

November 8, 2005

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

**Regular Meeting of
November 15, 2005**

SUBJECTS: TEST AMENDMENT REGARDING DISPLAY OF RETAIL MERCHANDISE
ON PIER PLAZA

Recommendation:

To recommend the City Council adopt an ordinance adding a new sub-section in Chapter 12.12 and 12.16 and amending Section 17.26.050 of Chapter 17.26 of the Hermosa Beach Municipal Code for outdoor display of retail merchandise on Pier Plaza.

Background:

On May 10, 2005, the City Council reviewed the current outdoor dining regulations and directed staff to return with a resolution reflecting the City Council's changes including new regulations for retail sales on Pier Plaza. On August 9, 2005, the City Council approved Resolution No. 05-6418 adopting standards for the design and operation of outdoor retail sales display areas on Pier Plaza.

Analysis:

The retail sales/display standards have been prepared pursuant to City Council direction and apply exclusively to businesses along Pier Plaza. The ordinance amends encroachment regulations in Chapter 12.16 and outdoor sales from stands in Chapter 12.12 of the Municipal Code and amends outdoor sales regulations in Chapter 17.26 of the Zone Code. Currently permanent outdoor sales and displays are prohibited and the Zone Code must be amended to allow it. Section 17.26.040 permits only "temporary outdoor merchandise display and outside dining in conjunction with a temporary outdoor event such as a sidewalk sale, authorized by city council by special permit as set forth in Section 12.12.070. (Section 12.12.070 refers to placing wagons, stands in streets for purposes of sale or display of goods as part of a temporary sidewalk sale by special permit.) The Zone Code and encroachment regulations were amended in 1997 to allow outdoor dining on Pier Plaza without a conditional use permit and there must be a similar exception for retail sales and displays. Following amendment of the Zone Code and amendment to the encroachment regulations, an existing or new retail business may apply for a standard encroachment permit to conduct outdoor sales along Pier Plaza.

The Zone Code regulates commercial use parking by gross floor area and if more than 333 sq .ft of the encroachment area is utilized by the retail business then it is subject to parking requirements and in-lieu parking fees under Sections 17.44.020 (E) and 17.44.040 (D)&(E)and 17.44.210 Parking Plans. Staff proposes that the use of 332 sq. ft. or less of the encroachment area be allowed subject to an encroachment permit only, since it has no affect on parking requirements. If an owner chooses to use more than 332 sq. ft. then they must pay in lieu fees in an amount commensurate with the area used.¹

Retail businesses will now also be required to obtain an encroachment permit and insurance to use the encroachment areas, but will be charged a reduced encroachment lease rate in order to provide an incentive for retail business location and expansion along the Plaza. A business owner must currently remit an encroachment permit fee of \$370 and a monthly lease payment of \$2.00 per

square foot to use the outdoor dining encroachment area. Retail businesses are proposed to be charged \$.50 per square foot for sales display in the encroachment area.

Sol Blumenfeld, Director
Community Development

Rick Morgan, Director
Public Works

Notes:

1. The outdoor dining areas were approved with a one time City contribution of \$78,000 through the Downtown Enhancement Fund in 1997. If more than 332 sq. ft. of outdoor display area is used, the City Council may choose to similarly fund in lieu fees on an area-wide basis. For 10 existing retail businesses, the allocation of up to \$150,000 from the Downtown Enhancement Fund would be required.

If the Council decides to fund the retail use of the entire encroachment area, an area-wide parking plan for retail in-lieu parking must also be processed through the Planning Commission to accept the in lieu fees. Alternately, if the City does not subsidize the use of the encroachment area and an owner chooses to use more than 332 sq. ft. then they must submit a Parking Plan application to the Planning Commission for consideration and provide in lieu fees equivalent to \$12,500 per space.

