

November 27, 2006

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

**Regular Meeting of
December 6, 2006**

SUBJECT: CONDITIONAL USE PERMIT AMENDMENT 06-10

LOCATION: 22 PIER AVENUE

APPLICANT: DRAGON
 22 PIER AVENUE
 HERMOSA BEACH, CA 90254

REQUEST: TO AMEND THE CONDITIONS OF APPROVAL FOR AN EXISTING RESTAURANT
 WITH ON-SALE GENERAL ALCOHOL AND LIVE ENTERTAINMENT TO ALLOW
 TELEVISIONS IN THE OUTDOOR SEATING AREA

Recommendation

Direct staff as deemed appropriate.

Background

PROJECT INFORMATION:

ZONING:	C-2, Restricted Commercial
GENERAL PLAN:	General Commercial
AREA OF ESTABLISHMENT:	2,850 Square Feet 292 Square Feet Patio
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

Dragon was opened in 2003, pursuant to the approval obtained from the Planning Commission in May 2003, for a C.U.P. amendment for interior and exterior alterations to an existing restaurant with on-sale alcohol and live entertainment. The conditions of the operation, as set forth in P.C. Resolution 03-24, includes condition No. 6, that "no live entertainment, amplified music, audio, television or speakers of any kind shall be permitted in the outside seating area". The location originally was granted a C.U.P. for on-sale alcohol in 1974, and live entertainment was added in 1987, outdoor seating in the encroachment area was added in 1997 as allowed by the Municipal Code for business on Pier Plaza.

The subject condition is more restrictive than the Municipal Code Noise Control Ordinance which prohibits the use of outdoor speakers "plainly audible" on adjacent right-of-way (Section 8.22.040.)

Analysis

The applicant is requesting to modify Condition No. 6 in order to allow televisions with no audio in the outdoor patio area. According the applicant televisions were installed in 2003, and have been used since that time until a few months ago when they were covered in order to comply with code

enforcement direction and the requirement of the C.U.P. The current business owner claims he was not aware of the prohibition on televisions.

Pursuant to the requirements of the C.U.P., the business also had an acoustical engineer prepare a noise study in 2004, based on noise measurements taken from the nearest residential property to the south, which verified that live music with both the front and back doors closed complied with the noise ordinance (at that time the ordinance prohibited sustained noise that is “plainly audible” from the nearest residential property). The study did not include any analysis of the outdoor patio with televisions. It should be noted that the noise ordinance was amended in 2005 for Pier Plaza businesses; and now requires that sustained noise cannot be “plainly audible” 80 feet from the property line. Since the business was opened in 2003, Dragon has been cited for violations of either the C.U.P. or Municipal Code on several occasions. These included several citations for noise, where both video and audio portion of the televisions were turned on, which likely contributed to the noise problem.

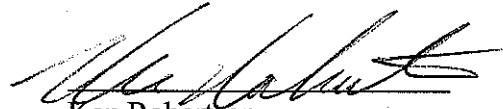
The condition to prohibit televisions is similar to the condition imposed on Mediterraneo, also on Pier Plaza, and also in the 2003 C.U.P. for 1320 Hermosa Avenue, now “The Shore.” Older C.U.P.’s did not address outdoor patio uses, as prior to 1997 there was no opportunity for outside dining on Pier Plaza. For other business after 1997, it was not considered an issue at the time, and the condition relating to the outdoor patios typically was limited to prohibit live entertainment or amplified music. The following is a list of Pier Plaza restaurants with outdoor seating on the plaza, and the provisions in the C.U.P.’s that deal with the use of televisions or music outside.

Business Name	Date of C.U.P.	Televisions prohibited outdoors?	Live entertainment, amplified music specifically prohibited outdoors	Televisions installed?
Hennessey’s	1997	No	No	No
Fish Market Cafe	1983	No	No	No
Dragon	2003	Prohibited	Prohibited	Yes
The Lighthouse	1991	No	No	Yes
Zeppy’s Pizza	2000.	No	No	Yes(occasionally)
Patrick Malloys	1998	No	Live entertainment prohibited; outside speakers “volume controlled”	No
Aloha Sharkeez	1968	No	No	Yes*
Sangria	1996	No	Prohibited	Yes
Mediterraneo	2003	Prohibited	Prohibited	No
Il Boccacio	1993	No	No	No
Cantina Real	1979	No	No	No

*prior to fire that damaged the main structure

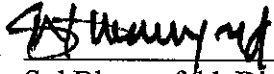
Section 12.16.090 and 12.16.100 of the Municipal Code also regulate use of the outdoor dining areas in the public right-of-way through an encroachment permit and design and operational standards set by the City Council, and except Pier Plaza business from the C.U.P. requirement otherwise required for outdoor dining. The standards for encroachment permits, recently updated by the City Council in August, 2005, specifically allow television sets with a building and electrical permit but with the volume turned off.

The Planning Commission must consider if the more restrictive standard of the current C.U.P. should be kept in place, or if it is appropriate to have televisions with no audio as allowed by the encroachment permit.



