

ATTACHMENT 4
MAY 2, 2016 PLANNING COMMISSION
STAFF REPORT (WITHOUT ATTACHMENTS)



Planning Commission Report

Meeting Date: May 2, 2016 (Special Meeting)

Subject: **9291 Burton Way (L'Ermitage Hotel)**
Conditional Use Permit, Development Plan Review, and Extended Hours Permit to allow a hotel restaurant to be open to the public; to allow an open air dining area that would be served by existing parking supply; and to allow the operation of the hotel restaurant, open air dining area, and rooftop event space during extended hours in a commercial-residential transition area.

Project Applicant: Mitchell J. Dawson

Recommendation: Staff recommends that the Planning Commission adopt a resolution conditionally approving a new Conditional Use Permit, Development Plan Review, and Extended Hours Permit.

REPORT SUMMARY

The proposed project involves a request for a Conditional Use Permit, Development Plan Review, and Extended Hours Permit to allow the operation of the L'Ermitage Hotel's restaurant, rooftop event space, and open air dining area. The project also consists of relocating the open air dining area and establishing conditions of approval that relate to the rooftop event space, the hotel restaurant, and the open air dining area.

This report analyzes the proposed project, summarizes past violations and neighborhood concerns, evaluates the applicant's proposed operation and recommends conditions of approval. The analysis contained in this report identifies that the existing operations of the hotel restaurant, open air dining area, and rooftop event space have caused impacts to neighboring residents. However, approving the project with conditions controlling certain aspects of hotel operations and including a penalty schedule for violations would reduce the negative effect of hotel operations on adjacent residential neighbors by balancing residential quality of life with the need to support the operational aspects of the City's local businesses. In addition, it is recommended that project approval include an annual review by the Planning Commission to assess compliance with the project conditions of approval.

Attachment(s):

- A. Required Findings
- B. Public Notice
- C. Correspondence Received from the Public
- D. Correspondence from Staff
- E. Police Reports
- F. Draft Resolution
- G. Past CUP and DPR Resolutions
- H. Architectural Plans

Report Author and Contact Information:
Andre Sahakian, Associate Planner
(310) 285-1127
asahakian@beverlyhills.org



Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

May 2, 2016

Page 2 of 20

BACKGROUND

File Date	4/19/16
Application Complete	4/20/16
Subdivision Deadline	N/A
CEQA Recommendation	Class 1, Class 2, and/or Class 32 Categorical Exemptions
CEQA Deadline	60 days from CEQA Determination
Permit Streamlining	60 days from determination of Exemption
Applicant(s)	Mitchell Dawson / Dawson Tilem & Gole
Owner(s)	LBH Real Estate LLC
Representative(s)	Mitchell Dawson
Prior PC Action	<p><u>Reso. 267</u> (2/25/80) – Variance from parking requirements. (Approved)</p> <p><u>Reso. 294</u> (12/8/80) – Variance from parking requirements. (Approved)</p> <p><u>Reso. 493</u> (11/23/87) – Front yard setback variance to allow two sculptures to encroach into front setback. (Approved)</p> <p><u>Reso. 890</u> (4/27/94) – Setback and rooftop variances, and modifying parking variance. (Approved)</p> <p><u>Reso 1094</u> (4/28/99) –DPR for Open Air Dining and CUP to allow hotel dining to be open to the public. (Approved)</p> <p><u>Reso 1138</u> (8/23/00) – Renew DPR for Open Air Dining and CUP for Hotel Dining to continue to be open to the public. (Approved)</p> <p><u>Reso 1191</u> (8/22/01) - Renewing DPR for Open Air Dining and CUP for Hotel Dining. (Approved)</p>
Prior Council Action	<p><u>Reso 75-R-5307</u> (9/2/75) – Allow sundeck to exceed height limit by 3' (Approved on appeal)</p> <p><u>Reso 99-7-10211</u> (8/3/99) – DPR for Open Air Dining and CUP to allow hotel dining to be open to the public. (Approved on appeal)</p>

PROPERTY AND NEIGHBORHOOD SETTING

Address	9291 Burton Way
Assessor's ID No.	4342-010-022 and 4342-010-002
Zoning District	R-4
General Plan	Multi-Family Residential (High Density)
Existing Land Use(s)	Commercial (Hotel)
Lot Dimensions & Area	240' x 130' (31,200 square feet)
Year Built	1976
Historic Resource	None



Protected Trees/Grove None

Adjacent Zoning and Land

Uses

North

C-5 – Commercial

South

R-1.8X – Single Family Residential

East

R-4 – Multi-Family Residential

West

R-4 – Multi-Family Residential

Circulation and Parking

Adjacent Street(s)

Burton Way, Between Foothill Road and Maple Drive

Traffic Volume

Average Daily Weekday Trips on Burton Way: Approx. 15,960

Eastbound; Approx. 16,410 Westbound

Average Daily Weekday Trips on Maple Drive: Approx. 3,080

Southbound; Approx. 2,360 Northbound

Average Daily Weekday Trips on Foothill Drive: Approx. 1,530

Southbound; Approx. 1,315 Northbound

Adjacent Alleys

20'-wide, two-way alley to the north of the subject property, parallel to Burton Way.

Parkways & Sidewalks

Burton Way – 145' street width with 12.5' North and South parkways.

Foothill Road – 35' street width with 16' East and West parkways.

Maple Drive – 35' street width with 16' East and West parkways.

Parking Restrictions

No preferential parking conditions on Burton Way, N. Foothill Rd, or N. Maple Dr.

