AGENDA REPORT

Meeting Date: October 4, 2016

Item Number: E-2

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP
Assistant Director of Community Development / City Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING ANCILLARY USES TO BUSINESSES IN COMMERCIAL ZONES

Attachments:

1. Ordinance
2. Planning Commission Resolution No. 1777
3. June 23, 2016, Planning Commission Staff Report (Without Attachments)
4. Proposed Floor Plan

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING ANCILLARY USES TO BUSINESSES IN COMMERCIAL ZONES" be introduced and read by title only.

INTRODUCTION

The proposed project involves a Zone Text Amendment to establish regulations for ancillary uses in commercial zones. While the Beverly Hills Municipal Code (BHMC) regulates uses that are allowed in each zone, the zoning code does not currently contain language pertaining specifically to ancillary uses (secondary or supporting uses) that are not expressly allowed (or may ordinarily require an increased parking ratio), but may support a principally permitted use.

This amendment is being processed in conjunction with a request from Pet Food Express (the applicant), a retail establishment that sells pet related goods located at 9153 Olympic Boulevard. The applicant is seeking to establish a "pet wellness center" within the existing store. Staff has also observed that a number of commercial businesses in the city have expressed a similar interest in augmenting their principally permitted use with an ancillary use, but there is currently no established mechanism to do so. In March 2016, staff presented a study session item to the Planning Commission on a potential Zone Text Amendment to include language in the BHMC to allow ancillary uses, which would encompass the pet wellness center use to address the identified lack of regulation in the code. At this study session, the Planning Commission indicated general support for such a Zone Text Amendment and provided staff with feedback on drafting regulations to allow ancillary uses in commercial areas of the city. Staff returned at a duly noticed public hearing on June 23, 2016, and the Planning Commission voted unanimously to adopt the attached resolution recommending that the City Council approve the Zone Text Amendment.

ENVIRONMENTAL ASSESSMENT

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Adoption and implementation of the Ordinance would create a process through which ancillary uses, which are ancillary by their very nature, could be established. Because these uses are ancillary by nature they would not constitute a substantial change in land use of any site, the amendments contained in the ordinance would therefore be exempt from CEQA pursuant to Section 15061(b)3 of Title 14 of the California Code of Regulations. It can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment. In addition, adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Amendments represent minor alterations in land use limitations and do not result in any changes in land use or density.

PUBLIC OUTREACH AND NOTIFICATION

Public notice was provided for the City Council hearing in the form of newspaper publication, site posting, and direct mailing. Newspaper notices ran in the Beverly Hills Courier on Friday, September 23, and the Beverly Hills Weekly on Thursday September 29. The Planning Commission also held a duly noticed public hearing on June 23, 2016, where members of the public provided oral comments on the project. At this meeting one speaker spoke in support of the item. As of the writing of this report, staff has not received any additional written public comments on this matter.

BACKGROUND & ANALYSIS

Ancillary Uses

Retail establishments with ancillary uses are becoming more popular as businesses strive to create in-store "experiences" for customers. Providing additional services is one method of gaining a competitive advantage over online businesses. The subject application is a good example of this trend as the applicant is seeking to provide an additional service to customers by providing a limited area within its retail operation for a pet wellness center. Other examples of ancillary uses that could be allowed include:

- a cookware store seeking to dedicate a small portion of floor area to hold one-on-one or small group cooking demonstrations;
- a sports clothing store that would like to establish a small area for fitness demonstrations or instruction;
- a service or retail store that would like to provide an area for the selling of refreshments to customers;
- an office building that would like to establish a small fitness center for use only by employees of the building; or,
- A screening room in an entertainment-related office building.

Staff has observed that the creation of "experiences" for customers is a trend that is becoming more common in high-end and specialty retail establishments. As retail establishments continue to innovate and develop new ways to compete with online retailers, staff expects the requests for ancillary uses in commercial areas to continue.

Ancillary uses can be described as uses that are secondary to and supportive of a principally permitted use on a site. Often, ancillary uses are defined as[1]:

- Only present in a small portion of the business (such as limited to no more than 20% of the floor area)
- Subordinate to the principally permitted use
- Related to the principally permitted use

Currently, the zoning code explicitly names permitted uses, restricted uses, and conditionally permitted uses in commercial zones. As part of the list of permitted uses, the Code allows for "any similar use," which applies to many uses that would be considered ancillary to most principally permitted uses. However, if a use is not explicitly permitted, restricted, conditionally permitted, or substantially similar to a listed use, there is no mechanism to approve or deny it as part of a principal use or project. While the "other similar use" category provides staff with some flexibility for considering certain ancillary uses, the phrase is vague and does not specifically address ancillary uses that support permitted uses. As a result, there is a need to establish regulations for ancillary uses in the code so requests by business and property owners can be fairly addressed and regulated.

The following examples are types of uses that fall outside of the current categories in the code and would benefit from the ancillary use category:

- Those uses that are not addressed as permitted uses and could not realistically fall into the "similar use" category. For example, a demonstration area in a retail establishment such as an area in a cookware store that is used for demonstration of goods or cooking techniques;
- Those uses that would affect the parking requirements of the site if they were larger in size or were the principal use, such as food or beverage service; and,
- Those uses that would otherwise require a Conditional Use Permit if they were the principally permitted use, such as educational uses.

