



City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning & Building
BY: Jill Arabe, Assistant Planner *JA*
DATE: March 13, 2012

SUBJECT: TWELVE-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 09-001 (DIGG'S RESTAURANT & BAR)

**APPLICANT/
BUSINESS**

OWNER: Philip Chung, Digg's Restaurant & Bar, 8052 Adams Avenue, Huntington Beach, CA 92646

PROPERTY

OWNER: Henry Chung, 434 W. Summerfield Circle, Anaheim, CA 92802

LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Ave.)

STATEMENT OF ISSUE:

This item represents a 12-month review of Conditional Use Permit (CUP) No. 09-001, approved by the Planning Commission on June 23, 2009. The 12-month review is required as a condition of approval by the Planning Commission of CUP 09-001. The purpose of the review is to verify compliance with the conditions of approval and assess any potential impacts of the approved use.

- ◆ Staff's Recommendation: Receive and file as adequate and complete the 12-month review of Conditional Use Permit No. 09-001 based upon the following:
 - There is no evidence that staff is aware of that would allow for a revocation hearing based on:
 - Minimal infrequent complaints regarding outside noise; and
 - No complaints related to dancing and valet parking.

RECOMMENDATION:

Motion to:

"Receive and file as adequate and complete the 12-month review of Conditional Use Permit No. 09-001."

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on March 1, 2012, and notices were sent to tenants and property owners of record within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Division's Notification Matrix), applicant, and interested parties. As of March 6, 2012, no communication supporting or opposing the request has been received.

ANALYSIS:

Conditional Use Permit No. 09-001 permitted the establishment of alcohol service within a 1,110 sq. ft. outdoor dining area of an existing 5,539 sq. ft. restaurant at 8052 Adams Avenue. The 12-month review considered complaints received by code enforcement and Police Department, as well as on-site inspections, conducted by Police, and Code Enforcement staff. To date, Code Enforcement has not received a complaint since the six-month review was completed and filed as adequate. The Police Department has received one complaint call for noise and has cited the business for failing to post their ABC license and violating entertainment hours.

The following violations were reported in the six-month review (June 28, 2011):

Staff	Date	Permit	Violation
Police	March 19, 2011	Entertainment Permit	Condition #13, on-site security guards not in possession of valid CA Guard Card
Police	April 2, 2011	Entertainment Permit/CUP 09-001	Condition #12, no security guards present /Condition #2e, no security guard on duty to monitor parking, trash, and noise
Police	May 29, 2011	Municipal Code	Section 5.44.015(A), excessive noise in excess of 100 ft.
		CUP 09-001	Condition #2e, no security guard on duty to monitor parking, trash, and noise
		ABC license	Condition #2, service or alcohol consumption on patio after 12 AM
Code Enforcement	June 4, 2011	CUP 09-001	Condition #2c, doors left open during business hours

The following violations were reported since the six-month review:

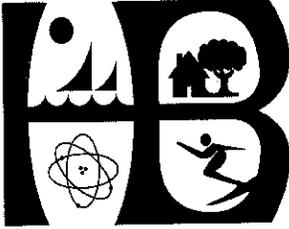
Staff	Date	Permit	Violation
Police	August 27, 2011	Municipal Code	Section 5.44.015(A), excessive noise in excess of 100 ft.
Police	December 21, 2011	ABC License/Entertainment Permit	Condition #1 & 2, hours of entertainment

Staff's recommendation is to receive and file as adequate and complete the 12-month review. Staff evaluated the current CUP conditions and considered revocation of the permit as a result of the ongoing violations. However, there is not substantial evidence of CUP violations regarding alcohol within the

patio area such that revocation could be supported. The reported noise incidents are isolated and infrequent. In the past year, the business has made efforts to reduce the number of violations and comply with the approved CUP and associated permits.