Ken Robertson
Senior Planner

CONCUR:



Sol Blumenfeld, Director
Community Development Department

Attachments

1. Draft Resolution (with change to condition No. 6)
2. Location Map
3. Photo
4. Letter from applicant
5. P.C. Resolution 03-24
6. Outdoor Dining and Operational Standards for Pier Plaza
7. Past reports regarding violations at 22 Pier Avenue

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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, AS AMENDED, FOR ON-SALE GENERAL ALCOHOL AND LIVE ENTERTAINMENT IN CONJUNCTION WITH AN EXISTING RESTAURANT AT 22 PIER AVENUE LEGALLY DESCRIBED AS LOT 6 BLOCK 12 HERMOSA BEACH TRACT

Section 1. An application was filed by Dragon restaurant seeking an amendment to a Conditional Use Permit to for on-sale general alcohol and live entertainment, to amend the condition prohibiting televisions in the outdoor patio area.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on December 6, 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 current Conditional Use Permit (CUP) granted in 2003 was approved as an amendment to allow upgrades and alterations to an existing business with live entertainment in conjunction with a restaurant with on-sale general alcohol. The proposed amendment, with its limited scope to modify one of the conditions, in order to remove the prohibitions on televisions in the outdoor patio areas, does not significantly alter the existing and approved primary use as a restaurant with on-sale general alcohol and live entertainment, and does not substantially alter the seating layout, bar area, stage location, operation, and other features of the business.

2. The site is located in the downtown district, which has several similar restaurants with on-sale general alcohol and live entertainment, which are permitted to install televisions in the outdoor encroachment area on Pier Plaza, pursuant to the outdoor dining standards adopted by the City Council.

3. The site is zoned C-2 allowing the existing on-sale alcohol 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-2, 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 concerns relative to the current requirements of the noise ordinance and to address nuisance concerns will mitigate any negative impacts on, and will improve its compatibility with, nearby residential or commercial properties within the downtown district.

3. This project is Categorically Exempt pursuant to 15301, Class 1 of the California Environmental Quality Act Guidelines, minor alterations to existing private structures.

Section 5. Based on the foregoing, the Planning Commission hereby approves the requested amendments to the Conditional Use Permit, subject to the following **Conditions of Approval**, which supersede the conditions contained in P.C. Resolution 03-24:

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1. 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 May 20, 2003.
2. The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily.
3. The hours for live entertainment shall be limited to the hours between 7:00 PM to 1:15 AM Thursdays through Sundays and on Federal, and State holidays, Cinco De Mayo and St. Patrick's day.
4. Double pane windows or solid doors shall be provided on all openings to the outside.
5. An acoustical study shall be prepared by an acoustical engineer, including proposed sound dampening features to baffle and direct sound away from the entrance/exit and window areas to ensure compliance with the noise ordinance. Said study and sound dampening features shall be reviewed and approved by the Community Development Director prior to the issuance of building permits and shall be implemented in the building prior to occupancy.
 - A. The acoustical study shall be based on the worst-case scenario, or on a sound level that will not be exceeded at any given time.
 - B. Management shall be responsible for the music/entertainment volume levels.
 - C. During the performance of any live entertainment, the exterior doors and windows shall remain closed.
 - D. The air conditioning system shall be of an adequate capacity to air condition the entire restaurant.
 - E. All exterior doors shall have self-closing hardware.
6. No live entertainment or amplified music, audio, ~~television~~ or speakers of any kind shall be permitted in the outside seating areas.
7. The establishment shall not adversely affect the welfare of the residents, and/or commercial establishments nearby.
8. The business shall provide adequate staffing and management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of the patrons both inside and outside the business and in nearby public areas.
9. The Police Chief shall determine if a continuing police problem exists, and may authorize the presence of a police approved doorman and/or security personnel to eliminate the problem, and/or shall submit a report to the Planning Commission, which will automatically initiate a review of this conditional use permit by the Commission.
10. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
11. Any changes to the interior layout which would alter the primary function of the business as a restaurant shall be subject to review and approval by the Planning Commission.
12. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.

- 1 **13. Noise emanating from the property shall be within the limitations prescribed by the city's**
2 **noise ordinance and shall not create a nuisance to surrounding residential neighborhoods,**
3 **and/or commercial establishments. Noise emanating from the property shall be**
4 **monitored to verify compliance with the noise ordinance in response to any complaints.**
- 5 **14. The Planning Commission shall review the operation of the restaurant for compliance with**
6 **conditions of approval and compliance with the Noise Ordinance 6 months from the**
7 **opening of the new restaurant, and in response to any complaints thereafter.**
- 8 **15. The Conditional Use Permit shall become null and void if not executed within two years of**
9 **the date of the approval of this Resolution.**
- 10 **16. The owner shall comply with requirements of the encroachment permit for use of the**
11 **public right-of-way.**

12 Section 6. This grant shall not be effective for any purposes until the permittee and the
13 owners of the property involved have filed a the office of the Planning Division of the Community
14 Development Department their affidavits stating that they are aware of, and agree to accept, all of the
15 conditions of this grant. The grant for live entertainment shall not be in effect until the acoustical
16 study is complete and approved by the Community Development Director, and all sound proofing
17 measures are implemented in the building pursuant to Condition Nos. 4, 5, and 6.

18 The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall be
19 submitted to the Community Development Department prior to the issuance of a building permit.

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

22 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and
23 employees from any claim, action, or proceeding against the City or its agents, officers, or employee
24 to attack, set aside, void or annul this permit approval, which action is brought within the applicable
25 time period of Government Code Section 65907. The City shall promptly notify the permittee of any
26 claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to
27 promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully
28 in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold harmless
29 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.