[1] Staff consulted the zoning codes of West Hollywood, Santa Monica, Palos Verdes Estates, Culver City, and Palo Alto as well as planning literature when researching this topic.

Pet Food Express Project
The proposed project consists of the establishment of a "pet wellness center" in the existing Pet Food Express retail store. Pet Food Express is a retail store that sells pet related goods with a total of 7,086 square feet dedicated to retail space. In addition, the store houses an ancillary cat adoption area, which is 283 square feet that was approved through a director's determination letter in 2015. The proposed pet wellness center will replace 285 square feet of what is currently a meeting space (See floor plan in Attachment 4). The proposed project would not include any changes to the exterior of the building.

According to the applicant, the pet wellness center will provide the following services to customers:

- Vaccinations
- Examination for heartworm and Lyme
- Prescription diets
- Puppy and kitten vaccinations
- Microchip implants
- Provision of health certifications for travel
- Allergy testing
- Toe-nail clipping
- Drop-in health examinations

Any animal in need of care beyond that listed above will be referred to a veterinarian office and will not be treated at the Pet Food Express pet wellness center.

Zone Text Amendment
The draft ordinance would establish language in the municipal code to allow the City to address requests for ancillary uses in a uniform manner and would also establish a process for application and approval of ancillary uses.

The proposed ordinance would establish a definition for ancillary uses, which would be:

> "ANCILLARY USE: An ancillary use is a secondary use directly associated with and supporting a principally permitted retail or office use. Ancillary uses occupy a minority of the square footage in a business and are subordinate to the principally permitted use. Ancillary uses permitted by § 10-3-1620.2 shall not include medical uses as defined in Beverly Hills Municipal Code § 10-3-1620.1 or any ancillary uses defined elsewhere in the code."

The draft ordinance establishes a process through which an applicant can request to establish an ancillary use. Per Planning Commission direction, the process is a tiered approach, depending on the size and other characteristics of the proposed ancillary use.

The Zone Text Amendment would establish a new section of the BHMC, § 10-3-1620.2 that would outline the regulations pertaining to ancillary uses. Within this section is code language that allows ancillary uses to be established by-right if they meet the following criteria:

- Total space dedicated to ancillary uses is less than 20% of floor area or less than 2,000 square feet of the principally permitted business, whichever is smaller, and
- The ancillary use is located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, and

- The ancillary use operates only within the operating hours of the principally permitted business, and
- The ancillary use is not listed as a prohibited use in the zone in which it is proposed, and
- No floor area is being added to an existing building in order to accommodate the ancillary use.

If a proposed ancillary use did not meet the above conditions, the establishment of the ancillary use would require a Conditional Use Permit. A Conditional Use Permit may be sought for an ancillary use that:

- Exceeds 20% of the total floor area of the business establishment or 2,000 square feet, or
- Is not located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance,
- Is proposed to operate outside the operating hours of the principally permitted business, or
- Requires the addition of floor area to an existing building to accommodate the use.

Under the proposed ordinance, parking requirements would be the same for the ancillary uses as for the principally permitted use.

During the June 23, 2016 meeting, the Planning Commission directed staff to include the following language in the draft ordinance to ensure that any ancillary uses that resulted in unforeseen negative impacts could be reviewed by the Planning Commission and appropriate restrictions could be established for the use:

> "Review or Revocation Due to Unforeseen Adverse Impacts: Any ancillary use permitted pursuant to 10-3-1620.2 B shall be subject to review by the Planning Commission if the Director determines that the ancillary use is causing unforeseen material adverse impacts on the community. Upon referral to the Planning Commission the matter shall be set for a noticed public hearing with notice as required for Minor Accommodation applications. The Planning Commission in reviewing the ancillary use shall have the authority to prohibit the ancillary use or impose conditions as necessary to prevent the adverse impacts."

Analysis

The Council may wish to consider the following when deliberating the merits of the proposed ordinance:

<u>Supporting Businesses:</u> Staff has observed that a number of businesses are interested in establishing ancillary uses in order to provide customers with an enhanced shopping experience and provide additional amenities in order to compete in a competitive retail environment. Allowing ancillary uses that support retail and office uses would allow the businesses in the city to innovate and continue to compete with online retailers.

<u>Establishing clear rules for the fair handling of requests:</u> Establishing regulations that allow for the establishment of appropriate ancillary uses can help staff fairly address each request for ancillary uses and remove ambiguity in the code surrounding the topic. Specifically the existing code language is vague and does not identify criteria for what would be an acceptable ancillary use nor does it establish a process for the establishment of such uses. The proposed Zone

Text Amendment establishes criteria for acceptable ancillary uses and a two-tier system for the approval of appropriate uses. Adoption of the amendments would result in a more fair process and would define clear regulations for the establishment and ongoing operation of appropriate ancillary uses. This will help reduce the potential for differences in interpretations of existing code language as it pertains to the establishment of ancillary uses.