Nearest Intersection

Burton Way and N. Foothill Road

Circulation Element

Burton Way is a designated truck route and carries regional traffic.

Neighborhood Character

The project site is located along Burton Way, a major east-west thoroughfare with primarily one- and two-story residential development along the south side, and higher density multi-family residential development along the north side. The project site is abutted by a three-story multi-family residential building to the west. Immediately adjacent to the subject property to the east a new five-story condominium project is currently under construction. To the north is a commercial area consisting of former industrial sites that have over time developed into a cluster of corporate offices for media/entertainment companies. The project site is separated from this



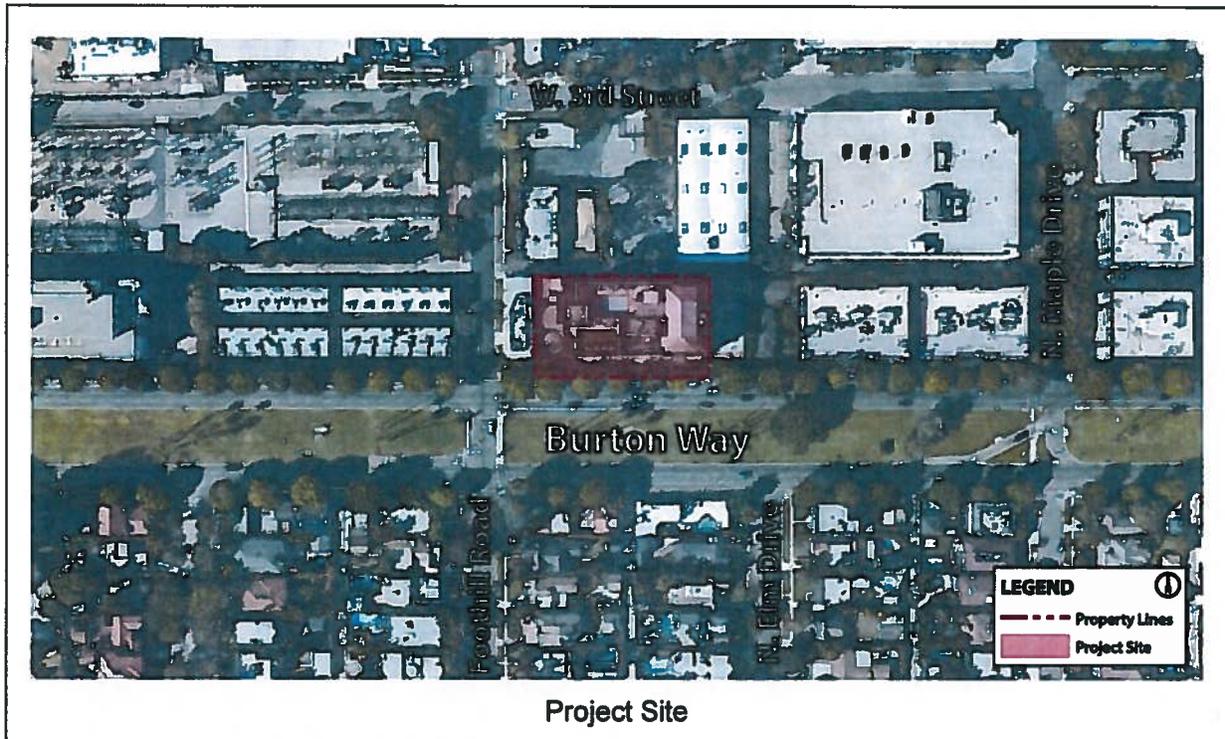
Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

May 2, 2016

Page 4 of 20

commercial area by a two-way alley that connects Maple Drive and Foothill Road. The alley provides pedestrian and vehicle access to the rear of the buildings along Burton Way.