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

4 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the
5 decision of the Planning Commission, after a formal appeal to the City Council, must be made within
6 90 days after the final decision by the City Council.

7 VOTE: AYES:
8 NOES:
9 ABSENT:
10 ABSTAIN:

11 CERTIFICATION

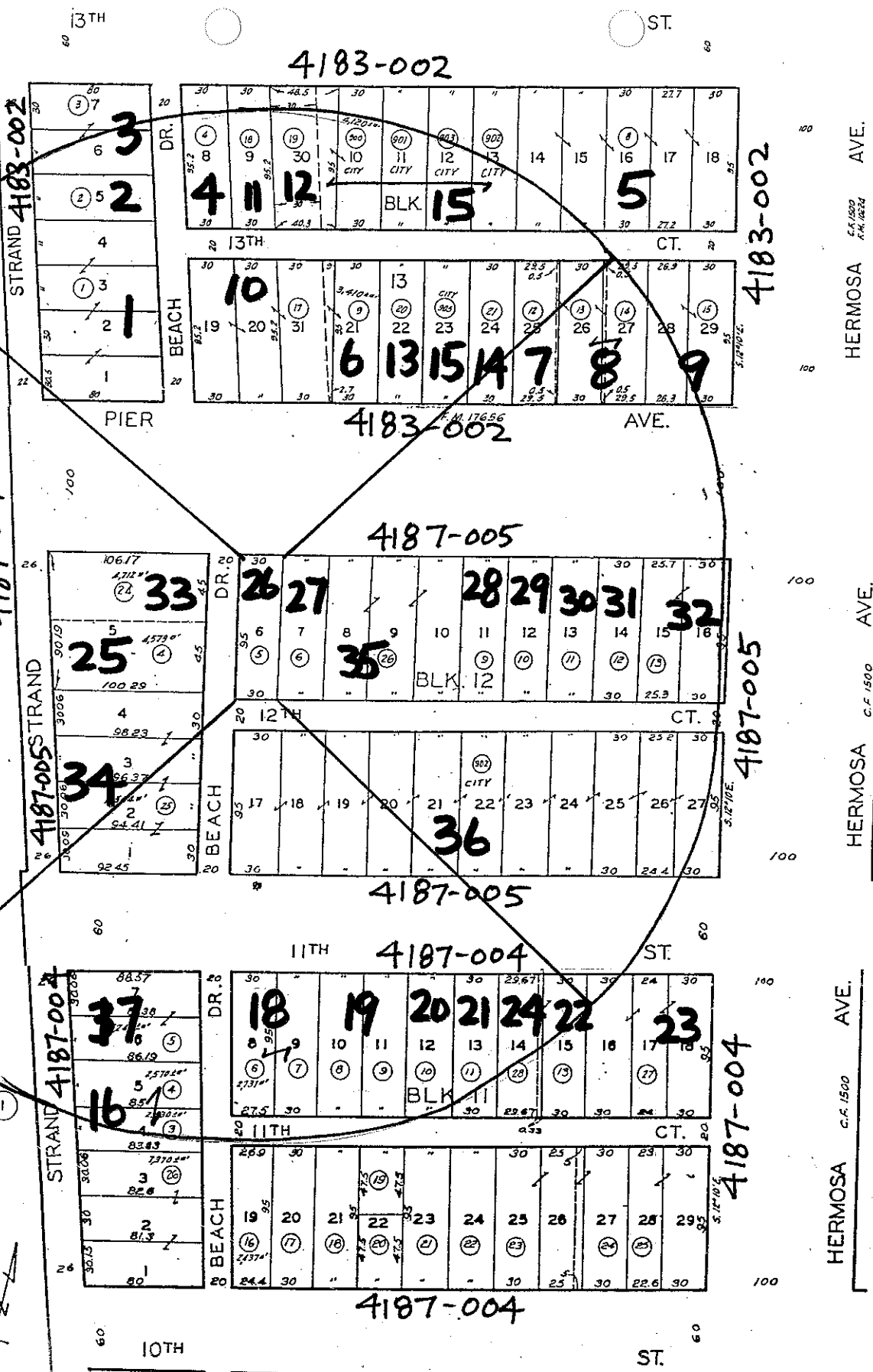
12 I hereby certify the foregoing Resolution P.C. 06- is a true and complete record of the action taken
13 by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of
14 December 6, 2006.

15 _____
16 Kent Allen, Chairman

17 _____
18 Sol Blumenfeld, Secretary

19 Date December 6, 2006

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ADDRESS: 22 PIER AVE

SCALE 1" = 100'



November 28, 2006 – Dragon Patio, covered TV's and Posted Notice.



RECEIVED

NOV 20 2006

COMMUNITY DEV. DEPT.

November 17, 2006

Dear Planning Commission/to whom it may concern,

My intentions today are to modify my Conditional Use Permit with a minor amendment for the outside encroachment on the entertainment of televisions, with no sound. I apologize, but when this establishment first opened in 2003, Mark Cosgrove was the general contractor; Dragon was dealing with, for the CUP. Our intentions were to open with the televisions, but the budget did not allow this. I did not realize the necessary steps that needed to be taken to put the televisions on the outside patio.