Traffic and Parking: The addition of ancillary uses on a site does have the potential to slightly increase the demand for parking and the number of trips to and from a site, depending on the ancillary use. The language in the proposed Zone Text Amendment attempts to place appropriate regulations on ancillary uses to limit potential impacts from such uses. For example, the proposed draft Zone Text Amendment limits the size, operating hours, and type of uses allowed (the use must be subordinate to and directly related to the principal use at the site). Additionally, the proposed Zone Text Amendment prohibits the addition of floor area for the establishment of an ancillary use. It is the intent that an ancillary use would inhabit existing floor area that was previously used for the principal use on the site, which also minimizes the parking and traffic impacts related to the use. Further, with the addition of the language added by the Planning Commission during review of the item (see above), if any ancillary use causes unforeseen material adverse impacts it may be referred to the Planning Commission for review. During this review the Planning Commission has the authority to impose necessary conditions to remedy the adverse impacts being caused.

FISCAL IMPACT

The recommendation in this report does not have significant budget or fiscal impacts for the City.

RECOMMENDATION

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING ANCILLARY USES TO BUSINESSES IN COMMERCIAL ZONES" be introduced and read by title only.

Susan Healy Keene, AICP
Director of Community Development

Susan Healy Keene
Approved By

Attachment 1

Ordinance

ORDINANCE NO. 16-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING ANCILLARY USES TO BUSINESSES IN COMMERCIAL ZONES

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. On June 23, 2016, the Planning Commission held a duly noticed public hearing after which it adopted Resolution No. 1777, recommending that the City Council amend portions of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code to include provisions for the regulation of ancillary uses in commercial zones (collectively, the "Amendments"). On October 4, 2016, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance and the Amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The adoption and implementation of the Amendments would create a process through which ancillary uses, which are ancillary by nature, and would therefore not constitute a substantial change or a change in land use could be established. Therefore the City Council finds that the Amendments are exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment. In addition, the City Council finds that

adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Amendments represent minor alterations in land use limitations and do not result in any changes in land use or density.

Section 3. The Amendments are consistent with the objectives, principles, and standards of the General Plan. General Plan Policy Land Use "9.1 Uses for Diverse Customers" encourages a variety of land uses and businesses that support the needs of local residents. Policy Land Use "10.1 Local Serving Businesses" encourages the promotion of appropriate development of businesses that serve and are located in close proximity to residential neighborhoods. Finally, Land Use Policy "15.1 Economic Vitality and Business Revenue" calls for the city to sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high paying jobs.

Section 4. The City Council hereby amends Section 10-3-100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding one new definition with all other definitions in the section remaining unchanged.

The term "Ancillary Use" is added between the terms "Alley" and "Architectural Projections" as they presently appear in Section 10-3-100, to read as follows:

> "ANCILLARY USE: An ancillary use is a secondary use directly and naturally associated with, subservient to, and supportive of a principally permitted retail or office use. Ancillary uses occupy a minority of the square footage in a business and are subordinate to the principally permitted use. Ancillary uses permitted by § 10-3-1620.2

shall not include medical uses as defined in Beverly Hills Municipal Code § 10-3-1620.1 or any ancillary uses defined elsewhere in the code."

Section 5. The City Council hereby adds Section 10-3-1620.2 to Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"10-3-1620.2: ANCILLARY USES

A. Ancillary Uses Permitted: Notwithstanding any other provision of this chapter ancillary uses as defined in 10-3-100 shall be permitted, subject to the restrictions set forth in this section.

B. Allowed by right: An ancillary use shall be allowed by right in the C-3 zone if all of the following criteria are met:

1. Total space dedicated to ancillary uses is less than 20% of floor area or less than 2,000 square feet of the principally permitted business, whichever is smaller, and
2. The ancillary use is located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, and
3. The ancillary use operates only within the operating hours of the principally permitted business, and
4. The ancillary use is not listed as a prohibited use in the zone in which it is proposed, and
5. No floor area is being added to an existing building in order to accommodate the ancillary use.

C. Conditional Use Permit Required: A Conditional Use Permit, pursuant to the provisions of article 38 of this chapter, shall be obtained prior to the establishment of an ancillary use that:

1. Exceeds 20% of the total floor area of the business establishment or 2,000 square feet, or

2. Is not located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, or

3. Is proposed to operate outside the operating hours of the principally permitted business

4. Requires the addition of floor area to the existing building to accommodate the ancillary use.

D. All ancillary uses shall comply with all of the following standards:

1. Parking: Parking requirements shall be calculated for any portion of a building that is used for an ancillary use at the same rate as the principally permitted use.

E. Review or Revocation Due to Unforeseen Adverse Impacts: Any ancillary use permitted pursuant to 10-3-1620.2 B shall be subject to review by the Planning Commission if the Director determines that the ancillary use is causing unforeseen material adverse impacts on the community. Upon referral to the Planning Commission the matter shall be set for a noticed public hearing with notice as required for Minor Accommodation applications. The Planning Commission in reviewing the ancillary use shall have the authority to prohibit the ancillary use or impose conditions as necessary to prevent any unforeseen adverse impacts."

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

SUSAN HEALY KEENE
Director of Community Development

Attachment 2

Planning Commission Resolution No. 1777

RESOLUTION NO. 1777

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING TO THE CITY COUNCIL AMENDMENTS TO BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING USES THAT ARE ANCILLARY TO USES IN COMMERCIAL ZONES.

