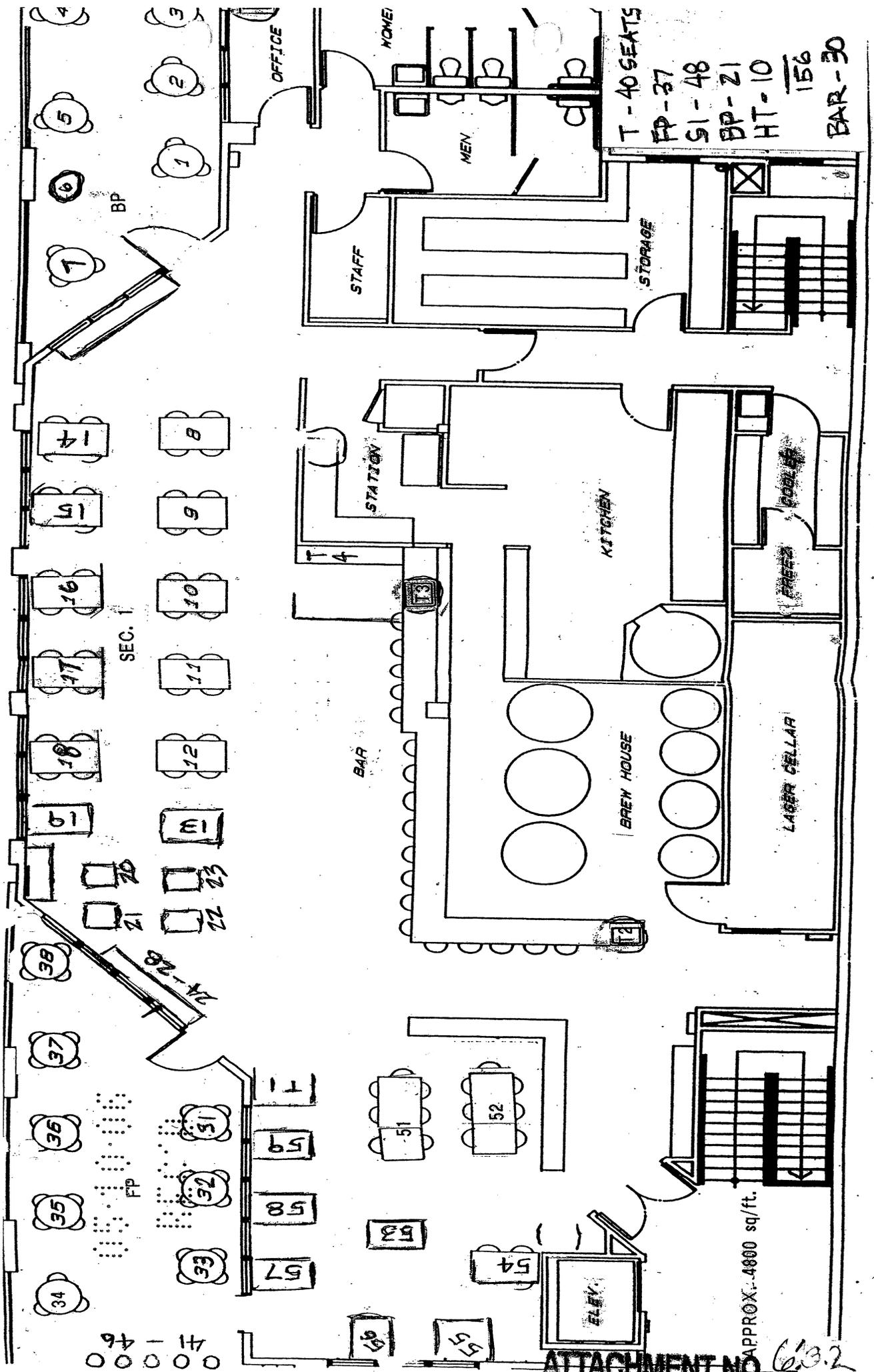
1. The site plan received and dated May 10, 2006 shall be the conditionally approved layout, except for the following:
 - a. Public Works would require HB Beer Company Restaurant (HBBCR) to reconstruct the corner, bring back the parking stall and reconstruct the catch basin to its previous location should the HBBCR no longer have outside dining.
 - b. Maintenance and repair of the ornamental barrier fencing and other elements shall be per the City of Huntington Beach "Outdoor Dining" Agreement.
 - c. A 'Cash' Bond shall be required with the City of Huntington Beach Public Works Department, to insure completion of the approved work to the satisfaction of the City. This bond will be returned to the applicant after all work is inspected and accepted by the Director of Public Works. The amount of the 'Cash' Bond shall be 150% of the cost of the work to be done.

City of Huntington Beach

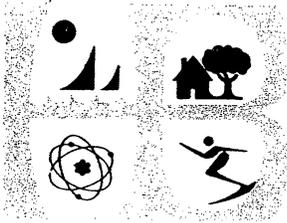
SEP 28 2006



DATE: 08/18/2011 SCALE: 1/8" = 1'-0" CAD FILE: 201-118	OUTDOOR DINING 201 MAIN ST. HUNTINGTON BEACH CALIFORNIA	A2
THIS DRAWING IS SOLE PROPERTY AND COPYRIGHT © OF THE ARCHITECT	JEFF BERGHA ARCHITECT	TEAM 0 • 6 • 6 • 1 • 1 • 0 • 1 • 4 711 12th Street 2nd Floor Huntington Beach, CA 92648 FAX: 714.380.3330



APPROX. 4800 sq/ft.



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone 536-5271
Fax 374-1540

September 1, 2006

Michael C. Adams
21190 Beach Blvd.
Huntington Beach, CA 92648

**SUBJECT: CONDITIONAL USE PERMIT NO. 06-23 (HB BEER COMPANY – 201 MAIN #E)
DEVELOPMENT AND USE REQUIREMENTS**

Dear Mr. Adams,

In order to assist you with your development proposal, staff has reviewed the project and identified applicable city policies, standard plans, and development and use requirements, excerpted from the City of Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes. This preliminary list is intended to help you through the permitting process and various stages of project implementation.

It should be noted that this requirement list is in addition to any "conditions of approval" adopted by the Planning Commission. Please note that if the design of your project changes or if site conditions change, the list may also change based upon modifications to your project and the applicable city policies, standard plans, and development and use requirements.

If you would like a clarification of any of these requirements, an explanation of the Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes, or believe some of the items listed do not apply to your project, and/or you would like to discuss them in further detail, please contact me at 714-374-1682 and/or the respective source department (abbreviation in parenthesis at end of each condition – contact person below).

Sincerely,

Rami Talleh
Associate Planner

Enclosures

cc: Gerald Caraig, Building and Safety Department – 714-374-1575
Eric Engberg, Fire Department – 714-536-5564
Terri Elliott, Public Works – 714-536-5580
Herb Fauland, Principal Planner
Jason Kelley, Planning Department
Sheryl and Tom Caverly, 555 Temple Hills Dr. Laguna Beach, CA 92651
Project File

ATTACHMENT NO. 64.1

PLANNING DEPARTMENT

DRAFT CODE REQUIREMENTS, POLICIES, AND STANDARD PLANS OF THE HUNTINGTON BEACH ZONING & SUBDIVISION ORDINANCE AND MUNICIPAL CODE

PROJECT: Conditional Use Permit No. 06-23 – HB Beer Company – 201 Main #E

ADDRESS: 201 Main Street Unit E, HB CA 92648

The draft list is intended to assist the applicant by identifying a preliminary list of code requirements applicable to the proposed project, which must be satisfied during the various stages of project implementation. Any conditions of approval adopted by the Planning Commission would also be applicable to your project. A final list of requirements will be provided upon approval by the applicable discretionary body. If you have any questions regarding these requirements, please contact the Project Planner and the applicable Department Representative.

CONDITIONAL USE PERMIT NO. 06-23:

1. Prior to commencing the live entertainment, dancing, and outdoor dining the following shall be approved and completed:
 - a. The property owner shall submit an In-Lieu Parking Fee Participation Agreement to the Planning Department. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of the Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach. **(City Council Resolution Nos. 6720 and 6721)**
 - b. A copy of an approved Entertainment Permit, approved by the Police Department and issued by the Business License Department, shall be submitted to the Planning Department. All conditions of the Entertainment Permit shall be observed.
 - c. A copy of the recorded In-Lieu Parking Fee Participation Agreement and proof of full payment or first installment payment to the City Treasurer shall be submitted to the Planning Department.
 - d. A Certificate of Occupancy must be approved by the Planning Department and issued by the Building and Safety Department.
2. The Planning Commission reserves the right to revoke Conditional Use Permit No. 06-23 pursuant to a public hearing for revocation, if any violation of the conditions of approval, Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs.
3. The project shall comply with all applicable requirements of the Municipal Code, Building & Safety Department and Fire Department, as well as applicable local, State and Federal Fire Codes, Ordinances, and standards, except as noted herein.
4. Construction shall be limited to Monday – Saturday 7:00 AM to 8:00 PM. Construction shall be prohibited Sundays and Federal holidays.
5. The applicant shall submit a check in the amount of \$43.00 for the posting of the Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Planning Commission's/ Zoning Administrator's action.



CITY OF HUNTINGTON BEACH

INTERDEPARTMENTAL COMMUNICATION

City of Huntington Beach

TO: Rami Talleh, Associate Planner

JUL 12 2006

FROM: James Wagner, Associate Civil Engineer JRW

DATE: July 11, 2006

SUBJECT: CUP 06-23 (201 Main Street, Unit E)–HB Beer Company Restaurant
Planning Application No. 2006-0116 - Development Requirements

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO ISSUANCE OF AN ENCROACHMENT PERMIT:

1. The site plan received and dated May 10, 2006 shall be the conditionally approved layout.
2. A Street Improvement Plan prepared by a Licensed Civil Engineer, shall be submitted to the Public Works Department for review and approval. (MC 17.05/ZSO 255.04A) The following improvements shall be shown on the plan:
 - a. The catch basin within the parking stall shall be removed and relocated outside of the proposed dining area. (ZSO 255.04A)
 - b. The bicycle parking shall be relocated to a suitable location on the plan. (ZSO 255.04A)
 - c. Curb, gutter and sidewalk along the Main Street frontage, per City Standard Plan Nos. 202 and 207. (ZSO 255.04A)
 - d. ADA Pedestrian access along the Main Street frontage is required, per City of Huntington Beach Standard Plans 104 and 207. (ZSO 255.04A)
 - e. The existing irrigation water service(s) currently serving the existing landscape may potentially be utilized if they are of adequate size, conform to current standards, and are in working condition as determined by the Utilities Division. If the property owner elects to utilize the existing water service(s), all non-conforming water meters and backflow protection devices shall be upgraded to conform to the current Utilities Division standards. A separate irrigation water service and meter shall be installed per Utilities Division standards. The water service shall be a minimum of 1-inch in size. (ZSO 255.04E)
3. Prior to submittal of a landscape plan, the applicant shall provide a Consulting Arborist report on all the existing trees. Said report shall quantify, identify, size and analyze the health of the existing trees. The report shall also recommend how the existing trees that

are to remain (if any) shall be protected and how far construction/grading shall be kept from the trunk. (Resolution 4545)

- a. Existing mature trees that are to be removed must be replaced at a 2 for 1 ratio with a 36" box tree or palm equivalent (13'-14' of trunk height for Queen Palms and 8'-9' of brown trunk).
4. All landscape planting, irrigation and maintenance shall comply with the City Arboricultural and Landscape Standards and Specifications. (ZSO 232.04B)
5. The Consulting Arborist (approved by the City Landscape Architect) shall review the final landscape tree-planting plan and approve in writing the selection and locations proposed for new trees and the protection measures and locations of existing trees to remain. Said Arborist report shall be incorporated onto the Landscape Architect's plans as construction notes and/or construction requirements. The report shall include the Arborist's name, certificate number and the Arborist's wet signature on the final plan. (Resolution 4545)
6. A Landscape and Irrigation Plan, prepared by a Licensed Landscape Architect shall be submitted to the Public Works Department for review and approval by the Public Works and Planning Departments. (ZSO 232.04)
7. The Landscape Architectural plans shall utilize the existing "as-built" landscape plans as base information that shall be modified to accommodate the new landscape additions that will be required by the City of Huntington Beach to make the installation acceptable for City crews to maintain.
8. All hardscape shall be designed to match the existing enriched paving and shall be shown on both the Engineers precise grading plan and the Landscape Architects plans. Hardscape shall include but not be limited to the paving and pavers, the curbs, the relocation of the existing catch basin, the bollards, the bike rack, the cordon fencing and any other elements.

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH DURING CONSTRUCTION OPERATIONS:

1. The construction disturbance area shall be kept as small as possible. (EC1)
2. Comply with appropriate sections of AQMD Rule 403, particularly to minimize fugitive dust and noise to surrounding areas. (AQMD Rule 403)
3. Remediation operations, if required, shall be performed in stages concentrating in single areas at a time to minimize the impact of fugitive dust and noise on the surrounding areas.

**THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED
PRIOR TO FINAL INSPECTION OR OCCUPANCY:**

1. Complete all improvements as shown on the approved landscape and improvement plans. (MC 17.05)
2. Existing curb, gutter and sidewalk must be removed and replaced per City Standard Plan Nos. 202 and 207. Existing street tree(s) to be inspected by the City Inspector during removal of concrete and prior to replacement thereof. Tree replacement or root/tree protection, will be specified upon the inspection of the root system. (Resolution 4545)
3. All landscape irrigation and the Landscape Architect of record shall certify planting installation to be in conformance to the City approved landscape plans in written form to the City Landscape Architect prior to the final landscape inspection and approval. "Smart irrigation controllers" and/or other innovative means to reduce the quantity of runoff shall be installed. (ZSO 232.04D)
4. Applicant shall provide City with CD media TIFF images (in City format) and CD (AutoCAD only) copy of complete City Approved landscape construction drawings as stamped "Permanent File Copy" prior to starting landscape work. Copies shall be given to the City Landscape Architect for permanent City record.

INFORMATION ON SPECIFIC CODE REQUIREMENTS

These code requirements are provided for reference. This is not a complete list of all code requirements applicable to this project.

1. Standard landscape code requirements apply. (ZSO 232)
2. City Arboricultural and Landscape Standards and Specifications apply. (Resolution 4545)
3. All applicable Public Works fees shall be paid. Fees shall be calculated based on the currently approved rate at the time of payment unless otherwise stated. (ZSO 250.16)
4. An Encroachment Permit is required for all work within the City's right-of-way. (MC 14.36.020)



CITY OF HUNTINGTON BEACH

INTER-DEPARTMENT COMMUNICATION

From: Daniel Lee

Ext.: 5679

Date: 7/19/06

To: Rami Talleh

Project Location: 201 Main Street

Re: 224 S.F. Outdoor Dining Addition

PETITION: _____

File No.: 2006-0116

The following are comments to the file (petition) identified above. This list is not a plan check correction list. General information is provided to help facilitate the development by giving you up front information on building code issues, City policies, and other codes or laws as they apply to your project. Please review the comments below before you submit for plan check. Allow 20 working days for first corrections.

If you incorporated the information below, you must next submit for plan check of structural and building code requirements. You may obtain all required forms and information for plan check review and permit applications on the 3rd floor of City Hall.

M/E/P plan checking is a separate plan check process.

Please include the following issues in the design of your project to reduce plan check corrections and improve turn around time.

Note to Planner: Please remind applicant to attach a copy of this list to the Plan Check Submittal Documents to help expedite plan check response and reduce corrections.

Comments:

1. A new certificate of occupancy is required as the occupant load will increase.
2. There is no such thing as a 'City standard railing'. However if this railing/fence does not exceed 42" in height, no building permit is required.
3. Verify that an accessible parking stall is not eliminated by the addition of this dining area.



CITY OF HUNTINGTON BEACH

INTER-DEPARTMENT COMMUNICATION

City of Huntington Beach

TO: Rami Talleh

SEP 27 2006

FROM: Captain C. Thomas

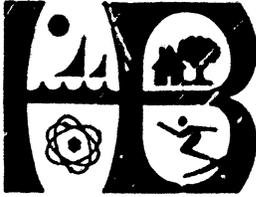
DATE: September 27, 2006

SUBJECT: Conditional Use Permit No. 06-23 (HB Beer Company-Outdoor Dining and Live Entertainment)

In reference to the request for a permit to allow live entertainment and dancing within the restaurant, including a 224 square foot outdoor dining area:

- Approve plans for dance floor.
- Do not support the outdoor dining proposal due to conflict with pedestrian traffic.

ATTACHMENT NO. 6.5.1



Huntington Beach Planning Commission

P.O. BOX 190

CALIFORNIA 92648

April 24, 1992

Thomas A. and Sheryl Caverly
553 Temple Hills Drive
Laguna Beach, CA 92651

SUBJECT: CONDITIONAL USE PERMIT NO. 92-13

REQUEST: To permit establishment of a restaurant in conjunction with a microbrewery.

LOCATION: 201 Main Street, Second Floor

DATE OF APPROVAL: April 21, 1992

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 92-13:

1. The proposed restaurant/brewery will be located in a structure that is properly adapted to streets, driveways, and adjacent structures in a harmonious manner.
2. The proposed restaurant/brewery is consistent with the uses permitted in Downtown Specific Plan Districts 3 and 5.
3. The proposed restaurant/brewery will be compatible with residential and public uses within 300 feet because:
 - a. The restaurant/brewery will be subject to both Orange County Health Department and Alcohol Beverage Control regulations.
 - b. Residential is buffered from the restaurant/brewery by existing commercial development.
 - c. The public park is a small, passive park for limited visitor seating.
4. Sufficient parking spaces exist in the vicinity to service the restaurant/brewery.
5. The visitor-serving commercial use is consistent with the General Plan, in particular the Coastal and Land Use Elements.

6. The establishment and maintenance of the restaurant will not be detrimental to the general welfare of persons working or residing in the vicinity nor be detrimental to the value of properties and improvements in the Downtown area.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 92-13:

1. The floor plan received and dated April 15, 1992 shall be the conceptually approved layout.
2. The hours of operation shall be:

Sunday - Thursday	11:00 AM - 12:00 AM
Friday - Saturday	11:00 AM - 2:00 AM
3. Natural gas shall be stubbed in at the locations of cooking and brewing facilities, water heaters, and central heating units.
4. The proposed use shall comply with all applicable provisions of the Municipal, Ordinance, Fire and Building Codes. Special tie down or other securing devices for the brewing equipment may be required, subject to City inspection.
5. Live entertainment shall be subject to the approval of a conditional use permit.
6. Prior to issuance of Certificate of Occupancy, the property owner shall submit to the Community Development Department proof of in-lieu fee payment for 36 parking spaces.
7. Any signs for this restaurant/brewery proposed on, or visible from the exterior of the building, shall be submitted for review and approval of the Design Review Board prior to approval of sign permit.
8. This conditional use permit shall not become effective for any purpose unless an "acceptance of conditions" form has been signed by the applicant (property owner), notarized, and returned to the Planning Division; and until the ten (10) day appeal period has elapsed.
9. This conditional use permit shall become null and void unless exercised within one (1) year of the date of final approval, or such extension of time as may be granted by the Planning Commission pursuant to a written request submitted to the Planning Division a minimum 30 days prior to the expiration date.
10. The Planning Commission reserves the right to amend or revoke this conditional use permit if any violation of these conditions or Huntington Beach Ordinance Code occurs.

Conditional Use Permit No. 92-13
Page Three

I hereby certify that Conditional Use Permit No. 92-13 was approved by the Planning Commission of the City of Huntington Beach on April 21, 1992 upon the foregoing findings and conditions. This approval represents conceptual approval only; detailed plans must be submitted for review and the aforementioned conditions completed prior to final approval.

Sincerely,

Mike Adams, Secretary
Planning Commission

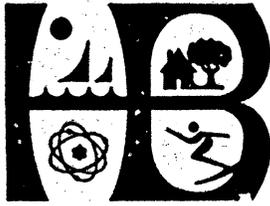
by:



Hal Simmons
Senior Planner

(3076d-2,4)

ATTACHMENT NO. 603



Huntington Beach Planning Commission

P.O. BOX 190

CALIFORNIA 92648

NOTICE OF ACTION

October 30, 1999

Peter Andriet
201 Main Street, Ste. E
Huntington Beach, CA 92648

SUBJECT: CONDITIONAL USE PERMIT NO. 99-55 (Huntington Beach Beer Co. Live Entertainment)

PROPERTY OWNER: Tom and Sheryl Caverly, 553 Temple Hills Drive, Laguna Beach, CA 92651

REQUEST: To permit live entertainment in conjunction with an existing restaurant with alcohol sales and outdoor dining.

LOCATION: 201 Main Street, Suite E (west side, north of Walnut Ave.)

DATE OF ACTION: October 26, 1999

Your application was acted upon by the Planning Commission of the City of Huntington Beach on October 26, 1999, and your request was Conditionally Approved. Attached to this letter are the Findings and Conditions of Approval for this application.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan reflecting conformance to all Zoning and Subdivision Ordinance requirements.

ATTACHMENT NO. 66.4

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal; it shall also be accompanied by a filing fee. The appeal fee is \$500.00 for a single family dwelling property owner appealing the decision on his/her own property. The appeal fee is \$1,490.00 for all other appeals.

In your case, the last day for filing an appeal and paying the filing fee is November 5, 1999.

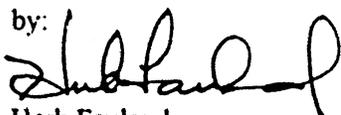
Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

If there are any further questions, please contact Wayne Carvalho, Associate Planner at (714) 536-5271.