The televisions were first put on the patio three months following the grand opening, of this establishment, and it was never brought to my attention that they must be taken down or that I would be in violation. This situation was brought to my attention, back in March 2006, when Bob Rollins came down and informed me that we were in violation of our CUP. At that point in time, I was notified of a meeting that would be held in April 2006, to discuss the televisions outside, along with the heaters and hostess stand in respect to the encroachment permits. I immediately took the precautions and put the covers on my televisions until the meeting. Following the meeting, I was under the assumption that the televisions were allowed, however the sound was prohibited. I then ran into Saul Bloomenfield, out on the Promenade, he advised me to take Polaroid shots and provide a drawing of the seating arrangement. This information was delivered to the office back in May 2006; unfortunately, this chart was misplaced at public works. I would like to make mention that I provided three copies, back in 2003, upon completion of construction for the outside seating encroachment permit.

Jeff Bellandi, Owner
22 Pier Avenue
Hermosa Beach, Ca 90254

jeff@dragonbar.net
310.863.7763 cell
310.372.4462 work



Since April 2006, I have had the televisions on, with the covers and volume off. I have not heard anything all summer and I was under the assumption that I took all the necessary steps to change the CUP. I did not hear anything from public works or Bob Rollins. That is why I am here today before you. In no way was I trying to do anything to beat the system. I have always asked advice from Greg and Ron Neuman, Owners and Operators of Sharkee's, for advice. This is 100% a misunderstanding and my deepest apologies. In your package there are pictures of the front of the building, along with two pieces of paper that highlight the areas of the new encroachment policies.

Thank you for your time.

Sincerely,

A handwritten signature in black ink that reads "Ballandi". The signature is written in a cursive style with a large, prominent initial "B".

Jeff Ballandi

Jeff Ballandi, Owner
22 Pier Avenue
Hermosa Beach, Ca 90254

jeff@dragonbar.net
310.863.7763 cell
310.372.4462 work

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P.C. RESOLUTION 03-24

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT, AS AMENDED, TO ALLOW INTERIOR AND EXTERIOR ALTERATIONS, AND TO ALLOW ON-SALE GENERAL ALCOHOL AND LIVE ENTERTAINMENT IN CONJUNCTION WITH AN EXISTING RESTAURANT AT 22 PIER AVENUE LEGALLY DESCRIBED AS LOT 6 BLOCK 12 HERMOSA BEACH TRACT

Section 1. An application was filed by Mark Cosgrove seeking an amendment to a Conditional Use Permit to allow alterations to an existing restaurant, to be named "Dragon," with on-sale general alcohol and live entertainment.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on May 20, 2003, 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 current Conditional Use Permit (CUP) granted in 1987 was approved as an amendment to allow live entertainment and dancing in conjunction with a restaurant with on-sale general alcohol. The proposed amendment, with its limited scope of alterations, does not significantly alter the existing and approved primary use as a restaurant with on-sale general alcohol and live entertainment, and does not substantially alter the seating layout, bar area, stage location and other features of the business.

2. The site is located in the downtown district, which has several similar restaurants with on-sale general alcohol and live entertainment.

3. The site is zoned C-2 allowing the existing on-sale alcohol 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-2, 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 concerns relative to the current requirements of the noise ordinance and to address nuisance concerns will mitigate any negative impacts on, and will improve its compatibility with, nearby residential or commercial properties within the downtown district.

3. This project is Categorically Exempt pursuant to 15301, Class 1 of the California Environmental Quality Act Guidelines, minor alterations to existing private structures.

Section 5. Based on the foregoing, the Planning Commission hereby approves the requested amendments to the Conditional Use Permit, subject to the following **Conditions of Approval**, which supersede the conditions contained in P.C. Resolution 87-4:

- 1 1. Interior and exterior building alterations and the continued use and operation of the
2 restaurant shall be substantially consistent with the plans submitted and reviewed by the
3 Planning Commission on May 20, 2003.
- 4 2. The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily.
- 5 3. The hours for live entertainment shall be limited to the hours between 7:00 PM to 1:15 AM
6 Thursdays through Sundays and on Federal, and State holidays, Cinco De Mayo and St.
7 Patrick's day.
- 8 4. Double pane windows or solid doors shall be provided on all openings to the outside.
- 9 5. An acoustical study shall be prepared by an acoustical engineer, including proposed sound
10 dampening features to baffle and direct sound away from the entrance/exit and window
11 areas to ensure compliance with the noise ordinance. Said study and sound dampening
12 features shall be reviewed and approved by the Community Development Director prior to
13 the issuance of building permits and shall be implemented in the building prior to
14 occupancy.
 - 15 A. The acoustical study shall be based on the worst-case scenario, or on a sound
16 level that will not be exceeded at any given time.
 - 17 B. Management shall be responsible for the music/entertainment volume levels.
 - 18 C. During the performance of any live entertainment, the exterior doors and
19 windows shall remain closed.
 - 20 D. The air conditioning system shall be of an adequate capacity to air condition the
21 entire restaurant.
 - 22 E. All exterior doors shall have self-closing hardware.
- 23 6. No live entertainment or amplified music, audio, television or speakers of any kind shall
24 be permitted in the outside seating areas.
- 25 7. The establishment shall not adversely affect the welfare of the residents, and/or commercial
26 establishments nearby.
- 27 8. The business shall provide adequate staffing and management and supervisory techniques
28 to prevent loitering, unruliness, and boisterous activities of the patrons both inside and
29 outside the business and in nearby public areas.
9. The Police Chief shall determine if a continuing police problem exists, and may authorize
the presence of a police approved doorman and/or security personnel to eliminate the
problem, and/or shall submit a report to the Planning Commission, which will
automatically initiate a review of this conditional use permit by the Commission.
10. The exterior of all the premises shall be maintained in a neat and clean manner, and
maintained free of graffiti at all times.
11. Any changes to the interior layout which would alter the primary function of the business
as a restaurant shall be subject to review and approval by the Planning Commission.
12. The project and operation of the business shall comply with all applicable requirements of
the Municipal Code.