WHEREAS, the Planning Commission has considered the proposed amendments to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the "Amendments"); and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on June 23, 2016, at which time it received oral and documentary evidence relative to the proposed Amendments; and

WHEREAS, the Planning Commission finds that the proposed Amendments are required for the public health, safety, and general welfare, and that the Amendments are consistent with the general objectives, principles, and standards of the General Plan;

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The Amendments have been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000,

et seq.("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines (hereafter the "Guidelines"). The Planning Commission finds that adoption of the Amendments will not have a significant environmental impact and are exempt from CEQA pursuant to to Section 15061(b)3 because it can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment. In addition the Planning Commission finds that adoption and implementation of the Ordinance is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Amendments represent minor alterations in land use limitations and do not result in any changes in land use or density. Further, the areas of the city to which the Amendments would apply have average slopes of not more than 20%.

Section 2. The Planning Commission does hereby finds that the proposed Zone Text Amendment is intended to provide limited flexibility in business operations located in commercial zones. This is accomplished by creating a process through which a business owner may establish a use that is ancillary to a principally permitted or conditionally permitted use. Ancillary uses that are minor in nature and meet criteria set forth in the municipal code shall be allowed by right. Ancillary uses that do not meet the established criteria shall require the approval of a Conditional Use Permit.

Section 3. The Amendments are consistent with the objectives, principles, and standards of the General Plan. General Plan Policy Land Use "9.1 Uses for Diverse Customers" encourages a variety of land uses and businesses that support the needs of local residents. Policy Land Use "10.1 Local Serving Businesses" encourages the promotion of appropriate development of businesses that serve and are located in close proximity to residential neighborhoods. Finally, Land Use Policy "15.1 Economic Vitality and Business Revenue" calls

for the city to Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high paying jobs.

Section 4. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendments substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 5. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: June 23, 2016

Alan Robert Block
Chair of the Planning Commission of the
City of Beverly Hills

Attest:

Ryan Gohlich, AICP
Secretary of the Planning Commission

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Ryan Gohlich, AICP
Assistant Director/City Planner
Community Development Department

EXHIBIT A

[DRAFT] ORDINANCE NO. 15-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE SECTION 10-3-100 AND ADDING SECTION 10-3-1620.2 TO CREATE REGULATIONS REGARDING ANCILLARY USES TO BUSINESSES IN COMMERCIAL ZONES.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. On June 23, 2016, the Planning Commission held a duly noticed public hearing after which it adopted Resolution No._____, recommending that the City Council amend portions of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code to include provisions for the regulation of ancillary uses in commercial zones (collectively, the "Amendments"). On _____, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance and the Amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The adoption and implementation of the Amendments would create a process through which ancillary uses, which are ancillary by nature, and would therefore not constitute a substantial change or a change in land use could be established. Therefore the City Council finds that the Amendments are exempt from CEQA pursuant to Section 15061(b)3 of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment. In addition, the City Council finds that

adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Amendments represent minor alterations in land use limitations and do not result in any changes in land use or density.

Section 3. The Amendments are consistent with the objectives, principles, and standards of the General Plan. General Plan Policy Land Use "9.1 Uses for Diverse Customers" encourages a variety of land uses and businesses that support the needs of local residents. Policy Land Use "10.1 Local Serving Businesses" encourages the promotion of appropriate development of businesses that serve and are located in close proximity to residential neighborhoods. Finally, Land Use Policy "15.1 Economic Vitality and Business Revenue" calls for the city to sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high paying jobs.

Section 4. The City Council hereby amends Section 10-3-100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding one new definition with all other definitions in the section remaining unchanged.

The term "Ancillary Use" is added between the terms "Alley" and "Architectural Projections" as they presently appear in Section 10-3-100, to read as follows:

> "ANCILLARY USE: An ancillary use is a secondary use directly and naturally associated with, subservient to, and supportive of a principally permitted retail or office use. Ancillary uses occupy a minority of the square footage in a business and are subordinate to the principally permitted use. Ancillary uses permitted by § 10-3-1620.2

shall not include medical uses as defined in Beverly Hills Municipal Code § 10-3-1620.1 or any ancillary uses defined elsewhere in the code."

Section 5. The City Council hereby adds Section 10-3-1620.2 to Article 16 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"10-3-1620.2: ANCILLARY USES

A. Ancillary Uses Permitted: Notwithstanding any other provision of this chapter ancillary uses as defined in 10-3-100 shall be permitted, subject to the restrictions set forth in this section.

B. Allowed by right: An ancillary use shall be allowed by right in the C-3 zone if all of the following criteria are met:

1. Total space dedicated to ancillary uses is less than 20% of floor area or less than 2,000 square feet of the principally permitted business, whichever is smaller, and
2. The ancillary use is located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, and
3. The ancillary use operates only within the operating hours of the principally permitted business, and
4. The ancillary use is not listed as a prohibited use in the zone in which it is proposed, and
5. No floor area is being added to an existing building in order to accommodate the ancillary use.

C. Conditional Use Permit Required: A Conditional Use Permit, pursuant to the provisions of article 38 of this chapter, shall be obtained prior to the establishment of an ancillary use that:

1. Exceeds 20% of the total floor area of the business establishment or 2,000 square feet, or
2. Is not located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, or
3. Is proposed to operate outside the operating hours of the principally permitted business
4. Requires the addition of floor area to the existing building to accommodate the ancillary use.

D. All ancillary uses shall comply with all of the following standards:

1. Parking: Parking requirements shall be calculated for any portion of a building that is used for an ancillary use at the same rate as the principally permitted use.