Sincerely,

Howard Zelefsky, Secretary
Planning Commission

by:



Herb Fauland,
Senior Planner

xc: Property Owner

Attachment: Findings and Conditions of Approval

ATTACHMENT NO. 6.6.5

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 99-55

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 99-55:

1. Conditional Use Permit No. 99-55 for the establishment of live entertainment within an existing 4,700 square foot restaurant (H.B. Beer Co.) will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood because the use is consistent with the mixed use zoning designation of the Downtown Specific Plan and is buffered from residential properties by commercial uses and structures; and noise associated with live entertainment will be contained within the building and restricted to specific hours.
2. The conditional use permit will be compatible with surrounding uses because: a) other commercial uses surround the project site; b) the expanded use will not generate significant noise impacts or result in additional traffic; and c) residential uses are separated and buffered from the proposed use.
3. The proposed use will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it would be located. The Downtown Specific Plan allows live entertainment with approval of a Conditional Use Permit from the Planning Commission.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of MV (Mixed Use Vertical) on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:
 - a. Goal LU 8: Achieve a pattern of land uses that preserves, enhances, and establishes a distinct identity for the City's neighborhoods, corridors, and centers.
 - b. Goal LU 10: Achieve the development of a range of commercial use.
 - c. Objective LU 10.1: Provide for the continuation of existing and the development of a diversity of retail and service commercial uses that are oriented to the needs of the local residents, serve the surrounding region, serve visitors to the City, and capitalize on Huntington Beach's recreational resources.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 99-55:

1. The floor plans received and dated August 19, 1999 shall be the conceptually approved layout.

2. The live entertainment use shall comply with the following:
 - a. All conditions of the Entertainment Permit issued by the Police Department. (PD)
 - b. Formation of lines to enter the restaurant shall be prohibited. However, should lines form, an official security guard shall prevent the formation of lines from obstructing access on the public sidewalk, and to and from the restaurant.
 - c. There shall be no cover charge/fee for entering the establishment, nor shall there be any requirement for patrons to purchase a minimum number of drinks.
 - d. Address numbers shall be installed to comply with City Specification No. 428. (FD)
 - e. Exit signs and exit path markings shall be provided in compliance with the HBFC and the California Administrative Code, Title 24.
 - 1) The posted Occupant Load shall not be exceeded.
 - 2) Exits and aisle ways are not to be blocked by chairs or tables.
 - 3) Patron counts shall be taken and monitored by establishment personnel. (FD)
 - f. All doors and windows shall be closed during times of entertainment.
 - g. All entertainment must remain inside the establishment at all times. No speakers shall be allowed outside the use.
3. Fire extinguishers shall be installed and located in areas to comply with HBFC standards. (FD)
4. The Planning Director ensures that all conditions of approval herein are complied with. The Planning Director shall be notified in writing if any changes to the site plan, elevations and floor plans are proposed as a result of the plan check process. Building permits shall not be issued until the Planning Director has reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the HBZSO.

INFORMATION ON SPECIFIC CODE REQUIREMENTS:

1. Conditional Use Permit No. 99-55 shall not become effective until the ten-day appeal period has elapsed.
2. Conditional Use Permit No. 99-55 shall become null and void unless exercised within one year of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date.

ATTACHMENT NO. 66.7

3. The development shall comply with all applicable provisions of the Huntington Beach Zoning Subdivision Ordinance, Building Department, Fire Department, and the Huntington Beach Municipal Code, including Chapter 8.40, Noise Control.
4. The applicant shall submit a check in the amount of \$38.00 for the posting of the Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Planning Commission's action.

From: Jcalgal [jcalgal@sbcglobal.net]
Sent: Monday, October 02, 2006 3:42 PM
Subject: No to Huntington Beach Beer Co.

I am unable to attend the Oct. 10 meeting and request that you read my letter to the committee members at that meeting.

I just received a notice re: another conditional use permit (06-23)for a 200 sq. ft dance floor,modified hours and construction of a 400 sq. ft patio with alcohol sales in the public right of way. This is being requested by Huntington Beach Beer Co., the same owner of the proposed Ponderosa Chop House. I object to granting this request. I am concerned that the planning commission will approve this as they did for the Ponderosa. Please keep in mind the objections that were voiced re: Ponderosa as the feeling will be the same re: Huntington Beach Beer Co. This man seems to not understand the negative effect of his requests on Huntington Beach. He seems determined to get dancing and more alcohol into downtown Huntington Beach.

The More Bars = More Neighborhood Violence. The number of alcohol outlets in a neighborhood is directly linked to the number of hospital admissions due to physical assaults, according to a six-year study of interpersonal violence. The more bars in a neighborhood, the more violence in not only that neighborhood, but in surrounding areas.

Researchers from the Prevention Research Center say their California study can be used by authorities to prevent violence and other crimes in targeted areas by reducing the distance between alcohol outlets.

Higher concentration of bars and higher numbers of incidents of drug possession were positively related to rates of child maltreatment.

Neighborhood disorder takes many forms – public drinking, prostitution, catcalling, aggressive panhandling, rowdy teenagers, battling spouses, graffiti, vandalism, abandoned buildings, trash-filled lots, alleys strewn with bottles and garbage. But no social disorder is at once so disruptive in its own right and so conducive of other disorders and crime as public drinking. In a classic 1990 study of community breakdown in American cities by William Skogan, public drinking was ranked first among the disorders identified by residents across 40 neighborhoods.

The presence of more bars per population may increase the stress on neighborhoods by attracting populations who are prone to participating in dangerous activities or increase the frequency of alcohol use by parents that then leads to maltreatment.

Changing the neighborhood environment to reduce the number of bars and the presence of illegal drugs may help to reduce child abuse and neglect.

Most people who leave the central cities for the suburbs cite three main reasons for their move: crime, the quality of life, and the quality of the public schools. Cities have been getting the upper hand on crime in recent years, while redevelopment efforts have made many central city neighborhoods more attractive places to live and work. But it will be necessary to restore all three aspects of city life before central cities can hope to reverse the exodus of middle class families. Discouraging alcohol sales in downtown is a step in the right direction.

Sincerely,

Judy Pinchuk 200 Pacific Coast Hwy 445

ATTACHMENT NO. 67.1

**LICENSE AGREEMENT BY AND BETWEEN
THE CITY OF HUNTINGTON BEACH AND**

FOR ENCROACHMENT INTO THE PUBLIC RIGHT OF WAY

This agreement is made and entered into on this ____ day of _____, 2006, by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "CITY," and _____, hereinafter referred to as "LICENSEE."

WHEREAS, LICENSEE has applied to CITY for permission to encroach into the public right of way adjoining LICENSEE'S property, for the purpose of seating additional restaurant patrons therein; and

CITY desires to allow such encroachment; and

The parties wish to enter into an agreement defining their respective rights and responsibilities concerning said encroachment,

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties covenant and agree as follows:

1. PERMISSION. Permission is hereby given to LICENSEE to enter upon and use the public right of way as depicted in the map attached hereto as Exhibit "A" (hereinafter referred to as the "Public Right of Way") for the purpose of providing additional, temporary seating and tables for LICENSEE'S restaurant patrons. LICENSEE agrees to remove and replace such seating and tables each day, so that the seating and tables will not be stored or kept in the Public Right of Way overnight. Alcohol may be served pursuant to the terms of an approved Conditional Use Permit, and in conjunction with those requirements attached hereto as Exhibit "B." This License is non-exclusive, and the Public Right of Way shall at all times remain open for use by the public. A minimum pedestrian passage way, in accordance with the requirements of the Downtown Specific Plan, shall be maintained at all times.

2. TERM; FEES AND CHARGES. The term of this License is one year. Either party may cancel this License upon 10 days written notice to the other party. In consideration of this License, LICENSEE agrees to pay to CITY an application fee, a use charge, and an inspection fee in the following amounts:

a) Application Fee: Thirty Dollars (\$30.00) one time fee.

b) Use Charge: One Cent (\$0.01) per square foot of public right of way encroached upon, for a total use charge of _____ (\$ _____) per year.

c) Code Enforcement Fee: Four Dollars (\$4.00) per square foot of outdoor dining area per year, for a total code enforcement fee of _____ (\$ _____) per year.

3. INDEMNIFICATION, DEFENSE, HOLD HARMLESS. LICENSEE hereby agrees to protect, defend, indemnify and hold and save harmless CITY, its officers, and employees against any and all liability, claims, judgments, costs and demands, however caused, including those resulting from death or injury to LICENSEE'S employees and damage to LICENSEE'S property, arising directly or indirectly out of the grant of License herein contained, including those arising from the passive concurrent negligence of CITY, but save and except those which arise out of the active concurrent negligence, sole negligence, or the sole willful misconduct of CITY. LICENSEE will conduct all defense at its sole cost and expense.

4. WORKERS' COMPENSATION INSURANCE. Pursuant to the *California Labor Code* Section 1861, LICENSEE acknowledges awareness of Section 3700 et seq. of said code, which requires every employer to be insured against liability for workers' compensation; LICENSEE covenants that it will comply with all such laws and provisions prior to the encroachment into the Public Right of Way pursuant to this license.

LICENSEE shall maintain such Workers' Compensation Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, and Two

Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit, at all times incident hereto, in forms and underwritten by insurance companies satisfactory to CITY.

5. INSURANCE. LICENSEE shall carry at all times incident hereto, on all activities to be performed in the Public Right of Way as contemplated herein, general liability insurance, including coverage for bodily injury, and property damage. All insurance shall be underwritten by insurance companies in forms satisfactory to CITY. Said insurance shall name the CITY, its officers, agents and employees and all public agencies as determined by the CITY as Additional Insureds. LICENSEE shall subscribe for and maintain said insurance policies in full force and effect during the life of this Agreement, in an amount of not less than One Million Dollars (\$1,000,000) combined single limit coverage. If coverage is provided under a form which includes a designated general aggregate limit, such limit shall be not less than One Million Dollars (\$1,000,000). In the event of aggregate coverage, LICENSEE shall immediately notify CITY of any known depletion of limits. LICENSEE shall require its insurer to waive its subrogation rights against CITY and agrees to provide certificates evidencing the same.

6. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENT. Prior to the encroachment into the Public Right of Way pursuant to this license, LICENSEE shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall promise to provide that such policies will not be canceled without thirty (30) days prior written notice to CITY. LICENSEE shall maintain the foregoing insurance coverages in force until this Agreement is terminated.

The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by LICENSEE under this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all said policies

of insurance. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

A separate copy of the additional insured endorsement to each of LICENSEE'S insurance policies, naming the CITY, its officers and employees as Additional Insureds shall be provided to the City Attorney for approval prior to the encroachment into the Public Right of Way pursuant to this License.

7. RELEASE. LICENSEE hereby releases and forever discharges CITY of and from any and all claims, demands, actions or causes of action whatsoever which LICENSEE may have, or may hereafter have, against the CITY specifically arising out of the matter of the entry of LICENSEE onto the Public Right of Way. This is a complete and final release and shall be binding upon LICENSEE and the heirs, executors, administrators, successors and assigns of LICENSEE'S use of the Public Right of Way. LICENSEE hereby expressly waives any rights under or benefit of any law of any jurisdiction whatsoever providing to the contrary. Neither the acceptance of this release nor any payment made hereunder shall constitute any admission of any liability of CITY.

8. WASTE. LICENSEE shall not alter, damage or commit any kind of waste upon the Public Right of Way or any improvement, equipment or personal property thereon and shall not interfere in any manner with the operations or activities of CITY. LICENSEE shall make no change in the use of the Public Right of Way nor shall the design of the Public Right of Way be changed other than as authorized herein without prior written consent of CITY. LICENSEE shall not cause any workmen's or materialmen's liens to be placed upon the Public Right of Way and agrees to indemnify and hold CITY harmless against any such liens including but not limited to the payment of attorneys' fees.

9. MAINTENANCE. LICENSEE agrees to care for and maintain the Public Right of Way in good and satisfactory condition as acceptable to the City. Maintenance shall include daily cleaning of the Public Right of Way including but not limited to removal of all rubbish, food stuffs, paper, bottles, cans, gum, cigarettes, animal litter, dirt and sand. At the end of each business day, any and all furniture, fixtures or other items, permitted and used in the operation of the business shall be removed from the Public Right of Way. Such items shall not be returned to the Public Right of Way until the beginning of the next business day. Steam cleaning or high pressure water cleaning of the Public Right of Way, including the sidewalk, curb and gutter shall be accomplished no less than once each month or as otherwise directed by the CITY.

In the event LICENSEE does not maintain the Public Right of Way in a satisfactory manner, LICENSEE authorizes CITY to perform such maintenance on LICENSEE'S behalf. All costs incurred performing said maintenance shall be assessed to and billed directly to the LICENSEE. LICENSEE agrees to pay such costs within ten (10) days of billing.

In the event any damage is caused to the Public Right of Way, including any damage to the brick pavers, hardscape, sidewalks, curb, planters, bollards, landscape, irrigation include but not be limited to system, street light, street or other utilities improvements, as a result of the encroachment authorized hereunder, LICENSEE agrees to repair same at its own expense.

In the event LICENSEE does not comply with all conditions of approval required by the Conditional Use Permit and relevant Downtown Specific Plan and Downtown Guidelines, Huntington Beach Municipal Code Section 7.12.050 and other applicable Huntington Beach Municipal Code Sections, as determined by the Planning Director, the License may be canceled on 10 days written notice from CITY to LICENSEE.

10. CONTROL OF EQUIPMENT; ANIMALS. LICENSEE shall keep any equipment used or brought onto the Public Right of Way under its absolute and complete control at all times and said equipment shall be used on the Public Right of Way at the sole risk of

LICENSEE. LICENSEE shall allow no animals, with the exception of seeing-eye dogs, within the outdoor dining area.

11. INDEPENDENT CONTRACTOR. LICENSEE agrees that all work done or undertaken by it on the Public Right of Way shall be for its sole account and not as an agent, servant or contractor for CITY. LICENSEE agrees to indemnify and hold CITY and the Public Right of Way harmless from and against all claims or liens of workmen and materialmen.

12. NO ASSIGNMENT. LICENSEE agrees that the permission herein extended shall be personal to it and that it shall not assign or permit any third party to avail itself of any of the privileges granted hereunder, without the express written permission of CITY.

13. NO TITLE INTEREST. No title interest of any kind is hereby given and LICENSEE shall never assert any claim or title to the Public Right of Way.

14. NOTICES. All notices given hereunder shall be effective when personally delivered or if mailed, within 48 hours of the deposit of such notice in the U.S. Mail, postage prepaid, and certified with return receipt requested and addressed to LICENSEE or to CITY at the respective addresses shown below:

CITY:

Director of Public Works
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

LICENSEE:

15. NO DISCRIMINATION. LICENSEE agrees that in performance of this Agreement and in the use of the Public Right of Way authorized hereunder, it will not engage in,

nor permit its officers, agents or employees to engage in, any discrimination or discriminatory practices against any person based on race, religion, creed, color, natural origin, ancestry, physical handicap, medical condition, marital status or gender.

16. ATTORNEY'S FEES. In the event suit is brought by either party to enforce the terms and provisions of this agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees.

17. ENTIRETY. This Agreement contains the entire agreement between the parties. This Agreement shall be modified only by a subsequent written amendment, as may be mutually agreed upon by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

LICENSEE:

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: _____

print name

ITS: (circle one) Chairman/President/Vice President

Director of Public Works

By: _____

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer

APPROVED AS TO FORM:

City Attorney

REVIEWED AND APPROVED:

City Administrator

**LICENSE AGREEMENT BY AND BETWEEN
THE CITY OF HUNTINGTON BEACH AND**

FOR ENCROACHMENT INTO THE PUBLIC RIGHT OF WAY

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**LICENSE AGREEMENT -OUTDOOR DINING W/ALCOHOL
STANDARD CONDITIONS**

- a. Only establishments that are established as a “Bona fide public eating place”, as defined by Section 23038 of the Alcoholic Beverage Control Act, shall be permitted to serve alcoholic beverages outdoors in accordance with Section 4.2.33 of the Downtown Specific Plan.
- b. Serving of alcoholic beverages shall not commence prior to 11:00 a.m. daily. The latest hour for serving alcoholic beverages and food in the outdoor dining area is 9:30 P.M., or no later than the closing of the associated food service of the establishment, whichever is first. All alcoholic beverages must be removed from the outdoor dining area no later than 10:00 P.M, or no later than the closing of the associated food service of the establishment, whichever is first.
- c. All servers employed in serving alcoholic beverages within outdoor dining areas shall undergo Licensee Education on Alcohol and Drugs (L.E.A.D.) training by the Department of Alcoholic Beverage Control. The business owner shall submit proof to that effect to the Planning Department prior to the initial establishment of alcohol service outdoors and on a quarterly basis for new employees hired within the previous three months.
- d. Establishments which serve alcoholic beverages outdoors are required to provide a physical barrier 36 inches in height surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier.
- e. Barriers located on private property in accordance with Section 4.2.33 of the Downtown Specific Plan as required for serving alcohol outdoors shall be permanently installed. Barriers located on public property as required for serving alcohol outdoors shall be designed to be removable in the event that it is deemed necessary.
- f. The cost of installation of the barriers required as specified in Section 4.2.33 of the Downtown Specific Plan shall be the responsibility of the establishment providing outdoor dining with alcohol.
- g. Restaurant management is responsible for running and operating the outdoor dining area.
- h. Outdoor dining areas shall be continuously supervised by management or employees of the establishment. Food establishments serving alcoholic beverages must have a supervisor on site at all times. Behavior that disturbs customers or passerby will not be tolerated and constitutes a violation of these provisions.
- i. No servers shall be permitted to serve any food or beverage item from outside the barriers as required by Section 4.2.33 of the Downtown Specific Plan.
- j. Outdoor dining patios are for sit down food and beverage service only; no stand up, walk-up or pick-up service is permitted.

**LICENSE AGREEMENT -OUTDOOR DINING W/ALCOHOL
STANDARD CONDITIONS**

- k. No signs may be placed on or secured to any barrier.
- l. Alcoholic beverages shall be served in glass or hard plastic containers only. Each establishment shall have a number assigned to it, and the number shall be permanently printed in a clearly identifiable print on each glass container used for serving of alcohol by that establishment.
- m. All outdoor dining sites must be handicapped accessible.
- n. At the termination of the License Agreement, the outdoor dining barriers must be removed and the sidewalk returned to its original condition.
- o. A review of the use shall be conducted by the Staff within six (6) months of the issuance of the conditional use permit to verify compliance with all conditions of approval and applicable Chapters of the Huntington Beach Zoning & Subdivision Ordinance (HBZSO). If the six (6) month review determines any violations of the conditions of approval or any applicable Chapters of the HBZSO or Huntington Beach Municipal Code, the conditional use permit shall be scheduled for a revocation hearing before the Zoning Administrator. At that time the Zoning Administrator may revoke the conditional use permit or consider modifications to the conditions of approval.
- p. Any violation of any condition of the applicable Conditional Use Permit, the Huntington Beach Municipal Code, or the Zoning and Subdivision Ordinance, shall be grounds for initiation of the revocation process for the Conditional Use Permit, and termination of the License Agreement.



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Jennifer Villaseñor, Associate Planner
DATE: November 14, 2006

SUBJECT: ZONING TEXT AMENDMENT NO. 06-05 (LARGE FAMILY DAY CARE AMENDMENT)

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: Citywide – Residential Zoning Districts

STATEMENT OF ISSUE:

- ♦ Zoning Text Amendment No. 06-05 request:
 - To amend Chapter 210 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to allow large family day care uses in residential zoning districts with an Administrative Permit (Neighborhood Notification: 300-foot radius) with no applicable fee or architectural plans required.

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 06-05 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Zoning Text Amendment No. 06-05 with findings for denial.”
- B. “Continue Zoning Text Amendment No. 06-05 and direct staff accordingly.”

PROJECT PROPOSAL:

Zoning Text Amendment No. 06-05 proposes to allow large family day care uses with an Administrative Permit (neighborhood notification: 300-foot radius). Additionally, the HBZSO will be amended so that applicants will not be required to submit architectural plans as part of the application process.

Pursuant to Chapter 247 of the HBZSO, the Planning Commission must make specific findings whether to approve, approve in modified form, or disapprove a proposed zoning text amendment prior to providing recommendation to the City Council.

Background

On May 1, 2006, the City Council discussed the issue of eliminating the Conditional Use Permit (CUP) requirement for Large Family Day Care uses (7-12 children) in residential zoning districts. Consideration of eliminating the CUP requirement was brought up due to the costs associated with applying for a CUP. After discussion of the issue, the City Council directed staff to further review the subject and present options for the City Council's consideration. It should be noted that there are no zoning requirements for Small Family Day Care uses (up to 6 children).

At the June 5, 2006 City Council meeting, a motion was approved to direct staff to initiate a Zoning Text Amendment amending the Huntington Beach Zoning and Subdivision Ordinance so that large family day care uses are permitted in residential zoning districts with an Administrative Permit (Neighborhood Notification: 300-foot radius) with no applicable fee or architectural plans required. Also, a resolution will be presented concurrently with this ordinance to the City Council to exclude any fees for an Administrative Permit for this type of use.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

The proposed zoning text amendment is Citywide within the residential zoning districts.

General Plan Conformance:

The proposed Zoning Text Amendment No. 06-05 is consistent with the goals, policies, and objectives of the City's General Plan as follows:

Land Use Element

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Objective LU 9.4: Provide for the inclusion of recreational, institutional, religious, educational and service uses that support resident needs within residential neighborhoods.

Policy LU 9.4.1: Accommodate the development of parks, sports facilities, schools, libraries, community meeting facilities, religious facilities, and similar community-serving uses in all residential areas, provided that they are compatible with adjacent residential uses and subject to review and approval by the City and other appropriate agencies.

The proposed zoning text amendment will permit large family day care homes in residential zoning districts without having to obtain approval of a CUP. A no-fee administrative permit will simplify the application process by shortening the processing time and eliminating the CUP fee of \$3,568. ZTA No. 06-05 complies with the policies and objectives of the General Plan in that it will accommodate a community-serving use such as a large family day care home by allowing more flexibility in the land use controls.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status: The proposed ZTA No. 06-05 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

Coastal Status: Not applicable.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements: The proposed zoning text amendment does not require review by other City departments or public agencies.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on November 2, 2006, and notices were mailed out to individuals/organizations requesting notification (Planning Department's Notification Matrix) as well as all interested parties.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:
Not Applicable

MANDATORY PROCESSING DATE(S):
Legislative Action – Not Applicable

ANALYSIS:

Currently, a large family day care, allowing up to 12 children plus two additional children if they are over the age of six and reside in the home, requires a CUP from the Zoning Administrator. The fee for this type of CUP is \$3,568. The process generally takes about 2-3 months and requires a 500-foot radius notification and a public hearing. Additionally, the California State Department of Social Services, Community Care Licensing Division, regulates the licensing of these uses.