- 1 13. Noise emanating from the property shall be within the limitations prescribed by the city's
2 noise ordinance and shall not create a nuisance to surrounding residential neighborhoods,
3 and/or commercial establishments. Noise emanating from the property shall be
4 monitored to verify compliance with the noise ordinance in response to any complaints.
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- 6 14. The Planning Commission shall review the operation of the restaurant for compliance with
7 conditions of approval and compliance with the Noise Ordinance 6 months from the
8 opening of the new restaurant, and in response to any complaints thereafter.
- 9 15. The Conditional Use Permit shall become null and void if not executed within two years of
10 the date of the approval of this Resolution.
- 11 16. The owner shall comply with requirements of the encroachment permit for use of the
12 public right-of-way.

13 Section 6. This grant shall not be effective for any purposes until the permittee and the
14 owners of the property involved have filed a the office of the Planning Division of the Community
15 Development Department their affidavits stating that they are aware of, and agree to accept, all of the
16 conditions of this grant. The grant for live entertainment shall not be in effect until the acoustical
17 study is complete and approved by the Community Development Director, and all sound proofing
18 measures are implemented in the building pursuant to Condition Nos. 4, 5, and 6.

19 The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall be
20 submitted to the Community Development Department prior to the issuance of a building permit.

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

23 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and
24 employees from any claim, action, or proceeding against the City or its agents, officers, or employee
25 to attack, set aside, void or annul this permit approval, which action is brought within the applicable
26 time period of Government Code Section 65907. The City shall promptly notify the permittee of any
27 claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to
28 promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully
29 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.

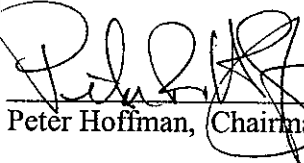
1 The Planning Commission may review this Conditional Use Permit and may amend the
2 subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects
3 on the neighborhood resulting from the subject use.

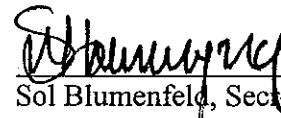
3 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the
4 decision of the Planning Commission, after a formal appeal to the City Council, must be made within
5 90 days after the final decision by the City Council.

5 VOTE: AYES: Hoffman, Perrotti, Pizer, Tucker
6 NOES: None
7 ABSENT: None
8 ABSTAIN: Kersenboom

8 CERTIFICATION

9 I hereby certify the foregoing Resolution P.C. 03-24 is a true and complete record of the action taken
10 by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of
11 May 20, 2003.

11 
12 _____
13 Peter Hoffman, Chairman

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12 _____
13 Sol Blumenfeld, Secretary

13 Date May 20, 2003

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RESOLUTION NO. 05-6417

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, ADOPTING STANDARDS AND PROCEDURES FOR THE DESIGN AND OPERATION OF OUTDOOR DINING AREAS ON PIER PLAZA.

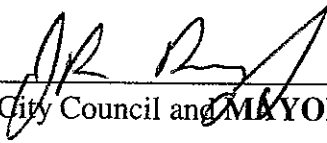
THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. On August 9, 2005, the City Council conducted a public meeting to review the outdoor dining standards and procedures for outdoor dining areas on Pier Avenue adopted in 1997, pursuant to Title 12, Chapter 12.16 of the Municipal Code pertaining to encroachments into the Public Right-of-Way.

SECTION 2. The City Council determined that the outdoor dining standards for dining establishments using these encroachment areas should be amended and updated.

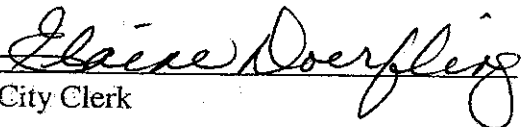
SECTION 3. Based on the foregoing, the City Council hereby adopts the City of Hermosa Beach Outdoor Dining Standards and Procedures for Pier Plaza, attached hereto as Exhibit A and incorporated herein by reference.

PASSED, APPROVED and ADOPTED this 9th day of August 2005.



PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, California

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No. 05-6417 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on August 9, 2005.

The vote was as follows:

AYES: Edgerton, Keegan, Tucker, Yoon, Mayor Reviczky
NOES: None
ABSTAIN: None
ABSENT: None