E. Review or Revocation Due to Unforeseen Adverse Impacts: Any ancillary use permitted pursuant to 10-3-1620.2 B shall be subject to review by the Planning Commission if the Director determines that the ancillary use is causing unforeseen material adverse impacts on the community. Upon referral to the Planning Commission the matter shall be set for a noticed public hearing with notice as required for Minor Accommodation applications. The Planning Commission in reviewing the ancillary use shall have the authority to prohibit the ancillary use or impose conditions as necessary to prevent the adverse impacts.

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

SUSAN HEALY KEENE
Director of Community Development

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES) SS.

CITY OF BEVERLY HILLS)

I, RYAN GOHLICH, AICP, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1777 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on June 23, 2016, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Gordon, Fisher, Corman, Vice Chair Shooshani, Chair Block.

NOES: None.

ABSTAIN: None.

ABSENT: None.

for

RYAN GOHLICH, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

Attachment 3

June 23, 2016 Planning Commission Staff Report (Without Attachments)

City of Beverly Hills
Planning Division
455 N. Rexford Drive Beverly Hills, CA 90210
TEL. (310) 285-1141 FAX. (310) 858-5966

Planning Commission Report

Meeting Date: June 23, 2016

Subject: **9153 Olympic Boulevard, Pet Food Express**
Zone Text Amendment
Request for a Zone Text Amendment to establish regulations for ancillary uses to businesses in commercial zones.

Project Applicant: Carol Horn Davis, Pet Food Express

Recommendation: That the Planning Commission:
1. Conduct a public hearing to receive testimony on the Project; and
2. Adopt the attached resolution memorializing the Commission's findings and making recommendations to the City Council.

REPORT SUMMARY

The proposed project involves a zone text amendment to establish regulations for ancillary uses in commercial zones. While the Beverly Hills Municipal Code (BHMC) regulates uses that are allowed in each zone, the zoning code does not currently contain language pertaining specifically to ancillary uses (secondary or supporting uses) that are not expressly allowed (or may ordinarily require an increased parking ratio), but may support a principally permitted use.

The applicant, Pet Food Express, is a retail establishment that sells pet related goods located at 9153 Olympic Boulevard. The applicant has submitted an application for a zone text amendment to allow for a "pet wellness center". Staff has also observed that a number of commercial businesses in the City have expressed a similar interest in augmenting their principally permitted use with an ancillary use, but there is currently no established mechanism to do so. In March 2016, staff presented a study session item on a potential zone text amendment to include language in the BHMC to allow ancillary uses, which would encompass the pet well center use to address the identified lack of regulation in the code. At this study session, the Planning Commission indicated general support for such a zone text amendment and provided staff with feedback related to an amendment to allow ancillary uses in commercial areas of the City. The attached Draft Ordinance represents code changes based on these comments.

Attachments:
A. Findings
B. Resolution and Draft Ordinance
C. Site Plan

Report Author and Contact Information:
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PET FOOD EXPRESS APPLICATION INFORMATION

File Date	1/14/2016
Application Complete	2/22/2016
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA determination
CEQA Determination	
Permit Streamlining	Take action on project within 60 days of CEQA determination
Applicant(s)	Carol Horn Davis
Owner(s)	Pet Food Express
Representative(s)	Carol Horn Davis
Prior Project Previews	N/A
Prior PC Action	N/A
Prior Council Action	N/A
CC Ad-Hoc Committee	N/A
CC/PC Liaison	N/A

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address	9153 Olympic Boulevard
Assessor's Parcel No.	4331020038
Zoning District	C-3T-2
General Plan	Commercial
Existing Land Use(s)	Retail Use – Pet Food Express
Lot Dimensions & Area	167 x 120 (depth), approximately 20,040
Year Built	1973
Historic Resource	The subject property was assessed for historic significance. It was not found to be eligible as a historic resource.
Protected Trees/Grove	None

Adjacent Zoning and Land Uses

North (across XX' alley)	R1.5X2 – Single Family Residential
East	C-3T-2 - Spa and wellness center
South (across Olympic Boulevard)	C-3T-2 - mini mall and surface parking lot
West (across Palm)	C-3T-2 – two story office building

Circulation and Parking

Adjacent Street(s)	Olympic Boulevard, Maple Drive and Oakhurst Drive
Traffic Volume	Average Daily Trips on Olympic Boulevard: Approx. 37,950 (combined east- and westbound) Average Daily Trips on Maple Drive: Approx. 1,480 (combined north- and southbound) Average Daily Trips on Oakhurst Drive: Approx. 2,397 (combined north-and southbound)

