

January 16, 2006

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

**Regular Meeting of
January 24, 2006**

**SUBJECTS: TEXT AMENDMENT TO PERMIT DISPLAY OF RETAIL MERCHANDISE
ON PIER PLAZA**

Recommendation:

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

Background:

On May 10, 2005, the City Council reviewed the current outdoor dining regulations and directed staff to return with a resolution reflecting the City Council's changes including new regulations for retail sales on Pier Plaza. On August 9, 2005, the City Council approved Resolution No. 05-6418, adopting standards for the design and operation of outdoor retail sales display areas on Pier Plaza. On November 15, 2005, the Planning Commission considered the subject amendments and twice continued the matter in order to have staff investigate other methods for providing outdoor display of retail merchandise along Pier Plaza. On December 7, 2005 the Planning Commission recommended approval of the subject text amendment and approved the attached resolution.

Analysis:

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

The Zone Code regulates commercial parking by gross floor area and the addition of retail floor space in the encroachment area is an expansion that must be calculated as required parking. The current downtown parking requirement is one space per 333 sq. ft with rounding up for any fractional amount greater than one-half and any amount less than one-half disregarded.¹ Thus, if a business uses no more than 166 sq. ft. of encroachment space, no additional parking is required. However, if more than 166 sq. ft. of the encroachment area is used, than the retail business is subject to parking requirements under Sections 17.44.020 (E) and 17.44.040 (D)&(E) and 17.44.210 Parking Plans. Staff proposes that encroachment retail displays not exceed 166 sq. ft. since there is no affect on required parking.²

Once the proposed changes are adopted, retail businesses will be required to obtain an encroachment permit and insurance to use the encroachment areas, but will be charged a reduced encroachment lease rate in order to provide an incentive for retail business location and expansion along the Plaza. A

business owner must currently remit an encroachment permit fee of \$370 and a monthly lease payment of \$2.00 per square foot to use the outdoor dining encroachment area. Retail businesses are proposed to be charged \$.50 per square foot for sales display in the encroachment area.



Sol Blumenfeld, Director
Community Development

Concur



Steve Burrell,
City Manager

Notes:

1. 333 sq. ft. per required space x .50 = 166.5 sq. ft. per Section 17.44.180 round-up requirement.
2. The outdoor dining areas were approved with a one time City contribution of \$78,000 through the Downtown Enhancement Fund in 1997. If the entire encroachment area is used for outdoor display area, the City Council may choose to similarly fund in lieu fees on an area-wide basis. For 10 existing retail businesses, the allocation of up to \$150,000 from the Downtown Enhancement Fund would be required for 10 businesses.

10 existing retail businesses x 30' approx. width x 13' depth

$$\begin{aligned}
 &= \underline{3,900 \text{ sq. ft.}} && = \text{total encroachment area} \\
 &333 \text{ /space} && = 11.71 \text{ spaces} \times \$12,500 \text{ per in lieu space*} \\
 &&& = \$150,000 \text{ total in lieu fees} \\
 &&& * .5 \text{ and above round up per parking ordinance.}
 \end{aligned}$$

In the event the Council decides to fund the retail use of the entire encroachment area, an area-wide parking plan for retail in-lieu parking must also be processed through the Planning Commission to accept the in lieu fees. Alternately, if the City does not subsidize the use of the encroachment area and an owner chooses to use more than 166 sq. ft. then the business must submit a Parking Plan application to the Planning Commission for consideration and provide in lieu fees at the rate of \$12,500 per space.

Existing Retail Businesses:

North		
34 Pier Avenue	Shirt Tales	Retail Clothing
50 Pier Avenue	Treasure Chest	Miscellaneous Retail
50 Pier Avenue	Robert's Liquor	Liquor and Sundries
South		
25 Pier Avenue	Pier Surf	Miscellaneous Retail
31 Pier Avenue	Avanti Jewelers	Retail
53 Pier Avenue	High Five	Woman's Clothing
49 Pier Avenue	Beach Shop	Miscellaneous Retail
49 Pier Avenue	Powerline 6 Store	Shoe Store
59 Pier Avenue	Blue	Clothing Retail
65 Pier Avenue	Spyder II	Miscellaneous Retail

Attachments:

1. Outdoor Display of Retail Merchandise on Pier Plaza Standards.
2. Resolution.
3. Ordinance.

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**CITY OF HERMOSA BEACH
RETAIL SALES/DISPLAY STANDARDS
FOR PIER PLAZA**

I. INTRODUCTION

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

II. APPLICATION PROCEDURE

- A. An application form for a Retail Sales Encroachment Permit may be obtained from the Public Works Department. A scaled and measured plan prepared by a licensed design professional shall accompany the application form. The plan shall delineate the encroachment area and the layout of the display area and allowable amenities.