Dated: September 13, 2005

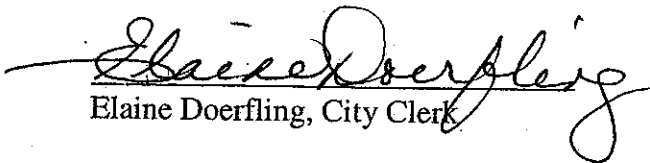

Elaine Doerfling, City Clerk

Exhibit A

**CITY OF HERMOSA BEACH
OUTDOOR DINING DESIGN AND OPERATIONAL STANDARDS
FOR PIER PLAZA**

I. INTRODUCTION

- A. The Outdoor Dining Design and Operational Standards are adopted pursuant to Section 12.16.100 of the Municipal Code in order to establish specific design and operational criteria for outdoor dining on the public right-of-way known as Pier Plaza (including Loreto Plaza). These standards balance the respective interests of restaurant establishments that desire to offer outdoor dining to their patrons, restaurant patrons and the City, which encourages the atmosphere created by outdoor dining but seeks to assure and protect the availability of the right-of-way for safe and convenient pedestrian passage. All outdoor dining on Pier Plaza shall comply with the standards set forth herein, and all encroachment permits issued for outdoor dining on Pier Plaza shall be in conformance herewith. No person shall use the public right-of-way on Pier Plaza for outdoor dining without first obtaining an Outdoor Dining Encroachment Permit from the City.
- B. An outdoor dining area is a place on the public sidewalk where patrons may consume food and/or beverages provided by an adjacent food service establishment.
- C. Establishments serving alcoholic beverages that apply for an Outdoor Dining Encroachment Permit shall meet the additional requirements of the State of California Alcohol Beverage Control Board.
- D. These standards and procedures regulate the design and operation of outdoor dining areas on Pier Plaza. However, they do not provide information on all the government agency requirements for starting a new restaurant or expanding an existing one. Business owners must secure the appropriate licenses and permits from the State Alcohol Beverage Control Board, Los Angeles County Health Department, the City of Hermosa Beach Community Development Department and Business License Office.
- E. Outdoor Dining 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.

- F. These regulations do not apply to outdoor dining on private property or on the public right-of-way outside of Pier Plaza.

II. APPLICATION PROCEDURE

- A. An application form for an Outdoor Dining 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 furnishings 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 Dining Encroachment Permit.
- D. The Director of Public Works is authorized to approve an outdoor dining application and to issue an Outdoor Dining Encroachment Permit on behalf of the City. The Encroachment Permit will specify the amount of the Outdoor Dining 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 dining area, shall be paid to the City at the time the Outdoor Dining Encroachment Permit is issued. It is the responsibility of the Applicant to maintain sidewalk paving and fixtures within the outdoor dining 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 Dining 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 Dining 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 DINING SITES

- A. The outdoor dining 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 outdoor dining 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 dining area shall be accessible to the disabled. The buildings adjacent to these dining 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 dining 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. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that satisfies these Standards and of the Alcohol Beverage Control Board. It is the responsibility of the applicant to research and verify design compliance with the Alcohol Beverage Control Board prior to filing an application for an Outdoor Dining Encroachment Permit.
- B. 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. No signs or banners of any kind shall be placed, displayed or erected on barriers.

- C. 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.
- D. 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.
- E. 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.
- F. The use of awnings or umbrellas over the outdoor dining 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.
- G. 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.
- H. 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.
- I. An 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.
- J. Flowering plants are encouraged.
- K. Television sets are permitted with a building permit and electrical permit.
- L. Heaters are permitted with a building permit, electrical and plumbing permit.
- M. Host/hostess podiums, 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. Restaurant management is responsible for running and operating the outdoor dining area and shall not delegate or assign that responsibility. Outdoor dining 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. Restaurant management shall keep the outdoor dining area clear of litter, food scraps, and soiled dishes and utensils at all times. Trash receptacles shall be provided in outdoor dining areas used for consuming take-out items.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor dining 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 dining area approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.

- I. Outdoor dining areas shall be operated in a manner that meets all requirements of the Los Angeles County Health Department and other applicable regulations.
- J. Upon termination of the Outdoor Dining Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor dining 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 permittee's 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. City Council will have the option to extend these hours for special events. City Council may extend or reduce these hours.
- 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 Dining 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 Outdoor Dining Encroachment Permit.
- B. The Applicant shall obtain and maintain in force during the life of the Outdoor

Dining 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.

VII. ENFORCEMENT

- A. Notice of violation of the outdoor dining design standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector, Building Inspector, Police Department Official, or Fire Department Official 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 Dining 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 Dining 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.

Downtown Violations

December 12, 2005

Sol:

Per your request, here is a list of HBPD violations issued this year. Copies are attached.

Dragon 22 Pier – Loud music 4/22/05, 5/12/05, 5/28/05, 11/3/05 4

Lighthouse 30 Pier - Loud music 4/28/05, 10/28/05

Aloha Sharkeez 52 Pier – Loud Music 4/22/05, 6/2/05, 11/11/05

Fenner's 53 Pier – Loud Music 4/23/05, 10/27/05

Sangria 60 Pier – Loud Music 4/22/05, 5/20/05, 6/9/05, 10/27/05, 10/28/05

Italys Kitchen 1150 Hermosa - Outside Amplifiers 5/14/05

Pedones 1332 Hermosa – Loud Music 5/12/05

Sign violations = 2
Working w/out permits - GAS HEATERS = 1

MEMORANDUM

TO: STEVE BURRELL, CITY MANAGER
FROM: SOL BLUMENFELD, DIRECTOR COMMUNITY DEVELOPMENT
SUBJECT: CUP AND MUNICIPAL CODE COMPLIANCE LOWER PIER AVENUE –
 AUGUST 13, AUGUST 28TH 2004 & OCTOBER 2, 2004
DATE: 11/27/2006

On August 13, 2004 and August 28, 2004 the Community Development Department checked Lower Pier Avenue businesses for Conditional Use Permit and Municipal Code conformance, based on complaints about excessive noise and failure to comply with occupant load requirements. Exterior site inspections were conducted for each business along Pier Plaza. CUP conformance was checked relative to closing of doors and windows during live entertainment, compliance with patio dining occupancy regulations and where applicable, compliance with approved seating plans. The Fire Department was not involved in these inspections as follow-up interior inspections will be conducted with the Fire and Police Departments.

