



City of Huntington Beach Planning and Building Department

**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, AICP, Director of Planning and Building  
**BY:** Ethan Edwards, AICP, Associate Planner *E*  
**DATE:** February 28, 2012

**SUBJECT:** **TWELVE-MONTH REVIEW OF ENTITLEMENT PLAN AMENDMENT NO. 10-003 (PLAZA ALMERIA CARTS – AMENDMENT TO CONDITIONAL USE PERMIT NO. 2000-015(R))**

**APPLICANT:** Michael Adams, Michael C. Adams Associates, P.O. Box 382, Huntington Beach, CA 92648

**PROPERTY OWNER:** John Tillotson, J.T. Development, 15272 Bolsa Chica Road, Huntington Beach, CA 92649

**LOCATION:** 301 Main Street (full block bounded by Main Street, Olive Avenue, Fifth Street, and Orange Avenue – Plaza Almeria)

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**STATEMENT OF ISSUE:**

This item represents a 12-month review of Entitlement Plan Amendment (EPA) No. 10-003, approved by the Planning Commission on September 14, 2010. EPA No. 10-003 amended Condition of Approval No. 1 of Conditional Use Permit No. 00-15(R) by increasing the number of approved portable vending carts from 6 to 10 within Plaza Almeria. When EPA No. 10-003 was approved, the Planning Commission required a review of the use within approximately twelve (12) months of the operation of the carts (Condition of Approval No. 7). The Planning Commission reviewed the use on January 24, 2011 and recommended that the entitlement be considered for revocation.

**RECOMMENDATION:**

Motion to:

“Receive and file as adequate and complete the 12-month review of Entitlement Plan Amendment No. 10-003.”

**ALTERNATIVE ACTION:**

The Planning Commission may take an alternative action such as:

“Forward a recommendation to the Director of Planning and Building to schedule a public hearing to consider the revocation of the approved entitlements.”

## **ANALYSIS:**

On January 24, 2012, staff gave a brief overview of the project and noted that Condition of Approval Nos. 2a and 2b of EPA No. 10-003 have yet to be satisfied. Condition of Approval No. 2a requires one set of project plans, revised pursuant to Condition of Approval No. 1, shall be submitted to the Planning Division for review, approval and inclusion in the entitlement file. This condition was approved in an effort to accurately depict the number and location of carts on the property. Condition of Approval No. 2b requires an amended or new License Agreement, including fees, shall be obtained from the City for portable vending carts located on public property. This condition requires coordination between the property owner and City and would allow vending carts to encroach into the public right-of-way for a certain term and use charge, along with other requirements including indemnification. The Public Works Department has prepared a draft license agreement, but cannot proceed until Condition of Approval No. 2a is satisfied.

Staff recommended that the Planning Commission direct the applicant to work with staff in satisfying Condition of Approval Nos. 2a and 2b and conduct a review of the use within approximately 3 months to verify compliance with the Huntington Beach Zoning and Subdivision Ordinance and conditions of approval. The Planning Commission discussed the length of time that the applicant had to comply with the conditions of approval and noted that the applicant was not in attendance. As a result, the Commission recommended staff to schedule the item for revocation. Pursuant to HBZSO Section 249.06, the Director is authorized to determine if there are reasonable grounds for potential revocation of the entitlements.