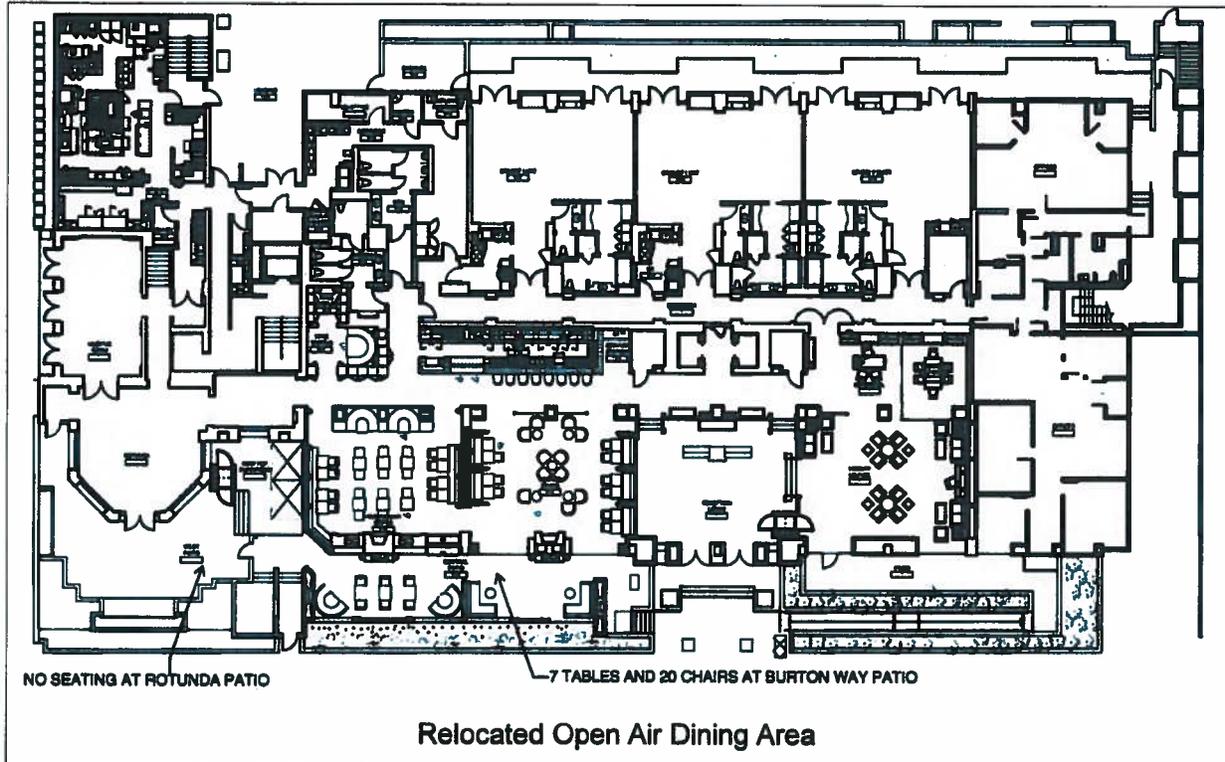
PROJECT DESCRIPTION

The proposed project includes specific operational components of a nonconforming hotel in an R-4 zone as follows:

- Allow a hotel restaurant to be open to the public, allow an open air dining area, and impose conditions on a rooftop event space;
- Relocate open air dining area from the western side of the property to the east near the main hotel entrance along Burton Way, maintaining the same number of tables and chairs authorized in previous approvals; and
- Allow a separate stairway entrance to the new outdoor dining area from Burton Way located immediately adjacent to the existing main hotel entrance.



The new configuration of the relocated open air dining area is shown in the figure below:



Relocated Open Air Dining Area

REQUIRED ENTITLEMENTS.

As proposed, the project requires the following entitlements in order to continue operations:

- **Conditional Use Permit.** The hotel restaurant on the ground floor requires a Conditional Use Permit (CUP) to be open to the general public, rather than just hotel guests and their guests.
- **Development Plan Review.** A Development Plan Review (DPR) is required for open air dining in nonconforming hotels in an R-4 Zone. The hotel is requesting an open air dining area adjacent to the hotel restaurant and located along Burton Way, with a separate stairway access directly from Burton Way. The applicant is also requesting that the Planning Commission determine that the parking demand for the open air dining area can be met with the existing parking supply and valet operations, and additional parking not be required for the open air dining area.



- **Extended Hours Permit.** The subject property is located in a commercial-residential transition area, and seeks to operate the hotel restaurant, open air dining area, and rooftop event space during extended hours. Extended hours are considered any time after 10 P.M. and before 7 A.M. on weekdays and after 10 P.M. and before 9 A.M. on weekends and holidays.

GENERAL PLAN POLICIES

The General Plan includes numerous goals and policies relevant to the Planning Commission's review of the project, including:

- **Policy LU 9.1 Uses for Diverse Customers.** Accommodate retail, office, entertainment, dining, hotel, and visitor-serving uses that support the needs of local residents, attract customers from the region, and provide a quality experience for national and international tourists.
- **Policy LU 12 Business Districts Adjoining Residential Neighborhoods.** Compatible relationships between commercial districts and corridors and adjoining residential neighborhoods, assuring that the integrity, character and quality of both commercial and residential areas are protected and public safety and quality of life are maintained.
- **Policy LU 12.1 Functional and Operational Compatibility.** Require that retail, office, entertainment, and other businesses abutting residential neighborhoods be managed to assure that businesses do not create an unreasonable and detrimental impact on neighborhoods with respect to safety, privacy, noise, and quality of life by regulating hours of operation, truck deliveries, internal noise, staff parking and on-site loitering, trash storage and pick-up and other similar business activities.
- **Policy LU 15.2 Priority Businesses.** Retain and build upon the key business sectors contributing to the City's identity, economy, and revenue for resident services, such as entertainment-related Class-A offices, high-end retail and fashion, restaurant, hotel, technology, and supporting uses.
- **Policy ES 1.4 Retain Existing Industries.** Consistent with future economic sustainability plans, encourage existing industries such as luxury retail, tourism, hoteling, finance, entertainment and media businesses and services to remain and expand within the City.
- **Policy N 1.3 Limit Hours of Commercial and Entertainment Operations.** Limit hours of commercial and entertainment operations adjacent to residential neighborhoods and other noise-sensitive receptors in order to minimize exposure to excessive noise.
- **Policy N 1.4 Limit Hours of Truck Deliveries.** Limit the hours of truck deliveries to commercial uses abutting residential neighborhoods and other noise-sensitive receptors in order to minimize exposure to excessive noise, unless there is no feasible alternative or there are overriding transportation benefits by scheduling deliveries at other hours.



ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines¹, and the environmental regulations of the City. Staff's initial determination is that the project is eligible for a categorical exemption pursuant to Sections 15301 (Class 1), 15302 (Class 2), and 15332 (Class 32) of the Guidelines, as follows:

A Class 1 Categorical Exemption consists of permitting or minor alteration of existing structures involving negligible or no expansion of use. Examples include interior or exterior alterations and additions to existing structures provided that the additions do not result in an increase of more than 10,000 square feet. The proposed project consists of granting entitlements that would govern the operations of a commercial hotel including restaurant and rooftop area, and allowing alterations to the front patio to establish an open air dining area of the same capacity as was previously existing and approved. The use of the hotel, restaurant, open air dining area, and rooftop area would remain substantially the same as what was previously approved and has been in operation for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 2 Categorical Exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The proposed project includes replacement/re-approval of a previously approved open air dining area on the same site, with the same capacity and function as was previously existing and approved. The hotel restaurant and rooftop structures will remain substantially the same as what was previously approved and has existed for approximately the last 16 years, although perhaps with additional conditions of approval to address compatibility with neighboring uses.

A Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.
 - The proposed project is a legally nonconforming commercial hotel use located in an R-4 multi-family residential zone. Although hotels are no longer a permitted use within an R-4 Zone if constructed new, the City's Zoning Ordinance allows for legally nonconforming uses to be continued without alteration or expansion, and includes specific provisions for the operation of nonconforming hotels in an R-4 Zone. The Zoning Ordinance also allows for restaurants to be operated within a nonconforming hotel located in an R-4 Zone, including the ability to be open to the general public provided that a Conditional Use Permit is first obtained. Additionally, the Zoning Ordinance allows outdoor dining to be

¹ The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>



established in nonconforming hotels in an R-4 Zone pursuant to the issuance of a Development Plan Review. The proposed project consists of a hotel restaurant, open air dining, and rooftop uses operated in substantially the same manner as when the hotel use was established, and as amended over time by the City Council and Planning Commission. In addition, the project complies with numerous General Plan policies, including Policies LU 9.1, LU 15.2, and ES 1.4, which relate to retaining existing industries such as luxury hotels, as well as Policies N 1.3, and N 1.4.

- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- The project site is located in the City of Beverly Hills and consists of 31,200 square feet (approximately 0.72 acres), and is surrounded by urban uses, such as multi-family residential buildings, government buildings, single-family residences, and commercial offices, all of which are typical of an urban environment.
- c) The project site has no value as habitat for endangered, rare, or threatened species.
- The project site has been developed with the current structure since 1976, and is located in a developed urban area. There are no known habitats for endangered, rare, or threatened species on the project site.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- **Restaurant / Outdoor Dining.** The project site has been operating as a commercial hotel with a restaurant open to the public and an open air dining area for approximately 16 years. The proposed project would operate in substantially the same manner as previously approved. The hotel restaurant faces Burton Way and is completely enclosed. As conditioned, banquets or similar private receptions or parties are also prohibited in the restaurant. The open air dining area has been relocated to an area that is approximately 120 feet from the neighboring residential building to the west, which is approximately 50 feet further away than the previously approved open air dining area, and as conditioned, operation of the open air dining area will cease at 10:30 p.m. The project will maintain the same number of tables and chairs in the relocated open air dining area as previously approved. Neither live entertainment nor amplified music will be allowed at any time in the open air dining area. The new stairway access to the open air dining area is located on private property directly adjacent to the main hotel entrance, and conditions have been recommended that would prohibit patrons from queuing outside.
 - **Rooftop Uses.** Proposed conditions would limit evening functions on the rooftop to twice per week unless authorized by the Director of Community Development, and such functions are limited to a total of 52 per calendar year. Proposed conditions would also require all rooftop functions to cease by 11:00 p.m. on



Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

May 2, 2016

Page 9 of 20

Sundays through Thursdays, and by 12:00 midnight on Fridays, Saturdays, and evenings preceding holidays. As conditioned, no additional events on the rooftop are allowed per calendar year beyond what was previously approved. Thus, approval of the project would not constitute any intensification of the past uses of the restaurant or rooftop. Additionally, the project is located on Burton Way, which is a major arterial street that can accommodate the traffic flow for the continued use of the hotel restaurant and rooftop area, thus the proposed project would not create any other significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

- Hotel Restaurant. The restaurant kitchen is located inside the hotel, and cooking will not be performed outdoors. Approval of the project will not alter the current venting of the kitchen and the City has received no evidence that the restaurant or rooftop currently create any odors or noxious fumes. Continuation of the previous uses would not result in any significant change to air quality in the vicinity of the project, or the region. The proposed continuation of uses would not result in any water quality issues in that no significant changes to the overall project site would occur, and all restaurant activities would continue to comply with applicable regulations to avoid any impact to water quality.
 - For the foregoing reasons, approval of the project, with the proposed conditions of approval, will not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.
- The site is currently served by all required utilities and public services, and no new utilities or public services will be necessary for the proposed project.

Based on the foregoing, staff recommends that the Planning Commission find the project exempt from further review under the California Environmental Quality Act.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	4/28/16	4 Days
Newspaper Notice	10 Days	4/22/16	4/22/16	10 Days
Mailed Notice (Owners & Residents - 500' Radius + blockface)	10 Days	4/22/16	4/22/16	10 Days
Property Posting	10 Days	4/22/16	4/22/16	10 Days
Website	N/A	N/A	4/28/16	4 Days



Public Comment

Staff has received correspondence from neighboring property owners/occupants in opposition of the project. Copies of the letters have been provided in Attachment C. Comments generally related to the following issues:

- Excessive noise from rooftop events late at night
- Excessive noise from attendees of rooftop events late at night, after events have ended
- Excessive noise from cleanup and breakdown of rooftop events late at night, after they have ended
- Deliveries being made outside of the allowed hours
- Delivery trucks blocking the alley behind the hotel, and in some cases blocking access to the parking garages of neighboring residences
- Excessive noise from open air dining area
- New stairway access to new open air dining area should not have been permitted
- Limousines parking on the south side of Burton Way

ANALYSIS

Project approval, conditional approval, or denial is based upon specific findings for each discretionary application requested by the applicant. The required findings are included with this report in Attachment A and may be used to guide the Planning Commission's deliberation on the subject project. Additionally, staff's analysis is provided below for the Commission's consideration.

