

May 2, 2005

**Honorable Mayor and Members
of the Hermosa Beach City Council**

**Regular Meeting of
May 10, 2005**

SUBJECTS: REVIEW OF COMMERCIAL OUTDOOR DINING REGULATIONS – H.B.M.C.
SECTION 12.16.090 – 12.15.100 AND OUTDOOR DINING STANDARDS AND
PROCEDURES – LOWER PIER AVENUE

Staff Recommendation:

That the City Council:

1. Review the subject code provisions, standards and discussion items; and
2. Direct staff to return with a resolution revising or clarifying the regulations as required.

Background:

On March 22, 2005, the City Council directed staff to provide a review of outdoor dining regulations on Pier Plaza and business compliance relative to the regulations. On April 26, 2005 the City Council commenced with discussion of the regulations, but continued the matter to the next City Council meeting in order to notify all Pier Plaza businesses about the review.

Analysis:

Staff has prepared a list of outdoor dining encroachment permit related issues for City Council discussion. The regulations are found in Chapter 12.16 of the Municipal Code and the Outdoor Dining Standards and Procedures adopted by reference in Ordinance No. 97-1172. The regulations and standards are intended to work together to provide direction for a business seeking to obtain an encroachment permit for use of the encroachment area for outdoor dining. A business owner must 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. The following provides a list of concerns related to the Outdoor Dining Standards and Procedures that staff believes require clarification or revision:

1. Section I Standards A and B suggest that the encroachment area is to be used for dining with table seating and not for standing or used as an outdoor lounge. The language is imprecise and should clarify the intended use. Are the encroachment areas intended only for dining use and is removal of furniture and standing in the dining area permitted?
2. Restaurants pay full fare for use of the encroachment areas and the retail uses pay nothing and are currently using the area without limitation. The retail uses should be required to obtain encroachment permits and insurance similar to other businesses. The City Council may want to set a reduced fee that continues to provide an incentive to retail businesses.
3. Standard III A and Section IV Design Standards contain requirements for allowable items that may be permitted inside encroachment areas and restrictions for placement of items immediately outside encroachment areas. Among the allowable items are barriers up to 3' – 6" in height, outdoor lighting, umbrellas and planters. The regulations also require a clear continuous pedestrian path of 5 feet outside the encroachment area. Some businesses have podiums, ash cans, sandwich board signs, banners, and heaters within the encroachment areas and in the required clear pedestrian path area outside the encroachment areas. These items may be blocking required aisles and violate approved seating plans.

Also there is no reference to T.V's which are also installed in many outdoor patios. Since these items are not listed as allowable uses, they are currently prohibited. If T.V.'s and other electronic equipment are permitted they must comply with the Electric Code related to weather resistant outlets, switches and protection and the standards should reflect compliance requirements. Staff recommends that barriers of 3' -6" and wind-screens up to 6'-0" in height, heaters, podiums and ash cans be permitted within the encroachment areas consistent with approved seating plans, but that sandwich board signs and banners be prohibited and that no items outside the encroachment areas be allowed.

4. Standard IV G allows the use of awnings to cover up to 50% of the outdoor dining area. Does the Council want to permit the dining area to be covered to this extent?
5. Section V C provides that when an establishment stops serving for the day, further seating in the outdoor dining area shall be prohibited and the outdoor dining area must close when those patrons already seated in it leave. Does the Council want to enforce this standard since many businesses continue to use the patio until closing time without limitation? If not, this section should be eliminated.
7. Section V J provides that unamplified musical instruments or sound reproduction systems are permitted in outdoor dining areas, but shall be maintained at sufficiently low volumes. The noise ordinance says that noise shall not be audible across the property line which is impossible given the proximity of the patios to the Plaza. This section should be deleted and speakers and musical instruments should be prohibited since allowing these items violate the noise ordinance.

Sol Blumenfeld, Director
Community Development

Rick Morgan, Director
Public Works

Concur:

Stephen R. Burrell,
City Manager

Attachments:

1. Outdoor Dining Standards
2. Encroachment Permit Regulations

Attachment No. 1

City of Hermosa Beach Outdoor Dining Standards and Procedures for Pier Avenue

- I. A. The Outdoor Dining Standards and Procedures were developed to encourage appropriate outdoor activities in the public right-of-way, to ensure that the space used for outdoor dining in the public sidewalk will, at all times, serve a public purpose, and to ease the process for obtaining permission to operate an outdoor dining facility. Outdoor dining on the public sidewalk may occur only pursuant to an Outdoor Dining Encroachment Permit.
- 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. Such establishments may either provide table service in the outdoor dining area or sell take-out items consumed in the outdoor dining area.
- 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 in Hermosa Beach. 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 properties.

II. APPLICATION PROCEDURE

- A. An application form for an Outdoor Dining Encroachment Permit may be obtained from, and should be returned to, the Public Works Department.
- 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. 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.
- D. 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.
- E. Public Works Department staff shall obtain the concurrence of the Community Development Department before approving any Outdoor Dining Encroachment Permit. If there are any problems with the application, Public Works staff shall assist the applicant in resolving them.
- F. The Director of Public Works is authorized to approve an outdoor dining application and to execute 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 in accordance with resolution by the City Council.
- G. 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 executed. 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.
- H. 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.
- I. A plan delineating the encroachment area and the layout of furnishings and amenities will be required to be submitted with each application for an Outdoor Dining Encroachment Permit. The plan should specify and comply with a minimum occupant load requirement of 15 square feet per occupant.