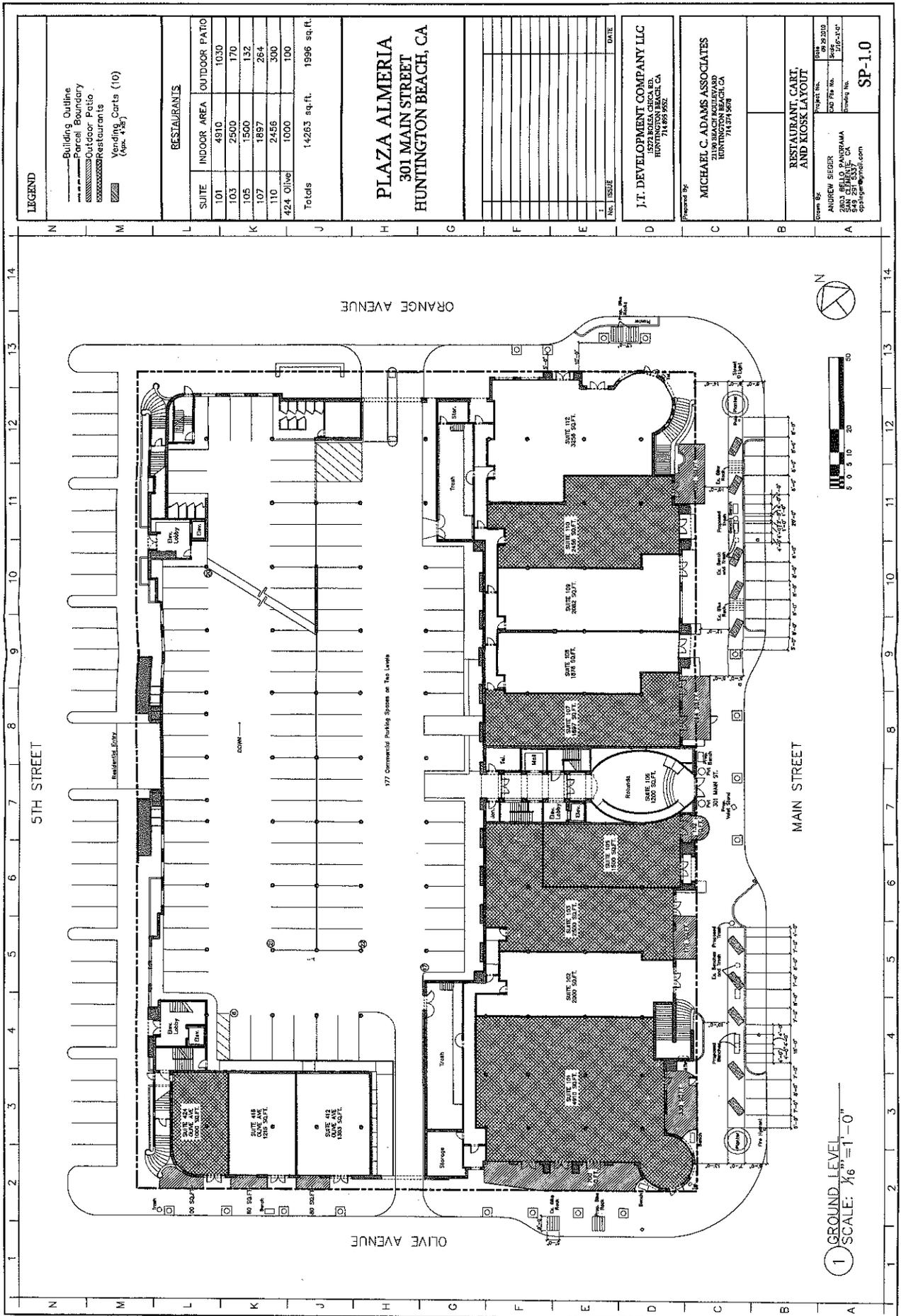
On January 25, 2012, staff received a site plan (Attachment No. 1) from the applicant that satisfies Condition of Approval No. 2a. Also, it should be noted that the applicant planned on attending the Planning Commission meeting on January 24, 2012 for the 12-month review. However, the Planning Commission Preliminary Agenda indicated a meeting time at 6:00 P.M. instead of the regular start time of 5:15 P.M. As a result, the applicant missed the meeting.

Attached is a draft License Agreement and staff is moving forward with executing the agreement which will satisfy Condition of Approval No. No. 2b. Given that compliance with all required conditions of approval is in progress, staff recommends that the Planning Commission receive and file the 12-month review as adequate. As an alternative, the Planning Commission may forward a recommendation to the Director of Planning and Building to schedule the item for revocation of the approved entitlement.

## **ATTACHMENTS:**

1. Site Plan received and dated January 25, 2012
2. Draft License Agreement
3. Planning Commission Notice of Action dated September 15, 2010 (EPA No. 10-003)

RECEIVED  
 JAN 25 2012  
 Dept. of Planning  
 & Building



1 GROUND LEVEL  
 SCALE: 1/8" = 1'-0"

LICENSE AGREEMENT BY AND BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
JT DEVELOPMENT COMPANY, LLC FOR  
ENCROACHMENT INTO THE PUBLIC RIGHT OF WAY

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LICENSE AGREEMENT BY AND BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
JT DEVELOPMENT COMPANY, LLC FOR  
ENCROACHMENT INTO THE PUBLIC RIGHT OF WAY

This agreement is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "CITY," and JT DEVELOPMENT COMPANY, LLC, 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 operating portable vending carts; 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 operating portable vending carts. LICENSEE agrees to remove and replace such portable vending carts each day, so that the portable vending carts will not be stored or kept in the Public Right of Way overnight. This License is non-exclusive, and the Public Right of Way shall at all times remain open for use by the public. A minimum (ten-foot wide clear) pedestrian passage way, in accordance with the requirements of the Downtown Specific Plan, shall be maintained at all times, along the public sidewalk adjacent to the portable vending carts, with a minimum four-foot customer queing area around each cart. A minimum eight-foot wide clear separation shall be maintained between portable vending carts/kiosks and any obstruction.