Background. The building on the subject property was originally constructed as an apartment/hotel, for which Certificate of Occupancy was granted in 1976. Hotel regulations, including the requirement for hotels to obtain a CUP, were established in 1984, and operational standards for Commercial-Residential Transition Areas were established in 1996. On April 28, 1999, the Planning Commission issued a CUP to allow the hotel restaurant to be open to the public and a Development Plan Review (DPR) for the open air dining area. The Planning Commission approval was appealed to the City Council and the decision was affirmed by the City Council on August 3, 1999. On October 23, 2000, and October 22, 2001, the Planning Commission renewed the entitlements for one year increments. The October 22, 2001 renewal modified the renewal procedure to allow the Director of Community Development to grant future renewals of the entitlements. The latest renewal in City records was granted on February 25, 2009 for a period of 3 years. Since the last renewal on file the hotel was sold and new ownership was established on January 10, 2010. According to available City records, a renewal of hotel's entitlements was required by February 25, 2012. A renewal application was not filed until March 5, 2015.

After filing of the renewal application, the item was scheduled for a hearing at the April 14, 2016 Planning Commission meeting. Just prior to the meeting, it was determined that the CUP and DPR were expired and not eligible for renewal. As a result of this determination, the CUP and DPR could not be reviewed by the Commission on April 14, 2016 because the



hearing was noticed as a renewal hearing rather than a review of a new CUP and DPR. The applicant was directed by the City to submit an application for new hotel entitlements which the applicant complied with, causing the current request to be before the Planning Commission.²

Open Air Dining Area. As part of recent renovations to the hotel lobby, the outdoor dining area was relocated from its original location on the southwestern corner of the property in the courtyard adjacent to the rotunda to a new patio adjacent to the hotel's main entrance along Burton Way. Upon issuance of building permits, it was determined that this relocation would be in substantial compliance with the hotel's existing entitlements, since the modification consisted of the same number of tables and chairs. It was further determined that the relocation of the outdoor dining was likely to cause less impacts than the original outdoor dining location because the new outdoor dining patio would be located farther away from the nearest residents to the west. The relocation was determined to be in substantial compliance with the past entitlements because the past approvals did not specify a particular area for the open air dining patio, and instead spoke to preventing neighborhood intrusion through operational restrictions. Since the relocation, nearby residents have expressed concerns about patrons using a new stairway access to the outdoor dining area that is provided from Burton Way.

² A request has also been filed by the hotel operator for the creation of a Hotel Overlay Zone for this property, which is being processed by the City as a separate and ongoing application. The proposed Hotel Overlay Zone would allow for the addition of a 15' rooftop enclosure, reconfiguration of the rooftop area, and the installation of a new exterior glass elevator on the western elevation of the building. As proposed, the Hotel Overlay Zone would require approval of a Planned Development Permit, which would set forth all the operational requirements and restrictions for the hotel use. If approved, the proposed Overlay Zone and Planned Development Permit would supersede any CUP, DPR, or Extended Hours Permit that may be granted for the hotel. Therefore, granting a new CUP, DPR, and Extended Hours Permit at this time would not preclude the City from making future changes to the operational requirements as part of the proposed Planned Development Permit. At this time, the applicant has placed this request on hold for an unspecified period of time.



New stairway to relocated open air dining patio (left) and main hotel entrance (right)

The past entitlements for the property did not have a specific condition of approval that prohibited direct stairway access to the open air dining area. However, the findings originally approving the open air dining area were based on the fact that there was no direct access from the sidewalk. The draft findings included in the attached draft resolution specifically address the additional stairway access to the revised outdoor dining location. Staff believes the findings can be made for the new stair access because 1) the new outdoor dining entrance is directly adjacent to the existing hotel entrance (approximately 120 feet away from the residential property to the west), 2) the new location of the open air dining area is approximately 50 feet farther away from the western property line than the previous outdoor dining location, and 3) it is unlikely that the new open air dining location and access will result in a greater noise impact to nearby residential uses than the previous configuration. While there is the possibility that a separate entrance to the open air dining area could potentially lead to queuing on the sidewalk, any queuing impacts resulting from the new entrance would be restricted to an area on private property directly adjacent to the existing hotel entrance which is an area that is already used by hotel and hotel restaurant patrons. A



condition of approval has also been recommended that would prohibit queuing on the sidewalk, and would require the hotel to direct patrons who can't be seated immediately to wait for their seats inside the hotel lobby to avoid potential noise impacts from queuing.

Rooftop Tent and Event Space. The building on the subject property was originally constructed as an apartment/hotel, for which a Certificate of Occupancy was granted in 1976. Hotel regulations, including the requirement for hotels to obtain a CUP, were established in 1984, and operational standards for Commercial-Residential Transition Areas were established in 1996. The hotel's rooftop area has been utilized as an event space for evening banquets prior to the establishment of regulations that would prohibit such activities, and thus the hotel rooftop event space is a legally nonconforming use. As part of the past approvals of the CUP and DPR for the hotel restaurant and open air dining areas, the Planning Commission and City Council imposed conditions on the operations of the rooftop event space in an effort to counterbalance the potential impacts of the other hotel dining uses.