The plan shall comply with all building and fire code regulations, and shall comply fully with all State and federal laws providing for access by the disabled. If the Applicant intends to modify the arrangement of furniture and other amenities or otherwise deviate from the plan at any time or times during the term of the Permit, the plan shall delineate all alternate arrangements to be utilized and all shall comply with the requirements set forth herein.

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

III. OUTDOOR RETAIL SALES/DISPLAY SITES

- A. The outdoor retail sales/display encroachment area shall be a maximum depth of thirteen feet (13') and include a clear, continuous pedestrian path not less than five feet (5') in width or more as deemed appropriate by the Director of Public Works for pedestrian circulation outside of the encroachment area. As used herein, pedestrian path means a continuous obstruction-free sidewalk area, paved to City standards, between the outside boundary of the dining area.

- B. The outdoor retail sales/display area shall be accessible to the disabled. The buildings adjacent to these encroachment areas shall maintain building egress as defined by the Uniform Building Code and Title 24 Disabled Access Standards.
- C. The final location and configuration of the outdoor retail sales display area shall be subject to approval by the Director of Public Works, who shall consider public safety issues unique to the specific location.
- D. No underground utilities are permitted within the encroachment area.

IV. DESIGN STANDARDS

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

- G. A Historic Preservation Certificate of Appropriateness shall be required prior to attaching any lights, awnings, or physical barriers to an historic structure that has been designated "landmark" or "significant" by the City Council.

V. STANDARDS OF OPERATION

- A. Management is responsible for running and operating the outdoor retail sales/display area and shall not delegate or assign that responsibility. Outdoor retail sales/display areas shall be continuously supervised by management. Patrons are prohibited from disturbing customers or passersby on the adjacent right-of-way by loud, boisterous, and unreasonable noise, offensive words or disruptive behavior.
- B. Management shall keep the outdoor area clear of litter and debris at all times.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's NPDES regulations.
- D. Awnings and umbrellas shall be washed whenever they are dirty and, in any event, no less than two times each year.
- E. All plans and permits for the outdoor retail sales/display areas approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.
- F. Outdoor retail sales/display areas shall be operated in a manner that meets all requirements of applicable regulations.
- G. Upon termination of the Outdoor Retail Sales/Display Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California.
- H. 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.
- I. The allowable hours of operation within the outdoor encroachment area shall be consistent with the CUP requirements for a particular permittee.

VI. INSURANCE

- A. The Applicant shall obtain and maintain in force during the life of the Outdoor Retail Sales/Display Encroachment Permit comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least one million dollars (\$1,000,000) covering the applicant's operations on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected, appointed boards, officers, agents and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellation, modification, or lapse without thirty (30) days prior written notice to the City. Both the Certificate of Insurance and the completed standard Special Endorsement form shall be submitted with the completed application for an Encroachment Permit.
- B. The Applicant shall obtain and maintain in force during the life of the Outdoor Encroachment Permit Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per accident.
- C. Comprehensive general liability policy shall provide coverage for all of the Applicant's outdoor operations and facilities whether or not within the encroachment area.
- D. The Applicant shall indemnify and hold harmless City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including reasonable costs of defense and attorney fees, arising from the Applicant's encroachment on City property, including but not limited to the Applicant's negligent or wrongful acts, errors or omissions in the construction, erection, operation and continued maintenance of the encroachment in its location. The Applicant shall promptly pay the amount of any judgment rendered against City, its officers, employees and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by City in the defense of such claims.

