

February 1, 2005

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

**Regular Meeting of
February 15, 2005**

SUBJECT: REPORT ON ALOHA SHARKEEZ AND DRAGON RESTAURANTS
CONDITIONAL USE PERMIT AND CODE COMPLIANCE.

Staff Recommendation:

To direct staff to:

1. Continue code enforcement inspections for three months and report back to the Planning Commission on CUP and code compliance for the businesses.
2. Schedule CUP revocation/modification hearings if the businesses continue to operate in violation of their CUP or otherwise violate the Municipal Code.

Background:

On January 18, 2005, the Planning Commission conducted an annual review of conditional use permits for various downtown businesses and heard reports from the Community Development and Police Departments. Based on the reported information, the Commission reiterated concerns about over-crowding and standing in outdoor dining areas, excessive noise and other public nuisance behavior and directed staff to proceed with informal hearings with six businesses that continue to violate their CUP or the Municipal Code. The Commission also directed staff to proceed with ticketing for CUP violations and to prepare a City Council report on possible revocation or modification of encroachment permits in response to patio encroachment violations after proper notice pursuant to Chapter 12.16 of the Hermosa Beach Municipal Code.

Analysis:

Over the last year the City has tried to correct CUP and Municipal Code violations of several Pier Plaza businesses through cooperative actions. As reported in January, some progress has been made, however, six businesses continue to violate their CUP and/or the Municipal Code. The businesses are: Aloha Sharkeez, Sangria, Patrick Malloy's, Lighthouse, Fat Face Fenner's Fishack and Dragon. The violations typically related to noise and use of patio areas and included violations of standard conditions requiring:

- Doors and windows not closed during live entertainment or loud amplified music.
- Outdoor dining patios not being used for dining and/or not occupied pursuant to an approved plan and/or in violation of Building Code requirements for clear aisles and egress.
- Loud music and TV's installed in encroachment patio areas.

Aloha Sharkeez

The Community Development and Police Departments have identified specific violations of the Municipal Code from August through December 2004 for the business.

Municipal Code Violations:

1. Violation of Noise Ordinance, Chapter 8.24 of the Municipal Code.
Staff observed the following violations of Section 8.24.040 Specific Prohibited Noises. (A) Placement of Stereo Speakers and (B) Band or Orchestral Concerts, Rehearsals or Practices.

August 13, 2004 and August 28, 2004 between the hours of 11:30 and 1:00 a.m., staff observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way.

October 2, 2004 between the hours of 11:30 and 1:00 a.m. staff observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way.

November 25, 2004 to November 28, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way.

December 1, 3 and 12, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way.

December 20, 2004 and December 31, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way.

2. Violation of outdoor encroachment regulations, Chapter 12.16 of the Municipal Code.
Staff observed the following violations of Section 12.16.090 Outdoor Dining Commercial (c) Conforms to the Municipal Code:

August 13, 2004 and August 28, 2004 between the hours of 11:30 and 1:00 a.m., staff observed that outdoor dining patios were not used for dining as required under encroachment guideline regulations and customers were standing in required aisles in the patios. TV's were installed and operated in the encroachment areas in violation of encroachment permit guidelines.

October 2, 2004 between the hours of 11:30 and 1:00 a.m. staff observed that outdoor dining patios were not used for dining as required under encroachment guideline

regulations and customers were standing in required aisles in the patios. TV's were installed and operated in the encroachment areas in violation of encroachment permit guidelines.

November 25, 2004 to November 28, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment guideline regulations and customers were standing in required aisles in the patios. TV's were installed and operated in the encroachment areas in violation of encroachment permit guidelines.

December 1, 3 and 12, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment guideline regulations and customers were standing in required aisles in the patios. TV's were installed and operated in the encroachment areas in violation of encroachment permit guidelines.

December 20, 2004 and December 31, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment guideline regulations and customers were standing in required aisles in the patios. TV's were installed and operated in the encroachment areas in violation of encroachment permit guidelines.

Dragon:

The Community Development and Police Departments have identified specific violations of the Municipal Code and business CUP from August through December 2004.

Municipal Code and CUP Violations:

Violation of Noise Ordinance, Chapter 8.24 of the Municipal Code.