10 existing retail businesses x 30' approx. width x 13' depth
= 3,900 sq. ft. = total encroachment area
333 /space = 11.71 spaces x \$12,500 per in lieu space*
= \$150,000 total in lieu fees
* .5 and above round up per parking ordinance.

Existing Retail Businesses:

North Side

| | | |
|----------------|-----------------|----------------------|
| 34 Pier Avenue | Shirt Tales | Retail Clothing |
| 50 Pier Avenue | Treasure Chest | Miscellaneous Retail |
| 50 Pier Avenue | Robert's Liquor | Liquor and Sundries |

South Side

| | | |
|----------------|-------------------|----------------------|
| 25 Pier Avenue | Pier Surf | Miscellaneous Retail |
| 31 Pier Avenue | Avanti Jewelers | Retail |
| 53 Pier Avenue | High Five | Woman's Clothing |
| 49 Pier Avenue | Beach Shop | Miscellaneous Retail |
| 49 Pier Avenue | Powerline 6 Store | Shoe Store |
| 59 Pier Avenue | Blue | Clothing Retail |
| 65 Pier Avenue | Spyder II | Miscellaneous Retail |

Attachments:

1. Outdoor Display of Retail Merchandise on Pier Plaza Standards.
2. Resolution.
3. Ordinance.
4. Photo of Retail Sales July 4th Pier Plaza.

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CITY OF HERMOSA BEACH

RETAIL SALES/DISPLAY STANDARDS FOR PIER PLAZA

I. INTRODUCTION

- A. The Outdoor Retail Sales/Display Standards are adopted pursuant to Section 12.16.100 of the Municipal Code in order to establish specific design and operational criteria for outdoor sales on the public right-of-way known as Pier Plaza (including Loretto Plaza). These standards balance the respective interests of retail establishments that have outdoor retail sales and the need to assure and protect the availability of the right-of-way for safe and convenient pedestrian passage. All retail sales/displays on Pier Plaza shall comply with the standards set forth herein, and all encroachment permits issued for outdoor sales on Pier Plaza shall be in conformance herewith. No person shall use the public right-of-way on Pier Plaza for retail sales/displays without first obtaining an Encroachment Permit from the City.
- B. An outdoor retail sales/display area is a place on the public sidewalk where business may sell and display merchandise sold in the principal retail establishment.
- C. These standards and procedures regulate the design and operation of outdoor retail sales areas on Pier Plaza. However, they do not provide information on all the government agency requirements for starting a new business or expanding an existing one. Business owners must secure the appropriate licenses and permits from the City of Hermosa Beach Community Development Department and Business License Office.
- D. Outdoor Retail Sales/Display Encroachment Permits are not transferable, salable, delegable or assignable. In the event of a transfer of the business, to the extent of 51% or more, the transferee shall apply to the Public Works Department for a new Encroachment Permit.
- E. These regulations do not apply to outdoor retail sales on private property or on the public right-of-way outside of Pier Plaza..

II. APPLICATION PROCEDURE

- A. An application form for a Retail Sales Encroachment Permit may be obtained from the Public Works Department. A scaled and measured plan prepared by a licensed design professional shall accompany the application form. The plan shall delineate the encroachment area and the layout of the display area and allowable amenities. The plan shall comply with all building and fire code regulations, and shall comply fully with all State and federal laws providing for access by the disabled. If the Applicant intends to modify the arrangement of furniture and other amenities or otherwise deviate from the plan at any time or times during the term of the Permit, the plan shall delineate all alternate arrangements to be utilized and all shall comply with the requirements set forth herein.