In comparison with other Orange County cities, the City of Huntington Beach has one of the highest zoning entitlement fees for large family day care uses according to a survey conducted by the Orange County United Way Local Investment In Child Care (LINCC) Project (Attachment No. 4). The survey also indicates that there is a greater need for childcare in the City of Huntington Beach than is currently being met. Because the costly CUP process may deter a potential large family day care operator from applying to provide childcare services in the City, a no-fee administrative permit is being proposed. By eliminating the CUP requirement for large family day cares, a potential operator will be able to obtain approval for this type of childcare use in a shorter amount of time and at a lesser expense.

ATTACHMENTS:

1. Suggested Findings for Approval – ZTA No. 06-05
2. Draft Ordinance for ZTA No. 06-05
3. Legislative Draft
4. OC United Way LINCC Project Survey

SH:MBB:jv

ATTACHMENT NO. 1

SUGGESTED FINDINGS FOR APPROVAL

ZONING TEXT AMENDMENT NO. 06-05

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves amendments to the HBZSO Plan that do not change the density of the affected project areas.

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 06-05:

1. Zoning Text Amendment No. 06-05 to permit large family day care uses with a no-fee administrative permit is consistent with the goals, objectives and policies of the General Plan. The General Plan Land Use Element calls for the inclusion of service uses that support the resident needs within residential neighborhoods. Elimination of the CUP requirement for large family day cares will create more opportunities for large family day care operators to offer childcare services in the City that may have been deterred in the past due to the costly CUP application fees. ZTA No. 06-05 provides for the further accommodation of community-serving uses in residential neighborhoods as stated in the policies of the General Plan Land Use Element.
2. In the case of general land use provisions, the zoning text amendment is consistent with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. ZTA No. 06-05 proposes to amend Chapter 210.04 of the HBZSO by eliminating the CUP requirement for large family day cares and instead requiring a no-fee administrative permit. This will allow for a planning review and approval but does not place the burden of expensive entitlement fees on a potential childcare provider. ZTA No. 06-05 does not propose to change existing land use designations and is consistent with the uses permitted in Chapter 210.04 of the HBZSO in that large family day cares will still be permitted in residential zoning districts but will no longer require a CUP in order to obtain approval.
3. A community need is demonstrated for the proposed zoning text amendment. The City of Huntington Beach has one of the highest zoning entitlement fees for large family day care homes in Orange County. There is also a need for more childcare services in the City. ZTA No. 06-05 proposes to eliminate the CUP requirement and implement a no-fee administrative permit, thereby reducing the costly entitlement fees and shortening the application processing time. The simplified process will allow potential childcare providers to better serve the needs of the community.

4. The adoption of ZTA No. 06-05 will be in conformity with public convenience, general welfare and good zoning practice. ZTA No. 06-05 will lessen the land use controls for large family day care uses and make it easier for operators to obtain approvals. The proposed zoning text amendment will enable childcare providers to obtain permits with less restrictions but still allow for planning approval to ensure that proposed large family day care homes will not significantly impact the surrounding properties and be compatible with the adjacent residential uses.

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH AMENDING
CHAPTER 210 OF THE HUNTINGTON BEACH ZONING AND SUBDIVISION
ORDINANCE RELATING TO RESIDENTIAL DISTRICTS-DAY CARE CENTERS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 210.04 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended by changing the land use controls for Day Care-Large Family, as follows:

210.04 RL, RM, RMH, RH, and RMP Districts: Land Use Controls

In the following schedules, letter designations are used as follows:

"P" designates use classifications permitted in residential districts.

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" that follow.

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission.

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator.

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator.

"P/U" designates that accessory uses are permitted, however, accessory uses are subject to approval of a conditional use permit if the primary use requires a conditional use permit.

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to provisions following the schedule or located elsewhere in the zoning ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading.

(Rest of page not used)

SEP 14 2008

RL, RM, RMH, RH, and
RMP DISTRICTS:
LAND USE CONTROLS

- P = Permitted
 L = Limited (see Additional Provisions) (3334-6/97)
 PC = Conditional use permit approved by Planning Commission
 ZA = Conditional use permit approved by Zoning Administrator
 TU = Temporary Use Permit
 P/U = Requires conditional use permit on site of conditional use
 - = Not Permitted

	RL	RM	RMH RH	RMP	Additional Provisions
Residential Uses					(A)(M)(Q)
Day Care, Ltd.	P	P	P	P	
Group Residential	-	-	PC	-	
Multi-family Residential					(B)(C)(D)(R)
2 - 4 units	ZA	P	P	-	
5 - 9 units	ZA	ZA	ZA	-	
10 or more units	PC	PC	PC	-	
Manufactured Home Parks	ZA	ZA	-	ZA	(E)(F)
Residential, Alcohol Recovery, Ltd.	P	P	P	P	
Residential Care, Limited	P	P	P	P	
Single-Family Residential	P	P	P	P	(B)(D)(F)(P)(R)
Public and Semipublic					(A)(O)
Clubs & Lodges	PC	PC	ZA	ZA	
Day Care, Large-family	L-6	L-6	L-6	L-6	
Day Care, General	L-1	ZA	ZA	ZA	
Park & Recreation Facilities	L-2	L-2	L-2	L-2	
Public Safety Facilities	PC	PC	PC	PC	
Religious Assembly	L-3	PC	PC	PC	
Residential Care, General	-	L-1	PC	PC	
Schools, Public or Private	PC	PC	PC	PC	
Utilities, Major	PC	PC	PC	PC	
Utilities, Minor	P	P	P	P	
Commercial					
Communication Facilities	L-5	L-5	L-5	L-5	
Horticulture	ZA	ZA	ZA	ZA	
Nurseries	ZA	ZA	ZA	ZA	
Visitor Accommodations					
Bed and Breakfast Inns	-	-	L-4	-	
Accessory Uses	P/U	P/U	P/U	P/U	(A)(G)(H)(I)(L)(M)
Temporary Uses					(J)(M)
Commercial Filming, Limited	P	P	P	P	
Real Estate Sales	P	P	P	P	(N)
Personal Property Sales	P	P	P	P	
Street Fairs	TU	TU	TU	TU	
Nonconforming Uses					(K)(L)

RL, RM, RMH, RH, and RMP Districts: Additional Provisions

- L-1 A conditional use permit from the Planning Commission is required and only allowed on lots 1.0 acre (gross acreage) or greater fronting an arterial in RL District.
- L-2 Public facilities permitted, but a conditional use permit from the Zoning Administrator is required for private noncommercial facilities, including swim clubs and tennis clubs.
- L-3 A conditional use permit from the Planning Commission is required, and only schools operating in conjunction with religious services are permitted as an accessory use. A General Day Care facility may be allowed as a secondary use, subject to a conditional use permit, if the Planning Commission finds that it would be compatible with adjacent areas and not cause significant traffic impacts.
- L-4 A conditional use permit from the Zoning Administrator is required and only allowed on lots 10,000 sq. ft. or greater in RMH-A subdistrict. See also Section 230.42: Bed and Breakfast Inns.
- L-5 Only wireless communication facilities permitted subject to section 230.96 Wireless Communication Facilities.
- L-6 Neighborhood notification is required pursuant to Section 241.24. No architectural plans shall be required.
- (A) Any addition or modification subsequent to the original construction that would result in an increase in the amount of building area, or a structural or architectural alteration to the building exterior, shall require an amendment to the previously approved conditional use permit, if any, or approval of a new conditional use permit.
- (B) A conditional use permit from the Planning Commission is required for residential uses requesting reduction in standards for senior citizens (See Section 210.08), for affordable housing (See Sections 210.10 and 230.14), or for density bonus (See Section 230.14).
- (C) A conditional use permit from the Zoning Administrator is required for any multiple family residential development that:
 - (1) abuts an arterial highway;
 - (2) includes a dwelling unit more than 150 feet from a public street; or
 - (3) includes buildings exceeding 25 feet in height.
- (D) See Section 210.12: Planned Unit Development Supplemental Standards. In addition, a conditional use permit is required for condominium conversion pursuant to Chapter 235.
- (E) See Section 210.14: RMP District Supplemental Standards. In addition, Neighborhood Notification pursuant to Chapter 241 is required for the addition of manufactured home space(s) to an existing Manufactured Home Park.
- (F) See Section 230.16: Manufactured Homes.
- (G) See Section 230.12: Home Occupation in R Districts.

- (H) See Section 230.08: Accessory Structures.
- (I) See Section 230.10: Accessory Dwelling Units.
- (J) See Section 241.20: Temporary Use Permits.
- (K) See Chapter 236: Nonconforming Uses and Structures.
- (L) See Chapter 233: Signs.
- (M) Tents, trailers, vehicles, or temporary structures shall not be used for dwelling purposes.
- (N) See Section 230.18: Subdivision Sales Offices and Model Homes.
- (O) Limited to facilities on sites of fewer than 2 acres.
- (P) See Section 230.22: Residential Infill Lot Developments.
- (Q) See Section 230.20: Payment of Parkland Dedication In-Lieu Fee.
- (R) Small lot development standards for RM, RMH, and RH Districts. A conditional use permit from the Planning Commission is required for small lot residential subdivisions, including condominium maps for detached single family dwellings. See also Section 230.24: Small Lot Development Standards.

SECTION 2. All other Chapters of the Zoning and Subdivision Ordinance not amended hereby shall remain in full force and effect.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jennifer M. Fish
9/14/06 City Attorney *JMM 9/13/06*

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:

Acting Director of Planning

LEGISLATIVE DRAFT

Section 210.04 RL, RM, RMH, RH, and RMP Districts: Land Use Controls

In the following schedules, letter designations are used as follows:

"P" designates use classifications permitted in residential districts.

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" that follow.

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission.

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator.

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3334-6/97, 3410-3/99)

"P/U" designates that accessory uses are permitted, however, accessory uses are subject to approval of a conditional use permit if the primary use requires a conditional use permit. (3334-6/97, 3410-3/99)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to provisions following the schedule or located elsewhere in the zoning ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading.

(Rest of page not used)

LEGISLATIVE DRAFT

RL, RM, RMH, RH, and RMP DISTRICTS:
 LAND USE CONTROLS

P = Permitted
 L = Limited (see Additional Provisions) (3334-6/97)
 PC = Conditional use permit approved by Planning Commission
 ZA = Conditional use permit approved by Zoning Administrator
 TU = Temporary Use Permit
 P/U = Requires conditional use permit on site of conditional use
 - = Not Permitted

	RL	RM	RMH RH	RMP	Additional Provisions	
Residential Uses					(A)(M)(Q)	(3334-6/97, 3410-3/99)
Day Care, Ltd.	P	P	P	P		
Group Residential	-	-	PC	-		
Multi-family Residential					(B)(C)(D)(R)	(3410-3/99, 3455-5/00)
2 - 4 units	ZA	P	P	-		(3334-6/97, 3410-3/99)
5 - 9 units	ZA	ZA	ZA	-		(3334-6/97, 3410-3/99)
10 or more units	PC	PC	PC	-		(3334-6/97, 3410-3/99)
Manufactured Home Parks	ZA	ZA	-	ZA	(E)(F)	
Residential, Alcohol Recovery, Ltd.	P	P	P	P		
Residential Care, Limited	P	P	P	P		
Single-Family Residential	P	P	P	P	(B)(D)(F)(P)(R)	(3334-6/97, 3410-3/99, 3455-5/00)
Public and Semipublic					(A)(O)	(3334-6/97, 3410-3/99)
Clubs & Lodges	PC	PC	ZA	ZA		(3334-6/97, 3410-3/99)
Day Care, Large-family	ZA	ZA	ZA	ZA		(3334-6/97)
	L-6	L-6	L-6	L-6		
Day Care, General	L-1	ZA	ZA	ZA		(3334-6/97, 3410-3/99)
Park & Recreation Facilities	L-2	L-2	L-2	L-2		(3334-6/97, 3410-3/99)
Public Safety Facilities	PC	PC	PC	PC		
Religious Assembly	L-3	PC	PC	PC		(3334-6/97, 3410-3/99)
Residential Care, General	-	L-1	PC	PC		(3334-6/97, 3410-3/99)
Schools, Public or Private	PC	PC	PC	PC		
Utilities, Major	PC	PC	PC	PC		
Utilities, Minor	P	P	P	P		
Commercial						
Communication Facilities	L-5	L-5	L-5	L-5		(3568-9/02)
Horticulture	ZA	ZA	ZA	ZA		(3410-3/99)
Nurseries	ZA	ZA	ZA	ZA		(3410-3/99)
Visitor Accommodations						
Bed and Breakfast Inns	-	-	L-4	-		(3334-6/97, 3410-3/99)
Accessory Uses	P/U	P/U	P/U	P/U	(A)(G)(H)(I)(L)(M)	(3334-6/97, 3410-3/99)
Temporary Uses					(J)(M)	(3334-6/97, 3410-3/99)
Commercial Filming, Limited	P	P	P	P		
Real Estate Sales	P	P	P	P	(N)	(3334-6/97, 3410-3/99, 3706)
Personal Property Sales	P	P	P	P		
Street Fairs	TU	TU	TU	TU		
Nonconforming Uses					(K)(L)	

RL, RM, RMH, RH, and RMP Districts: Additional Provisions

- L-1 A conditional use permit from the Planning Commission is required and only allowed on lots 1.0 acre (gross acreage) or greater fronting an arterial in RL District. (3410-3/99)
- L-2 Public facilities permitted, but a conditional use permit from the Zoning Administrator is required for private noncommercial facilities, including swim clubs and tennis clubs. (3334-6/97, 3410-3/99)
- L-3 A conditional use permit from the Planning Commission is required, and only schools operating in conjunction with religious services are permitted as an accessory use. A General Day Care facility may be allowed as a secondary use, subject to a conditional use permit, if the Planning Commission finds that it would be compatible with adjacent areas and not cause significant traffic impacts. (3334-6/97, 3410-3/99, 3724-02/06)
- L-4 A conditional use permit from the Zoning Administrator is required and only allowed on lots 10,000 sq. ft. or greater in RMH-A subdistrict. See also Section 230.42: Bed and Breakfast Inns. (3334-6/97, 3410-3/99, 3706-6/05)
- L-5 Only wireless communication facilities permitted subject to section 230.96 Wireless Communication Facilities. (3568-9/02)
- L-6 Neighborhood notification is required pursuant to Section 241.24. No architectural plans shall be required.**
 - (A) Any addition or modification subsequent to the original construction that would result in an increase in the amount of building area, or a structural or architectural alteration to the building exterior, shall require an amendment to the ~~previously~~ **previously** approved conditional use permit, if any, or approval of a new conditional use permit. (3334-6/97, 3410-3/99)
 - (B) A conditional use permit from the Planning Commission is required for residential uses requesting reduction in standards for senior citizens (See Section 210.08), for affordable housing (See Sections 210.10 and 230.14), or for density bonus (See Section 230.14).
 - (C) A conditional use permit from the Zoning Administrator is required for any multiple family residential development that:
 - (1) abuts an arterial highway;
 - (2) includes a dwelling unit more than 150 feet from a public street; or
 - (3) includes buildings exceeding 25 feet in height. (3334-6/97, 3410-3/99)
 - (D) See Section 210.12: Planned Unit Development Supplemental Standards. In addition, a conditional use permit is required for condominium conversion pursuant to Chapter 235.
 - (E) See Section 210.14: RMP District Supplemental Standards. In addition, Neighborhood Notification pursuant to Chapter 241 is required for the addition of manufactured home space(s) to an existing Manufactured Home Park. (3334-6/97, 3410-3/99, 3706-6/05)
 - (F) See Section 230.16: Manufactured Homes.

RL, RM, RMH, RH, and RMP Districts: Additional Provisions

- (G) See Section 230.12: Home Occupation in R Districts.
- (H) See Section 230.08: Accessory Structures.
- (I) See Section 230.10: Accessory Dwelling Units.
- (J) See Section 241.20: Temporary Use Permits.
- (K) See Chapter 236: Nonconforming Uses and Structures.
- (L) See Chapter 233: Signs.
- (M) Tents, trailers, vehicles, or temporary structures shall not be used for dwelling purposes. (3334-6/97, 3410-3/99)
- (N) See Section 230.18: Subdivision Sales Offices and Model Homes. (3334-6/97, 3410-3/99)
- (O) Limited to facilities on sites of fewer than 2 acres. (3334-6/97, 3410-3/99)
- (P) See Section 230.22: Residential Infill Lot Developments. (3334-6/97, 3410-3/99)
- (Q) See Section 230.20: Payment of Parkland Dedication In-Lieu Fee. (3410-3/99)
- (R) Small lot development standards for RM, RMH, and RH Districts. A conditional use permit from the Planning Commission is required for small lot residential subdivisions, including condominium maps for detached single family dwellings. See also Section 230.24: Small Lot Development Standards. (3455-5/00)

Child Care in Huntington Beach

Huntington Beach's working families need child care ...

- An estimated 10,752 children ages birth to 12 have working parents. More than half of those children are under age 5.¹
- Only 6,376 licensed child care spaces are available in Huntington Beach, creating a shortfall of 4,376 licensed spaces.¹
- Orange County's Child Care Resource and Referral Agency (Children's Home Society of California) reports 685 requests for child care referrals in Huntington Beach during a year's time.²

The child care industry often encounters barriers to meeting community needs ...

- Costs to operate quality child care programs are high
- Land use policies can create barriers:
 - * High land and development costs
 - * Long waiting times for permitting
 - * Zoning restrictions
- Permit fees for child care centers in Huntington Beach are \$6,815, the second highest city in Orange County. A permit for a large family child care home costs \$3,502, the second highest city in Orange County.
- Wait time for permitting process for centers in Huntington Beach is 12-16 weeks and 12-16 weeks for family child care homes.
- Child care is permitted in Residential, Industrial, and Commercial zones, but omitted from at least 3 other possible appropriate zones.
- Child care is not specifically addressed in the City of Huntington Beach's general plan.

Licensed child care is an income producing, job-creating industry that is essential to Orange County's infrastructure and deserving of community support!

Licensed child care generates \$412 million annually in income and enables parents to earn \$828 million.

The combined productivity effects of licensed child care in Orange County amount to a \$6.7 billion contribution to industry output!



Orange County United Way

**Local Investment In Child Care
(LINCC)**



Orange County United Way

¹ Statistics available from the Office of the Orange County Child Care Coordinator

² Calls were received from January 2004 through December 2005

CHILD CARE HOMES (FCCH)

CHILD CARE CENTERS (CCC)

FAMILY

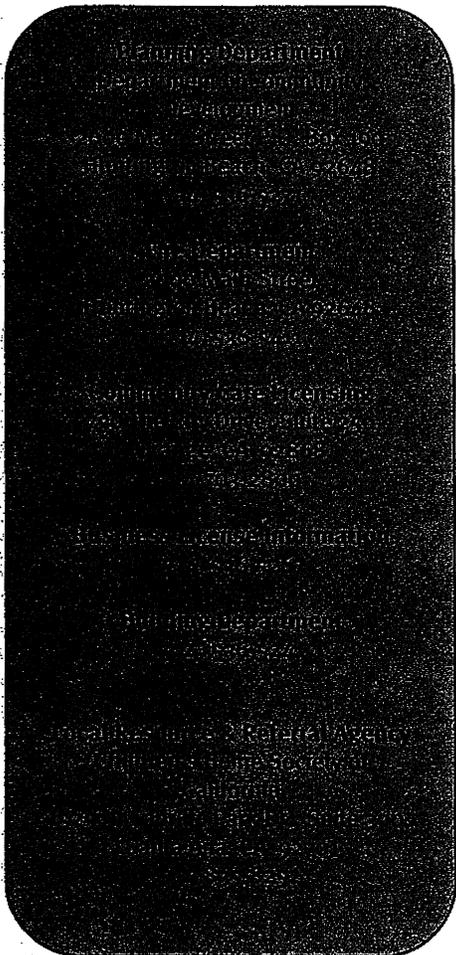
City or Jurisdiction	Permit Fee	Permit Type	Average Length of Time	Permitted Zones	Permit Fee	Permit Type	Average Length of Time	Permitted Zones
Anaheim	\$127/hr. for staff time \$10,000 deposit	Conditional Use Negative Declaration	12 weeks	Residential, Commercial Industrial, Special Play	\$160	Conditional Use	Up to Completion of the application	Residential
Brea	\$2,000 for deposit; plus \$100/hr. for staff time	Conditional Use	16-24 weeks	General Commercial	\$100/hr. for staff time	Large Family Child Care Home Permit	8 weeks	Residential
Brea Park	\$1,600 plus \$93 or \$408 for Environmental Study Fee; \$95 EIR Fee	Conditional Use	6-8 weeks	Commercial, some Residential	N/A	Permitted Use	N/A	Residential
Costa Mesa	\$990; plus \$285 is not environmentally exempt	Conditional Use	6 weeks	Residential, Commercial, Industrial	\$650	Developmental Review	8-12 weeks	Residential, Planned Development, Planned Industrial
County of Orange	\$2,500; \$2,000 CSEA Fee; \$87 Fire Authority Review	Use Permit	12 weeks	Commercial (C), (C-1), (C-2), Public (PA)	N/A	Permitted Use	N/A	Residential (R-1, R-2, R-2B, R-3, R-4, R-4.1, R-4.5, A1)
Cypress	Minor; plus Environmental Fees; \$50 Categorical Exemption; \$150 Negative Declaration; \$250 Mitigated Negative Declaration	Conditional Use	8-12 weeks	Commercial, Industrial, Public, Business Park Zone	N/A	Permitted Use	Staff Review by Orange County Social Services Agency	Residential
Dana Point	\$2,335	Conditional Use	6-8 weeks	Residential, Commercial, Mixed Use, Professional, Community Facility	\$2,335	Conditional Use	6-8 weeks	Residential, Mixed Use
Fountain Valley	\$3,150; plus \$450 Notice of Exemption Fee	Conditional Use	3-6 weeks	Residential, Agricultural, Garden Home, Commercial	N/A	Permitted Use	3 days	Residential
Fullerton	\$2,480	Conditional Use	6-8 weeks	Residential, Commercial	N/A	Review by zoning Department	12 weeks	Residential
Garden Grove	\$2,100; plus additional Environmental Fees	Conditional Use	8-10 weeks	Commercial	N/A	Permitted Use		Residential (R-1, R-2, R-3)
Huntington Beach	\$6,815	Conditional Use	2-16 weeks	Residential, Commercial, Industrial	\$3,500	Conditional Use	12-16 weeks	Residential, Commercial Offices, Commercial General
Irvine	\$1,500 for deposit; \$115.08/hr. for staff time	Conditional Use	8-10 weeks	Residential, Commercial, Industrial, Multi-Use, Institutional, Medical and Science	N/A	Permitted Use; requires Planning and Zoning Departments approval.	1 week	Residential
La Habra	\$1,750	Conditional Use	4 weeks	Residential, Commercial, Industrial	\$1,750	Conditional Use	4-8 weeks	Residential
La Palma	\$859; \$719 for an existing building	Conditional Use	12-24 weeks	Residential, Commercial, Industrial	\$859	Conditional Use	12-24 weeks	Residential
La Puente	\$500	Conditional Use	4-7 weeks	Commercial	N/A	Permitted Use	2 weeks	Residential
La Puente Hills	\$3,000 for deposit for staff time	Conditional Use	8-12 weeks	Residential, Commercial, Industrial, Office Professional, Village Commercial, Mixed-Use, Community/Private Institutional	\$3,000 for deposit for staff time	Conditional Use	8-12 weeks	Residential, Commercial, Industrial, Office Professional, Village Commercial, Mixed-Use, Community/Private Institutional