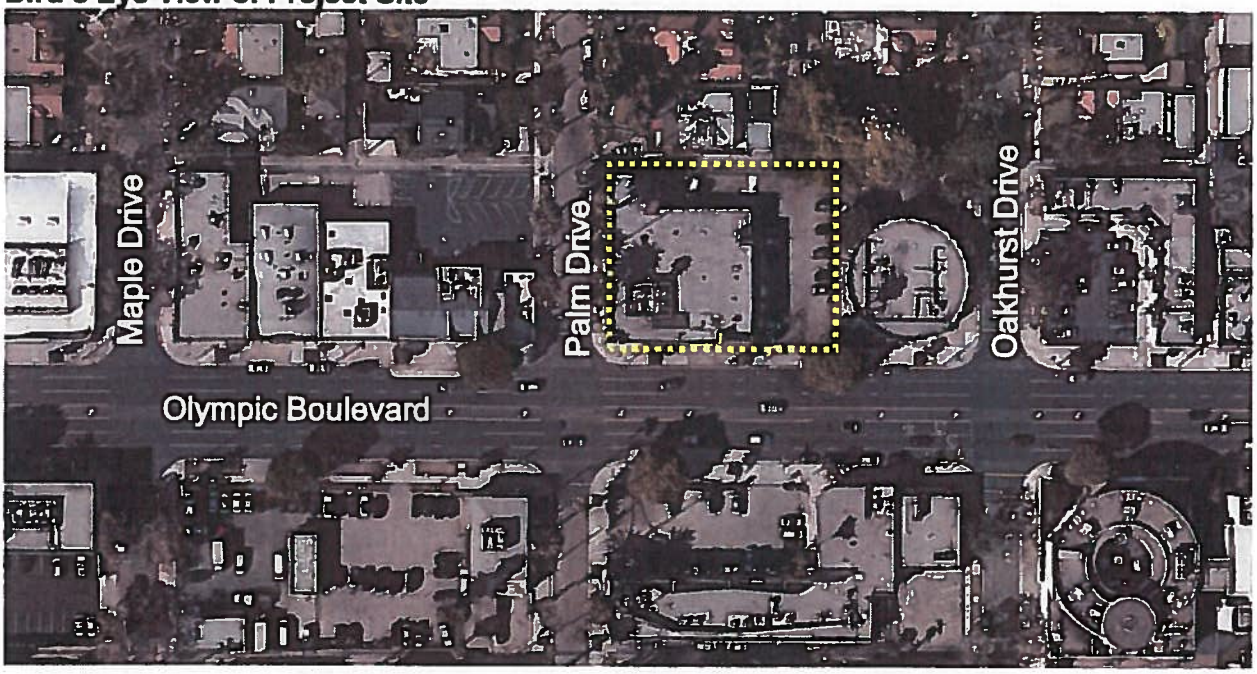
Adjacent Alleys	Two-way, east-west alley at rear (north) of property, 15 feet wide.
Parkways & Sidewalks	Olympic Boulevard – 15' from face of curb to property line

Neighborhood Character

The project site is located along Olympic Boulevard. The neighborhood surrounding the project site consists of a mix of low rise commercial buildings, surface parking lots, multiple family residential buildings and single family homes. The project site consists of one lot located on the north side of the block along Olympic Boulevard between Palm Drive and Oakhurst Drive. To the north of the property site there are single family homes. To the south, east and west are commercially zoned properties.

The existing commercial store is one story (22.5') in height and occupies a site that is approximately 20,400 square feet in size.

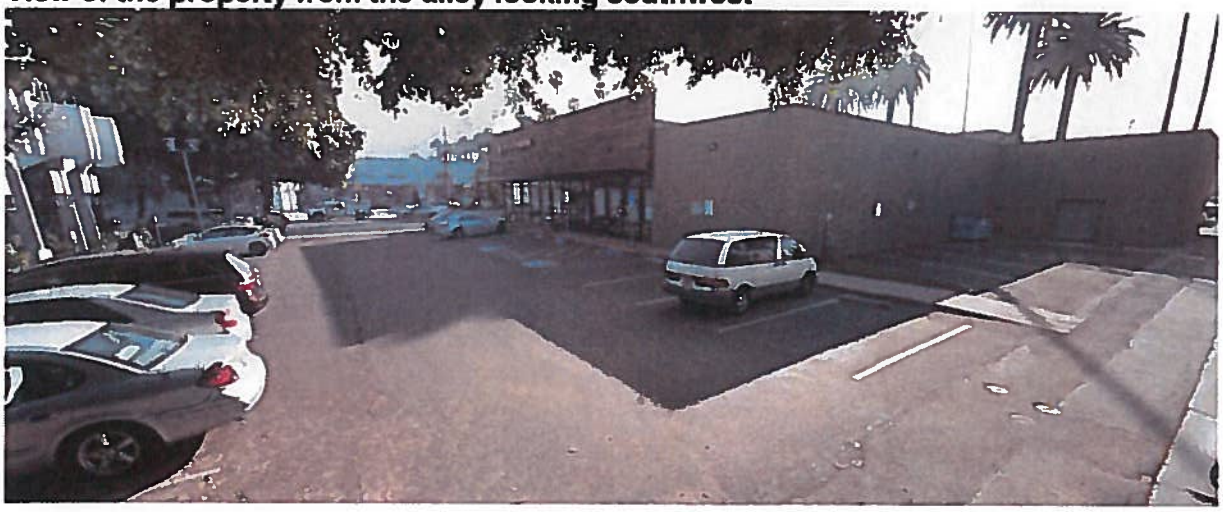
Bird's Eye View of Project Site



Existing Project Site – View of project site from Southern side of Olympic

View of alley to the rear of project site looking east

View of the property from the alley looking southwest



PROJECT DESCRIPTION

Background

Retail establishments with ancillary uses are becoming more popular as businesses strive to create in-store "experiences" for customers. Providing additional services is one method of gaining a competitive advantage over online businesses. The subject application is a good example of this trend as the applicant is seeking to provide an additional service to customers by providing an area for a pet wellness center. Another hypothetical example would be a cookware store seeking to dedicate a small portion of floor area to hold one-on-one or small group cooking demonstrations. Staff has observed that the creation of "experiences" for customers is a trend that is becoming more common in high-end and specialty retail establishments. As retail establishments continue to innovate and develop new ways to compete with online retailers, staff expects the requests for ancillary uses in commercial areas to continue.