III. OUTDOOR DINING SITES

- A. The encroachment area shall be thirteen feet (13') maximum width. A clear, continuous pedestrian path not less than five feet (5') in width shall be required for pedestrian circulation outside of the outdoor dining area, provided that the Director of Public Works may require more than five feet (5') to protect the public safety. As used herein, pedestrian path means a continuous obstruction-free sidewalk area, paved to City standards, between the outside boundary of the dining area and any obstruction, including but not limited to parking meters, street trees, landscaping, street lights, bus benches, public art, and curb lines.
- B. When an outdoor dining area is located on a corner, the outdoor dining area shall not be permitted within five feet (5') of the corner of the building, along both frontages. When an outdoor dining area is located adjacent to a driveway or an alley, the outdoor dining area shall not be permitted within five feet (5') of the driveway or alley. These requirements may be modified at the discretion of the Director of Public Works in locations where the sidewalk adjacent to the proposed outdoor dining area is wider than usual or where the perimeter of the building has an unusual configuration.
- C. 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 State of California Title 24 Disabled Access Standards.
- D. The final location and configuration of the outdoor dining area shall be subject to approval by the Director, who shall consider public safety issues unique to the pedestrian and vehicular needs of the specific location.
- E. 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 meets the requirements of this document 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. No barrier shall be required if the applicant proposes to limit the outdoor dining area to one row of tables and chairs abutting the wall of the establishment and if no alcohol will be served.
- C. 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.

- D. 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.
- E. 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.
- F. The height of any barrier shall not exceed three feet six inches (3'6").
- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. Flowering plants are encouraged.

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. When the establishment stops serving for the day, further seating in the outdoor dining area shall be prohibited and the outdoor dining area must close when those patrons already seated in it leave.
- D. 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.
- 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 replace. 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. Unamplified musical instruments or sound reproduction systems are permitted in outdoor dining areas, but shall be maintained at sufficiently low volumes so as not to unduly intrude on neighboring businesses, residents, or users of the public right-of-way beyond the outdoor dining area.
- K. 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.
- L. 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.
- M. 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.

VI. 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 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 City retains the right to revoke an Outdoor Dining Encroachment Permit upon thirty (30) days notice, regardless of compliance with these provisions. Any Encroachment Permits revoked can be appealed to the City Council per the provision of Chapter 12 of the Hermosa Beach Municipal Code.

Attachment No. 2

Chapter 12.16
ENCROACHMENTS

12.16. 090 Commercial outdoor dining.

A conditional use permit is required for use of public right-of-way for commercial outdoor dining subject to the following conditions:

1. Provides for and maintains an area for passage of pedestrian traffic;
2. Does not inconvenience pedestrian traffic;
3. Conforms to all applicable health codes and this code;
4. Applicant to pay all appropriate fees, including but not limited to rental fees;
5. Applicant to maintain and keep in force at all times a policy of liability insurance, naming the city as an additional insured in the amount of one million dollars (\$1,000,000.00); and
6. To pay restorative costs, if applicable, in an amount to be determined by the director of public works, plus administrative costs. (Prior code § 29-39)

12.16. 100 Commercial Outdoor Dining -- Exception for Pier Avenue.

Notwithstanding the provisions of Section 12.16.060 and 12.16.090, a conditional use permit shall not be required for commercial outdoor dining on Pier Avenue between Pacific Coast Highway and the Strand as long as the conditions set forth in Section 12.16.090 are satisfied and the outdoor dining facility complies with design standards adopted by resolution of the City Council. (Ord. 97-1172 § 1, 06/24/97)

12.16. 110 Application procedure.

1. Filing. An application for an encroachment into a planned or existing public right-of-way shall be filed by the owner of the property for which the encroachment is sought or by an authorized representative of the owner. Such application shall be made to the director of public works and shall be on forms furnished by the department of public works.
2. Filing Fee. A uniform fee, established by council under separate resolution, shall be required upon the filing and investigation of the application for encroachment or transfer of an encroachment permit to defray administrative costs incurred by the city in processing the application. Such fee shall be nonrefundable and shall include the costs of recordation of the encroachment, if granted.
3. Investigation. An investigation shall be conducted by all departments of the city having an interest in, or jurisdiction over, the matter. Upon the receipt of an application pursuant to the provisions of this chapter, the director of public works shall transmit the application to all affected departments for written

reports of findings and recommendations. All such written reports shall be submitted to the director of public works for consideration when making a decision on the application.

4. Director of Public Works Findings and Decision. The director of public works shall make a written decision. Such decision shall recite the findings upon which the director bases his decision. If the decision is favorable to the granting of the encroachment, it shall set forth the conditions to be imposed. The conditions set forth in Sections 12.16.080 through 12.16.100 shall be attached to every permit approval.
5. Appeal. The decision of the director of public works shall be final ten days after mailing a copy of his decision to the applicant. Within said ten-day period, the applicant may appeal the decision of the director of public works to the council to review; a denial of the application or any conditions attached to an approval other than those set forth in Section 12.16.080. Upon consideration of such appeal, the council may approve, modify, or disapprove the application for encroachment. The council may add, delete or modify the conditions attached to the encroachment permit. The action of the council shall be final.
6. Time Limit for Development. Any encroachment granted pursuant to the provisions of this chapter shall be developed and utilized within a period not to exceed six months from and after the date of the granting of such encroachment, and, if not so developed and utilized, such encroachment automatically shall become null and void at the expiration of such six-month period.
7. Extension of Time. The permittee may apply in writing for one extension of time, not to exceed six months, within which to develop and use such encroachment. The director of public works, after due consideration, shall either grant or deny the extension of time for such development and use. (Prior code § 29-41)