CHILD CARE HOMES (FCCH)
CHILD CARE CENTERS (CCC)

FAMILY

City or Jurisdiction	Permit Fee	Permit Type	Average Length of Time	Permitted Zones	Permit Fee	Permit Type	Average Length of Time	Permitted Zones
Laguna Niguel	\$4,440	Full Use	8 weeks	Neighborhood Commercial, Community Commercial, Office Commercial, Business Park, Public Industry	\$1,600 for deposit; plus \$54/hr. for staff time	Minor Use Permit	4 weeks	Residential, except Attached Residential District and Multi-Family District
Lake Forest	\$5,500 plus deposit plus \$175 for Fire Department Review, \$43 CEQA Fee	Use Permit	8 weeks	Residential, Commercial	\$5,500 plus deposit plus \$175 for Fire Department Review, \$43 CEQA Fee	Use Permit	8-12 weeks	Residential
Los Alamitos	\$425; plus \$150 for Fire Authority Fee; \$43 CEQA Fee	Minor Conditional Use	4-6 weeks	Commercial: Professional Commercial and General Commercial	\$425; plus \$150 for Fire Authority Fee; \$43 CEQA Fee	Minor Conditional Use	4 weeks	Residential (R2 and R3)
Mission Viejo	\$1,000 plus Environmental Fees	Conditional Use	6-8 weeks	Commercial: Residential, Retail Service Commercial, Administrative Financial, Recreational Marine Commercial	\$400	Conditional Use	4-6 weeks	Residential
Newport Beach	\$2,200; deposit billed for staff time	Conditional Use	8-12 weeks	Residential (R1 and R2)	N/A	Permitted Use	3 weeks	Residential
Orange	\$3,000 deposit billed for staff time; \$340; plus \$125 for an Environmental Review; \$185 for a Fire Authority Review	Conditional Use			N/A	Permitted Use		Residential
Placentia	\$1,700	Use Permit	21 days	Residential, Commercial	\$125	Special Use	21 days	Residential
San Clemente	\$2,500; deposit billed for staff time	Conditional Use	8-12 weeks	Residential, Commercial, Industrial and Mixed Uses	\$1,700	Conditional Use	8 weeks	Residential, Commercial and Mixed Uses
San Juan Capistrano	\$2,050; deposit billed for staff time	Conditional Use	8-12 weeks	Residential, Commercial: Neighborhood Commercial and General Commercial	\$2,500; deposit billed for staff time	Conditional Use	8-12 weeks	Residential
Santa Ana	\$1,900 Environmental Fee; \$122.50 Public Works Fee; \$470 additional processing fees	Conditional Use	16 weeks	Residential, Commercial, Industrial and Professional Office	\$130	Use Permit Certificate	2 weeks	Residential, Commercial (C2, CMB, C3, C4, C5)
Seal Beach	\$750 deposit billed for staff time	Conditional Use	45 days	Residential, Commercial	\$750 deposit billed for staff time	Conditional Use	45 days	Residential, Commercial
Stanton	\$1,970 plus \$170 for a Categorical Exemption Notice, \$30 Maintenance Charge, \$185 CEQA Fee, \$37 fee per property owner within a 500 foot radius	Conditional Use	16 weeks	Commercial	N/A	Permitted Use	1 week	Residential
Fustin	\$750	Conditional Use	16 weeks	Commercial	N/A	Permitted Use	Upon completion of application	Residential
Yorba Linda	\$1,000 deposit at a rate of \$89/hr. for staff time	Conditional Use	6 weeks	Commercial	N/A	Permitted Use	6 weeks	Residential

* Data compiled by Orange County United Way Local Investment In Child Care (LINCC) Project, Planning Department Survey for the Land Use and Zoning Guide for Orange County.



**Small Family
Child Care Homes**

Maximum of 8 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

**Large Family
Child Care**

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential (Commercial Office, Commercial General)

Permit: Conditional Use Permit.

Fee: \$ 3,502

Approximate Time for Approval:
3-4 months.

Application: Available at the Planning Department. Site plans and floor plans are required. Traffic circulation patterns are usually a part of the site plan. A preliminary review for major projects such as new construction is recommended and the fee is \$ 2,292. Notification of neighbors is needed. The applicant must submit mailing labels to the city. The city then sends out a notice. Planning cannot provide a list of neighbors.

Impact Requirements:

1. The parking requirement is determined on a case-by-case basis and is subject to Conditional Use Permit regulations.
2. The City's Noise Ordinance is as follows:
Exterior Noise Standards
Noise Zone
1 (All residential properties)
Noise Level Time Period
55 dB(A) 7:00am-10:00pm
50 dB(A) 10:00pm-7:00am
2 (All professional office and public institutional properties)
55 dB(A) Anytime
3 (All commercial properties with the exception of professional office properties)
60 dB(A) Anytime
3. The provider must meet State standards and be licensed.

Hearing: A public hearing is necessary and is held by the Zoning Administrator.

Appeal Process: The appeal is made to the Planning Commission.

Appeal Fee: \$ 1,540

Fire Clearance: Required. Pre-inspections are offered. However, there is a second option that may help you save money. By purchasing a booklet titled California Building Code "R" Occupancy for Community Residential Care Facilities (Revised February 2004) and using it as a pre-inspection check-list (which includes child care). Afterwards you can contact the Fire Department. This way they can review what you've already done and let you know if you have not met all the requirements. You can purchase this booklet by calling (916) 455-0723 or requesting it at 1924 Alhambra Blvd. Sacramento, CA 95816-9270.

Fees: For the booklet \$ 10.00

Business License: Required.

Fee: \$ 91.29

Child Care Centers

Zone: Residential (with an approval of a Conditional Use Permit to the Planning Commission with a fee of \$ 6,815). In all other zones it is a Permitted Use by the Zoning Administrator.

Permit: For a Residential zone a Conditional Use Permit is needed. **Fee:** \$ 6,815

Approximate Time for Approval:
3-4 months.

Application: Available at the Planning Department. Site plans and floor plans are required. Traffic circulation patterns are usually a part of the site plan. A preliminary review for major projects such as new construction is recommended and the fee is \$ 2,292. Notification of neighbors is needed. The applicant must submit mailing labels to the city. The city then sends out a notice. Planning cannot provide a list of neighbors.

Impact Requirements: 1. One off-street parking space per each staff person and one off-street parking space per each classroom, plus 2 drop-off locations.
2. Traffic/circulation is reviewed by the city's traffic engineer.

3. The use must conform to the City's Noise Ordinance which is:

Exterior Noise Standards
Noise Zone
Noise Level Time Period
1 (All residential properties)
55 dB(A) 7:00am-10:00pm
50 dB(A) 10:00pm-7:00am

2 (All professional office and public institutional properties)
55 dB(A) Anytime

3 (All commercial properties
60 dB(A) Anytime
with the exception of professional office properties

4. Building and fire code compliance is necessary.
Hearing: A public hearing is necessary and is held by the Zoning Administrator.

Appeal Process: An appeal is made to the Planning Commission.

Appeal Fee: \$ 1,540.

Fire Clearance: Required. Pre-inspections are offered. However, there is a second option that may help you save money. By purchasing a booklet titled California Building Code "R" Occupancy for Community Residential Care Facilities (Revised February 2004) and using it as a pre-inspection check-list (which includes child care). Afterwards you can contact the Fire Department. This way they can review what you've already done and let you know if you have not met all the requirements. You can purchase this booklet by calling (916) 455-0723 or requesting it at 1924 Alhambra Blvd. Sacramento, CA 95816-9270.

Fee: For the booklet \$ 10.00

Business License: Required.

Fee: \$ 75 covers 3 employees full-time or less (for each additional employee, the charge is \$4.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.

www.ci.costa-mesa.ca.us/

Planning Department
Costa Mesa City Hall
Planning Division (714)
1000 S. Coast Drive
Costa Mesa, CA 92626
(714) 754-5335

Fire Department
City Hall Drive
Costa Mesa, CA 92626
(714) 754-5306

Community Care Licensing
750 Alhambra Blvd, Suite 205
Orange, CA 92668
(714) 962-2800

Business License
Information
Finance Department (714)
1000 S. Coast Drive
(714) 754-5335

Building Department
(714) 754-5327

Local Resource & Referral
Agency
Children Home Society
1000 S. Coast Drive
525 N. California Park Drive
Santa Ana, CA 92701

**Small Family
Child Care Homes**

Maximum of 8 children, including provider's own children less than 10 years old.

Small family childcare is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

**Large Family
Child Care**

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential; Other: Planned Development and Planned Development Industrial (a Conditional Use Permit is not necessary because it is a permitted use)

Permit: Yes, A Development Review/staff level review is needed (there is no public notice required)

Fee: \$ 650

Approximate Time for Approval: 8-12 weeks

Application: Available at the Planning Department. Site plans are required. Landscaping designs are typically not required. A preliminary review is not possible. Notification of neighbors is not needed.

Impact Requirements:

1. Applications for large family day care homes should be submitted to the Planning Division for development review, prior to the commencement of the use.
2. A large family day care home may only be permitted in a single-family dwelling and shall not be located within 700 feet of an existing large family day care home on the same street or block, unless the applicant applies for and obtains approval of a minor conditional use permit.
3. A large family day care home shall not be subject to provisions of the California Environmental Quality Act.
4. The City Council can adopt general standards that may be applied to large family day care home applications on a case-by-care basis.
5. There are additional property development standards for the multiple-family residential districts. (a) If the residential project is to be located in proximity to a freeway, major arterial airport or any other source of significant noise, an acoustical evaluation of the working drawings may be required to be submitted by an acoustical engineer to approval by the City. The noise levels shall certify that the construction will reduce interior noise levels to 45 CNEL and exterior noise levels to 65 C (b) Additional conditions or requirements may be applied by other City departments (e.g. Fire Department).

Hearing: A hearing is not required unless appealed.

Appeal Process: An appeal to the Planning Commission is \$470 and an appeal to the City Council is \$810.

Appeal Fee: \$810

Fire Clearance: Required. Pre-inspections are offered.

Fees: \$50

Business License: Required

Fee: \$25 to \$200 generated from annual gross receipts of the business per year.

Child Care Centers

Zone: A Conditional Use Permit is required for Residential; Commercial and Industrial Zones.

Permit: Conditional Use Permit

Fee: \$990.

Approximate Time for Approval: 8-12 weeks

Application: Available at the Planning Department and on-line. Site plans are required. Landscaping designs are typically not required. A preliminary review is not possible. Notification of property owners within a 500-foot radius is needed and is made by the city. Planning Dept. cannot provide a list of property owners.

Impact Requirements:

1. Each application is reviewed on a case-by-case basis.
2. For traffic and circulation issues, contact the Transportation Services Department for applicable requirements at (714) 754-5335.
3. The use shall comply with the City's Noise Ordinance, which is:
Exterior Noise Standard
Noise Level
Time Period
55 dB (A)
7:00 am-11:00 pm
50 dB (A)
11:00 pm-7:00 am
4. If a new building is proposed specifically for a childcare center, the floor area of the building shall comply with the applicable floor area ratio.

Hearing: A public hearing is necessary and is held by the Planning Commission.

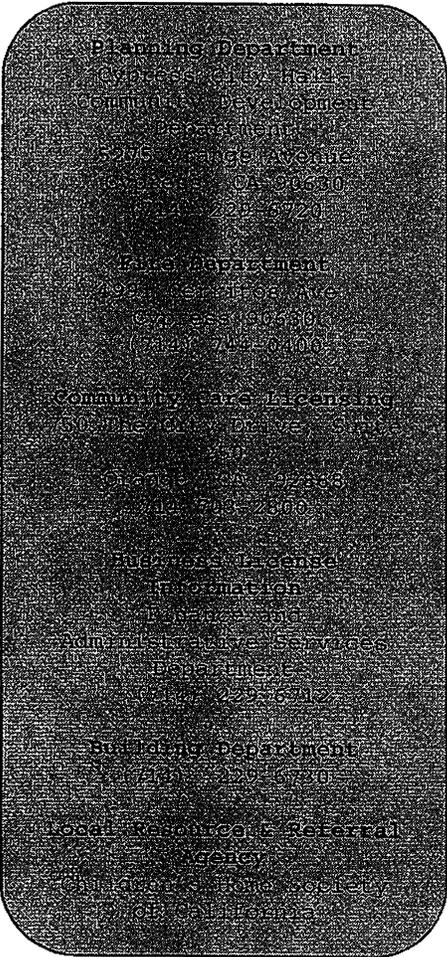
Appeal Process: An appeal to the Planning Commission is \$470 and an appeal to the City Council is \$810.

Appeal Fee: See above.

Fire Clearance: Required. Pre-inspections are offered. **Fees:** \$50

Business License: Required **Fee:** \$25 to \$200 generated from annual gross receipts of the business per year.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.



**Small Family
Child Care Homes**

Maximum of 8 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

**Large Family
Child Care**

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential (single and multiple family).

Permit: It is a permitted use. Large family child care homes are allowed "by right".

Fee: Not Applicable

Approximate Time for Approval: Is made by Orange County Social Services.

Application: Available at the Planning Department. Site plans and traffic circulation patterns are required. Landscaping designs are typically not required. A preliminary review is recommended and the fee is \$100.

Impact Requirements: 1. Parking and noise requirements are outlined in the Zoning Ordinance. The noise requirements are as follows:

Noise Zone	Time Period
55 dB(A)	7:00 am-10:00 pm
50 dB(A)	10:00 pm-7:00 am

- (All residential properties zoned RS-15000 or RS-6000)
- The parking requirement is as follows:
One space for each employee, plus one space for every ten children
- Any accessory buildings/structures used in the day care shall conform to the requirements for accessory structures for the zone in which the property is located.
- If a minor improvement is done to attach/detach or existing structures, permits are required.

Hearing: Not applicable.

Appeal Process: There is no appeal process.

Appeal Fee: Not Applicable

Fire Clearance: Required. Pre-Inspections are not offered but there is a Special Inspection fee (administered through the Building Department) in which fire clearance is included.

Fees: \$ 70

Business License: Not Required.

Fee: Not Applicable.

Child Care Centers

Zone: Commercial: Office Professional; Commercial General; Commercial Heavy. Industrial: Business Park; Industrial Light. Other: Public/Semi-Public; Planned Business Park Zone

Permit: Conditional Use Permit Major (new structure) or Minor (existing structure)
Fee: \$750 (Major) or \$400 (Minor) plus Environmental Fees: Categorical Exemption \$50; Negative Declaration \$150 and Mitigated Negative Declaration \$250.

Approximate Time for Approval: 2-3 months.

Application: Available at Planning Department. Site plans and traffic circulation patterns are required. Landscaping designs are typically not required. A preliminary review is recommended and the fee is \$100. Notification of neighbors is needed and is made by the applicant. Planning cannot provide a list of neighbors.

Impact Requirements:
1. Applicants are reviewed on a case-by-case basis and must meet development standards for the designated area or zone.
2. One parking space per employee, plus one space per ten children. In addition, facilities located in a Planned Community, Planned Business Park, or Business Park zones shall pay for a parking study to be conducted by the City or its designee. A parking plan will then be approved for each facility based on this study.
3. Authorized activities conducted on the grounds of any public or private nursery school shall be exempt from the noise ordinance.

Hearing: A public hearing is necessary and is held by the City Council.

Appeal Process: Written appeals are filed with the City Clerk who schedules the public hearing. There is a 10 day appeal period and the fee is \$100.

Appeal Fee: \$100

Fire Clearance: Required. There are no pre-inspections.

Fees: If the building is classified as Residential there are no fees but there are guidelines that must be met, this can be done on-line or the information can be faxed. However, if it's a Commercial building the fees vary. It depends on the plan submitted (i.e. fees can vary because of upgrades in the building).

Business License: Required
Fee: \$0.33 per \$1,000 gross receipts with a minimum of \$40 per year.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.

City of Fullerton
 Planning Department
 202 W. Commonwealth
 Fullerton, CA 92832
 TEL: 714-373-6540

Fire Department
 100 W. Commonwealth
 Fullerton, CA 92832
 TEL: 714-373-6500

Community Care Licensing
 15011 S. Gault Road, Suite 200
 Orange, CA 92668
 TEL: 714-373-2300

Business License
 Information
 100 W. 7th St.
 Fullerton, CA 92832

Public Works Department
 100 W. 7th St.
 Fullerton, CA 92832

Local Resource & Referral
 Agency
 Children's Home Society
 of California
 250 N. Capistrano Park Dr.
 Orange, CA 92668
 TEL: 714-835-8252

Small Family

Maximum of 8 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential

Permit: A permit is not required, however, a review is needed by the Zoning Department.

Fee: None.

Approximate Time for Approval:

1-2 weeks (this does not include the review by the Fire Department).

Application: An application is not required. But there are regulations that you're required to meet. They are stated below but they can also be found in the Municipal Code under section 15.17.030 H.

Impact Requirements:

1. May exist in detached residential single-family dwellings
2. Shall not be located closer than 300 linear feet to any other day care home or day nursery regardless of size.
3. Provide off-street vehicular loading areas with on-site circulation for safe loading/unloading from vehicles.
4. One-off street parking space to be provided for each employee on duty, in addition to the parking originally required for dwelling. One guest space shall also be provided for each six children, or portion thereof, cared for by the facility. The spaces shall not be located in a required street setback area, and not located in tandem.
5. Outdoor play area shall be maintained so as not to constitute a nuisance to such residential use. A solid six-foot masonry wall shall be constructed along the perimeter of the facility adjacent to all such outdoor play areas in the side and rear yards to mitigate noise.
6. Shall comply with noise and maintenance regulations of the zone subject to applicable abatement/nuisance procedures to mitigate incompatibility with the surrounding neighborhood and the intent of the regulations.

Hearing: A hearing is not necessary.

Appeal Process: There is no appeal process.

Appeal Fee: Not Applicable

Fire Clearance: Required. The Planning Department does an inspection before the Fire Department is able to do a pre-inspection.

Fees: For the Fire Department it's an hourly rate of \$ 69. The pre-inspection usually takes 30-45 minutes.

Business License: Required

Fee: \$ 60

Child Care Centers

Zone: Residential; Commercial (Office Professional, Commercial 1, Commercial 2, Commercial 3).

Permit: Conditional Use Permit

Fee: \$ 2,488

Approximate Time for Approval: 6-8 weeks.

Application: Available at the Planning Department and on-line. Site plans and floor plans are required. There is no streamlining of the application process. A preliminary review is possible and there is no fee. During busy times, planners advise that you submit your application and not wait for a preliminary review. Notification of neighbors is needed and is made by the city.

Impact Requirements:

1. One parking space for each worker/employee plus one space for each sixteen children enrolled.
2. Traffic/circulation requires on-site drop-off/pick up area be provided.
3. Six-foot high block wall along all property lines with adjacent parcels.
4. Relationships between proposed and existing/surrounding uses are evaluated.
5. Potential impacts on surrounding uses involving noise, glare, parking activity and traffic are evaluated. Mitigation measures to control impacts are reviewed.
6. Noise impact is evaluated and mitigation measures may apply.
7. Submittal of a site plan will be required.

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: The applicant may file a written appeal to the City Council within 10 days of the denial decision. For more information contact the City Clerk's office.

Appeal Fee: \$142

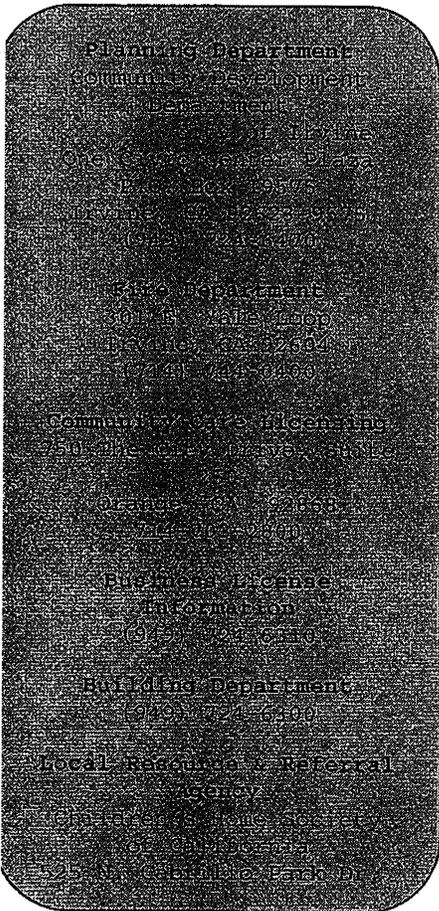
Fire Clearance: Required. The Planning Department does an inspection before the Fire Department is able to do a pre-inspection.