The following summarizes our findings on August 13, 2004:

BUSINESS NAME	ADDRESS	CUP AND MUNICIPAL CODE COMPLIANCE
Hennessey's Tavern	8 Pier Avenue	No Occupant Load posting visible for encroachment area.
Mermaid Restaurant	11 Pier Avenue	No violations
Cantina Real	19 Pier Avenue	No violations
Fishmarket Cafe	20 Pier Avenue	No violation
Dragon	22 Pier Avenue	Doors and windows open during live entertainment (D.J.) with extremely loud music, four TV's have been installed outside the club – these are CUP violations (5C & 6). Patrons are mostly standing and not seated in patio, standing in aisles and at business egress, possible violation of 1:15 occupant load ratio and required exits per Building Codes. A "rope line" – plastic posts with retractable nylon straps has been deployed outside of the encroachment as an entry path.
Lighthouse	30 Pier Avenue	Doors and windows open with live and extremely loud music, CUP violation. No Occupant Load posting visible for encroachment area. Patrons crowded into encroachment area standing in aisles and at business egress, possible violation of 1:15 occupant load ratio and required exits per Building Codes.

Downtown Business Inspections Summary

From: December 14, through 19, 2004, Six Foot Patrol Reports

Business Name	CUP + Code Violations	Date/Time
Dragon	Doors and windows open during live band or DJ Performance Yes <u> 1 </u> No <u> </u>	_____
	Doors and windows open during loud amplified music Yes <u> 4 </u> No <u> </u>	_____
	Customers standing in patio outdoor dining aisles Yes <u> 3 </u> No <u> </u>	_____
	TV's turned on, Loud amplified music in Patio Area Yes <u> 4 </u> No <u> </u>	_____
	TOTAL VIOLATION OF 6 INSPECTIONS = 12	
<hr/>		
Lighthouse	Doors and windows open during live band or DJ Performance Yes <u> </u> No <u> </u>	_____
	Doors and windows open during loud amplified music Yes <u> 1 </u> No <u> </u>	_____
	Customers standing in patio outdoor dining aisles Yes <u> 2 </u> No <u> </u>	_____
	Loud amplified music in Patio Area Yes <u> 1 </u> No <u> </u>	_____
	TOTAL VIOLATION OF 6 INSPECTIONS = 4	
<hr/>		
Patrick Malloy's	Doors and windows open during live band or DJ Performance Yes <u> 1 </u> No <u> </u>	_____
	Doors and windows open during loud amplified music Yes <u> 1 </u> No <u> </u>	_____
	Customers standing in patio outdoor dining aisles Yes <u> </u> No <u> </u>	_____
	TV's turned on, Loud amplified music in Patio Area Yes <u> 1 </u> No <u> </u>	_____
	TOTAL VIOLATION OF 6 INSPECTIONS = 3	

Downtown Business Inspections Summary

From: December 1, 3, and 12, 2004, Three Foot Patrol Reports

Business Name	CUP + Code Violations	Date/Time
Dragon	Doors and windows open during live band or DJ Performance Yes _____ No _____	_____
	Doors and windows open during loud amplified music Yes <u>1</u> No _____	_____
	Customers standing in patio outdoor dining aisles Yes _____ No _____	_____
	TV's turned on, Loud amplified music in Patio Area Yes <u>3</u> No _____	_____
	TOTAL VIOLATION OF 3 INSPECTIONS = 4	
Lighthouse	Doors and windows open during live band or DJ Performance Yes _____ No _____	_____
	Doors and windows open during loud amplified music Yes _____ No _____	_____
	Customers standing in patio outdoor dining aisles Yes _____ No _____	_____
	Loud amplified music in Patio Area Yes <u>1</u> No _____	_____
	TOTAL VIOLATION OF 3 INSPECTIONS = 1	
Patrick Malloy's	Doors and windows open during live band or DJ Performance Yes <u>1</u> No _____	_____
	Doors and windows open during loud amplified music Yes <u>2</u> No _____	_____
	Customers standing in patio outdoor dining aisles Yes _____ No _____	_____
	TV's turned on, Loud amplified music in Patio Area Yes <u>2</u> No _____	_____
	TOTAL VIOLATION OF 3 INSPECTIONS = 5	

RECORDING REQUESTED BY

CITY OF HERMOSA BEACH

WHEN RECORDED, MAIL TO:

Name / City of Hermosa Beach
 City Clerk's Office
 Mailing Address 1315 Valley Drive
 City, State, Hermosa Beach, CA 90254
 Zip Code

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CITY OF HERMOSA BEACH

COMMERCIAL OUTDOOR DINING
ENCROACHMENT PERMIT AND COVENANT

RECITALS

A. THIS PERMIT is made and entered into at Hermosa Beach, California, this 13 day of APRIL, 2004. By and between the CITY OF HERMOSA BEACH, a municipal corporation in the county of Los Angeles, State Of California, hereinafter referred to as "CITY", for the purpose of permitting a portion of the public right-of-way to be used for outdoor dining, and, or:

Hereinafter referred to as "PERMITTEE" which parties do agree as follows:

B. PERMITTEE represents that they are the owners of the business located in Hermosa Beach, legally described as follows: 4187 005 02 00 Lot 6,
 Block 12 Hermosa Beach Tract 04340 Commonly known as:
22 PIER AVE Hermosa Beach, CA 90254

And doing business as DRAGON RESTAURANT

C. The parties further agree that an encroachment permit application was presented to the public works department of the CITY for permission to encroach in and over a portion of the public right-of-way at: 22 PIER AVE 316 for the sole purpose of outside dining with improvements consisting of the following: 357 square feet of PATIO part of which includes CITY easement to be used for outside dining. A sketch of the proposed improvements and encroachment is on file in the public works department of the CITY and is by reference incorporated herein and made a part hereof.

D. The term of this permit shall be for _____ (____ years) at the rate of \$1.00 per square foot for 316 square feet for a monthly rate of (\$ _____). The rate shall be paid quarterly, in advance. (\$ _____ quarterly) the payment schedule is as follows:

<u>PAYMENT DUE</u>	<u>FOR</u>
July 1, Every Year	July, August And September, Lease
October 1, Every Year	October, November And December Lease
January 1, Every Year	January, February And March, Lease
April 1, Every Year	April, May And June, Lease

For the first year and shall be the same for each consecutive year thereafter.

E. PERMITEE further agrees to deposit with the CITY an amount to be determined by the public works department, a cash deposit to be used for restorative costs. This deposit is evidenced by receipt no. _____, in the amount of \$ _____ this deposit shall be held by the CITY to provide for the removal of improvements on the public right-of-way in the event the PERMITEE does not restore the land within 15 days of surrender of possession of the lease. The encroachment shall be removed by the PERMITEE at no cost to the CITY upon a thirty-day written notice to the PERMITEE from the CITY, and should any cost be incurred by the CITY in the removal of such encroachment, such cost shall become a lien on the adjacent Business.

PERMIT

1. Encroachment permit. A revocable encroachment permit is hereby granted to property owner on the right-of-way described in the recitals hereinabove as described in the drawing attached hereto as Exhibit A in accordance with the provisions of Chapter 29, Article V of the Hermosa Beach Municipal Code and the provisions of this permit.
2. Term. This permit shall take effect on the date set forth hereinabove and shall remain in effect until and unless revoked by City pursuant to Paragraph 3 herein or voluntarily relinquished or abandoned by property owner.
3. Termination. This permit is in the nature of a revocable license and may be revoked by City at any time, with or without cause, in City's sole discretion, upon giving property owner thirty (30) days' advance notice of revocation.
4. Assignment. This permit shall not be assigned or transferred without the written consent of City. Any such purported assignment or transfer shall be void and of no effect.
5. Indemnification. Property owner 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 property owner's encroachment on City property as described in Exhibit A, including but not limited to property owner's

negligent or wrongful acts, errors or omissions in the construction, erection and continued maintenance of the encroachment in its location. Property owner 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.

6. City's right of entry. Property owner acknowledges the City's absolute right to enter upon the encroachment area for purposes of inspection, replacement, repair, or maintenance of public facilities above, on or under the right-of-way and property owner expressly waives any and all claims for damages to its encroachment resulting from such actions.

7. Damage to right-of-way. Property owner assumes responsibility for all damage to City's right-of-way caused by construction or maintenance of the encroachment and shall reimburse City for correction of any such damage. Upon failure of property owner to so reimburse City, the cost incurred by City in removing the encroachment shall be a debt of the property owner to the City, and recoverable by City in any manner provided by law. Moreover, property owner acknowledges that City may record and enforce a lien upon the property in order to recover such costs.

8. Restoration of premises. Within thirty (30) days of termination of this permit, whether upon its expiration or earlier termination, property owner shall at its expense remove the encroachment and restore the property to its condition prior to placement of the encroachment. In the event property owner fails to do so, City shall have the option of removing the encroachment at property owner's expense and property owner waives all claims for damage to the encroachment or property owner's adjacent property or improvements resulting from such removal. The cost incurred by City in removing the encroachment is a debt of the property owner to the City, and recoverable by City in any manner provided by law. Moreover, property owner acknowledges that City may record and enforce a lien upon the property in order to recover such costs.

9. Possessory interest. Property owner acknowledges that this permit may create a taxable possessory interest subject to property taxation, and that property owner shall be solely responsible for satisfaction of any property taxes levied on the property.

10. Compliance with Codes. Property owner shall perform all work in full compliance with all applicable codes, ordinances and laws, and obtain all necessary permits.

11. Maintenance of encroachment area. During the term of this permit, property owner shall at its sole expense maintain the encroachment area in good condition and appearance, in accordance with all ordinances, and shall not allow a nuisance condition to exist on the encroachment area.

THIS INSTRUMENT SHALL BE RECORDED IN THE OFFICE OF THE RECORDER OF LOS ANGELES COUNTY, CALIFORNIA, AND SHALL RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES HAVING OR ACQUIRING ANY RIGHT, TITLE OR INTEREST IN OR TO THE PROPERTY OR ANY PORTION THEREOF, AND SHALL CONSTITUTE NOTICE OF PROPERTY OWNERS' OBLIGATIONS AND CITY'S RIGHTS WITH RESPECT TO THE ENCROACHMENT AREA.