Staff observed the following violations of Section 8.24.040 Specific Prohibited Noises. (A) Placement of Stereo Speakers and (B) Band or Orchestral Concerts, Rehearsals or Practices. Violation of CUP Condition No. 5 (c) -- During the performance of any live entertainment, the exterior doors and windows shall remain closed; Condition No. 6 -- No live entertainment or amplified music, audio, television or speakers of any kind shall be permitted in outside seating areas. Violation of outdoor encroachment regulations, Chapter 12.16 of the Municipal Code.

3. August 13, 2004 and August 28, 2004 between the hours of 11:30 and 1:00 a.m., staff observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way. TV's were installed and operated in the encroachment areas in violation of CUP Condition No. 6 and encroachment permit guidelines. Staff observed a violations of Section 12.16.090 Outdoor Dining Commercial (c) Conform to the Municipal Code: Violation of Encroachment Regulations with outdoor dining patios not used for dining as required under encroachment guideline regulations and customers standing in required aisles in the patios.

4. October 2, 2004 between the hours of 11:30 and 1:00 a.m. staff observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way. TV's were installed and operated in the encroachment areas in violation of CUP Condition No. 6 encroachment permit guidelines. Staff observed a violations of Section 12.16.090 Outdoor Dining Commercial (c) Conform to the Municipal Code: Violation of Encroachment Regulations with outdoor dining patios not used for dining as required under encroachment guideline regulations and customers standing in required aisles in the patios.

November 25, 2004 to November 28, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way. TV's were installed and operated in the encroachment areas in violation of CUP Condition No. 6 encroachment permit guidelines. The police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment regulations and customers were standing in required aisles in the patios.

December 1, 3 and 12, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way. TV's were installed and operated in the encroachment areas in violation of CUP Condition No. 6 encroachment permit guidelines. The police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment regulations and customers were standing in required aisles in the patios.

December 20, 2004 and December 31, 2004 between the hours of 11:30 and 1:00 a.m., the police department foot patrol observed that doors and windows were open during live entertainment (D.J. performing) with extremely loud amplified music. There was also loud amplified music in the outdoor patio. The noise was clearly audible from outside the restaurant along the public way. TV's were installed and operated in the encroachment areas in violation of CUP Condition No. 6 encroachment permit guidelines. The police department foot patrol observed that outdoor dining patios were not used for dining as required under encroachment regulations and customers were standing in required aisles in the patios.

Discussion of Code Enforcement Actions:

The Commission has directed staff to notify the subject businesses and schedule informal hearings to give the business owners an opportunity to comment and 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

Commission determined that after follow up inspections, if the business is not fulfilling their commitments, then it will proceed with a formal revocation hearing.

During the follow-up inspections, staff will proceed with citations for CUP noise violations. 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.¹

Also during the follow-up inspections, staff was directed to draft a report to City Council suggesting that violations of encroachment permits be referred to City Council for revocation or modification.² Some of the violations in the patios pertain to occupant load or egress violations which will be addressed when the fire department conducts occupant load inspections.

Sol Blumenfeld, Director
Community Development

Mike Lavin,
Police Chief

Russell Tingley,
Fire Chief

Attachments:

1. Memoranda on Violations.
2. Encroachment Permit Regulations.
3. CUP's

Notes:

-
1. Section 17.74.030 establishes violations of CUP's as a citable infraction with a fine of \$50 for the first violation, \$100 for the second violation, \$150 for the third violation and \$300 for each additional violation of the same condition within the one year. Each person guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by such person and shall be punishable accordingly.

Section 17.74.010 provides that each person guilty of a violation of the provisions of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$300. Section 17.74.020 provides that each person shall be guilty of a separate offense for every day during any portion of which any violation of any provision of this title is committed, continued or permitted by such person, firm or corporation, and shall be punishable therefore as provided for in this title and any use, occupation or building or structure maintained contrary to the provisions hereof shall constitute a public nuisance.

2. 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 TV's have never been allowed in the encroachment areas and that loud music is prohibited under the noise ordinance. The TV's were installed after encroachment permits had been issued and are not permitted under outdoor dining regulations. Staff advised the business owners to turn TV'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 also check occupant loads for outdoor dining areas and require compliance with approved seating plans when checking interior occupant loads.