Fees: For the Fire Department it's an hourly rate of \$ 69. The pre-inspection usually takes 30-45 minutes.

Business License: Required

Fee: \$ 60

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.



Small Family Child Care Homes

Maximum of 8 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: All Residential Zones.

Permit: An official permit is not required but the Planning and Zoning Departments have to make sure that city guidelines are met. **Fee:** None.

Approximate Time for Approval:
1 week

Application: Available at the Planning Department and on-line. Site plans, traffic circulation and landscaping designs are not required. Notification of neighbors is not required but it's recommended.

Impact Requirements: The large family child care home is permitted subject to the applicant's signed agreement to meet the following conditions:

1. Comply with regulations of the Irvine Code of Ordinances related to residential development;
2. Comply with State licensing requirements including standards adopted by the State Fire Marshall pursuant to the Health and Safety Code;
3. Enclose all required outdoor play areas with a natural barrier, wall fence, or other solid structure having a maximum height of six feet and conform to the requirements of the City of Irvine Zoning Ordinance;
4. Separate all outdoor play areas from vehicular circulation, parking areas, equipment enclosures, storage areas, refuse and recycling areas; and
5. Provide a drop-off/pick-up area, such as a driveway area or curb space, to minimize interference with traffic and promote the safety of the children.
6. No signs identifying the family day care operations are allowed.
7. The garage may be used for day care ONLY if it has been improved to meet building and fire code regulations as habitable space, and the appropriate building permit was obtained.
8. Protective covering over any pools, spas or other water bodies must be in place.

Hearing: A public hearing is not required. However, upon approval of the large family day care permit, notification should be sent to the appropriate homeowners' association.

Appeal Process: There is no appeal process but if you do not follow city guidelines, Code Enforcement can hold you accountable.

Appeal Fee: Not Applicable

Fire Clearance: Required. After receiving an Orientation form from the State you are able to make an appointment for a pre-inspection (but do to time constraints a pre-inspection may not be possible).

Fees: Currently, there is no fee.

Business License: Not Required.

Fee: Not applicable.

Child Care Centers

Zone: Residential; Commercial; Industrial; Multi-use; Institutional; Medical and Science zones.

Permit: Conditional Use Permit.

Fee: \$1500 initial deposit which is billed at an hourly rate of \$115.08 according to staff time. If the deposit drops below \$300, more money will be needed. If it stays above \$300 you should receive a refund from the balance that is left over.

Approximate Time for Approval:
8-10 weeks (depends on the completeness of plan and application).

Application: Available at the Planning Department and on-line. Site plans, traffic circulation patterns and landscaping designs are required. Notification of neighbors 500 feet from the property line is needed and is made by the city. The applicant must provide the mailing labels.

Impact Requirements: 1. One parking space per staff member; plus either one space per five children or one space per ten children where adequate and safe drop-off is provided.

2. Traffic impacts which exceed established thresholds must be mitigated through conditions of approval placed on the Conditional Use Permit.

3. Childcare is not permitted in Accident Potential Zones I and II nor where noise exceeds exterior noise standards. Interior noise must be mitigated to meet interior noise standards.

4. Applicant must apply concurrently for the following before the child care center may operate:

- a. a child day care center license from the State Department of Social Services
- b. a Conditional Use Permit and
- c. a business license to operate a child care center

5. Comply with General Development Standards and Land Use Regulations.

6. Centers not consistent with the child care center development standards may apply for administrative relief.

Hearing: A public hearing is required and is held by the Zoning Administrator.

Appeal Process: 30-day appeal process can be made to the Planning Commission. If denied by the Planning Commission you may appeal to the City Council. (However, the initial approval must be made with the California Environmental Quality Act (CEQA))

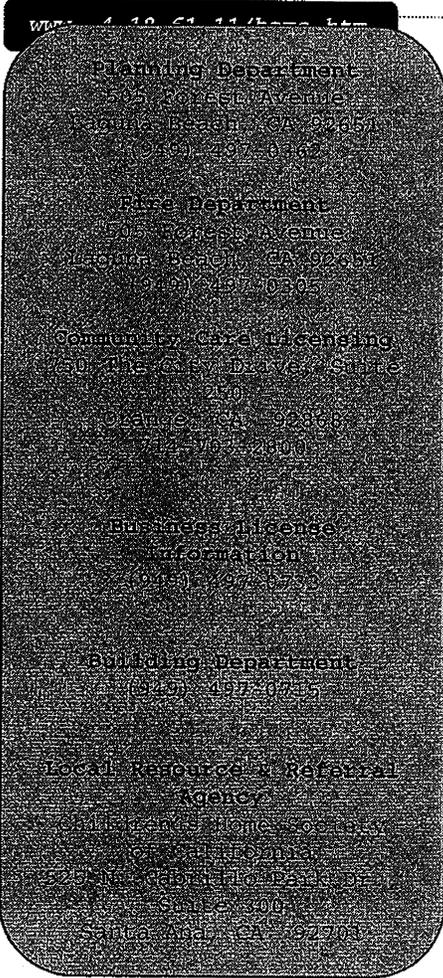
Appeal Fee: \$ 245.

Fire Clearance: Required. After receiving an Orientation form from the State you are able to make an appointment for a pre-inspection (but do to time constraints a pre-inspection may not be possible). **Fees:** Currently, there is no fee.

Business License: Required **Fee:** \$ 50.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.

Fee: None.



Approximate Time for Approval:
A few weeks.

Application: Available at the Planning Department. Site plans are required. However, traffic circulation patterns and landscaping designs vary depending on the scope of your project. A preliminary review is recommended and there is no fee. Notification of neighbors is not needed.

Impact Requirements:
1. Meet State licensing regulations.
2. Parking: One for each staff person plus one for every five children.
3. Traffic/circulation and noise standards were not identified.
4. Density/space requirements are dictated by the State.

Hearing: A hearing is not needed.

Appeal Process: There is no appeal process.

Appeal Fee: Not Applicable.

Fire Clearance: Required. Pre-inspections are offered.

Fees: None

Business License: Required.

Fee: The fee is based on gross receipts. You take that number and you multiply it by .00088 which gives you your tax. There is also an additional \$ 5 licensing fee, a \$60 base licensing fee and a one-time fee for a Home Occupancy Certificate which is \$ 75.

Child Care Centers

Zone: Commercial

Permit: Conditional Use Permit

Fee: \$ 500

Approximate Time for Approval:
Can take several months and/or up to a year.

Application: Available at the Planning Department. Site plans are required. However, traffic circulation patterns and landscaping designs vary depending on the scope of your project. A preliminary review is recommended and there is no fee. Notification of neighbors is needed and is done by the applicant.

Impact Requirements:
1. Parking for staff plus one parking space per five children.
2. Noise standards were not identified.

Hearing: A public hearing is required and is done by the Planning Commission.

Appeal Process: An appeal can be made within 10 days.

Appeal Fee: \$1000.

Fire Clearance: Pre-inspections are offered.

Fees: None.

Business License: Required.

Fee: For a Commercial location the fee is \$225. Furthermore, the Commercial location has to be approved by the Zoning Department.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and

Small Family

Maximum of 8 children, including provider's own children less than 10 years old.

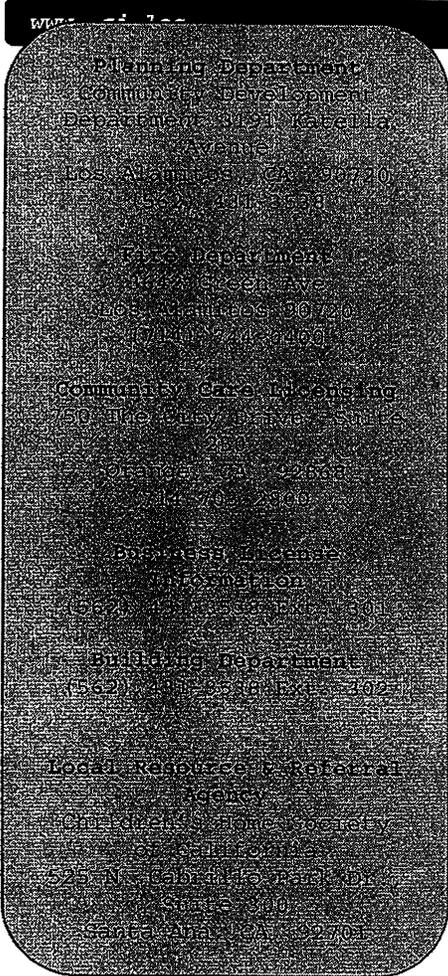
Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential

Permit: No. It's a Permitted Use as long as it's in the pervue of the state.



Approximate Time for Approval:
30 days

Application: Available at the Planning Department. Site plans are required. However, traffic circulation patterns are not. Landscaping designs vary depending on what the site looks like. A preliminary review is possible and there is no fee. Notification of neighbors is needed and is made by the applicant.

Impact Requirements:

1. The parking standard requires 2 on-site parking in addition to 2 required spaces.
2. Traffic/circulation must not impact on the neighborhood.
3. Compliance with the noise standard for the residential area which is:

Noise Zone

Noise Level	Time
1 (all residential zones)	
55 d(B)A	7:00am-10:00pm
50 d(B)A	10:00pm-7:00am
4. Meet State licensing and fire codes/regulations; be licensed to operate.	

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: There is a 20-day appeal period and the fee

Appeal Fee: Half the amount of the first application fee, which is \$ 212.50.

Fire Clearance: Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately.

Fees: None.

Business License: Required.

Fee: \$ 93 plus a \$ 25 one time fee.

Child Care Centers

Zone: Commercial: Professional Commercial (CP) and General Commercial (CG)

Permit: Minor Conditional Use Permit

Fee: \$425 plus an additional \$150 (Fire Authority fee) and \$43 (CEQA fee).

Approximate Time for Approval: 30 days.

Application: Available at the Planning Department. Site plans are required. However, traffic circulation patterns are not. Landscaping designs vary depending on what the site looks like. A preliminary review is possible and there is no fee. Notification of neighbors is needed and is made by the applicant.

Impact Requirements:

1. One parking space for every 5 seats but not less than 1 space for per 30 square feet.
2. Comply with city traffic/circulation, noise and development standards. The noise standard is as follows:

Noise Zone

Noise Level	Time
2 (all residential zones)	
60 d(B)A- (CG)	7:00am-10:00pm
55 d(B)A- (CP)	7:00am-10:00pm
3. Meet State licensing regulations and the State fire codes.	

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: There is a 20-day appeal period.

Appeal Fee: half the amount of the first application fee, which is \$ 212.50.

Fire Clearance: Required. Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Business License: Required.

Fee: The fee is based on how many employees work at the center. For example, 0-3 employees is \$ 190 and 4-29 employees is \$ 376.

Small Family

Maximum of 8 children, including provider's own children less than 10 years old.

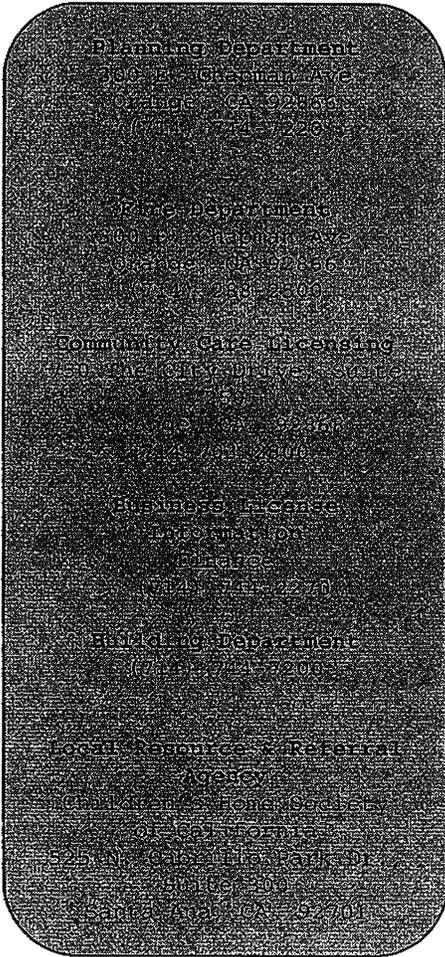
Small family childcare is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential (R2 and R3)

Permit: Minor Conditional Use Permit.



Small Family Child Care Homes

Maximum of 6 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential (single-family)

Permit: Permitted Use; only a Business License Application is required.

Fee: Not applicable

Approximate Time for Approval:
Not applicable.

Application: Not applicable. A business application is only needed. It doesn't have any major requirements, just bring a copy of your State permit.

Impact Requirements:

1. Operate in a single-family property in a Residential Zone.
2. Shall be located within 600 feet of the exterior property boundaries of the proposed home.
3. Comply with the standards in the Noise Ordinance at all times. Limit outdoor play activities to the hours between 8:00am and 8:00pm.
4. Maintain two enclosed parking spaces for parking purposes only.
5. Be licensed by the State Department of Social Services and comply with the State Fire Marshal's standards.
6. No signs advertising the business shall be allowed.
7. Compliance with all development standards for single-family residential structures is required.
8. Provide a site plan identifying pedestrian access to/from loading area.
9. Obtain a letter from the City, to be provided to State Licensing office, stating that their proposed use was permitted by City Ordinance after providing the city with evidence they have complied with the proposed special provisions.

Hearing: Not applicable

Appeal Process: Not applicable.

Appeal Fee: Not applicable.

Fire Clearance: Required. Pre-inspections are offered.

Fees: For a maximum of 14 children the fee is \$ 50.

Business License: Required.

Fee: \$ 81 with approval from the Planning and Zoning Departments. The Business License Department also requires you to bring a copy of your State permit.

Child Care Centers

Zone: Residential (R1, R2) it's also allowed in R3 and R4 with a Conditional Use Permit. It is also allowed in Commercial (Commercial Office), all other zones are subject to the provisions found in section 17.18.060 of the Municipal Code.

Permit: Conditional Use Permit.

Fee: \$ 1000 deposit that is billed according to staff time.

Approximate Time for Approval:
2-3 months

Application: Available at the Planning Department. Site plans, traffic circulation patterns and landscaping designs are required. A preliminary review is possible and the fee is a \$ 500 deposit. Notification if neighbors is needed and is made by the city. However, the applicant must first provide the city with mailing labels. Planning cannot provide a list of neighbors.

Impact Requirements:

1. Each application is reviewed on a case-by-case basis.
2. Traffic requirements site-specific; two parking spaces per employee.
3. Density/space requirements are dictated by State licensing and fire codes.
4. Exterior Noise Standards

Noise Zone

Noise Level	Time Period
1(All residential property within a designated noise zone)	
55dB (A)	7:00 am-10:00 pm
50dB (A)	10:00 pm-07:00 am

Interior Noise Standards

Noise Zone

Noise Level	Time Period
1(All residential property within a designated noise zone)	
55 dB(A)	7:00 am-10:00 pm
50 dB(A)	10:00 pm-7:00 am

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: There is a 15 day appeal period.

Appeal Fee: A \$ 1000 deposit.

Fire Clearance: Required. Pre-inspections are offered.

Fees: For 30-40 children, the fee is \$ 100.

Business License: Required. **Fee:** \$ 81 with approval from the Planning and Zoning Departments. The Business License Department also requires you to bring a copy of your State permit.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.

Planning Department
2110 97th Street
Seal Beach, CA 92740
(949) 424-2571 x206

Fire Department
1411 Central Ave.
Seal Beach, CA 92740
(949) 743-0400

Community Care Licensing
750 The City Drive, Suite
250
Orange, CA 92663
(714) 995-2800

**Business License
Information**
Finance and
Administrative Services
(714) 995-2800

Building Department
Permit Technician
(949) 424-2529 x329

**Local Resource & Referral
Agency**
Children's Home Society
of California
505 N. California Parkway
Suite 300

Approximate Time for Approval:
45 days

Application: Available at the Planning Department and on-line. Site plans are required. However, traffic circulation patterns and landscaping designs are generally not required. A preliminary review with staff is possible with no fee. Notification of neighbors is needed and is made by the city. The applicant must first provide the city with mailing labels.

Impact Requirements:

1. Provide 6 foot high masonry wall with self-closing gate entry enclosing outdoor play area.
2. Comply with noise levels contained within the City of Seal Beach Noise Ordinance. The Noise Standards are as follows:
Exterior Noise Standards
Noise Zone 1 (All Residential)
Noise Level Time Period
55 db(A) 7:00a.m.-10:00p.m.
50 db(A) 10:00 p.m. - 7:00 a.m.
Noise Zone 2 (All Commercial)
65 db(A) At any time
3. Shall not be located within a 300 foot radius of any existing licensed large family child care home.
4. Comply with State Fire Marshall regulations and be licensed by the State.
5. Provide two covered parking spaces plus one on-site parking space for each employee. One drop-off/pick-up space shall be provided on-site or immediately adjacent to the subject property.

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: There is a 10 day appeal period. Furthermore, an appeal would be considered at a public hearing before the City Council.

Appeal Fee: \$ 750.

Fire Clearance: Required. Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Child Care Centers

Zone: Residential and Commercial zones
Permit: Conditional Use Permit
Fee: \$ 750 deposit based on staff time and expenses incurred

Approximate Time for Approval:
45 days

Application: Available at the Planning Department and on-line. Site plans are required. However, traffic circulation patterns and landscaping designs vary. Therefore, the Planning Department would have to look at the specific information in the application. A preliminary staff review is possible with no fee. Notification of neighbors is needed and is made by the city. The applicant must provide the city with mailing labels.

Impact Requirements:

1. Meet State licensing regulations and the State Fire Marshall's requirements for child care centers.
2. The facility must be fenced in order to provide for the children's safety.
3. Comply with the noise levels contained in the City's Noise Ordinance. The Noise Standards are as follows:
Exterior Noise Standards
Noise Zone 1 (All Residential)
Noise Level Time Period
55 db(A) 7:00a.m.-10:00p.m.
50 db(A) 10:00 p.m. - 7:00 a.m.
Noise Zone 2 (All Commercial) 65 db(A) At any time
4. May not be located within a 300 to 500 foot radius of any other licensed child care facility.
5. Obtain both a State license and a City's business license.
6. Provide one parking space for each employee and one drop-off/pick-up space on-site or immediately adjacent to the subject property.

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: There is a 10 day appeal period. Furthermore, an appeal would be considered at a public hearing before the City Council. **Appeal Fee:** \$ 750.

Fire Clearance: Required. Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately.

Fees: None.

Business License: Required. **Fee:** \$ 178.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and

Small Family

Maximum of 8 children, including provider's own children less than 10 years old.

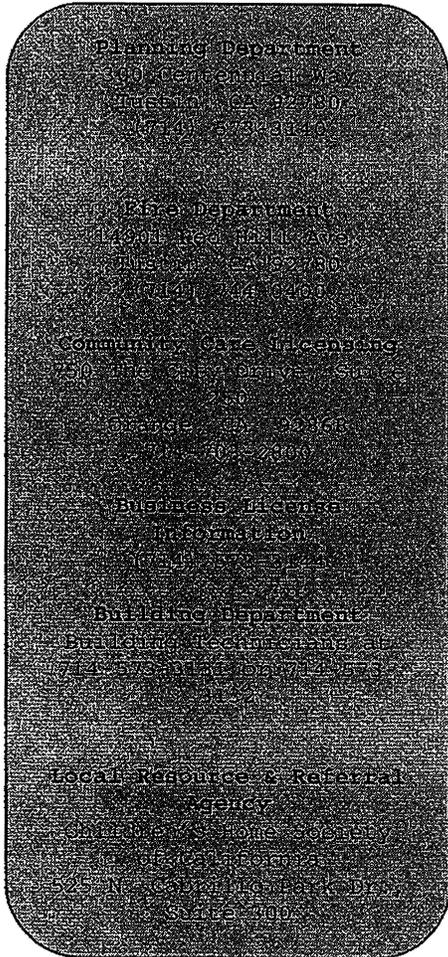
Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

**Large Family
Child Care**

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential and Commercial

Permit: Conditional Use Permit



Small Family Child Care Homes

Maximum of 6 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential

Permit: Permitted Use.

Fee: None.

Approximate Time for Approval: Upon completion of the application.

Application: Available at the Planning Department. Site plans are required. Traffic circulation patterns and landscaping designs are typically not required. Notification of neighbors is not needed unless they request it.

Impact Requirements:

1. Shall not exceed the noise levels in the Noise Ordinance so as not to constitute a nuisance to neighboring properties.

Exterior Noise Standards

Noise Zone	Noise Level	Time period
1 (All residential properties)	55 dB(A)	7:00am-10:00pm
	50 dB(A)	10:00pm- 7:00am

Interior Noise Standards

Noise Zone	Noise Level	Time Period
1 (All residential properties)	55 dB(A)	7:00am-10:00pm
	45 dB(A)	10:00pm-7:00am

2. Shall not be within 300 feet of an existing licensed family day care home.
3. Comply with regulations adopted and enforced by the State Fire Marshall and the Orange County Fire Department.
4. The rear yard must be enclosed by a minimum six-foot high fence.
5. Shall be allowed as permitted uses in those areas designated for single-family residential land uses, subject to standards contained regulations.
6. One off-street parking space per non-resident employee; adequate drop-off/pick-up area is required.
7. Applicant must be licensed by the State of California as a large family day care home.

Hearing: A public hearing is not necessary for 12 children or less. However, if a neighbor within 100 feet wants to appeal, he can request a public hearing.

Appeal Process: 7-day appeal process. For further information please contact the City Clerk at (714) 573-3025.