2. TERM, AND CHARGES. The term of this License is five years. Either party may terminate this License with or without cause upon ten days written notice to the other party. LICENSEE agrees to pay to CITY one dollar and fifteen cents (\$1.15) per square foot of public right of way encroached upon, for a total amount not to exceed Three Hundred Sixty-eight Dollars (\$368.00) per year, plus a one-time payment of Thirty Dollars (\$30.00).

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 230.94(C) 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. 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.

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:

John H. Tillotson, Jr.  
JT Development Company, LLC  
15272 Bolsa Chica Road  
Huntington Beach, CA 92649

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.

JT DEVELOPMENT COMPANY, LLC

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

**AND**

By: \_\_\_\_\_

print name

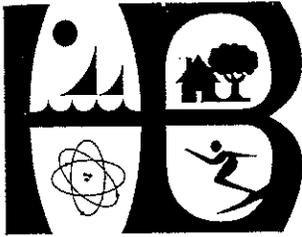
**ITS:** (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager



# Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

## NOTICE OF ACTION

September 15, 2010

Michael Adams  
Michael C. Adams and Associates  
P.O. Box 382  
Huntington Beach, CA 92648

**SUBJECT:** ENTITLEMENT PLAN AMENDMENT NO. 10-003 (PLAZA ALMERIA CARTS – AMENDMENT TO CONDITIONAL USE PERMIT NO. 00-15(R) – CONTINUED FROM THE AUGUST 10, 2010 MEETING WITH THE PUBLIC HEARING OPEN)

**APPLICANT:** Michael Adams, Michael C. Adams Associates

**REQUEST:** To amend Condition No. 1 of Conditional Use Permit No. 00-015(R) by increasing the number of approved vending carts from 6 to 14.

**PROPERTY OWNER:** John Tillotson, J.T. Development, 15272 Bolsa Chica Road, Huntington Beach, CA 92649

**LOCATION:** 301 Main Street, 92648 (full block bounded by Main Street, Olive Avenue, Fifth Street, and Orange Avenue – Plaza Almeria)

**DATE OF ACTION:** September 14, 2010

On Tuesday, September 14, 2010, the Huntington Beach Planning Commission took action on your application, and your application was approved with findings and conditions of approval. Attached to this letter are the findings and conditions of approval.

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 (10) 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. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Thirty-Nine Dollars (\$1,539.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Seven Hundred Four Dollars (\$2,704.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is September 24, 2010 at 5:00 PM.

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.

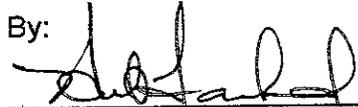
"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Ethan Edwards, the project planner, at [Ethan.Edwards@surfcity-hb.org](mailto:Ethan.Edwards@surfcity-hb.org) or (714) 536-5561 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary  
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:EE:kd

Attachment: Findings and Conditions of Approval – EPA No. 10-003

c: Honorable Mayor and City Council  
Chair and Planning Commission  
Fred A. Wilson, City Administrator  
Scott Hess, Director of Planning and Building  
Bill Reardon, Division Chief/Fire Marshal  
Mike Vigliotta, Deputy City Attorney III  
Steve Bogart, Senior Civil Engineer  
Gerald Caraig, Permit-Plan Check Manager  
Ethan Edwards, Associate Planner  
Property Owner  
Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

ENTITLEMENT PLAN AMENDMENT NO. 2010-003

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1—*Existing Facilities*, because the project involves a minor modification to the operation of the existing development involving negligible expansion of an existing use.