ATTACHMENTS:

1. Planning Commission Notice of Action dated June 24, 2009 (CUP No. 09-001)
2. Planning Commission Notice of Action dated May 6, 1994 (CUP No. 94-9)
3. Entertainment Permit for Digg's Restaurant issued November 15, 2011
4. Alcoholic Beverage Control (ABC) License for Digg's Restaurant
5. Police Department Summary dated January 12, 2012
6. Code Enforcement Division Memorandum dated February 8, 2012



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

June 24, 2009

Scott Natvig, Architect
12528 Gilmore Avenue
Los Angeles, CA 90066

SUBJECT: CONDITIONAL USE PERMIT NO. 09-001 (SANDBOX SPORTS GRILL)

APPLICANT: Scott Natvig, Architect

REQUEST: To permit the establishment of 1) a 150 sq. ft. indoor area for dancing, 2) alcohol service within a 1,110 sq. ft. outdoor dining area, and 3) valet service for an existing 5,539 sq. ft. sports bar restaurant

PROPERTY OWNER: Antonio Orlando, 8052 Adams Avenue, Huntington Beach, CA, 92646

LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Avenue)

DATE OF ACTION: June 23, 2009

On Tuesday, June 23, 2009, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

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.

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 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 and Two Thousand Three Hundred

ATTACHMENT NO. 1.1

Seventy-Nine Dollars (\$2,379.00) 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 July 6, 2009 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 Jill Arabe, the project planner, at jarabe@surfcity-hb.org or (714) 374-5357 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:JA:lw

Attachment: Findings and Conditions of Approval – CUP No. 09-001

c: Honorable Mayor and City Council
Chair and Planning Commission
Fred Wilson, City Administrator
Scott Hess, Director of Planning
Bill Reardon, Division Chief/Fire Marshal
Leonie Mulvihill, Senior Deputy City Attorney
Steve Bogart, Senior Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Property Owner
Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 09-001

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, because the project involves negligible or no expansion of the existing restaurant use.

FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 2009-001:

1. Conditional Use Permit No. 2009-001 for the establishment, maintenance and operation of alcohol service and consumption within an existing outdoor dining patio of an existing restaurant 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 existing outdoor dining area is located north of the subject restaurant and oriented towards arterial streets, so potential noise do not impact residential uses to the south and east of the commercial center. Alcohol service will be in conjunction with food service, such that the restaurant use will be consistent both within the exterior of the northwest patio and within the interior of the building. The project will be modified to remove the 150 sq. ft. dance floor and valet plan because these additional requests may cause detrimental impacts related to noise and traffic. The restaurant will remain as an eating and drinking establishment.
2. The conditional use permit will be compatible with surrounding uses because nearby residential uses are buffered from the existing outdoor dining area by buildings and parking lots. Noise generated by the outdoor dining patrons will be consistent with a restaurant use. Outdoor dining patrons may only be served and consume alcohol in conjunction with food service, such that the restaurant use remains unaltered. Vehicular traffic and noise will be similar to other eating and drinking establishments within close proximity to residential uses. The outdoor dining patio is surrounded by minimum five (5) foot high screen walls and building walls to restrict access to and from the area and to minimize noise spreading to residential uses.
3. The granting of the conditional use permit, as modified by conditions of approval, will not adversely affect the General Plan. It is consistent with the following goals and policies of the General Plan:

A. Land Use Element

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.

Policy LU 10.1.8 Require that entertainment, drinking establishments, and other similar uses provide adequate physical and safety measures to prevent negative impacts on adjacent properties.

The subject site operates with alcohol service and live entertainment, which are ancillary to the restaurant use. The proposed alcohol service and consumption within the existing outdoor dining area is compatible with the restaurant use and neighboring commercial uses. The expansion of the alcohol menu to the existing outdoor area does not increase the intensity of the permitted use. As suggested by condition of approval, the alcohol service and consumption will be in conjunction with food service. The outdoor dining patio is located along the north and west exterior of the building towards the arterial streets. It is surrounded by the building and minimum five (5)-foot high screen walls. The residential uses are buffered from the patio area by commercial buildings, parking lots, and perimeter walls. Also, the restaurant is the furthest building from nearby residential properties, which offers adequate relief. The restaurant will operate with conditions placed on the Entertainment Permit issued by the Police Department.

B. Noise Element

Objective N 1.4 Minimize noise spillover or encroachment from commercial and industrial land uses into adjoining residential neighborhoods or "noise sensitive" uses.