In addition to some of the neighborhood concerns identified above, questions have been raised about the status of a temporary tent on the hotel rooftop. Based on past approvals, the temporary tent structure is primarily intended to be used for rooftop events during the Fall/Winter months when there is increased likelihood for inclement weather. These types of structures are typically approved through the issuance of a Temporary Tent Permit, which is issued by Building and Safety in conjunction with the Fire Department. Temporary Tent Permits are on file for the L'Ermitage Hotel rooftop since as far back as November 21, 2000, with approval generally being valid for a six-month period and requiring renewal thereafter. The hotel's current Temporary Tent Permit is valid through July 10, 2016, and may be renewed thereafter as has been done in the past unless otherwise restricted.

The conditions of approval on past hotel entitlements did not regulate the hotel's ability to obtain a Temporary Tent Permit, and concerns have been raised about the perceived permanent nature of the tent, as well as the possibility that it may serve to enable a greater frequency of rooftop events that have the potential to impact the surrounding neighborhood. While no conditions are included in the draft resolution regarding the use of the tent at this time, the Commission may wish to discuss whether it would be desirable to place restrictions on the use of rooftop tents, either through frequency restrictions or an outright prohibition.

Operational Restrictions. As part of the request for the new CUP, DPR, and Extended Hours Permit, staff recommends the following restrictions for various components of the hotel operations. Additionally, the applicant has requested changes to some of the restrictions that were required in past entitlements. A summary of the proposed and recommended operational restrictions is provided below:

Hotel Restaurant



The hotel contains a restaurant on the ground floor, adjacent to the main lobby lounge and bar. The hotel restaurant is currently accessible through the main hotel doors via the hotel's lobby. Additionally a stairway has been constructed to allow direct access from Burton Way to the recently relocated new open air dining area. If this new stairway is allowed to be used as an access point to the new open air dining area, then it would be possible for patrons to enter the hotel restaurant by using the new stairs along Burton Way and using the doors between the open air dining area and the hotel restaurant.

The R-4 zoning designation restricts the use of restaurants within nonconforming hotels to hotel guests and guests of hotel guests. However, through the issuance of a Conditional Use Permit, hotel restaurants in the R-4 zone can be open to the general public. The Planning Commission and City Council previously approved a Conditional Use Permit for this hotel restaurant, and these previously approved entitlements were renewed on multiple occasions, for several years. Past entitlements have included the following conditions for the hotel restaurant:

- Prohibition on banquets and similar private events
- No patrons seated indoors before 6:30 a.m. or after 11:00 p.m.
- Provide free valet parking for restaurant patrons, and inform patrons upon reservation of availability of free valet parking
- All exterior doors to the restaurant must only be used for emergency ingress/egress

Staff recommends maintaining all prior conditions of approval applicable to the restaurant, with the exception of the restriction on exterior doors for the hotel restaurant only being used for emergency ingress/egress, in the event that the open air dining is permitted. Based on the recent renovations, the open air dining area is now adjacent to the hotel restaurant, and there are new openings in the restaurant that allow access between the open air dining area and restaurant area. Staff recommends amending this condition to allow movement between the open air dining area and the hotel restaurant. However, as part of this condition, staff recommends that the doors leading to the open air dining area not be held open. These doors should remain closed and only opened for immediate ingress or egress to prevent noise from inside the restaurant impacting neighboring properties.

Open Air Dining Area

The Municipal Code allows nonconforming hotel restaurants to have open air dining areas pursuant to an approval of a Development Plan Review. Past entitlements approved an open air dining area on the west side of the property in the courtyard adjacent to the hotel rotunda. As part of recent renovations, the open air dining patio has been relocated further east near the hotel's Burton Way entrance. Past entitlements included the following conditions of approval for the open air dining area:

- Limit of 7 tables and 20 chairs
- Tables and Chairs to be located adjacent to the existing building
- No live entertainment or amplified sound allowed in the open air dining area



Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

May 2, 2016

Page 15 of 20

- Open air dining operations, including accepting new patrons and moving of tables and chairs, cannot occur outside the hours of 8:00 a.m. and 9:00 p.m. daily, and all patrons must have exited the area no later than 10:30 p.m. daily.
- Fountain in the open air dining area to commence operation at 7:30 a.m., and cease when last diner exits the area (no earlier than 9:00 p.m., no later than 10:30 p.m.), seven days a week. No outdoor dining to occur when fountain is not in operation.

The conditions of approval that limit seating of patrons to no later than 9:00 p.m. are more restrictive than current Municipal Code requirements for Commercial-Residential Transition Areas. Although the Municipal Code provisions for Commercial-Residential Transition Areas do not require patrons to vacate the premises at any specific time so long as they entered the establishment prior to 10:00 p.m., based on the level of concern raised by neighbors regarding noise impacts from the open air dining area, staff recommends maintaining the requirement that patrons exit the area no later than 10:30 p.m. daily. Based on past operations, and new conditions intended to encourage compliance with conditions through more effective enforcement, staff recommends maintaining all of the conditions of approval listed above, with the exception of the description of the location of the open air dining area, which should be updated to reflect the relocated open air dining patio along Burton Way.

