

**CITY OF HERMOSA BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

MEMORANDUM

Date: June 5, 2003

To: Honorable Chairman and Members of the Planning Commission

From: Sol Blumenfeld, Director,
Ken Robertson, Senior Planner
Community Development Department

Subject: Modified Conditions of Approval for 1320 Hermosa Avenue, "Dano's" to be known as "Element".

Recommendation

To approve the attached resolution as modified by the Commission with additional minor changes as recommended by staff. Direct staff in regards to future use of automatic reviews and how to implement the reviews.

The attached resolution reflects the Planning Commission modifications regarding noise attenuation related to live entertainment, the authority of the Police Chief to require a doorman and review of the C.U.P. and to require a 6-month review. Staff is proposing 6-month review language as follows:

The Planning Commission shall review the operation of the restaurant for compliance with conditions of approval and compliance with the Noise Ordinance in six (6) months and one year from the approval of this Resolution and thereafter as necessary to respond to complaints.

Staff is seeking the Commission's confirmation of this wording of the condition. Staff is suggesting limiting the automatic review to the initial 6-month period and one year, and further review only if complaints are received, to more efficiently use staff resources than requiring a review every six months or annually. This is how the condition was written for Union Cattle Company as approved by the City Council. Requiring an automatic periodic review of a business after the initial reviews may not be necessary. Further, the other standard statement included at the end of the resolution states that "the Planning Commission may review this Conditional Use Permit and may amend the subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the neighborhood resulting from the subject use." These conditions give the Commission ample

discretion to direct staff to review the C.U.P. at anytime whether complaints arise, or to respond to any concerns of the Commission.

Staff is also seeking direction on future use of automatic reviews. Staff would suggest using similar wording for automatic reviews in conditions of approval when included by the Commission, in order to avoid unduly burdening the Commission agenda.

Further, when an automatic review is scheduled for Commission staff suggests the following information be reviewed by the Commission:

- Police reports
- Staff inspection of the business for changes to the interior layout.
- Weekend nighttime inspection only if the police report and/or Police Chief indicate frequent or severe problems.
- Staff review and discussion of any complaints.

Attachments

1. Proposed Resolution

memo1334Hermosa

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3 **P.C. RESOLUTION 03-23**

4 **A RESOLUTION OF THE PLANNING COMMISSION OF THE**
5 **CITY OF HERMOSA BEACH, CALIFORNIA, MODIFYING A**
6 **CONDITIONAL USE PERMIT FOR ON-SALE GENERAL**
7 **ALCOHOL, IN CONJUNCTION WITH AN EXISTING**
8 **RESTAURANT WITH LIVE ENTERTAINMENT, AT 1320**
9 **HERMOSA AVENUE, FORMERLY KNOWN AS “DANO’S” WITH**
10 **A PROPOSED NEW NAME, “ELEMENT”, AND LEGALLY**
11 **DESCRIBED AS LOTS 8 & 9, BLOCK 34, FIRST ADDITION TO**
12 **HERMOSA BEACH TRACT**

13 Section 1. The Planning Commission conducted a duly noticed public hearing to
14 consider the revocation or modification of Conditional Use Permit 00-1, approved April 18,
15 2000 (P.C. Resolution 00-24), pursuant to Section 17.70.010 of the Zoning Ordinance, on
16 March 18, April 15, and May 20, 2003, at which testimony and evidence, both written and oral,
17 was presented to and considered by the Planning Commission.

18 Section 2. A new buyer of the restaurant, currently in escrow, Southern California
19 Restaurant Endeavors, plans to continue the operation of the restaurant with on-sale general
20 alcohol and live entertainment under a new name, “Element,” and has submitted plans for
21 interior alterations, and a noise impact study.

22 Section 3. Based on evidence received at the public hearing, the Planning Commission
23 makes the following findings:

24 1. The Hermosa Beach Chief of Police reported major disturbances due to unruly
25 behavior of the patrons of the existing restaurant, “Dano’s” resulting in three arrests;

26 2. The unruly and boisterous behavior was determined to be the result of poor
27 management, staffing, and supervisory techniques as required by the Conditional Use Permit,
28 and as required of any responsible operation of an establishment serving general alcohol under
29 the license granted by the State Department of Alcohol Beverage Control. This behavior
adversely affected the public welfare and the welfare of surrounding commercial
establishments and caused excessive noise creating a nuisance, which also inconsistent with the
requirements of the Conditional Use Permit.

3. Based on the above evidence provided by the Police Department, the permit has
been exercised contrary to the terms and conditions of the permit, and in violation of the
Municipal Code.

4. Since the ownership is changing, and the new owner is proposing changes to the
floor plan and operation of the restaurant, the Commission does not find it appropriate to
revoke the permit, but instead determines that modifications to the conditions of approval are
necessary to ensure that similar problems do not occur with the new ownership.