The expansion of alcohol service and consumption in conjunction with food service will not increase the existing conditions generated by patrons utilizing the outdoor dining area. The outdoor patio is located towards the arterial streets and further away from residents. Vehicular traffic along the arterial streets absorbs noise generated by the outdoor dining patrons. The outdoor patio located southeast of the building will not be utilized by patrons as modified by a condition of approval.

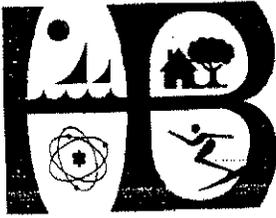
CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 09-001:

1. The site plan, floor plan, and elevation received and dated May 4, 2009, shall be the conceptually approved design with the following modifications:
 - a. The 150 sq. ft. dance floor shall be removed.
 - b. The proposed valet parking plan shall be removed.
 - c. The proposed (2) parking spaces south of the subject building shall be removed.
2. The use shall comply with the following:
 - a. Dancing shall be prohibited (PD).
 - b. Valet service shall not be permitted until such time a revised valet plan is submitted to the Planning Department for review and approval by the Planning Commission.
 - c. Doors shall remain closed during hours of operation.
 - d. Alcoholic beverages may only be served and consumed in conjunction with food service within the 1,110 sq. ft. outdoor dining patio along the north and west side of the building. The area shall be monitored for compliance by Code Enforcement and the Police Department.

- e. A security guard shall be on duty to monitor parking, trash, and noise from 7pm until a minimum one-half hour after closing.
 - f. Patrons will not be permitted in the patio areas along the south and east sides of the business. (PD)
 - g. Food from the regular restaurant menu must be available from opening until one-half hour prior to the scheduled closing time. (PD)
 - h. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
 - i. All previous conditions of approval per Conditional Use Permit No. 94-9 shall apply.
3. A review of the use shall be conducted by the Planning Commission with public hearing within (6) months and (12) months of Conditional Use Permit No. 09-001 approval to verify compliance with all conditions of approval and applicable Chapters of the Huntington Beach Zoning and Subdivision Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval.
 4. The Planning Commission reserves the right to amend the conditions or revoke Conditional Use Permit No. 09-001 if any violation of these conditions of the Huntington Beach Municipal or HBZSO occurs.
 5. The Development Services Departments (Building & Safety, Fire, Planning, and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. 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 provisions of HBZSO Section 241.18.
 6. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

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.



Huntington Beach Planning Commission

P.O. BOX 190

CALIFORNIA 92648

May 6, 1994

Restaurant Kikuya
Mr. Wayne Chin
8052 Adams Avenue
Huntington Beach, CA 92646

SUBJECT: CONDITIONAL USE PERMIT NO. 94-9

REQUEST: To permit live entertainment at the Restaurant Kikuya pursuant to Section 9220.12 of the Huntington Beach Ordinance Code.

LOCATION: 8052 Adams Avenue

DATE OF
ACTION: May 3, 1994

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 94-9:

1. The establishment and operation of live entertainment will not be detrimental to the general welfare of persons working or residing in the vicinity, nor be detrimental to property values and improvements in the area. With the conditions imposed, the proposed live entertainment use will not adversely impact the surrounding residential and commercial properties.
2. **The granting of Conditional Use Permit No. 94-9 will not adversely affect the General Plan of the City of Huntington Beach.** The proposed live entertainment use is consistent with the General Plan land use designation and zoning for the location.
3. The access to and parking for the proposed live entertainment use does not create an undue traffic problem; there is adequate on-site parking to accommodate restaurant patrons.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 94-9:

1. The site plan and floor plans dated July 28, 1993 shall be the conceptually approved layout.
2. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
(pcc1007-18)

ATTACHMENT NO. 2.1

3. A security guard to monitor the exterior of building, including the parking area, shall be present during live jazz performances.
4. A review of the use shall be conducted within six (6) months of the live entertainment operation to verify compliance with all conditions of approval and applicable Articles of the Huntington Beach Municipal and Ordinance Codes. A public hearing may be held should, at any time, there be violations of these conditions or code sections to the extent that such a hearing is deemed necessary by the Police Department or Community Development (Code Enforcement) Department.
5. The Planning Commission reserves the right to amend the conditions or revoke Conditional Use Permit No. 94-9 if any violation of these conditions of the Huntington Beach Municipal or Ordinance Code occurs.
6. This conditional use permit shall not become effective for any purpose until an "Acceptance of Conditions" form has been properly executed by the applicant and an authorized representative of the owner of the property, recorded with County Recorder's Office, and returned to the Planning Division; and until the ten (10) day appeal period has elapsed.
7. Conditional Use Permit No. 94-9 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.