VII. ENFORCEMENT

- A. Notice of violation of the outdoor retail sales/display standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector or Building Inspector of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Director may suspend or revoke the Encroachment Permit.
- B. The Outdoor Retail Sales/Display Encroachment Permit is in the nature of a revocable license, and is revocable at will by the City. The Public Works Director

may revoke an Outdoor Sales/Display Encroachment Permit upon thirty (30) days written notice, with or without cause. The Director's decision may be appealed to the City Council pursuant to the provisions of Chapter 12 of the Hermosa Beach Municipal Code. The City Council's decision shall be final.

P.C. RESOLUTION NO. 05-73

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, RECOMMENDING A TEXT AMENDMENT TO ALLOW OUTDOOR DISPLAY OF RETAIL MERCHANDISE ON PIER PLAZA

The Planning Commission of the City of Hermosa Beach does hereby resolve as follows:

Section 1. The Planning Commission held a duly noticed public hearing on December 7, 2005, to consider amending the Zoning Ordinance, Chapter 17.26, to allow outdoor display of merchandise on Pier Plaza.

Section 2. Based on the evidence considered at the public hearing, the Planning Commission makes the following findings:

1. The Zoning Ordinance, Section 17.26. currently does not permit outdoor merchandise display on or adjacent to commercially zoned property, and said display should be allowed along Pier Plaza.

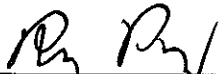
Section 3. Based on the foregoing, the Planning Commission hereby recommends that the Hermosa Beach Municipal Code. Title 17-Zoning, Section 17.26.050, be amended by amending paragraph B.4. thereof to read as follows:


"4. Temporary outdoor merchandise display and outside dining in conjunction with a temporary outdoor event such as a sidewalk sale, authorized by the City Council by special permit as set forth in Section 12.12.070, and outdoor merchandise display on Pier Plaza as allowed by Section 12.16.105"

VOTE: AYES: Comms.Allen,Hoffman,Kersenboom,Perrotti,Chmn.Pizer
NOES: None
ABSTAIN: None
ABSENT: None

CERTIFICATION

I hereby certify the foregoing Resolution P.C. 05-73 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 December 7, 2005.


Ron Pizer, Chairman


Sol Blumenfeld, Secretary

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ORDINANCE 05-

AN ORDINANCE OF THE CITY OF HERMOSA BEACH,
CALIFORNIA, REGARDING OUTDOOR DISPLAY OF RETAIL
MERCHANDISE ON PIER PLAZA AND AMENDING THE
HERMOSA BEACH MUNICIPAL CODE

The Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1. The Planning Commission held a duly noticed public hearing on December 7, 2005, to consider amending the Zoning Ordinance, Chapter 17.26, to allow outdoor display of merchandise on Pier Plaza, and recommends amending the Ordinance to allow outdoor display.

Section 2. The City Council held a duly noticed public hearing on January 24 to consider the recommendation of the Planning Commission and other related Municipal Code amendments regarding outdoor merchandise display on Pier Plaza.

Section 3. Section 12.12.070 of Title 12, Chapter 12.12 of the Hermosa Beach Municipal Code is hereby amended by adding thereto a new subparagraph C. to read as follows:

C. Exception. This section shall be inapplicable to outdoor display of merchandise allowed pursuant to Section 12.16.105 of this code.

Section 4. Title 12, Chapter 12.16 of the Hermosa Beach Municipal Code is amended by adding thereto a new Section 12.16.105 to read as follows:

12.16.105 Outdoor display of merchandise – exception for Pier Plaza.

Notwithstanding the provisions of Section 12.16.060, a conditional use permit shall not be required for outdoor display of merchandise by retail business establishments located on Pier Avenue between Hermosa Avenue and the Strand, provided that the display complies with the standards and requirements adopted by resolution of the City Council.

Section 5. Section 17.26.050 of Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code is amended by amending paragraph B.4. thereof to read as follows:

4. Temporary outdoor merchandise display and outside dining in conjunction with a temporary outdoor event such as a sidewalk sale, authorized by the City Council by special permit as set forth in Section 12.12.070, and outdoor merchandise display on Pier Plaza as allowed by Section 12.16.105.

PASSED, APPROVED AND ADOPTED this day of , 2005.

MAYOR

ATTEST:

City Clerk