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2 Section 4. Based on the foregoing, and pursuant to Section 17.70.010 of the Zoning
3 Ordinance, the Planning Commission hereby modifies the **Conditions of Approval**, which
4 supersede the conditions contained in P.C. Resolution 00-24:

- 5 **1. The continued use of the restaurant shall be substantially consistent with submitted**
6 **plans. Modifications to any of the plans shall be reviewed and may be approved by**
7 **the Community Development Director.**
- 8 **2. The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily.**
- 9 **3. The establishment shall not adversely affect the welfare of the residents, and/or**
10 **commercial establishments nearby.**
- 11 **4. The business shall provide adequate staffing and management and supervisory**
12 **techniques to prevent loitering, unruliness, and boisterous activities of the patrons**
13 **both inside and outside the business and in nearby public areas.**
- 14 **5. The Police Chief shall determine that a continuing police problem exists, and may**
15 **authorize the presence of a police approved doorman and/or security personnel to**
16 **eliminate the problem, and/or shall submit a report to the Planning Commission,**
17 **which will automatically initiate a review of this conditional use permit by the**
18 **Commission.**
- 19 **6. The exterior of all the premises shall be maintained in a neat and clean manner, and**
20 **maintained free of graffiti at all times.**
- 21 **7. An accurate seating plan shall be prepared by a state-licensed architect, which shall**
22 **determine the maximum occupant load.**
- 23 **8. Any significant changes to the interior layout, which would alter the primary**
24 **function of the business as a restaurant, shall be subject to review and approval by**
25 **the Planning Commission.**
- 26 **9. The project and operation of the business shall comply with all applicable**
27 **requirements of the Municipal Code.**

28 **CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:**

- 29 **10. Noise emanating from the property shall be within the limitations prescribed by the**
30 **City's noise ordinance and shall not create a nuisance to surrounding residential**
31 **neighborhoods, and/or commercial establishments.**
- 32 **11. The hours for live entertainment shall be limited to the hours between 9:00 P.M.**
33 **to 1:15 A.M. Monday through Friday, and from 2:00 P.M. to 1:15 A.M. on**
34 **Saturday, Sundays, and Federal and State Holidays, Cinco De Mayo, and St.**
35 **Patrick's day.**

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2 **12. An acoustical study shall be prepared by an acoustical engineer, including**
3 **proposed sound dampening features to baffle and direct sound away from the**
4 **entrance/exit and window areas to ensure compliance with the noise ordinance.**
5 **Said study and sound dampening shall be reviewed and approved by the**
6 **Community Development Director prior to the issuance of building permits and**
7 **shall be implemented in the building interior prior to occupancy.**

8 **A. The acoustical study shall be based on the worst-case scenario, or on a**
9 **sound level that will not be exceeded at any given time.**

10 **B. Management shall be responsible for the music/entertainment volume**
11 **levels.**

12 **C. During the performance of any live entertainment, the exterior doors and**
13 **windows shall remain closed.**

14 **D. All exterior doors shall have self-closing hardware.**

15 **E. The air conditioning system shall be of an adequate capacity to air**
16 **condition the entire restaurant.**

17 **13. No live entertainment or amplified music, audio, television, or speakers of any**
18 **kind shall be permitted in the outside seating area.**

19 **14. All exterior glass windows or doors shall be equipped with double-pane glass or a**
20 **comparable substitute with equivalent sound dampening properties to the**
21 **satisfaction of the Community Development Director.**

22 **15. Noise emanating from the property shall be within the limitations prescribed by**
23 **the city's noise ordinance and shall not create a nuisance to surrounding**
24 **residential neighborhoods, and/or commercial establishments. Noise emanating**
25 **from the property shall be monitored to verify compliance with the noise**
26 **ordinance in response to any complaints.**

27 **16. The Planning Commission shall review the operation of the restaurant for compliance**
28 **with conditions of approval and compliance with the Noise Ordinance in six (6)**
29 **months and one year from the approval of this Resolution and thereafter as necessary**
30 **to respond to complaints.**

31 Section 5. This grant shall not be effective for any purposes until the permittee and the
32 owners of the property involved have filed a the office of the Planning Division of the
33 Community Development Department their affidavits stating that they are aware of, and agree to
34 accept, all of the conditions of this grant. The grant for live entertainment shall not be in effect
35 until the acoustical study is complete and approved by the Community Development Director,
36 and all sound proofing measures are implemented in the building pursuant to Condition Nos. 12
37 and 14.

38 The Conditional Use Permit Amendment, as modified, shall be recorded, and proof of
39 recordation shall be submitted to the Community Development Department.

Each of the above conditions is separately enforced, and if one of the conditions of approval is
found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

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Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employee to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code. The City shall promptly notify the permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold harmless the City.

The permittee shall reimburse the City for any court and attorney's fees which the City may be required to pay as a result of any claim or action brought against the City because of this grant. Although the permittee is the real party in interest in an action, the City may, at its sole discretion, participate at its own expense in the defense of the action, but such participation shall not relieve the permittee of any obligation under this condition.

The subject property shall be developed, maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions.

The Planning Commission may review this Conditional Use Permit and may amend the subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the neighborhood resulting from the subject use.

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| VOTE: | AYES: | Hoffman, Perrotti, Pizer, Tucker |
| | NOES: | None |
| | ABSENT: | None |
| | ABSTAIN: | Kersenboom |

CERTIFICATION

I hereby certify the foregoing Resolution P.C. 03-23 is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of May 20, 2003.

Peter Hoffman, Chairman

Sol Blumenfeld, Secretary

Date June 17, 2003

Cupr00-1 revised