CODE REQUIREMENTS:

1. All applicable Public Works fees shall be paid.
2. Service roads and fire lands, as determined by the Fire Department, shall be posted and marked. Fire access lanes shall be maintained. If fire lane violations occur and the services of the Fire Department are required the applicant will be liable for expenses incurred.
3. The applicant shall meet all applicable local, State and Federal Fire Codes, Ordinances and standards.
4. The development shall comply with all applicable provisions of the Ordinance code, Building Division, and Fire Department.
5. No sweeping or clean-up of the parking lot shall be permitted between 10:00 PM and 7:00 AM.
6. Dancing will not be permitted unless an application is made for such use and approved.

Conditional Use Permit No. 94-9

Page Three

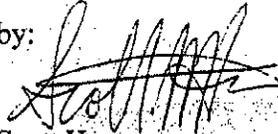
2000 MAIN ST
HUNTINGTON BEACH, CA 92648

I hereby certify the Conditional Use Permit No. 94-9 was approved by the Planning Commission of the City of Huntington Beach on May 3, 1994 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,

Howard Zelefsky, Secretary
Planning Commission

by:



Scott Hess
Senior Planner



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

ENTERTAINMENT PERMIT

THE PERMITTED LOCATION SHALL OPERATE IN COMPLIANCE WITH THE BELOW LISTED CONDITIONS AND SECTION 5.44 OF THE HUNTINGTON BEACH MUNICIPAL CODE AT ALL TIMES.
THIS PERMIT IS NON-TRANSFERABLE.

Issued to: **Digg's Restaurant and Bar**
8052 Adams Ave.
Huntington Beach, CA 92648

Effective Dates: **November 1, 2011 to October 31, 2012**

Entertainment Permit Conditions

- Hours of entertainment

Monday through Thursday:	11:00 AM to 10:00 PM
Friday and Saturday:	11:00 AM to 1:30 PM
Sunday:	11:00 AM to 9:00 PM
- All entertainment must cease no less than 30 minutes prior to the posted or scheduled closing time, and no later than the time authorized by this permit.
- Types of Entertainment: Entertainment is limited to a disc jockey, live bands, recorded music and karaoke.
- Dancing is not allowed by anyone.
- No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
- Food service from the regular menu must be available to patrons up to thirty minutes before the scheduled closing time.
- No cover charge or admission fee will be allowed.
- There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
- No "happy hour" type of reduced price alcoholic beverage promotions shall be allowed after 7:00 p.m. each day of the week.
- All exterior doors and windows shall be closed during times of entertainment.
- All live entertainment must remain inside the establishment at all times.
- Security Guards: At least two when entertainment is present. One guard shall be designated to monitor the parking lot from 7:00 p.m. until one half hour after closing when entertainment is present.
- All security guards must be clearly identifiable as security guards and possess a valid California Guard Card.
- The licensee or any representatives of the licensee may not pay a promoter for services based upon occupancy or attendance to an event.
- Per section 5.44.140 HBMC: All owners, employees, representatives, and agents shall obey all state, local, and municipal laws, conditions of the Conditional Use Permit, Entertainment Permit, Alcoholic Beverage Control License, or any other regulations, provision, or restrictions prescribed at all times. Any violations of any law or conditions will be considered violations of the permit to constitute permit suspensions or revocation in addition to civil or criminal enforcement.

You are hereby reminded of the below listed CUP Special Conditions and ABC Special Conditions that directly affect your Entertainment Permit. Refer to your CUP and ABC License for a complete list of conditions imposed on your establishment. A violation of any of these conditions is also considered a violation of your Entertainment Permit.

