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P.C. RESOLUTION 06-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO ALLOW OUTDOOR DINING/SEATING IN CONJUNCTION WITH AN EXISTING RESTAURANT AT 1025 PACIFIC COAST HIGHWAY, AND LEGALLY DESCRIBED AS PORTIONS OF LOTS 1-3, TRACT NO. 223 AND PORTIONS OF LOTS 1-3, BLOCK 2, TRACT 6851

Section 1. An application was filed by Wally Curry seeking approval of a Conditional Use Permit to allow outdoor dining/seating in conjunction with an existing restaurant.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on July 18, 2006, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission

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

1. The existing Rocky Cola Restaurant serves no alcohol, beer or wine and has been in operation since October 4, 1994. The building has been a restaurant use since 1971

2. The restaurant is situated on two properties, located in the PCH commercial district, and contains 39 total parking spaces, with 19 spaces on site, and 20 on the northerly portion of the property.

3. The site is zoned C-3 allowing the requested "outdoor-dining" use with a Conditional Use Permit.

Section 4. Based on the foregoing factual findings, the Planning Commission makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The site is zoned C-3, and the continued operation of the restaurant with the proposed modifications is suitable for the proposed location.

2. The imposition of conditions as required by this resolution to address noise and nuisance concerns will mitigate any negative impacts on, and will improve its compatibility with, nearby residential or commercial properties within the PCH commercial district;

3. This project is Categorical Exempt pursuant to 15323, Class 23 of the California Environmental Quality Act Guidelines. Normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same kind of purpose.

Section 5. Based on the foregoing, the Planning Commission hereby approves the requested Conditional Use Permit subject to the following **Conditions of Approval**:

1. Any interior and exterior building alterations and the continued use and operation of the restaurant shall be substantially consistent with the plans submitted and reviewed by the Planning Commission on July 18, 2006.
2. The C.U.P. is not in effect until all existing illegal banners on display are removed, and no temporary signs are allowed for the remainder of the calendar year (2006). Temporary signs on the property in the future (beginning calendar year 2007) shall be in compliance with Chapter 17.50 of the Zoning Code (Sign Ordinance), limited to one banner sign for 90 days in the calendar year.
3. The hours of operation of the outdoor dining, seating and any use of the outdoor patio area shall not be allowed later than 10:00 PM. No patrons shall be seated on the outside dining patio areas after 9:00 P.M.
4. The establishment shall not adversely affect the welfare of the residents, and/or commercial establishments nearby.
5. The business shall provide adequate staffing, management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of the patrons outside the business and in nearby public areas.
6. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
7. Any changes to the interior or exterior layout which would alter the primary function of the business as a restaurant shall be subject to review and approval by the Planning Commission.
8. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.
9. No live entertainment shall be permitted in the outside dining/seating area.
10. Noise emanating from the property shall be within the limitations prescribed by the city's noise ordinance and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments. Noise emanating from the property shall be monitored to verify compliance with the noise ordinance in response to any complaints.

Section 6. This grant shall not be effective for any purposes until the permittee and the owners of the property involved have filed a the office of the Planning Division of the Community Development Department their affidavits stating that they are aware of, and agree to accept, all of the conditions of this grant.

The Conditional Use Permit shall be recorded, and proof of 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.

1 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and
2 employees from any claim, action, or proceeding against the City or its agents, officers, or employee
3 to attack, set aside, void or annul this permit approval, which action is brought within the applicable
4 time period of Government Code Section 65907. The City shall promptly notify the permittee of any
5 claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to
6 promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully
7 in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold harmless
8 the City.

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

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

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

21 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the
22 decision of the Planning Commission, after a formal appeal to the City Council, must be made within
23 90 days after the final decision by the City Council.

24 VOTE: AYES:
25 NOES:
26 ABSENT:
27 ABSTAIN:

28 CERTIFICATION

29 I hereby certify the foregoing Resolution P.C. 06- 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 July
18, 2006.

Peter Hoffman, Chairman

Sol Blumenfeld, Secretary

Date July 18, 2006

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