- B. An application fee in an amount determined by resolution of the City Council shall be paid at the time the application is submitted to the Public Works Department.
- C. Public Works Department staff shall obtain the written concurrence of the Community Development Department before approving any Outdoor Retail Sales/Display Encroachment Permit.
- D. The Director of Public Works is authorized to approve a retail outdoor sales/display application and to issue an Encroachment Permit on behalf of the City. The Encroachment Permit will specify the amount of the Outdoor Retail Sales/Display License fee to be paid by the applicant as established by resolution of the City Council.
- E. A maintenance deposit, in an amount determined by the Public Works Director to be adequate to pay for the replacement of the sidewalk paving and any fixtures within the outdoor retail sales/display area, shall be paid to the City at the time the Encroachment Permit is issued. It is the responsibility of the Applicant to maintain sidewalk paving and fixtures within the outdoor retail sales/display area in the condition they are in at the time of permitting. The Applicant shall be responsible for any repairs required as a result of the Applicant's use of the area. Upon termination of the Permit and inspection of the paving and fixtures by the Public Works Department, the deposit shall be refunded to the Applicant less any offset for repairs.
- F. An application for renewal of an Outdoor Retail Sales/Display Encroachment Permit may be submitted to the Public Works Department on a form obtained from the Director. The application must be filed with the Public Works Department no later than thirty (30) days prior to the expiration of the existing Outdoor Retail Sales/Display Encroachment Permit. Upon determination by the Director that the Permit should be renewed, the Applicant shall pay the annual fee as determined by resolution of the City Council.

III. OUTDOOR RETAIL SALES/DISPLAY SITES

- A. The outdoor retail sales/display encroachment area shall be a maximum depth of thirteen feet (13') and include a clear, continuous pedestrian path not less than five feet (5') in width or more as deemed appropriate by the Director of Public Works for pedestrian circulation outside of the encroachment area. As used herein, pedestrian path means a continuous obstruction-free sidewalk area, paved to City standards, between the outside boundary of the dining area.
- B. The outdoor retail sales/display area shall be accessible to the disabled. The buildings adjacent to these encroachment areas shall maintain building egress as defined by the Uniform Building Code and Title 24 Disabled Access Standards.

- C. The final location and configuration of the outdoor retail sales display area shall be subject to approval by the Director of Public Works, who shall consider public safety issues unique to the specific location.
- D. No underground utilities are permitted within the encroachment area.

IV. DESIGN STANDARDS

- A. Barriers shall conform to the Public Works Director's installation standards and be removable. Barriers need not be removed each evening, but shall be capable of being removed; if imbedded into the pavement they must be fixed through the use of recessed sleeves and posts, otherwise by wheels that can be locked into place or weighted in place.
- B. Any modification to the surface of public sidewalks, such as borings for recessed sleeves, shall be approved by the Director. In no case shall there be any modification to the existing sidewalk surface.
- C. Barriers shall be able to withstand inclement outdoor weather and one hundred (100) pounds of horizontal force at the top of the barriers when in their fixed positions.
- D. The height of any barrier shall not exceed three feet six inches (3' - 6") exception that clear glass or plastic windscreens not to exceed 6.5' in height may also be installed on the westerly side of the encroachment area.
- E. The use of awnings or umbrellas over the outdoor retail sales/display area is permitted, provided they do not interfere with street trees. No portion of an awning or umbrella shall be less than eight feet (8') above the sidewalk. Umbrellas must be contained within the encroachment area. Awnings may extend up to six feet six inches (6' - 6") from the building front or cover up to fifty percent (50%) of the outdoor dining area, whichever is less. A building permit must be obtained prior to installation of an awning.
- F. Outdoor lighting fixtures should complement the style of the building. Lighting fixtures shall not be glaring to pedestrians on the adjacent right-of-way, and shall illuminate only the outdoor dining area. Outdoor lighting may be installed on the facade of the building. Lighting shall be installed by a licensed electrician and requires an electrical permit from the Building and Safety Division.
- G. Tivoli lights, table lamps and candles are encouraged. The use of any candles shall comply with State of California Fire Code and applicable City of Hermosa Beach requirements.
- H. A Historic Preservation Certificate of Appropriateness shall be required prior to attaching any lights, awnings, or physical barriers to an historic structure that has been designated "landmark" or "significant" by the City Council.