ENTERTAINMENT PERMIT

Page 2 of 2

Conditional Use Permit (CUP) Special Conditions (CUP 09-001)

1. Dancing shall be prohibited.
2. Valet service shall not be permitted until such time a revised valet plan is submitted to the Planning Department for review and approval by the Planning Commission.
3. Doors shall remain closed during the hours of operation.
4. Alcoholic beverages may only be served and consumed in conjunction with food service within the 1,110 sq. ft. outdoor dining patio along the north and west side of the building. The area shall be monitored for compliance by Code Enforcement and the Police Department.
5. A security guard shall be on duty to monitor parking, trash and noise from 7:00 pm until a minimum one-half hour after closing.
6. Patrons will not be permitted in the patio areas along the south and east sides of the business.
7. Food from the regular restaurant menu must be available from opening until one-half hour prior to the scheduled closing time.
8. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
9. All previous conditions of approval per Conditional Use Permit No. 94-9 shall apply.

ABC License Special Conditions (#47-500159)

1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 am and 12:00 midnight Sunday through Thursday and 10:00 am until 2:00 am Friday and Saturday.
2. Sales, service and consumption of alcoholic beverages shall be permitted on patio #1 only between the hours of 10:00 am and 12:00 midnight each day of the week.
3. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
4. Food service with an available menu shall be available up until ½ hour before closing each day of the week.
5. Food service with an available menu shall be available until 12:00 midnight on patio #1 each day of the week.
6. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 6-14-2010.
7. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
8. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
9. There will be no dancing allowed on the premises.
10. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed after 7:00 pm each day of the week.
11. Petitioner(s) shall not require an admission charge or a cover charge, nor shall there be a requirement to purchase a minimum number of drinks.

Per section 5.44.110 HBMC: The Chief of Police may revoke or suspend an entertainment permit upon receiving satisfactory evidence that (a) Administrative or criminal citation(s) which have been upheld and which the Chief of Police determines evidence that continued operation of the entertainment will constitute public health, safety and welfare problems; (b) The entertainment (including employee or patron behavior) is detrimental to the public welfare; (c) The application contains incorrect, false, or misleading information; or (d) the permit holder has had an entertainment permit or similar permit or license denied or revoked for cause by the City of Huntington Beach or any other jurisdiction located in or out of this state prior to the date of application; (e) The permit holder caused or permitted to be caused a violation of any provision of this Chapter, conditions of Entertainment Permit or Land Use Approval.

Issued: November 15, 2011


Kenneth W. Small
Chief of Police

ATTACHMENT NO. 3.2

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

**HENRY & PHILIP CORPORATION
DBA: Diggs Restaurant
8052 Adams Ave
Huntington Beach, CA 92648**

File: 47-500159

**PETITION FOR
CONDITIONAL
LICENSE**

For issuance of an On Sale General Eating Place License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the local policing agency has expressed an objection to the issuance of the applied-for license without the below-listed conditions; and,

WHEREAS, the undersigned applicant(s) is/are desirous to allay the policing agency's concerns; and,

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare or morals;

NOW THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

- 01. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 a.m. and 12:00 midnight Sunday through Thursday and 10:00 a.m. and 2:00 a.m. Friday and Saturday.
- 02. Sales, service and consumption of alcoholic beverages shall be permitted in the patio area only between the hours 10:00 a.m. and 12:00 midnight each day of the week.
- 03. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
- 04. Food service with an available menu shall be available up until ½ hour before closing each day of the week.
- 05. Food service with an available menu shall be available until 12:00 midnight on the north/west patio each day of the week.
- 06. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 06-14-2010.

Initial(s); PH

47-500159

HENRY & PHILIP CORPORATION

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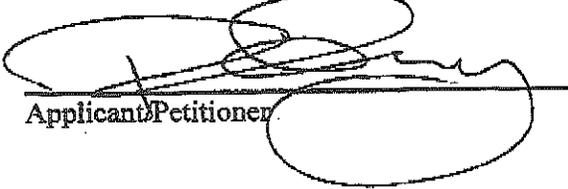
- 07. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand
- 08. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
- 09. There will be no dancing allowed on the premises.
- 10. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed after 7:00 p.m. each day of the week.
- 11. Petitioner(s) shall not require an admission charge or a cover charge, nor shall there be a requirement to purchase a minimum number of drinks.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 2nd DAY OF September, 2010


Applicant/Petitioner

Applicant/Petitioner



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P.O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