Ancillary uses can be described as uses that are secondary to and supportive of a principally permitted use on a site. Often, ancillary uses are defined as[1]:

- Only present in a small portion of the business (such as limited to no more than 20% of the floor area)
- Subordinate to the principally permitted use
- Related to the principally permitted use

Currently, the zoning code explicitly names permitted uses, restricted uses, and conditionally permitted uses in commercial zones. As part of the list of permitted uses, the Code allows for "any similar use," which applies to many uses that would be considered ancillary to most principal permitted uses. However, if a use is not explicitly permitted, restricted, or conditionally permitted, there is no mechanism to approve or deny it as part of a principal use or project. While the "other similar use" category provides staff with some flexibility for considering certain ancillary uses, the phrase is vague and does not specifically address ancillary uses that support permitted uses. There is a need to establish regulations for ancillary uses in the code so requests by business and property owners can be fairly addressed and regulated.

The following examples are types of uses that fall outside of the current categories in the code and would benefit from the ancillary use category:

- Those uses that are not addressed as permitted uses and could not realistically fall into the "similar use" category. For example, a demonstration area in a retail establishment;
- Those uses that would affect the parking requirements of the site if they were larger in size or were the principal use, such as food or beverage service; and,
- Those uses that would otherwise require a Conditional Use Permit if they were the principally permitted use, such as educational uses.

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[1] Staff consulted the zoning codes of West Hollywood, Santa Monica, Palos Verdes Estates, Culver City, and Palo Alto as well as planning literature when researching this topic.

The City of Beverly Hills received an application from an existing business, Pet Food Express, to establish a pet wellness center as an ancillary use to the existing retail operations (the project is described in more detail in the following section). On March 10, 2016 the Planning Commission held a study session at which ancillary uses and a possible zone text amendment were discussed to formalize a process for the approval of such uses. At this meeting the Planning Commission provided comments to staff concerning a text amendment. In general, the Commission was supportive of such a text amendment, and suggested that the ordinance language provide for different tiers of approval for ancillary uses depending on characteristics of the ancillary use.

Pet Food Express
The proposed project consists of the establishment of a "pet wellness center" in the existing Pet Food Express retail store. Pet Food Express is a retail store that sells pet related goods with a total of 7,086 square feet dedicated to retail space. In addition, the store houses an ancillary cat adoption area, which is 283 square feet that was approved through a director's determination letter in 2015. The proposed pet wellness center will replace 285 square feet of what is currently a meeting space. The proposed floor plan is included as Attachment C. The proposed project would not include any changes to the exterior of the building.

According to the applicant, the pet wellness center will provide the following services to customers:

- Vaccinations
- Examination for heartworm and Lyme
- Prescription diets
- Puppy and kitten vaccinations
- Microchip implants
- Provision of health certifications for travel
- Allergy testing
- Toe-nail clipping
- Drop-in health examinations

Any animal in need of care beyond that listed above will be referred to a veterinarian office and will not be treated at the Pet Food Express pet wellness center.

In their application, the applicant has stated that the pet wellness center would not provide any of the following services:

- Emergency or critical care
- Animal surgery
- Overnight stay
- Treatment for injuries that require sedation or tie down
- Diagnostic imaging or radiology
- Radiation treatments
- Oncology treatments
- Ultrasounds
- In house laboratories for testing
- Dentistry

- Spay/neutering services
- Internal medicine
- Behavioral treatments
- Pet boarding

The proposed hours for the Pet Wellness Center will be established on an as needed basis within the existing operating hours of the store. The applicant estimates that approximately three additional employees will be associated with the pet wellness center use and pet care will be provided to walk-in customers only (no appointments). The wellness center space will be located along the rear wall of the store, away from the entry, which is accessed via the parking lot located adjacent to the store.

The existing commercial structure in which the pet wellness center is proposed was constructed in 1973 and has a total floor area of approximately 10,200 square feet. Parking for the subject property is provided in surface parking lot that includes 24 spaces. The building also includes are 12 foot by 35 foot truck loading space. Access to the parking lot is provided from Olympic Boulevard as well as the alley located to the north of the property. The existing business is a retail pet food and pet supply business that is open from 9:30 AM to 8:00 PM Monday through Saturday and 10 AM to 6 PM on Sunday. The peak number of employees on site at one time is five.

REQUESTED ENTITLEMENT

- **Zone Text Amendment:** There are currently no provisions in the Beverly Hills Municipal Code to allow a pet wellness center in an existing retail space. The applicant is requesting a zone text amendment that would allow the pet wellness center as an ancillary use at the subject retail establishment.