- I. Flowering plants are encouraged.
- J. Television sets are permitted with a building permit and electrical permit.
- K. Heaters are permitted with a building permit, electrical and plumbing permit.
- L. Ash cans, portable heaters and stanchions used to facilitate queuing of patrons are permitted both within and outside the encroachment area. Any such items shall be placed only in locations shown on the approved plan. Items may be placed outside the encroachment area only if covered by the liability insurance policies required by Section VI of these Standards.

V. STANDARDS OF OPERATION

- A. Management is responsible for running and operating the outdoor retail sales/display area and shall not delegate or assign that responsibility. Outdoor retail sales/display areas shall be continuously supervised by management. Patrons are prohibited from disturbing customers or passersby on the adjacent right-of-way by loud, boisterous, and unreasonable noise, offensive words or disruptive behavior.
- B. Management shall keep the outdoor area clear of litter and debris at all times.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's NPDES regulations.
- D. Televisions shall not be operated with audio.
- E. If disposable materials are used, the establishment shall comply with all applicable City recycling programs.
- F. Plants shall be properly maintained and stressed or dying plants shall be promptly replaced. Because plant fertilizers contain materials that can stain the pavement, water drainage from any plants onto the adjacent right-of-way shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage and be elevated to allow for air flow of at least one inch (1") between saucer and sidewalk.
- G. Awnings and umbrellas shall be washed whenever they are dirty and, in any event, no less than two times each year.
- H. All plans and permits for the outdoor retail sales/display areas approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.

- I. Outdoor retail sales/display areas shall be operated in a manner that meets all requirements of applicable regulations.
- J. Upon termination of the Outdoor Retail Sales/Display Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California.
- K. All existing CUP provisions for the adjoining commercial establishment shall be enforced within the encroachment area. Noise, hours of operation and other city requirements shall be strictly enforced as if the encroachment area were an extension of the permittees place of business. If the encroachment permit requirements should not agree with the CUP requirements the stricter of the two requirements shall prevail.
- L. The allowable hours of operation within the outdoor encroachment area shall be consistent with the CUP requirements for a particular permittee.
- M. The total number of patrons inside the establishment and in the outdoor encroachment area shall not exceed the posted occupancy limits of the establishment.

VI. INSURANCE

- A. The Applicant shall obtain and maintain in force during the life of the Outdoor Retail Sales/Display Encroachment Permit comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least one million dollars (\$1,000,000) covering the applicant's operations on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected, appointed boards, officers, agents and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellation, modification, or lapse without thirty (30) days prior written notice to the City. Both the Certificate of Insurance and the completed standard Special Endorsement form shall be submitted with the completed application for an Encroachment Permit.
- B. The Applicant shall obtain and maintain in force during the life of the Outdoor Encroachment Permit Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per accident.
- C. Comprehensive general liability policy shall provide coverage for all of the Applicant's outdoor operations and facilities whether or not within the encroachment area.

- D. The Applicant shall indemnify and hold harmless City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including reasonable costs of defense and attorney fees, arising from the Applicant's encroachment on City property, including but not limited to the Applicant's negligent or wrongful acts, errors or omissions in the construction, erection, operation and continued maintenance of the encroachment in its location. The Applicant shall promptly pay the amount of any judgment rendered against City, its officers, employees and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by City in the defense of such claims.

VI.I. ENFORCEMENT

- A. Notice of violation of the outdoor retail sales/display standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector or Building Inspector of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Director may suspend or revoke the Encroachment Permit.
- B. The Outdoor Retail Sales/Display Encroachment Permit is in the nature of a revocable license, and is revocable at will by the City. The Public Works Director may revoke an Outdoor Sales/Display Encroachment Permit upon thirty (30) days written notice, with or without cause. The Director's decision may be appealed to the City Council pursuant to the provisions of Chapter 12 of the Hermosa Beach Municipal Code. The City Council's decision shall be final.