Appeal Fee: 30% of the application fee.

Fire Clearance: Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Business License: Required.

Fee: A flat fee of \$ 25.

Child Care Centers

Zone: Commercial zones.

Permit: Conditional Use Permit.

Fee: \$ 375 for an existing use.

Approximate Time for Approval: 4 months

Application: Available at the Planning Department. Site plans, floor plans and elevation plans are required. There is no streamlining of the application process. However, a preliminary review is possible with a \$ 50 fee. Notification of neighbors is needed and it's made by the city. But the applicant must first provide them with the mailing labels.

Impact Requirements:

1. Maximum allowable height is thirty five feet-minimum building site of 5,000 square feet-minimum lot width of 50 feet at property line. Minimum front, side, rear yards same as for primary uses in the district.
2. One off-street parking space for each staff member plus one loading space for each eight children. Loading spaces shall be located for easy circulation and shall not interfere with other required parking.
3. Outdoor play areas shall be screened from surrounding properties by a 6 foot 8 inch solid wall or fence.

Hearing: A public hearing is necessary and is held by the City Council.

Appeal Process: 7-day appeal process for further information please contact the City Clerk at (714) 573-3025.

Appeal Fee: 30% of the application fee.

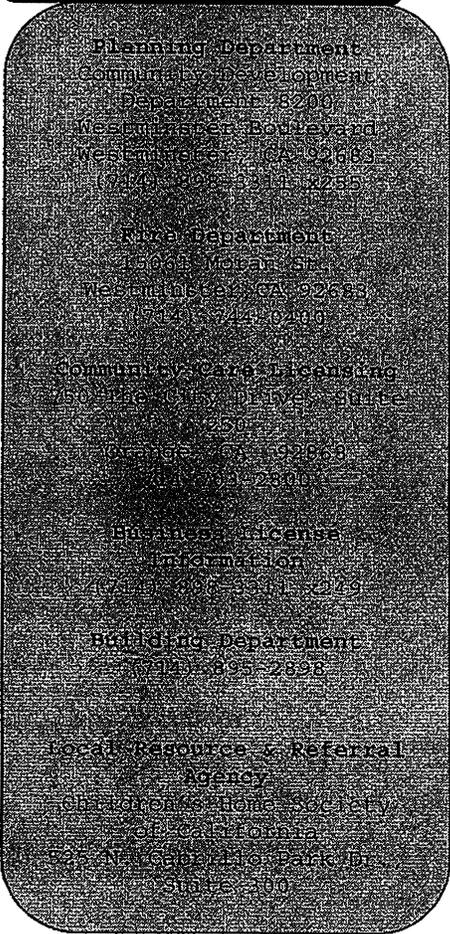
Fire Clearance: Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/.

There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Business License: Required.

Fee: A flat fee of \$ 25.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.



Approximate Time for Approval:
2-3 months

Application: Available at the Planning Department. Site plans and floor plans are required. There is no streamlining of the application process. An optional preliminary review is possible and the fee is an additional \$ 1020 (this money is charged according to staff time so anything left over is refunded back). Notification of neighbors is needed and is made by the city.

Impact Requirements:

1. A minimum of a 600 foot radius between large family child care homes is required.
2. Installed six foot high masonry wall on the side/rear yard lines and is adjacent to other residential uses is required.
3. Two off-street parking spaces for provider and assistant (may be a garage spaces) and two for pick-up/drop-off of children are required.
4. Submit application, fee, 15 copies of detailed plot and floor plan.
5. No noise conditions unless the Planning Commission imposes one.
6. A minimum of 1,000 square feet of outdoor area is required.

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: A letter may be submitted to the city clerk with 15 days.

Appeal Fee: There is no fee for the first appeal.

Fire Clearance: Required. Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/. There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Business License: Required.

Fee: The minimum fee is \$ 210, it's based on gross receipts.

Child Care Centers

Zone: Residential and Commercial.

Permit: Conditional Use Permit.
Fee: \$750

Approximate Time for Approval:
2-3 months

Application: Available at the Planning Department. Site plans and floor plans are required. There is no streamlining of the application process. A preliminary review is possible and the fee is \$ 1020 (this money is charged according to staff time so anything left over is refunded back). Notification of neighbors is needed and is made by the city.

Impact Requirements:

1. Parking requirements, traffic/circulation, noise, and density must conform to the city's ordinances and codes and are reviewed through the Conditional Use Permit process.
2. Density/space is dictated by State licensing and fire code regulations. The city requires a minimum of 1,000 square feet of outdoor play area.
3. Spacing of a 600 foot radius between child care facilities.
4. Six-foot high masonry wall on side and rear yard lines are required.
5. Four off-street parking spaces shall be maintained as well as adequate drop-off and pick-up for the children.

Hearing: A public hearing is necessary and is held by the Planning Commission.

Appeal Process: A letter may be submitted to the city clerk with 15 days.

Appeal Fee: There is no fee for the first appeal.

Fire Clearance: Safety guidelines are available on the Orange County Fire Authority website at www.ocfa.org/.

There is no fee for a pre-inspection but they cannot guarantee that you will get one immediately. **Fees:** None.

Business License: Required.

Fee: The minimum fee is \$ 210, it's based on gross receipts.

Fee information is as of April 2005. Fees and process should be used as general guidelines, and could be subject to change. Please contact the Planning Department for further changes.

Small Family

Maximum of 8 children, including provider's own children less than 10 years old.

Small family child care is allowed "by right" in residential districts. No zoning, fire, or business permits are required.

Large Family Child Care

Maximum of 14 children, including provider's own children less than 10 years old.

Zones: Residential

Permit: Conditional Use Permit.

Planning Department
1845 Casa Loma Avenue
Yorba Linda, CA 92886
(714) 961-7130

Fire Department
1555 West 15th
Orange, CA 92666
(714) 774-8400

Community Care Licensing
750 The Oaks Drive, Suite
200
Orange, CA 92666
(714) 771-2800

Business License
Information
Planning Department
(714) 961-7145

Building Department
Planning Division
(714) 961-7120

Local Resource & Referral
Agency
Children's Home Society
of California
525 N. Cabrillo Park Dr.
Suite 200
Santa Ana, CA 92701
(714) 855-6252

Small Family

Maximum of 8 children, including
provider's own children less than 10 years
old.

Small family child care is allowed "by right"
in residential districts. No zoning, fire, or
business permits are required.

**Large Family
Child Care**

Maximum of 14 children, including
provider's own children less than 10 years
old.

Zones: Residential

Permit: There is no permit required
because it is a Permitted Use.

Approximate Time for Approval:
6 weeks

Application: Available at the Planning
Department. Site plans are required.
Traffic circulation patterns and landscaping
designs vary depending on the situation.
There is no streamlining of the application
process but a preliminary review is
possible with no fee. Notification of
neighbors is needed and it is done by the
applicant.

Impact Requirements: Not applicable
because Large Family Child Care Homes
are a Permitted Use.

Hearing: A public hearing is necessary
and is held by the Planning Commission.

Appeal Process: 15-day appeal period to
the City Council.

Appeal Fee: \$75.

Fire Clearance: Required. Safety
guidelines are available on the Orange
County Fire Authority website at
www.ocfa.org/. There is no fee for a pre-
inspection but they cannot guarantee that
you will get one immediately.

Fees: None.

Business License: Not required.

Fee: Not applicable.

Child Care Centers

Zone: Commercial

Permit: Conditional Use Permit.
Fee: \$ 1000 deposit at a rate of \$ 89 per
hour for staff time.

Approximate Time for Approval:
6 weeks.

Application: Available at the Planning
Department. Site plans are required.
Traffic circulation patterns and landscaping
designs vary depending on the situation.
There is no streamlining of the application
process but a preliminary review is
possible with no fee. Notification of
neighbors is needed and it is done by the
applicant.

Impact Requirements:

1. One parking space per staff member
plus one space per ten students.
2. Traffic/circulation must be approved by
the City's Traffic Engineer. In addition, a
Traffic Study may be required.
3. Conformance with the interior and
exterior noise standards contained within
the city's Noise Ordinance must be
maintained.
4. Density/space requirements are dictated
by State Licensing and Fire regulations.
5. Design review is required for approval of
site planning and building architecture (for
building a new facility).

Hearing: A public hearing is necessary
and is held by the Planning Commission.

Appeal Process: 15-day appeal period to
the City Council.

Appeal Fee: \$75.

Fire Clearance: Required. Safety
guidelines are available on the Orange
County Fire Authority website at
www.ocfa.org/. There is no fee for a pre-
inspection but they cannot guarantee that
you will get one immediately. **Fees:** None.

Business License: Required.
Fee: \$ 40 per year.

Fee information is as of April 2005. Fees and
process should be used as general guidelines, and



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: November 14, 2006

SUBJECT: ZONING TEXT AMENDMENT NO. 06-07 (AMENDING CHAPTER 231 OFF-STREET PARKING AND LOADING PROVISIONS)

LOCATION: Citywide

STATEMENT OF ISSUE:

- ◆ Zoning Text Amendment No. 06-07 request:
 - Amend Chapter 231, Off-Street Parking and Loading Provisions, of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to require Public Work's approval of Privacy Gates (Section 231.18 D.8.) and Parking Controls (Section 231.18 E.2.) and to require bicycle parking for non-residential uses, multi-family residential uses and amend the design standard. (Section 231.20 1a., 1b., 2) Bicycle Parking.

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 06-07 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Zoning Text Amendment No. 06-07 with findings for denial.”
- B. “Continue Zoning Text Amendment No. 06-07 and direct staff accordingly.”

PROJECT PROPOSAL:

Zoning Text Amendment No. 06-07

The purpose of Zoning Text Amendment No. 06-07 is to amend Chapter 231, Off-Street Parking and Loading Provisions, of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to require Public Work’s approval of Privacy Gates (Section 231.18 D.8.) and Parking Controls (Section 231.18 E.2.) and to require bicycle parking for non-residential uses, multi-family residential uses and amend the design standard. (Section 231.20 1a., 1b., 2) Bicycle Parking.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

Zoning Text Amendment (ZTA) No. 06-07 impacts citywide development.

LOCATION	GENERAL PLAN	ZONING	LAND USE
Citywide	All Land Use Categories	All Zoning Categories	All Land Uses

General Plan Conformance:

The proposed Zoning Text Amendment No. 06-07 is consistent with the goals, policies, and objectives of the City’s General Plan as follows:

Circulation Element

Goal CE 2 : Provide a circulation system which supports existing, approved, and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

Objective CE 2.3: Ensure that the location, intensity and timing of new development is consistent with the provision of adequate transportation infrastructure and standards as defined in the Land Use Element.

Policy CE 2.3.1: Require development projects to mitigate off-site traffic impacts and pedestrian, bicycle, and vehicular conflicts to the maximum extent feasible.

The incorporation of bicycle parking within new commercial and residential development will continue to support and encourage alternative transportation within Huntington Beach.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status: The proposed ZTA No. 06-07 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

Coastal Status: Not applicable.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements: The proposed zoning text amendment does not require review by other City departments or public agencies.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on November 2, 2006, and notices were published in the newspaper at 1/8 page and sent to individuals/organizations requesting notification (Planning Department's Notification Matrix), as well as other interested parties. As of November 7, 2006, no communication supporting or opposing the request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

Not Applicable

MANDATORY PROCESSING DATE(S):

Legislative Action – Not Applicable

ANALYSIS:

During the 2004 phase of the permit streamlining process, bicycle parking was added to Chapter 231 of the HBZSO by the City Council. The new requirements identify how much bicycle parking is required for non-residential uses as well as multi-family residential uses and the design of the facility. However, the new criteria for bicycle parking underwent several language changes prior to adoption of the ordinance. Although the legislative draft reflected the final language, the ordinance did not fully incorporate what was ultimately approved. This amendment is intended to only correct the discrepancy between the texts.

Additionally, Section 231.18 requires minor cleanup to clarify existing code criteria and incorporate Public Works approval relating to the review of automobile stacking and the location of privacy gates as criteria within Chapter 231 Off Street Parking and Loading Provisions.

ATTACHMENTS:

1. Suggested Findings for Approval – ZTA No. 06-07
2. Draft Ordinance for ZTA No. 06-07
3. Legislative Draft

SH:MBB:RM

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL

ZONING TEXT AMENDMENT NO. 06-07

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 06-07:

1. Zoning Text Amendment No. 06-07 incorporates previously approved text correcting Sections 231.18 and 231.20 of Chapter 231 Off Street Parking and Loading Provisions to create consistency with the goals, objectives and policies of the General Plan. The City Council identified a need to require bicycle parking within new developments to encourage the use of bicycles and provide a secure means of storage. The text added to Section 231.18 also requires the review by the Public Works Department prior to final approval for privacy gates ensuring that such approvals are compatible with vehicle stacking and location of the gates.
2. In the case of the general land use provision, the change proposed is compatible with the uses authorized in, and the standards prescribed for in the zoning district for which it is proposed because bicycle parking storage was adopted during the permit streamlining process for both residential and commercial development to encourage alternative transportation and provide for adequate storage. The amendment to Section 231.20 incorporates the City Council's approved bicycle language. Section 231.18 adds the review by the Public Works Department for the location and stacking of vehicles.
3. A community need is demonstrated for the change proposed as the proposed amendment corrects what was previously approved and identified by City Council as a need to have onsite bicycle parking to encourage alternative transportation methods.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice because the Circulation Element of the General Plan speaks to Bicycle Facilities, acknowledging the needs of the community and bicycle enthusiasts by providing for numerous bicycle facilities throughout the City. Adding further review by Public Works Department for privacy gates will also ensure that the addition of privacy gates does not adversely impact surrounding properties creating a traffic hazard.

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 231 OF THE HUNTINGTON BEACH ZONING AND
SUBDIVISION ORDINANCE RELATING TO OFF-STREET PARKING AND
LOADING PROVISIONS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. In Section 231.18 of the Huntington Beach Zoning and Subdivision Ordinance, subsections 231.18 D.8. and E.2. are hereby amended to read as follows:

231.18 Design Standards

D. Residential Parking

8. Privacy Gates: Privacy gates may be installed without a conditional use permit provided there is compliance with the following criteria prior to the issuance of building permits:
- 1) Fire Department approval for location and emergency entry.
 - 2) Public Works Department approval of stacking and location.
 - 3) Postmaster approval of location for mail boxes or entry for postal carrier.
 - 4) Shall provide a driveway with a minimum of twenty (20) feet for vehicle stacking.
 - 5) No adverse impacts to public coastal access, including changes in the intensity of use of water, or of access thereto, shall result from installation of the privacy gates.

E. Non-residential Parking and Loading.

2. Parking Controls. Parking controls, such as valet service, or booths, and/or collection of fees may be permitted when authorized by conditional use permit approval by the Zoning Administrator. Privacy gates may be installed without a conditional use permit provided there is compliance with the following criteria prior to the issuance of building permits:
- 1) Fire Department approval for location and emergency entry.
 - 2) Public Works Department approval of stacking and location.
 - 3) Postmaster approval of location for mail boxes or entry for postal carrier.
 - 4) Shall provide a driveway with a minimum of twenty (20) feet for vehicle stacking.
 - 5) No adverse impacts to public coastal access, including changes in the intensity of use of water, or of access thereto, shall result from installation of the privacy gates.

SECTION 2. Section 231.20 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

231.20 Bicycle Parking

1. Bicycle Parking Requirements:

a. Non-Residential Uses:

- 1) Buildings up to 50,000 square feet of gross building area: One bicycle space for every twenty-five (25) automobile parking spaces required; minimum of three (3).
- 2) Buildings over 50,000 square feet of gross building area: The Director shall determine the number of bicycle spaces based upon the type of use(s) and number of employees.

b. Multiple-Family Residential Uses: One bicycle space for every four units.

- 2. Facility Design Standards: Bicycle parking facilities shall include provision for locking of bicycles, either in lockers or in secure racks in which the bicycle frame and wheels may be locked by the user. Bicycle spaces shall be conveniently located on the lot, close to the building entrance as possible for patrons and employees, and protected from damage by automobiles.

SECTION 3. All other chapters of the Huntington Beach Zoning and Subdivision Ordinance not amended hereby shall remain in full force and effect

SECTION 4. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

P. L. De... 10/17/06

City Attorney LM10/17/06

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:

Director of Planning

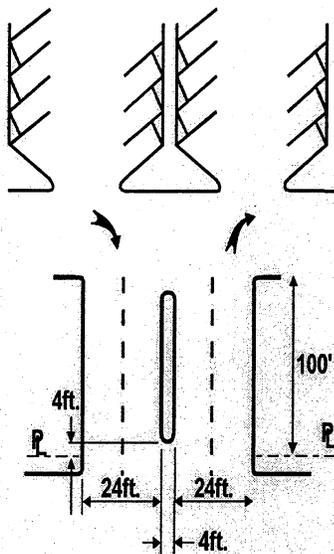
LEGISLATIVE DRAFT

231.18 Design Standards

- A. Public Works Requirements. Drive entrances on arterial highways shall be located in a manner to coordinate with future median openings and in accord with Department of Public Works standards. The paved surface of driveways and drive entrances shall comply with Department of Public Works specifications. Parking facilities shall be prepared, graded, and paved to ensure that all surface waters will drain into a public street, alley, storm drain, or other drainage system approved by the Department of Public Works. Aisle ways without adjacent parking shall be a minimum 24 feet in width. (3334-6/97)

- B. Circulation Design. All off-street parking spaces shall have access to a public street or alley, and shall have internal circulation, safe entrances and exits, drives, and aisles in conformance with City standards. Every required parking space shall have unobstructed access from an aisle without moving another vehicle. All parking spaces, except residential garages and carports for single-family dwellings and duplexes, shall have forward travel to and from parking facilities when access is to a dedicated street. Traffic circulation shall be designed so that no vehicle need enter a public street in order to progress from one aisle to any other aisle within the same development. (3334-6/97)

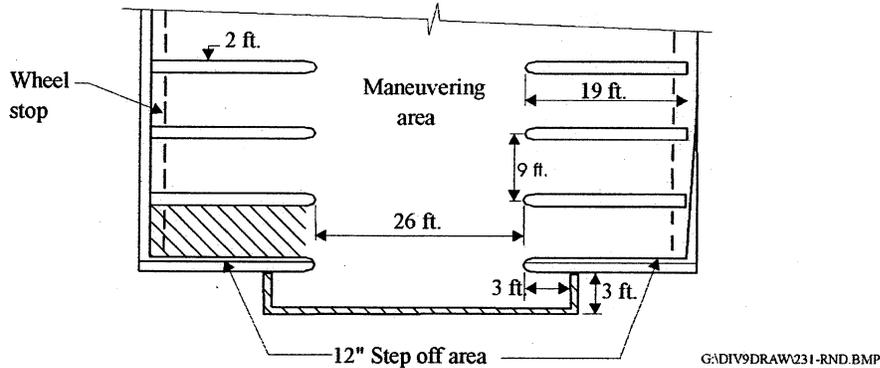
Commercial centers which have 200 parking spaces or more shall have at least one main entrance designed as depicted in Diagram B. (3334-6/97)



COMMERCIAL CENTER MAIN ENTRANCE
FOR PARKING LOTS WITH OVER 200 SPACES

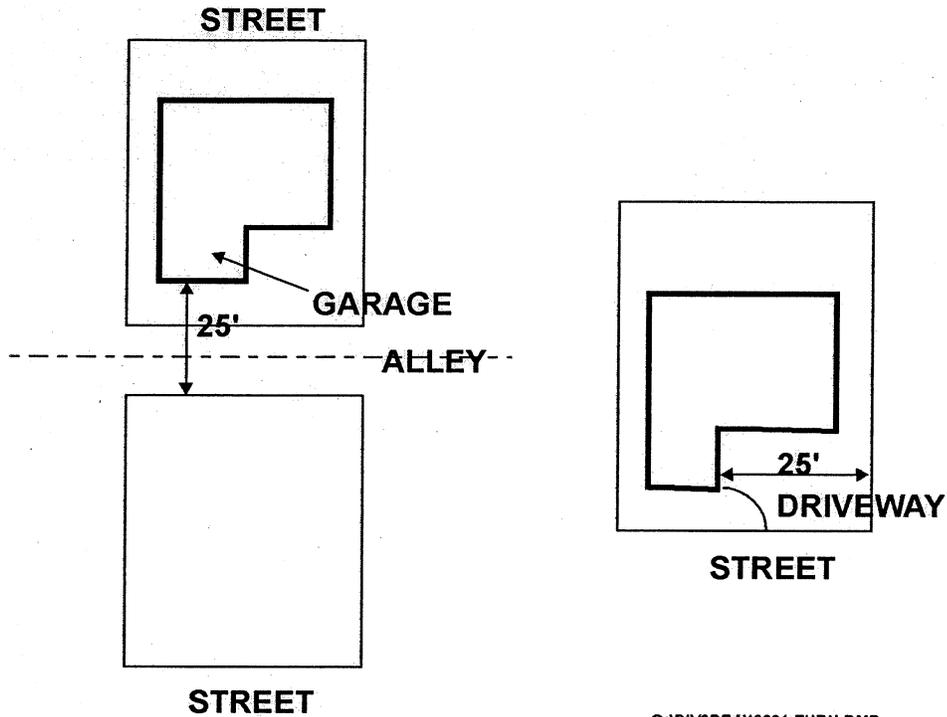
DIAGRAM B

A minimum 3-foot-by-3-foot-wide maneuvering area shall be provided at the end of dead-end parking aisles less than 150 feet in length. A vehicle turnaround space shall be provided at the end of all dead-end parking aisles which exceed 150 feet in length (measured from the closest intersecting aisle with complete circulation). The maneuvering area and turnaround space shall be designed as depicted in Diagram C. Other turnaround arrangements providing the same maneuverability are subject to approval by the Director.