FINDINGS FOR APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 10-003:

1. Entitlement Plan Amendment No. 10-003 for the establishment, maintenance and operation of 10 outdoor portable vending carts 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 upon the conditions imposed, adequate pedestrian passage area will be provided. The project has been evaluated for compatibility with the surrounding neighborhood. The portable vending carts will provide additional open air commercial amenities, are designed on a pedestrian scale and character, and will meet the goals, objectives, and policies of the General Plan.
  2. The entitlement plan amendment will be compatible with surrounding uses because the ancillary operation of portable vending carts and kiosks is consistent with the zoning and General Plan designations and does not represent a significant change from the existing mix of uses. The site currently includes carts and kiosks and the entitlement plan amendment will allow for the expansion of this ancillary use. With the conditions of approval, the portable vending carts will provide adequate pedestrian passage areas and will enhance the pedestrian character and scale of the street scene surrounding the project.
  3. The 10 outdoor portable vending carts facing Main Street 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. As conditioned, the project complies with all aspects of the SP5 (Downtown Specific Plan) and HBZSO including parking, onsite circulation, setbacks, carts and kiosks standards.
- 
4. The granting of the entitlement plan amendment will not adversely affect the General Plan. It is consistent with the Land Use Element designation of MV-F6/25-sp-pd (Mixed Use Vertical-2.0 FAR/25 du/acre-Specific Plan Overlay-Pedestrian Overlay) on the subject property. In addition, it is consistent with the following goals, objectives and policies of the General Plan:

A. Land Use Element

Goal LU1: 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.

Objective LU7.1: Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, educational, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding sub-region, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic "relief" from urban development.

Goal LU11: 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 LU15.2.2: Require that structures located in the pedestrian overlay zone be sited and designed to enhance pedestrian activity along the sidewalks in consideration of the guidelines noted in the general plan.

B. Economic Development Element

Objective ED1.1: Enhance the City's market potential in terms of retail, office, industrial, and visitor serving activity. This would allow Huntington Beach to provide for retail, office, and industrial opportunities that serve the current and projected population and enhance sales and occupancy tax revenue.

Policy ED3.2.2: Encourage mixed use (retail/office/residential) structures in the downtown area and at the visitor-serving nodes along Pacific Coast Highway.

The Plaza Almeria mixed use project is located in the Downtown area of Huntington Beach. The design of the building with its retail uses facing Main Street and Olive Avenue was originally designed to encourage pedestrian activity from the pier and Pacific Coast Highway to progress further north on Main Street. A key component to expanding pedestrian activity in a downtown beach community is the provision of a mix of open-air commercial uses including carts and kiosks. As conditioned, the portable vending carts provide adequate pedestrian passage (10 ft.) which is consistent with other cart and kiosk locations in the Downtown. This request to increase the number of vending carts contributes to the project's effectiveness in meeting the goals, objectives and policies of the General Plan.

**CONDITIONS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 10-003:**

1. The site plan and floor plans received and dated August 16, 2010, shall be the conceptually approved design with the following modifications:
  - a. Depict a minimum eight foot wide separation between portable vending carts.
  - b. Pedestrian benches and trash receptacles shall remain or be relocated along Main Street. (DRB)
  - c. Depict a minimum 4 ft. customer queuing area around each cart. (DRB)
  - d. A minimum 10 ft. wide clear path of travel shall be maintained along the public sidewalk adjacent to the portable vending carts. (PW)
  - e. No carts shall be located at the locations designated on the site plan as 1, 7, 8, and 14.

2. Prior to operation of the carts & kiosks:
  - a. One set of project plans, revised pursuant to Condition of Approval No. 1, shall be submitted to the Planning Division for review, approval and inclusion in the entitlement file.
  - b. An amended or new License Agreement, including use fees, shall be obtained from the City for portable vending carts located on public property. The applicant shall apply for an obtain approval of the license agreement from the Public Works Department prior to improvements or use of public property. The License Agreement shall be subject to termination at any time upon a 10 day prior written notice upon determination of the Planning Commission that one or more of the conditions or provisions of Section 4.2.33 or that one or more of the items listed under the Findings for Approval in this document, have been violated. Termination of a License Agreement shall nullify the conditional use permit. (PW)
3. Portable vending carts may sell general merchandise, flowers, pre-packaged food items, any other food items as permitted by the Orange County Health Care Agency. Portable vending carts may also sell any other merchandise of similar nature as the above mentioned items with approval from the Director of Planning and Building. (ED)
4. All conditions of approval required under Conditional Use Permit No. 00-015(R), with exception of Condition of Approval No. 2(g & m), shall remain valid.
5. EPA No. 10-003 shall become null and void unless exercised within two years 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 and Building Department a minimum 30 days prior to the expiration date.
6. All carts shall be maintained in a neat and clean manner. Products to be sold shall remain on the cart, no expansion of the display area or additional racks are allowed. Storage must be maintained within the cart, hidden from view, or in the parking garage if space is provided.
7. A review of the use shall be conducted by the Planning Commission within 12 months of operation to verify compliance with the HBZSO and conditions of approval. At that time the Planning Commission may consider modifications to the conditions of 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.