Kenneth W. Small
Chief of Police

RECEIVED

JAN 26 2012

Dept. of Planning
& Building

Date: January 12, 2012
To: Jill Arabe, Planning Department
From: Kevin Kesler, Special Investigations Bureau Vice Unit
Subject: Police Department CUP Review: DIGGS Restaurant
Location: 8052 Adams Avenue

Summary:

A review of incidents requiring police services was performed at DIGGS Restaurant, located at 8052 Adams, as required by Condition of Appeal No. 3 of CUP 09-001. The Police Department has continued to receive noise complaints from citizens residing in the area and has noted continued Entertainment Permit violations. A summary of the required conditions and recently noted violations is provided herein.

Summary of CUP Conditions:

DIGGS Restaurant was granted a Conditional Use Permit (09-001) authorizing service/on-site consumption of alcohol in the outdoor dining area. CUP 94-9 permits live entertainment. Provided below is a summary of the CUP conditions:

1. Dancing is prohibited.
2. Doors shall remain closed during business hours.
3. A security guard shall be on duty to monitor parking, trash and noise from 7 PM until a minimum of one-half hour after closing.

Summary of ABC Conditions:

DIGGS Restaurant was granted a type 47 ABC license (ABC License # 47-500159). Provided below is a summary of the ABC license conditions:

1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 12:00 midnight Sunday through Thursday and 10:00 AM and 2:00 AM Friday and Saturday.
2. There will be no dancing allowed on the premises.

Crime Analysis:

As part of the review, Vice Detectives examined calls for service, crime reports, and arrests at the above location since the last CUP review. A total of two citations were given to the owner, one for noise and one for failing to post his ABC license. Additionally, one assault report was taken at the business.

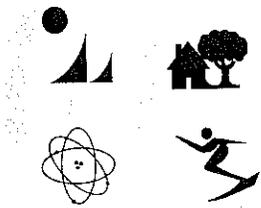
8/27/2011 (DR 2011-14886): Officers responded to the business reference a noise complaint by a nearby resident. The business was cited for the noise violation. The business appealed the citation and it was repealed based on the fact the officer could not verify the noise was heard in excess of 50 feet.

12/21/2011 (DR 2011-21190): Officers responded to the business while performing a series of ABC inspections. The business was cited for failing to post their ABC license and for having entertainment after the hours allowed in their entertainment permit. The owner has not paid this citation or requested an appeal.

12/22/2011 (DR 2011-21189): Officer responded to the business reference an assault that had just occurred. The suspect had left the scene prior to the officers arriving and the victim was not cooperative.

Recommendation:

Based on the foregoing information, the Huntington Beach Police Department has found the public peace, safety and welfare has not been negatively impacted by the issuance of this Conditional Use Permit. However, the business continues to violate conditions contained in their Conditional Use Permit, Entertainment Permit and ABC license even after being cautioned against doing so. It is the responsibility of the owner to follow all the conditions imposed on the operation of his business. If any future modifications are made, it is recommended the hours listed in the ABC license (condition #1 above) for sales, service and consumption of alcohol be added to the CUP.



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Date: February 8, 2012
To: Jill Arabe, Assistant Planner
From: Kathy Schooley, Code Enforcement Officer 
Location: Diggs Restaurant and Bar 8052 Adams Avenue

Summary of Inspection:

A six-month review of the Conditional Use Permit was performed at Digg's Restaurant and Bar located at 8052 Adams. No violations were found during the review/inspection that would appear to fully justify modifying or revoking Conditional Use Permits 94-9 or 09-001.

Summary of CUP Conditions:

1. Dancing is not permitted.
2. Security guard on duty to monitor parking, trash and noise.
3. Doors shall remain closed during business hours.
4. Valet service shall not be permitted.
5. Food service from the restaurant menu must be available from opening until one-half hour prior to the scheduled closing time.

Summary of Inspection:

1. Doors remained closed.
2. Security guard monitoring door and parking lot area.
3. No valet service.
4. Did not observe and did not appear that business allowed dancing.
5. Did not observe alcohol served on patios.

Code Enforcement Complaints:

There have been no calls/complaints for service as pertains to Code Enforcement since the last CUP inspection.

ATTACHMENT NO. 6