TURN-AROUND SPACE AND MANEUVERING AREA
DIAGRAM C

- C. **Illumination.** All parking area lighting shall be energy-efficient and designed so as not to produce glare on adjacent residential properties. Security lighting shall be provided in areas accessible to the public during nighttime hours, and such lighting shall be on a time-clock or photo-sensor system. (3334-6/97)
- D. **Residential parking.** (3334-6/97)
1. **Garages and Carports.** All required garages and carports, permitted as accessory structures, shall be constructed at the same time as the main building and shall be used only by persons residing on the premises for storage of personal vehicles and other personal property. (3334-6/97)
 2. **Assignment of Spaces.** Each studio and one bedroom dwelling unit shall have a minimum of one assigned parking space and each two or more bedroom units shall have a minimum of two assigned parking spaces. Each dwelling unit shall have an enclosed, assigned space which shall be within 200 feet walking distance of that unit and designated as such. The assigned spaces shall be provided with the rental of a dwelling unit without any additional cost. All unassigned spaces provided on site shall be open and only used for the parking of vehicles by persons residing on the property or their guests. (3334-6/97)
 3. **Turning Radius.** The minimum turning radius for any garage, carport or open parking space, entered directly from an alley or driveway, shall be 25 feet. (See Diagram D) (3334-6/97)



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TURNING RADIUS

DIAGRAM D

4. Driveway Width. (3334-6/97)

Length of Drive
150 feet or less

Minimum Driveway Width
10 ft. for single family dwellings

20 ft. for multi-family dwellings

Greater than 150 feet

20 feet clear width

Exception: when designated as fire lane, all Fire Department requirements shall apply.

5. Guest Parking. All guest parking shall be fully accessible. (3334-6/97)

6. Coastal Zone. Each dwelling unit located in the Coastal Zone shall have a minimum of 2 on-site parking spaces. If the total coastal parking requirements exceed the total minimum parking as required by this chapter, the additional required parking spaces may be in tandem with enclosed spaces, provided the tandem space is assigned to an enclosed space and complies with the required turning radius. (3334-6/97)

7. Planned Residential Developments. In a planned residential development where a garage is constructed a minimum of 20 feet from the curb, the driveway in front of the garage may be used to provide one of the required uncovered spaces. (3334-6/97)

8. **Privacy Gates:** Privacy gates may be installed without a conditional use permit provided there is compliance with the following criteria prior to the issuance of building permits: (3526-2/02)
 - 1) Fire Department approval for location and emergency entry. (3526-2/02)
 - 2) **Public Works Department approval of stacking and location.**
 - 2-3) Postmaster approval of location for mail boxes or entry for postal carrier. (3526-2/02)
 - 3-4) Shall provide a driveway with a minimum of twenty (20) feet for vehicle stacking. (3526-2/02, 3677-12/04)
 - 4-5) No adverse impacts to public coastal access, including changes in the intensity of use of water, or of access thereto, shall result from installation of the privacy gates. (Resolution No. 2004-80-9/04)
9. **Driveway Air Space.** The air space above all driveways which exceed 150 feet in length shall remain open to the sky, except that eaves or roof overhangs with a maximum 4-foot projection may be permitted above a height of 14 feet. (3334-6/97, 3526-2/02)
10. **Storage Space.** 100 cubic feet of enclosed storage space for each unit shall be provided in a secured parking area where there is no private garage. (3334-6/97, 3526-2/02)
11. **Accessory Dwelling.** One additional off-street parking space shall be required for an accessory dwelling, except that in the coastal zone there shall be a minimum of four (4) parking spaces on-site. (3334-6/97, 3526-2/02)

E. **Non-residential Parking and Loading.** (3334-6/97)

1. **Designated Parking.** Parking spaces within an integrated, non-residential complex shall not be designated for exclusive use of any individual tenant except as authorized by a parking management plan approved by the Director. (3334-6/97)
2. **Parking Controls.** Parking controls, such as valet service, or booths, and/or collection of fees may be permitted when authorized by conditional use permit approval by the Zoning Administrator. Privacy gates may be installed without a conditional use permit provided there is compliance with the following criteria prior to the issuance of building permits: (3334-6/97, 3526-2/02, Resolution No. 2004-80-9/04, 3677-12/04)
 - 1) Fire Department approval for location and emergency entry. (3526-2/02, Resolution No. 2004-80-9/04)
 - 2) **Public Works Department approval of stacking and location.**
 - 2-3) Postmaster approval of location for mail boxes or entry for postal carrier. (3526-2/02, Resolution No. 2004-80-9/04)
 - 3-4) Shall provide a driveway with a minimum of twenty (20) feet for vehicle stacking. (3526-2/02, Resolution No. 2004-80-9/04)
 - 4-5) No adverse impacts to public coastal access, including changes in the intensity of use of water, or of access thereto, shall result from installation of the privacy gates. (Resolution No. 2004-80-9/04)
3. **Minimum Driveway Width.** 25 feet when providing access to the rear of a structure. (3334-6/97)
4. **Reciprocal Access.** Reciprocal ingress/egress access with adjacent properties shall be provided for all commercial properties. (3334-6/97)

5. Loading Location. On a site adjoining an alley, a required loading space shall be accessible from the alley unless alternative access is approved by the Director. An occupied loading space shall not prevent access to a required parking space. Truck or rail loading, dock facilities, and doors for such facilities shall not face or be located within 45 feet of property zoned or general planned residential. (3334-6/97)
 6. Loading Design. Any loading facility shall be designed and located so that vehicles need not extend onto the public sidewalks, streets or alleys during loading activities. (3334-6/97)
 7. Landscape Buffer. Where the side or rear yard of a parcel is used for loading activities and abuts an R District, a landscaped buffer along the property line shall be provided. (3334-6/97)
- F. Seasonal and Temporary Parking Lots. Seasonal and temporary parking lots may be allowed upon approval of a conditional use permit by the Zoning Administrator. Seasonal lots may operate only from Memorial Day through the third weekend in September and shall be located within 1,000 yards of the mean high tide line of the Pacific Ocean. Temporary and seasonal commercial parking lots may be permitted for a maximum of five years. The design and layout of seasonal and temporary parking lots shall comply with this chapter, Fire Department requirements, and the following standards: (3334-6/97)
1. Paving shall be 2 inches of asphalt over compacted native soil, or as approved by the Department; except seasonal parking lots shall be surfaced to meet minimum specifications for support of vehicles and to provide dust control as required by the Zoning Administrator. (3334-6/97)
 2. Boundaries of such lots shall be marked off and secured by chain or cable, with posts a minimum of 3 feet in height, solidly built. At a minimum, posts shall consist of 4" x 4" wood or equivalent metal posts a minimum of 1-1/2 inches in diameter securely set in the ground and placed 8 feet on center. The posts shall be connected with at least 1 strand of 1/2-inch cable or chain securely fastened to each post. An opening shall be provided to accommodate vehicle access during business hours. Seasonal lots shall be secured to prevent overnight parking between the closing hour on one business day and the opening hour the following business day. (3334-6/97)
 3. Temporary parking lots shall have landscaped planters with an inside dimension of 3 feet along street-side property lines excluding driveways. Landscaping shall be protected from vehicle and pedestrian damage by wheel bumpers (asphalt, concrete, or wood), or asphalt or concrete curbs, or any other design that will provide adequate protection. (3334-6/97)
 4. Seasonal parking lots are exempt from landscaping requirements of Chapter 232. (3334-6/97)
 5. Directional and informational signs shall be displayed on-site to identify the entrance(s), fees, and hours of operation. Such signs shall be located at the entrance of the parking lot and shall not exceed 12 square feet and shall be 6 feet high. Signs for seasonal parking lots shall be removed from the site each season no later than the third weekend in September. (3334-6/97)
 6. Automatic entry devices or fee collection points shall be set back a minimum of 20 feet from the public right-of-way, or at a distance recommended by the Department of Public Works and approved by the Director. (3334-6/97)

7. An attendant shall be on duty at all times during business hours of seasonal parking lots. (3334-6/97)
8. An approved fire extinguisher shall be provided on the premises during business hours. (3334-6/97)
9. The site shall be maintained in a clean condition, free from trash and debris. Trash containers shall be placed on the site to accommodate and store all trash that accumulates on the lot. (3334-6/97)

For seasonal parking lots, a certificate of insurance for combined single limit bodily injury and/or property damage including products liability in the amount of \$1,000,000 per occurrence shall be filed with the Department of Administrative Services. A hold harmless agreement holding the City harmless shall also be filed with the Department of Administrative Services. (3334-6/97)

Subsequent to approval of an application for any seasonal or temporary parking lot, the applicant shall meet all standards and requirements and install all improvements. The parking lot shall then be inspected and approved by the Director prior to issuance of a Certificate to Operate. (3334-6/97)

G. Parking Structures. Parking structures above or below grade shall be subject to conditional use permit approval by the Planning Commission when no other entitlement is required. In addition, parking structures proposed within the coastal zone shall be subject to approval of a coastal development permit. All parking structures shall comply with the following requirements: (3334-6/97)

1. Transition ramps which are also used as back-up space for parking stalls shall have a maximum slope of 5 percent. The maximum slope for transition ramps with no adjacent parking spaces shall be 10 percent. A ramp used for ingress and egress to a public street shall have a transition section at least 16 feet long and a maximum slope of 5 percent. (3334-6/97)
2. Parking structures with over 300 spaces shall provide secondary circulation ramps and additional ingress and egress if deemed necessary by a traffic study prepared by a state-registered traffic engineer. (3334-6/97)
3. Parking structures shall be provided with a minimum 10-foot-wide perimeter landscape planter at ground level. Parked cars shall be screened on each level through landscape planters or trellises and/or decorative screening wall or railings. The Design Review Board shall approve the landscaping plan. (3334-6/97)
4. All parking structures shall be architecturally compatible with existing or proposed structures and shall be subject to review and approval by the Design Review Board prior to hearing. The Design Review Board shall consider the following factors in reviewing a proposal: bulk, scale, proportion, building materials, colors, signage, architectural features, and landscaping. (3334-6/97)
5. All parking structures proposed for conversion to a fee parking arrangement shall be subject to conditional use permit approval by the Planning Commission. Public parking structures within the coastal zone proposed for conversion to a fee parking arrangement shall be subject to approval of a coastal development permit. (3334-6/97)

1. Bicycle Parking Requirements:

A. ~~Non-residential developments shall provide one (1) bicycle stall for every twenty (20) parking spaces. Racks shall be made available to both customers and employees.~~

B. ~~Residential multiple family projects shall provide at a minimum one (1) bicycle stall per four (4) units in a secured, enclosed and covered area. The Planning Director shall approve location and provisions as set forth.~~

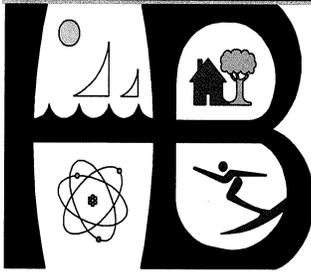
a. **Non-Residential Uses:**

1) **Buildings up to 50,000 square feet of gross building area: One bicycle space for every twenty-five (25) automobile parking spaces required; minimum of three (3).**

2) **Buildings over 50,000 square feet of gross building area: The Director shall determine the number of bicycle spaces based upon the type of use(s) and number of employees.**

b. **Multiple-Family Residential Uses: One bicycle space for every four units.**

2. **Facility Design Standards:** A. ~~B~~**Bicycle parking facility facilities** shall include provision for locking of bicycles, either in lockers or in secure racks in which the bicycle frame and wheels may be locked by the user. Bicycle spaces shall be conveniently located ~~near the primary~~ **on the lot, close to the building** entrance of structures or ~~central location as possible for patrons and employees,~~ and shall be protected from **damage by** automobiles damage. The Planning Director shall approve all the aforementioned criteria.



MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, SEPTEMBER 12, 2006

HUNTINGTON BEACH CIVIC CENTER

2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: P P P P P P A
Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer
Commissioner Dwyer arrived at 5:30 p.m.

AGENDA APPROVAL

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY HORGAN TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF SEPTEMBER 12, 2006, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Ray, Horgan
NOES: None
ABSENT: Dwyer
ABSTAIN: None

MOTION APPROVED

INTRODUCTION OF NEW PLANNING STAFF

New Planning staff members Andrew Gonzales, Assistant Planner, Ann Minnie, Office Assistant II, and Tess Nguyen, Associate Planner, introduced themselves to the Commissioners.

A. PROJECT REVIEW (FUTURE AGENDA ITEMS):

A-1. CONDITIONAL USE PERMIT NO. 06-23 (HUNTINGTON BEACH BEER COMPANY – 201 MAIN ST.) – Rami Talleh

Rami Talleh, Associate Planner, gave an overview of the proposed project, which provides for the establishment of an outdoor dining area, indoor dance floor, amended hours of operation, and parking in-lieu fees.

Commissioner Ray asked what comments the Police Department had with the CUP. Talleh stated that they are concerned with the distance between the proposed outdoor dining area and the restaurant and the management's ability to visually monitor outdoor activity.

Discussion ensued between Commissioners and staff regarding the parking in-lieu fee, placement of parking bollards, and the use of the elevator to transport food.

**A-2. GENERAL PLAN CONFORMANCE NO. 06-02 (TAYLOR STREET VACATION)
- Jason Kelley**

Jason Kelley, Associate Planner, outlined the proposed street vacation and the intended improvements to the site.

Discussion ensued regarding costs to the property owner and projected improvements to the property.

Ray asked if the vacation is considered an easement or land transfer and if the improvements are required.

Joe Claudio, Associate Civil Engineer, explained that a quitclaim deed would be completed for the new owner. The project is considered a landscape beautification project and access must be preserved to the existing garage making the improvements necessary.

**A-3. APPEAL OF DESIGN REVIEW NO. 06-24 (CIVIC CENTER ADMINISTRATION
BUILDING SEISMIC RETROFIT) – Rosemary Medel**

Ross Cranmer, Director of Building and Safety, gave a Powerpoint presentation of the alternative retrofit designs. He explained that the Design Review Board's recommended design is aesthetic in nature but by adding the top portion to the building it not only allows for a better design flow, but the additional weight would make the overall structure more stable.

Discussion ensued between the Commissioners and staff regarding cost, design and funding.

B. STUDY SESSION ITEMS - NONE

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS):

Rami Talleh, Associate Planner, advised of a late communication for Item F-2.

D. PLANNING COMMISSION COMMITTEE REPORTS:

Commissioner Ray stated that the Major Projects Review Process Committee has completed their report and the item is up for action at tonight's meeting (Item D-1).

E. PUBLIC COMMENTS (Regarding Study Session Portion of Meeting) – NONE

Mike Adams, applicant for Study Session Item A-1 spoke in favor of the proposed project and stated he was available for questions.

F. PLANNING COMMISSION COMMENTS:

Commissioner Ray commented on the use of the elevator at 201 Main (Study Session Item A-1) being impacted negatively if used for regular food deliveries to the outdoor dining and asked for some information regarding ADA requirements.

Commissioner Livengood asked if all required residents were notified of Public Hearing Item B-2. Staff advised that required notifications were made in accordance with State Law.

6:15 P.M. – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Chair Dingwall

ROLL CALL: *P* *P* *P* *p* *P* *A* *P*
Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer
Commissioner Horgan arrived at 8:30 pm

AGENDA APPROVAL

A MOTION WAS MADE BY RAY, SECONDED BY DWYER, TO APPROVE THE PLANNING COMMISSION AGENDA OF SEPTEMBER 12, 2006, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Ray, Dwyer
NOES: None
ABSENT: Horgan
ABSTAIN: None

MOTION APPROVED

PRESENTATION OF PLANNING COMMISSION RESOLUTION NO. 1612 IN APPRECIATION OF OUTGOING COMMISSIONER STEVE RAY

Commissioner Ray thanked the Planning Commissioners for their hard work and stated that he enjoyed his tenure on the Commission.

A. ORAL COMMUNICATIONS:

Mike Adams, Consultant, provided comments supporting Item D-1 and recommended approval.

B. PUBLIC HEARING ITEMS

PROCEDURE: Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

B-1. ENTITLEMENT PLAN AMENDMENT NO. 06-04 (AMENDMENT TO CONDITIONAL USE PERMIT NO. 03-35 – TARGET DEPARTMENT STORE): Applicant: Pacific Land Services (John Warren) **Request:** To amend Condition of Approval No. 5f, which requires all doors on the southerly and westerly facades to remain closed at all times, and Condition of Approval No. 5g, which limits store operating hours to 7:00 a.m. to 12:00 a.m., of Conditional Use Permit No. 03-35 approved by the City Council on July 19, 2004. The proposed amendment is to allow **(a):** deliveries at the receiving door located along the westerly façade during approved loading dock hours (between the hours of 8:00 a.m. and 7:00 p.m. Monday through Friday, and 10:00 a.m. to 6:00 p.m. on Saturday and Sunday; and **(b):** to allow the store to operate 6:00 a.m. to 12:00 a.m. between Thanksgiving and New Year's Day, and 7:00 a.m. to 12:00 a.m. at all other times. **Location:** 9882 Adams Avenue (southwest corner of Brookhurst St. and Adams Ave.) **Project Planner:** Ron Santos

STAFF RECOMMENDATION: Motion to: "Approve Entitlement Plan Amendment No. 06-04 with suggested findings and suggested conditions of approval."

The Commission made the following disclosures:

- Commissioner Burnett advised she spoke with staff and has visited the site many times as a patron.
- Commissioner Livengood visited the site and spoke with staff.
- Commissioner Scandura has visited the site and spoke with Councilmember Coerper and staff.
- Chair Dingwall stated he has visited the site many times and spoken with staff.
- Commissioner Ray visited the site and spoken with staff.
- Commissioner Dwyer visited the site, spoke with staff and Mayor Sullivan.

Ron Santos, Associate Planner, gave a Powerpoint presentation explaining the proposed amendment to store hours and deliveries to the west side receiving door.

Commissioner Ray questioned if deliveries to the side door would impact air quality for the residents.

Santos advised that there would be no increase in delivery activity, just a change in the receiving location; therefore, the emissions would not exceed air quality management district (AQMD) thresholds.

Discussion ensued between the Commissioners and staff regarding delivery locations, emissions and parking lot use.

Scandura questioned the use of the parking area to the rear of the building and the hours of access. Staff advised that the gates must remain locked from 10:00 p.m. to 7:00 a.m. according to the Conditions of Approval.

Ray asked if any more complaints had been received regarding noise. Santos advised he had not received any complaints.

John Warren, Applicant, reviewed the location of the receiving door and where trucks would park in order to deliver goods. He stated that the west side receiving door would be used for hand cart type

deliveries that were currently being made through the front customer entry door. The relocation of these types of deliveries would avoid potential injury to customers and damage to entryway flooring. Warren also stated that the proposed holiday hours would be more customer friendly and allow patrons to shop on their way to work.

Commissioner Livengood requested to limit the size of trucks utilizing this west side door for deliveries and prohibiting the use of forklifts. The applicant stated this condition was acceptable.

Commissioner Dwyer suggested a sign be placed by the delivery door stating this proposed condition.

Discussion ensued between the Commissioners and the Applicant regarding the size and type of delivery trucks utilizing the proposed west side receiving door, parking, and hours of delivery.

THE PUBLIC HEARING WAS OPENED

Robert Copeland, resident, voiced his opposition to allowing deliveries at the west side door due to larger trucks using the area prior and blocking fire lanes. He added that speed bumps should be installed to the rear of the store.

Rebecca Brown, resident, voiced her concern regarding noise and air quality. She stated that employees come early to work, make noise outside, turn on lights, and trucks arrive before authorized delivery times and idle by the delivery area.

Girard Manke, resident, thanked store manager Randy Yee for his help mitigating issues such as drivers not abiding by the signs indicating delivery hours and idling time limits.

Pamela Manke, resident, stated that she has been negatively impacted by the noise from truck deliveries and asked that the Planning Commission not allow any more truck deliveries near residences.

Ray asked Rebecca Brown how the truck idling was affecting her home. She stated that prior to deliveries not being allowed at the west side door her home constantly smelled of truck fumes and she requested that deliveries not be allowed at this proposed site.

Discussion ensued between the Commissioners and the store manager regarding loading dock noise and hours of delivery.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Livengood stated he was not convinced that the applicant has worked closely enough with the residents in regards to mitigating the issues. He recommended that speed bumps be placed at the rear of the building and suggested delivery hours of 8:00 a.m. to 12:00 p.m. be made a condition of approval.

Commissioner Burnett recommended that a size restriction be placed on trucks delivering to the west side door.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY BURNETT TO APPROVE ENTITLEMENT PLAN AMENDMENT NO. 06-04 WITH SUGGESTED FINDINGS AND SUGGESTED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dwyer
NOES: Dingwall, Ray
ABSENT: None
ABSTAIN: Horgan

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL

ENTITLEMENT PLAN AMENDMENT NO. 06-04

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15305 – *Minor Alterations in Land Use Limitations* of the CEQA Guidelines, because the request represents an amendment to previously imposed land use limitations which will not result in any changes in land use or density.

FINDINGS FOR APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 06-04:

1. Entitlement Plan Amendment No. 06-04 to amend Condition of Approval No. 5f and Condition of Approval No. 5g of Conditional Use Permit (CUP) No. 03-35 to allow **(a)**: deliveries at the receiving door located along the westerly façade between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, and 10:00 a.m. to 4:00 p.m. on Saturday and Sunday; and **(b)**: to allow the store to operate 6:00 a.m. to 12:00 a.m. between Thanksgiving and New Year's Day, and 7:00 a.m. to 12:00 a.m. at all other times will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood based on the following factors:
 - The doors on the west side of the building are not overhead roll-up doors designed to accommodate heavy or bulk loading activities necessitating the use of heavy equipment such as forklifts or other operations likely to generate significant noise impacts.
 - Use of the receiving doors on the west side of the building would be limited to the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, and 10:00 a.m. to 4:00 p.m. on Saturday and Sunday.
 - All activities on the project site, including proposed deliveries at the receiving doors along the west side of the building are subject to compliance with Chapter 8.40 – *Noise Control*, of the Huntington Beach Municipal Code, which contains noise standards designed to ensure no significant detrimental impacts occur to adjacent properties.
 - The Target storefront and entrances are oriented to the east, away from residential properties to the south and west, existing conditions of approval require that the gates providing access to the rear of the building (i.e., adjacent to residential areas) remain closed before 7:00 a.m., and no garden center or other outdoor sales areas exist on site. In addition, no loading/delivery activities are permitted on the site on any day prior to 8:00 a.m. Consequently, any activities occurring on the site during the one-hour period (6:00 a.m. to 7:00 a.m.) requested are unlikely to generate noise impacts at residential areas behind the building to the west and south.