Hotel Rooftop

The western side of the hotel rooftop area contains a pool, cabanas, and lounge area primarily for hotel guests. The eastern side of the hotel rooftop has been utilized as an event space, including evening functions. This area is also covered by a temporary tent, which is permitted through a Temporary Tent Permit. As part of the previously approved CUP and DPR, the rooftop event space has been regulated subject to the following conditions:

- Evening functions involving more than 25 attendees (excluding hotel guests) limited to 2 per week (Monday through Sunday)
- Evening functions limited to 52 per calendar year
- Prior to any evening function, a traffic and parking plan for the function to be submitted to Director of Transportation for approval
- Applicant must file a written schedule of dates and times of each evening function on the last day of each month for events scheduled for the forthcoming month.
- Applicant must file a written amendment to the schedule of dates at least 48 hours before the evening function if a change is proposed from the submitted monthly event schedule

The applicant has requested the following changes to the past conditions of approval, and staff's analysis and recommendation is provided below each request:

- Allow the hotel to request for the Director of Community Development to authorize one additional event within a one-week period during the Awards season, which is typically from January through March. This change would not increase the total number of allowed rooftop events per year, which would remain limited to 52. The



additional event would also be subject to the same hours of operation as all other rooftop events.

- Due to the relatively limited period of time in which this type of request could be made, and the fact that such requests would be subject to review by the Director of Community Development rather than being allowed by right, staff supports this request.
- Allow the hotel to request for the Director of Community Development to allow for one rooftop event per year to operate until 1:00 a.m. This would not increase the total number of allowed rooftop events per year, which would remain limited to 52.
 - Past entitlements did not establish time restrictions on rooftop events for the hotel. Due to the nature of complaints and concerns raised by neighbors, at this time staff does not recommend allowing one event to operate until 1:00 a.m. In order to allow the hotel to host events in a manner that is competitive with similar types of hotels in the vicinity, but also be sensitive to surrounding residential uses, staff recommends that all rooftop events, including associated amplified music, be required to end by 10:00 p.m. and that all event attendees must vacate the rooftop by 11:00 p.m. Sunday through Thursday, and rooftop events, including associated amplified music, be required to end by 11:00 p.m. and all attendees vacate the rooftop by 12:00 a.m. midnight on Friday and Saturday, and evenings preceding a holiday. While these hours go later into the evening than standard Commercial-Residential Transition Area hours of operation, the recommended hours are more restrictive than what has been imposed on other hotels in the City with rooftop event areas. Additionally, the total number of these events would be limited to 52 per year, and no more than two per week unless approved by the Director of Community Development for one extra event within a week during the Awards season (if the Commission were to approve the applicant's request as discussed above).
- Allow the hotel to request for the Director of Community Development to allow for one amendment to the monthly rooftop event schedule with less than 48 hours' notice prior to an event occurring.
 - This request is intended to allow last-minute relocation for an event from another nearby hotel in the case of unforeseen situations, such as a flood or other complication. Given that these requests would be subject to review by the Director of Community Development, and recognizing the need for flexibility in order to allow the City's hotels to remain competitive, staff supports this amendment.



Parking Requirements. The hotel and existing interior bar and dining areas are considered legally nonconforming with regard to parking. The applicant has requested approval of a new open air dining area located along Burton Way, which consists of approximately 618 square feet and contains 7 tables and 20 chairs - the same amount that was previously approved. Past approvals also included a waiver of the parking required for the open air dining area and opening the restaurant to the public. Since the past entitlements that approved the open air dining have expired, the new request for open air dining is subject to the Municipal Code parking requirements, which would require 14 parking spaces (1 space per 45 square feet).

The hotel currently contains 129 parking spaces on-site. Past approvals granted a waiver of the parking requirements for the open air dining area based on the finding that the provision of valet parking at the site coupled with the conditions placed upon the conduct of rooftop functions would minimize any cumulative parking impacts that may otherwise be generated by the expanded restaurant use. Additionally, conditions are recommended to remain in place that would require the hotel to provide free parking to its employees, which would further reduce the likelihood of parking impacts to the streets in the vicinity of the hotel.

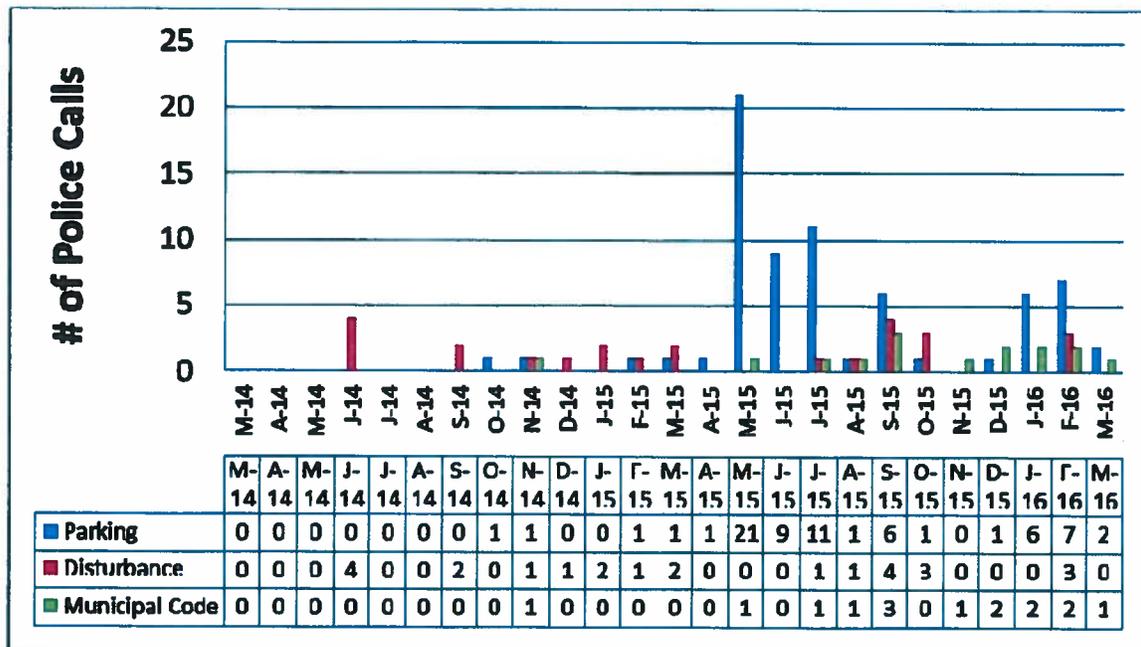
Violations and Enforcement. City staff has received a number of complaints from neighboring residents, primarily related to: noise from rooftop events and outdoor dining; limousine parking on Burton Way; and truck deliveries and the blocking of alley access. Code Enforcement staff, and in many cases the Police Department, have responded to these complaints. Over the past 18 months, two Code Enforcement cases have been opened in response to complaints received. The details of these cases are as follows:

1. On 2/3/2015 a complaint was received indicating that a new elevator was being constructed at the rear of the hotel without permits. On 2/5/2015 Code Enforcement staff investigated the complaint and determined that an elevator was not being constructed at the rear of the hotel, and that the work that was underway was being done with valid permits. Accordingly, there was no violation and the enforcement case was closed.
2. On 5/6/2015 a complaint was received that alleged the following violations:
 - Setting up the outdoor dining tables at 6:45 AM, in advance of the permitted hours stipulated in the CUP and DPR.
 - Creating a new entrance at the street for the restaurant.
 - Music in the outdoor dining area and patrons making noise until midnight.
 - Outside fountain left on past 10:30 PM.
 - Delivery trucks blocking garages.
 - Delivery trucks present and party equipment being broken down after the allowed hours for loading operations.
 - Amplified music during rooftop events and as part of outdoor dining.



In response to the above complaint, a code enforcement case was opened and investigation initiated on 5/18/2015. Code Enforcement staff met with the complainant, hotel staff, and also consulted with the Police Department. At that time, based on the results of the investigation, sufficient evidence was not available to verify the complaints and issue citations in accordance with Municipal Code procedures. Notwithstanding the insufficient evidence, the hotel was placed on notice about the complaint and directed to abide by the conditions of approval.

The following table provides a summary of all Police calls relating to the hotel where Police have responded within the past two years, for the period of March 12, 2014 through March 12, 2016.



The calls are categorized under Parking, Disturbing/Keeping the Peace, and Municipal Code Violation. In general, 'Parking' calls related to construction and delivery trucks blocking the alley and garages of neighboring properties; "Disturbing/Keeping the Peace" calls related to rooftop noise, music, outdoor patio furniture setup, and trucks loading after rooftop events; and 'Municipal Code' calls related to construction noise and noise from moving outdoor patio furniture. Based on the incident reports, Police responded to a total of 24 Disturbing/Keeping the Peace calls, with some as early as 6:39 a.m., and in a handful of cases, as late as 1:49 a.m. The majority of these calls were responded to between 10:00 p.m. and 11:00 p.m. Of the 24 calls, some were unrelated to the hotel's restaurant, open air dining, and rooftop operations (i.e. disputes regarding room billings). Additionally, there were some calls where it was determined that there was no violation.



Planning Commission Report

9291 Burton Way (L'Ermitage Hotel)

May 2, 2016

Page 19 of 20

Although each and every complaint and violation cannot be completely verified, this data, along with the numerous concerns from residents that have been expressed to City staff, the Planning Commission, and the City Council, suggest that there has been an increased amount of impacts resulting from the hotel's operations, and that actions should be taken to encourage better oversight of hotel functions and events and more consistent compliance with the conditions of approval. In order to increase the likelihood of compliance with conditions of approval, and to provide for a clear set of consequences for violations, staff recommends the following penalty schedule for documented violations of conditions of approval within any one calendar year:

1st Violation	2nd Violation	3rd Violation	4th Violation	5th Violation	Subsequent Violations
\$500	\$1,000	\$5,000	\$10,000	\$10,000	\$10,000 and automatically returned to Planning Commission for review and possible revocation. All application fees would be required in addition to the assessed penalty.

A specific penalty structure with escalating penalties for recurring violations of conditions of approval would make enforcement more efficient, and would encourage hotel management to ensure that violations do not occur. To administer the penalties quickly and efficiently, staff recommends that an account be established with an initial deposit of \$20,000 paid by the applicant. When violations are reported, verified, and documented, penalties will be drawn automatically from the account, and once the account is depleted by 50%, the hotel would be required to replenish the account back to \$20,000. In addition, staff proposes that a \$10,000 deposit be paid by the applicants to cover the costs of Code Enforcement responding to and documenting violations, and administering the penalties.



Summary of Project Benefits and Concerns. Based on the analysis provided above, a summary of the project's potential benefits and potential concerns is provided in the table below for the Planning Commission's consideration.

Potential Benefits	Potential Concerns
<ul style="list-style-type: none">• Relocation of the outdoor dining area will move associated noise impacts away from residences to the west.• Specific and escalating penalties for violations will make enforcement more efficient and effective, and will encourage compliance with conditions of approval.• Enabling the hotel to continue operating will provide revenue to the City and will enhance luxury tourism amenities consistent with the City's economic development goals.	<ul style="list-style-type: none">• Any hotel operations in proximity to residential uses will likely result in some impacts to neighboring residents.• Some violations of conditions of approval may be difficult to verify at the time of the violation.

NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and adopt the attached resolution conditionally approving a new Conditional Use Permit, Development Plan Review Permit, and Extended Hours Permit.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Report Reviewed By:

Ryan Bohlich, AICP, City Planner / Assistant
Director of Community Development