

January 4, 2004

**Honorable Chairman and Members of the
Hermosa Beach Planning Commission**

**Regular Meeting of
January 18, 2005**

SUBJECTS: ANNUAL REVIEW AND REPORT ON CODE ENFORCEMENT FOR PIER PLAZA AND
DOWNTOWN AREA BUSINESSES

Staff Recommendation:

To direct staff to:

1. Schedule informal hearings at Planning Commission with each non-compliant business and publicly review violations and necessary actions for compliance.
2. Revise enforcement procedure policy at City Council to permit ticketing for CUP violations as citable offenses and proceed with issuance of citations for each offense as necessary.
3. Recommend the City Council revoke or modify encroachment permits where applicable in response to patio encroachment violations after proper notice pursuant to Chapter 12.16 of the Hermosa Beach Municipal Code.

Alternatives:

4. Continue code enforcement and inspection activity, with regular reminders for voluntary business compliance with CUP conditions.
5. Schedule CUP revocation hearings for violating businesses to consider modification or revocation of the CUP.

Background:

Consistent with the Planning Commission's conditional use permit annual review policy, in January and February 2004, staff presented police incidents reports for various downtown businesses and heard testimony from the Police and Fire Departments. Based on this testimony, the Commission expressed concerns about a pattern of incidents involving over-crowding, loitering in and around outdoor dining areas, noise and other public nuisance behavior and directed staff to proceed with efforts to involve downtown businesses in code compliance. The Commission further directed staff to expand its investigations and to continue to monitor all downtown restaurants with respect to Municipal Code or CUP violations. The problems ranged from gang violence to noise violations of conditional use permits. The intent was to work with restaurant owners to jointly solve area problems and to reduce the need for frequent police and fire response calls.

Analysis:

Over the last year, the City has made good progress in some areas of code enforcement and CUP compliance with specific businesses and in the Pier Plaza area generally. Specific problem businesses have been closed such as Dano's and T.J. Charlyze and will reopen under new management. Other businesses have made changes in business practice such as the Underground and improved monitoring of customers. Some businesses have instituted dress codes to help deal with gang related problems in the area, and all businesses have been aggressively checking ID's to prohibit underage drinking. Noise problems have also somewhat improved for some businesses and occupant load problems are being checked on a twice monthly basis to prohibit overcrowding. This progress has been made cooperatively with downtown businesses.

Despite the progress there are still problems in the area that must be addressed as evidenced by staff's investigations. From August through December 2004, the Police, Fire and Community Development Departments conducted inspections, separately and together, and found several businesses that were in violation of their CUP, encroachment permit, and approved patio seating plans. Each current CUP contains a requirement that a business comply with all municipal laws and ordinances. Thus any Municipal Code violation is also generally a CUP violation. The violations typically related to noise and use of patio areas and included violations of standard conditions requiring:

- Doors and windows to be closed during live music.
- Over occupied encroachment areas and removal of furniture inconsistent with approved seating plans.
- Lounging in required patio aisles.
- Loud music and TV's installed in encroachment patio areas.

The specific reports from these investigations conducted in August through December 2004, are attached.

Staff met with six restaurant owners on November 2nd, 3rd and 4th to discuss their violations and the steps needed to bring their businesses into compliance. A list of the restaurants and the issues discussed in these meetings is attached.

Follow up investigations were conducted, November 20th, November 29th, December 1st, 3rd, 12th and 20th 2004. These investigations, documented in the attached memoranda, indicate that little progress has been made as the businesses continued to violate their CUP's relative to noise and improper use the encroachment areas.

The Commission has specific authority with respect to the Conditional Use Permit violations. Pursuant to Section 17.70 of the Zone Code, the Commission may revoke a CUP on any one or more of the following grounds:

- A. That the approval was obtained by fraud;
- B. That the use for which such approval is granted is not being exercised;
- C. That the use for which such approval was granted has ceased to exist or has been suspended for one year or more;
- D. That the permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- E. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

The process requires a noticed public hearing at Planning Commission, where, upon consideration of all the facts and public testimony, the Commission may revoke or modify the conditions of the CUP to address specific problems. If modification is deemed appropriate, the Commission may establish more restrictive operating conditions which can range from eliminating live entertainment to establishing earlier closing times. The City Attorney has advised that a conditional use permit conveys a property right to the business and that the Commission must carefully weight the relevant evidence before revoking or modifying a permit. Revoking a CUP will also result in suspension of the business alcohol license issued by the Alcohol Beverage Control (A.B.C.).

Discussion of Alternatives:

Alternative 1 allows the Commission to conduct informal hearings to give the business owners another opportunity to present what they are doing to rectify their problems, hear testimony from neighbors and/or customers of the business, and have the businesses make a public commitment to correct their violations. The City may then follow up with limited further inspections. If it becomes clear that the business is not fulfilling their commitments, the Commission may then proceed with a formal revocation hearing or proceed with actions under Alternative 2.

Alternative 2 allows the businesses time to correct their violations with continued follow up investigation. The citation process typically involves sending formal letters that list specific violations, with a warning that if the violations are not corrected by a specific date the offender will be cited. This option requires procedural changes for citation issuance approved by City Council.

Alternative 3 involves compliance with requirements for use of outdoor dining areas along Pier Plaza and related occupant load violations. Occupant load compliance can be addressed through enforcement of encroachment permit regulations and under authority provided in the Building or Fire Code. This alternative may also include closing the encroachment areas after midnight when the area is not used for its intended purpose of outdoor dining.

Outdoor dining patios along Pier Plaza are regulated by Chapter 12.16 of the Municipal Code which allows the Public Works Director to revoke encroachment permits when there are violations. During staff's inspections and meetings with Pier Plaza businesses, each violating business was warned that T.V.'s have never been allowed in the encroachment areas and that loud music is prohibited under the noise ordinance. The T.V.'s were installed after encroachment permits had been issued and are not permitted under outdoor dining regulations. Staff advised the business owners to turn T.V.'s off until further notice. Pursuant to Section 12.16.150 the City may issue a written violation notice and if the problem is not corrected it can revoke the encroachment permit. The businesses may then, within 10 days of notification, file an appeal before City Council. The Fire Department can check occupant loads for outdoor dining areas and require compliance with approved seating plans when checking interior occupancies.

Alternative 4 allows the business time to correct their problems with repeated review and consultation by staff to obtain code compliance. This requires continuing staff inspections and reallocation of code enforcement resources to continually monitor the Pier Plaza area.

Alternative 5 is discussed in detail above.

Conclusions:

Staff believes that the above problems should be addressed at a scheduled meeting of the Planning Commission for the purpose of expressing the Commission's intent regarding the CUP or encroachment permit violations for each business. These meetings should be held over the next two months with two or three businesses considered per meeting in order to avoid impacting the Commission agenda. Staff also believes that a citation program should be implemented as soon as possible for noise and CUP violations and that citations be issued as necessary to control noise and overcrowding of outdoor dining areas. Any businesses repeatedly cited should be remanded to the Commission for CUP modification or to the City Council for encroachment permit review.

Sol Blumenfeld, Director
Community Development

Mike Lavin,
Police Chief

Russell Tingley,
Fire Chief

Concur:

Stephen R. Burrell,
City Manager

Attachments:

1. Memoranda on Violations.
2. Police Department Foot Patrol log.
3. Encroachment Permit Regulations.

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