- Prior to approval of Conditional Use Permit No. 03-35 for the new Target store, there were no limitations on operations and delivery hours for Target.
- 2. The entitlement plan amendment will be compatible with surrounding uses because the proposed amendment to conditions of approval represents a minor alteration in land use limitations, which will not generate significant noise or other impacts to surrounding uses, for a project which had previously been designed to achieve compatibility and was reviewed and approved on the basis that the project is compatible with surrounding land uses.
- 3. The proposed Entitlement Plan Amendment No. 06-04 will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). The HBZSO does not regulate operating hours or delivery hours for commercial uses or otherwise contain provisions which restrict locations for deliveries. The use is subject to compliance with Chapter 8.40 – *Noise Control*, of the Huntington Beach Municipal Code.
- 4. The granting of the conditional use permit will not adversely affect the General Plan. The project is consistent with the Land Use Element designation of CG-F1 (General Commercial – FAR 0.35) on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

Goal LU 1: Achieve development that maintains or improves the City's fiscal viability and reflects economic demands while maintaining and improving the quality of life for the current and future residents of Huntington Beach.

Policy LU 10.1.5: Require that buildings, parking, and vehicular access be sited and designed to prevent adverse impacts on adjacent residential neighborhoods.

Policy LU 10.1.6: Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular traffic, visual character, and operational hazards.

The proposed amendment to conditions of approval for the Target store will improve the fiscal viability of a commercial use which generates significant tax revenues for the City, and thereby improve the fiscal viability of the City. Based on the type of deliveries which can be accommodated at the receiving doors along the west side of the building, the restriction on delivery hours, restrictions on use of the area behind the building prior to 7:00 a.m. provided by access gates, and the location of parking, store entrances and activity areas on the site, no adverse impacts to adjacent residential neighborhoods is anticipated.

CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 03-35:

(ENTITLEMENT PLAN AMENDMENT NO. 06-04 – PC APPROVED 9/12/06)

1. The site plan, floor plans and elevations received and dated July 28, 2004 shall be the conceptually approved layout with the following modifications:
 - a. The loading dock enclosure shall be constructed with sound absorbing material designed to minimize noise impacts associated with loading and unloading activities. Truck loading and maneuvering shall be designed to provide the greatest separation possible from the adjacent residential properties. The architecture colors and materials of the enclosure shall be consistent with the overall building architecture.
 - b. The architecture colors and materials of the garden center shall be consistent with the overall building architecture.
 - c. The design, colors, and materials for the subject building shall be reviewed by the Design Review Board (DRB) following approval by the Planning Commission.
 - 1) Elevations shall be revised to incorporate multiple roof planes and/or a variety of roof slopes to reduce the overall mass and bulk of the building and comply with the Urban Design Guidelines.
 - 2) The overall architectural theme shall reflect a contemporary architectural design consistent with the design concept identified on elevation dated April 14, 2004. Several massing elements, in various volumes, shall be incorporated into the design. Varied use of earth tone colors and quality exterior materials such as stone veneer, split-face block, or other similar material shall be incorporated to accent prominent portions of the building façades.
 - 3) The design of the garden center shall incorporate an enhanced entry design which shall have the appearance of a secondary storefront. The design of the garden center shall include similar architectural design as the overall building.
 - 4) A public art element shall be integrated and be in a location that is visible to the public within the project site. Public art shall incorporate the following:
 - i) Artistic excellence and innovation
 - ii) Appropriate to the design of the project
 - iii) Indicative of the community's cultural identity (ecology, history, society)
- d. The cart corrals shall be constructed with a durable material such as concrete block. The design of the cart corrals shall be consistent with Sheet 6 of the conceptual plans dated March 18, 2004. The colors and materials used on the cart corrals shall be consistent with the subject building.

The Design Review Board's recommended public art element shall be reviewed and approved by the Planning Director, prior to issuance of a building permit for the project. The public art shall be in place at the subject site prior to final building inspection.

- e. All non-conforming signs shall be eliminated from the subject site, including the one pylon sign along the Adams Avenue frontage and a second pylon sign along the Brookhurst Street frontage. A planned sign program for all signage on the subject property and outlying commercial pads shall be submitted to the Planning Department. Said program shall be approved prior to the first sign permit request.
 - f. Prior to submittal for building permits. The applicant shall submit a copy of the revised site plan, floor plans and elevations pursuant to Condition No. 1 for review and approval, and inclusion in the entitlement file to the Planning Department and submit 8.5 inch by 10 inch colored elevations, materials board, and renderings to the Planning Department for inclusion in the entitlement file.
 - g. All parking that is proposed behind the store, within the access gates, shall be designated as employee-only parking.
 - h. A minimum of two speed bumps shall be provided behind the building, subject to review and approval by the Fire Department.
 - i. All perimeter trees located directly adjacent to residential properties shall be of a species that is non-deciduous and results in minimal impacts in maintenance and upkeep to adjacent properties.
2. Prior to issuance of a grading permit, the following shall be completed:
- a. The site plan received and dated April 14, 2003 shall be the approved layout except for the following: **(PW)**
 - 1) The driveway on the south side of the property along Brookhurst Street shall be widened to a minimum of 36-feet in width, to allow for two egress lanes.
 - 2) A minimum 10-foot sight triangle must be provided at all points on the site, including the building corners. Areas of concern include the northwest corner (at the loading dock) and northeast corner of the building. The sidewalk must also be extended a minimum of four feet west of the building corner.
 - 3) A truck-tracking exhibit, utilizing a WB-50 design vehicle, must be provided to demonstrate that delivery trucks can be accommodated. This truck tracking exhibit must illustrate a truck entering the site, accessing the loading docks and egressing the site. It must be demonstrated that the truck movements will not encroach into opposite directions of roadway traffic nor impact the parking spaces shown.
 - 4) A traffic signal shall be constructed at the main driveway entrance on Adams Avenue. This traffic signal shall include the installation of interconnect conduit and cable to the traffic signal controller cabinet at the intersection of Brookhurst Street and Adams Avenue. A traffic signal and maintenance easement shall be provided in the driveway area. The appropriate curb ramp and signing & striping modifications shall be made to accommodate the traffic signal installation. **(PW/MM)**
 - 5) The applicant shall provide the legal description(s), plat(s), and supporting documents necessary for the City to quitclaim any abandoned portions of the existing water line easement dedicated to the City of Huntington Beach. **(PW)**

3. Prior to issuance of building permits, the following shall be completed:
 - a. An "Acceptance of Conditions" form shall be properly executed by the applicant and an authorized representative of the owner of the property, recorded with the County Recorder's Office, and returned to the Planning Department for inclusion in the entitlement file. Conditions of approval shall remain in effect in the recorded form in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
 - b. The public art element shall be approved by the reviewed by the Design Review Board and approved by the Planning Director.
4. The structure(s) cannot be occupied, the final building permit(s) cannot be approved, and utilities cannot be released for commencement of use and issuance of a Certificate of Occupancy until compliance with all conditions of approval specified herein are accomplished and verified by the Planning Department.
5. The use shall comply with the following:
 - a. Target product delivery and trash pickup shall be permitted between the hours of 8:00 a.m. to 7:00 p.m. Monday through Friday and 10:00 a.m. to 6:00 p.m. on Saturday and Sunday.
 - b. Delivery trucks shall not leave engines idling while delivering merchandise to the Target store. Trucks shall turn-off engines once they reach the loading dock. **(MM)**
 - c. There shall be no loudspeakers or other amplified devices within the garden center, at any time. **(MM)**
 - d. Rubber noise seals shall be provided around the opening to the building at the location of the loading dock. **(MM)**
 - e. The trash compactor shall not be operated before 8:00 AM and after 7:00 PM. **(MM)**
 - f. All doors along the southerly and westerly facades of the building shall remain closed, except that emergency access doors may be opened during an emergency and for testing to ensure operational adequacy, and the receiving door located on the westerly façade (see site plan dated 7-31-06) may be opened and used for vendor deliveries between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday and 10:00 a.m. to 4:00 p.m. on Saturday and Sunday.

Vendor delivery trucks using this receiving door shall be limited to trucks a maximum of 26 feet in length and shall not park or encroach into any fire lanes.

The use or operation of forklifts or other heavy equipment in association with deliveries at the receiving door shall be prohibited.

Sign(s) specifying the restrictions associated with deliveries at the receiving door stated herein shall be posted and maintained on the exterior of the west wall of the loading dock and at the receiving door at all times. A drawing depicting the size, location and text of the required signs shall be submitted for review and approval to the Planning Department and installed prior to the occurrence of deliveries at the receiving doors. **(AMENDED 09/12/06)**

- g. The hours of operation for the Target store shall be from 7:00 a.m. to 12:00 a.m., except between Thanksgiving and the immediately following New Year's Day, each year, when permitted store operating hours shall be 6:00 a.m. to 12:00 a.m. The access gates to the rear of the building shall remain closed from 10:00 p.m. to 7:00 a.m. **(AMENDED 09/12/06)**
 - h. Parking lot lights shall be automatically dimmed to minimal security level lighting one hour after closing.
 - i. The Target Department Store shall be designated as a single user with a maximum of 10 percent of the gross building floor area devoted to an ancillary retail/restaurant tenant.
 - j. Any re-use of the site or request for future demising walls to allow for a new use within the subject building shall require approval of a conditional use permit by the Planning Commission.
 - k. All outdoor display of seasonal, holiday, special events, and temporary outdoor sales events within the parking lot, on sidewalks, or any other portion of the project site shall be subject to the Huntington Beach Zoning and Subdivision Ordinance Code. At no time shall a Temporary Use Permit be granted for the area between the subject building and the southerly or westerly property lines.
 - l. There shall be no outside storage of storage containers or bins, vehicles, vehicle parts, equipment, or trailers. There shall be no outside storage of palettes or other product at any time without the required permits.
 - m. There shall be no loitering by patrons or employees within the parking areas located at the rear of the subject building. Signs shall be posted to indicate that no loitering in all parking areas located behind the subject building. Store managers shall be responsible for regulating all activity occurring at the rear of the subject building at all times.
 - n. A store liaison shall be permanently established and available to assist neighbors and residents with issues regarding the site during construction and after completion of the project when the development is open for business. A sign identifying the store contact and telephone number shall be permanently posted on-site.
 - o. All Mitigation Measures of Mitigated Negative Declaration No. 03-02 shall be adhered to.
6. Within 30 days of Planning Commission action on the six-month review, the following signs shall be installed **(AMENDED 4/25/06)**:

- a. A sign(s) prohibiting truck idling, identifying the permitted hours for loading and delivery, and providing a store contact shall be placed in a conspicuous location adjacent to the loading dock. The sign shall be sized appropriately in order that it can be clearly viewed by truck drivers entering the loading dock area. The sign(s), the text, and location shall be submitted to the Planning Department for review and approval prior to installation. **(AMENDED 4/25/06)**
 - b. A sign shall be installed at the southeasterly portion of the building that indicates "No thru traffic" and "No deliveries permitted". The sign shall be placed in a conspicuous location with the text and location subject to the review of the Planning Department prior to installation. **(AMENDED 4/25/06)**
7. The Planning Director ensures that all conditions of approval herein are complied with. The Planning Director shall be notified in writing if any changes to the site plan, elevations and floor plans are proposed as a result of the plan check process. Building permits shall not be issued until the Planning Director has reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the Huntington Beach Zoning and Subdivision Ordinance.
 8. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

B-2. CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE)

Applicant: Michael C. Adams Associates **Request:** To permit the establishment of a 5,000 sq. ft. restaurant with alcohol sales, live entertainment and dancing, up to four billiard tables and 1,000 sq. ft. outdoor dining area.

Location: 300 Pacific Coast Highway, #112 (south side of Walnut Avenue, between Main St. and Third St.) **Project Planner:** Rami Talleh

STAFF RECOMMENDATION: Motion to: "Approve Conditional Use Permit No. 06-20 with suggested findings and conditions of approval."

The Commission made the following disclosures:

- Commissioner Burnett visited the site.
- Commissioner Livengood visited the site and spoke with staff.
- Commissioner Scandura visited the site and met with Mike Adams and the Applicant.
- Chair Dingwall visited the site and spoke with Mike Adams and the Applicant.
- Commissioner Ray visited the site and spoke with staff.
- Commissioner Horgan visited the site.
- Commissioner Dwyer visited the site.

Rami Talleh, Associate Planner, gave a Powerpoint presentation covering the proposed project and identified the location of the proposed restaurant, dance floor, billiard area and outdoor dining area.

Burnett referenced the late communication received regarding public notification and asked staff if appropriate public notification had been given. Talleh advised that public notice was given in accordance with state law.

Ray voiced concern over adequate access to the outdoor patio area alley and hours of operation. Talleh advised these issues could be addressed in the conditions of approval.

THE PUBLIC HEARING WAS OPENED

Mike Adams, Applicant, spoke in favor of the proposed project and stated that Pierside Pavilion was designed as an entertainment complex. He explained that the Ponderosa Restaurant would be a family style restaurant with entertainment. He assured the Commissioners there would not be any live entertainment outdoors and suggested a six-month review be placed in the conditions of approval.

Horgan voiced concern for the theatre patrons if the noise levels from the proposed restaurant become too loud.

Adams stated that the theatre is not renewing its lease and will more than likely become office units.

Richard Theil, President of the Huntington Beach Pier Colony Homeowners Association, voiced concerns over potential noise and air quality issues.

James Melton, resident, advised that there is already too much noise from the established bars in the area and is concerned that the proposed project will negatively impact the area.

R. C. Alley, resident, stated that he did not receive a public hearing notice regarding the proposed project and does not want to have a mechanical bull in the area. He said that more outdoor dining would make the noise levels intolerable to residents.

Spyro Cacontis, resident, spoke in opposition of the proposed project due to the excessive noise in the area. He feels that the proposed project will negatively affect property values.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Ray applauded the applicant for wanting to open the business, but suggested trying to mitigate some of the negative impacts to residents.

Dwyer asked if the dance floor would increase the occupancy load. Engberg stated that it would and the Building Department would calculate the adjusted occupancy load.

Scandura questioned if outdoor dining had been at this location in the past.

Scott Hess, Acting Director of Planning, stated that Johnny Rockets and a Vietnamese restaurant had some outdoor dining and the Golden Bear used the outdoor area for patrons lining up for concerts.

Commissioner Dwyer stated that this proposed project should not be penalized because of negative issues caused by other bars in the area.

Discussion ensued regarding the mechanical bull placement, noise issues and the placement of a sound wall surrounding the outdoor dining area.

A STRAW VOTE MOTION WAS MADE BY RAY, SECONDED BY SCANDURA REGARDING THE MANDATORY PLACEMENT OF A SOUND WALL AROUND THE OUTDOOR DINING LOCATION, THE VOTE AS FOLLOWS:

THE COMMISSION DID NOT VOTE ON THE RECOMMENDED ACTION

Discussion ensued regarding denial of the second phase of outdoor dining.

A MOTION WAS MADE BY RAY, SECONDED BY SCANDURA TO APPROVE CONDITIONAL USE PERMIT NO. 06-20 WITH MODIFIED FINDINGS AND SUGGESTED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES: Livengood, Scandura, Dingwall, Ray, Dwyer
NOES: Burnett, Horgan
ABSENT: None
ABSTAIN: None

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 06-20
(September 12, 2006)

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

FINDINGS FOR APPROVAL:

1. Conditional Use Permit No. 06-20 for the establishment of a 5,000 sq. ft. restaurant with on-site alcohol sales, live entertainment and dancing, up to four billiard tables with shuffleboard, and a 1,000 sq. ft. two-phased outdoor dining area with alcohol (Phase One: 400 sq. ft., and Phase Two: 600 sq. ft.) will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation.
2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, and regulation on the hours of operation to ensure compatibility with surrounding businesses and residents.
3. The proposed restaurant will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. In addition, prior to construction of Phase Two of the outdoor dining area, the applicant will be required to submit a parking analysis demonstrating compliance with the Downtown Parking Master Plan. There is no physical expansion proposed as part of the request and the use will comply with all building occupancy/exiting requirements.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use on the subject property including the following policies and objectives identified in the General Plan:

A. Land Use Element

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

The proposed restaurant will provide a new visitor-commercial venue within the Downtown that is consistent with the Land Use Density Schedules for the Downtown and is compatible with surrounding mixed-use development.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed restaurant will increase the commercial viability of Pierside Pavilion, allowing for its continued success within the Downtown. The proposed establishment will expand the available visitor-serving commercial uses within the Coastal Zone available to its patrons.

CONDITIONS OF APPROVAL:

1. The site plan, floor plans, and elevations received and dated May 31, 2006, shall be the conceptually approved design with the following modification:
 - a. A 42-inch high barrier in compliance with the Department of Alcoholic Beverage Control (ABC) and consistent with City standard designs shall be provided along the perimeter of the outdoor dining area.
2. The use shall comply with the following:
 - a. All conditions of the Entertainment Permit issued by the Police Department shall be observed.
 - b. All ingress/egress to and from the outdoor dining area shall be provided from inside the restaurant. Exiting from the outdoor dining area to the adjacent paseo shall be for emergency purposes only.
 - c. Lighting in the outdoor dining area shall be regulated and directed to prevent "spillage" onto adjacent properties.
 - d. The rear door providing access to the alley shall be closed at all times and used for emergency purposes only.
3. The hours of operation for the business shall be limited to between 7:00 am and 1:30 am daily and the hours of operation for outdoor dining shall be limited to between 11:00 am and 9:00 pm Mon.-Thur. and between 11:00 am and 10:00 pm Fri.-Sun.
4. Prior to construction of Phase Two of the outdoor dining area, adequate parking for the entire outdoor dining area shall be demonstrated or provided consistent with applicable code requirements.
5. A review of the use shall be conducted by the Planning Commission within six (6) months of the issuance of Certificate of Occupancy or final building permit approval to verify compliance with the Huntington Beach Noise Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval to address noise issues.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

- B-3. ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT)**
Applicant: City of Huntington Beach. **Request:** To amend Huntington Beach Zoning and Subdivision Ordinance, Section 230.14 Affordable Housing Incentives/Density Bonus, to comply with state mandated changes pursuant to Senate Bills 1818 and 435. The existing ordinance allows for up to a 25% density bonus when housing projects restrict 10-20% of the units as affordable or 50% for seniors. The proposed ordinance reduces the number and affordability of the units that must be restricted to qualify for a density bonus. Consistent with the new law, the proposed ordinance includes other provisions regarding incentives, concessions, waiver of development standards and child care facilities. **Location:** Citywide Residential Districts/Mixed Use Zoning. **Project Planner:** Rosemary Medel

STAFF RECOMMENDATION: Motion to: "Approve Zoning Text Amendment No. 06-02 with findings for approval and forward Draft Ordinance including the legislative draft to the City Council for adoption."

A MOTION WAS MADE BY SCANDURA, SECONDED BY BURNETT TO CONTINUE ZONING TEXT AMENDMENT NO. 06-02 TO THE NOVEMBER 14, 2006, MEETING, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

C. CONSENT CALENDAR:

- C-1. PLANNING COMMISSION MINUTES DATED JUNE 13, 2006**

RECOMMENDED ACTION: Motion to: "Approve the June 13, 2006, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY RAY, TO APPROVE THE JUNE 13, 2006, PLANNING COMMISSION MINUTES AS MODIFIED, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Ray
NOES: None
ABSENT: None
ABSTAIN: Horgan, Dwyer

MOTION APPROVED

C-2. PLANNING COMMISSION MINUTES DATED JUNE 27, 2006

RECOMMENDED ACTION: Motion to: "Approve the June 27, 2006, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY SCANDURA, SECONDED BY BURNETT, TO APPROVE THE JUNE 27, 2006, PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Dwyer
NOES: None
ABSENT: None
ABSTAIN: Ray, Horgan

MOTION APPROVED

D. NON-PUBLIC HEARING ITEMS:

D-1. PROJECT REVIEW PROCESS – Commissioner Ray

RECOMMENDATION: Motion to: "Approve the amendment to The Project Review Process."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY HORGAN, TO APPROVE THE AMENDMENT TO THE PROJECT REVIEW PROCESS, ACTION WAS TAKEN BY THE FOLLOWING VOTE:

AYES: Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING

Scott Hess, Acting Director of Planning – reported on the items from the previous City Council meeting.

- E-2. **CITY COUNCIL ITEMS FOR NEXT MEETING**
Scott Hess, Acting Director of Planning – reported on the items scheduled for the next City Council meeting.
- E-3. **PLANNING COMMISSION ITEMS FOR NEXT MEETING**
Scott Hess, Acting Director of Planning – reported on the items scheduled for the next Planning Commission meeting.

F. **PLANNING COMMISSION ITEMS**

F-1. **PLANNING COMMISSION REQUEST ITEMS** – NONE

F-2. **PLANNING COMMISSION COMMENTS**

Commissioner Burnett – None.

Commissioner Livengood – None.

Vice-Chairperson Scandura – Wished outgoing Planning Commissioner Ray good luck in his future endeavors and looks forward to working with incoming Commissioner Blair Farley.

Chairperson Dingwall – Wished Commissioner Ray well in the future.

Commissioner Ray – Asked staff about a Code Enforcement issue that was emailed to him. Staff advised they were researching the matter and will provide the information when available.

Commissioner Horgan – Thanked Commissioner Ray for all the information he provided her while on the Commission.

Commissioner Dwyer – Wished Commissioner Ray well in the future.

ADJOURNMENT:

Adjourned at 12:10 a.m. to the next regularly scheduled meeting of September 26, 2006.

APPROVED BY:

Scott Hess, Secretary

Robert Dingwall, Chair