GENERAL PLAN CONSISTENCY

The General Plan includes numerous goals and policies intended to help guide development in the City. Some policies relevant to the Planning Commission's review of the project include:

- 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 10.1 Local-Serving Businesses. Promote appropriate development of businesses that serve, are located in proximity to, and are accessible to adjoining residential neighborhoods, such as grocery stores, dry cleaners, and personal care businesses.

- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services, and high paying jobs.

ENVIRONMENTAL ASSESSMENT

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the

environmental regulations of the City. Adoption and implementation of the Ordinance would create a process through which ancillary uses, which are ancillary by their very nature, could be established. Because these uses are ancillary by nature they would not constitute a substantial change and do not constitute a change in land use of any site, the amendments contained in the ordinance would therefore be exempt from CEQA pursuant to Section 15061(b)3 of Title 14 of the California Code of Regulations. It can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment. In addition, adoption of the Amendments will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Amendments represent minor alterations in land use limitations and do not result in any changes in land use or density.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	10 Days	June 13	June 13	10 Days
Newspaper Notice	10 Days	June 13	June 13	10 Days
Mailed Notice (Owners & Occupants - 500' Radius plus block-face)	10 Days	June 13	June 13	10 Days
Property Posting	10 Days	June 13	June 13	10 Days
Agenda on Website	N/A			

Public Comment
As of the writing of this report, staff has not received any comments regarding this project.

ANALYSIS

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. The specific findings that must be made in order to approve the project are provided as Attachment A to this report, and may be used to guide the Planning Commission's deliberation of the subject project.

In reviewing the requested entitlements, the Commission may wish to consider the following information as it relates to the project and required findings:

Zone Text Amendment

The draft ordinance would establish language in the municipal code to allow the City to address requests for ancillary uses in a uniform manner and would also establish a process for application and approval of ancillary uses.

The proposed ordinance would establish a definition for ancillary uses, which would be:

> "ANCILLARY USE: An ancillary use is a secondary use directly associated with and supporting a principally permitted retail or office use. Ancillary uses occupy a minority of the square footage in a business and are subordinate to the principally permitted use. Ancillary uses permitted by § 10-3-1620.2 shall not

include medical uses as defined in Beverly Hills Municipal Code § 10-3-1620.1 or any ancillary uses defined elsewhere in the code."

The draft ordinance establishes a process through which an applicant can request to establish an ancillary use. Per Planning Commission direction, the process is a tiered approach, depending on the size and other characteristics of the proposed ancillary use. The zone text amendment would establish a new section of the BHMC, § 10-3-1620.2 that would outline the regulations pertaining to ancillary uses. Within this section is code language that allows ancillary uses to be established by right if they meet the following criteria:

- Total space dedicated to ancillary uses is less than 20% of floor area or less than 2,000 square feet of the principally permitted business, whichever is smaller, and
- The ancillary use is located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, and
- The ancillary use operates only within the operating hours of the principally permitted business, and
- The ancillary use is associated with and supporting the principally permitted or conditionally permitted land use, and
- The ancillary use is not listed as a prohibited use in the zone in which it is proposed, and
- No floor area is being added to an existing building in order to accommodate the ancillary use.

If a proposed ancillary use did not meet the above conditions, the establishment of the ancillary use would require a Conditional Use Permit. A conditional use permit may be sought for an ancillary use that:

- Exceeds 20% of the total floor area of the business establishment or 2,000 square feet, or
- Is not located in the same fully enclosed business area as the principally permitted use and accessed by the same entrance, or
- Is proposed to operate outside the operating hours of the principally permitted business

Under the proposed ordinance, parking requirements would be the same for the ancillary uses as for the principally permitted use.

Some issues that the planning commission may wish to consider regarding the ancillary use include:

Supporting Businesses: Staff has observed that a number of businesses are interested in establishing ancillary uses in order to provide customers with an enhanced shopping experience and provide additional amenities in order to compete in a competitive retail environment. Allowing ancillary uses that support retail and office uses would allow the businesses in the City to innovate and continue to compete with online retailers.

Establishing clear rules for the fair handling of requests: Establishing regulations that allow for the establishment of appropriate ancillary uses can help staff fairly address each request for ancillary uses and remove ambiguity in the code surrounding the topic. Specifically the existing code language is vague and does not identify criteria for what would be an acceptable ancillary use nor does it establish a process for the establishment of such uses. The proposed zone text amendment establishes criteria for acceptable ancillary uses and a two-tier system for the approval of appropriate uses. Adoption of the amendments would result in a more fair process and would define clear regulations for the establishment and ongoing operation of appropriate ancillary uses. This will help reduce the potential for differences in interpretations of existing code language as it pertains to the establishment of ancillary uses.

Traffic and Parking: The addition of ancillary uses on a site does have the potential to slightly increase the demand for parking and the number of trips to and from a site, depending on the ancillary use. The language in the proposed zone text amendment attempts to place appropriate regulations on ancillary uses to limit potential impacts from such uses. For example, the proposed draft zone text amendment limits the size, operating hours, and type of uses allowed (the use must be subordinate to and related to the principal use at the site). Additionally, the proposed zone text amendment prohibits the addition of floor area for the establishment of an ancillary use. It is the intent that an ancillary use would inhabit existing floor area that was previously used for the principal use on the site, which also minimizes the parking and traffic impacts related to the use.

Alternate code language: Should the Planning Commission find that the regulations proposed in the draft ordinance are too broad the Commission may wish to include a list of preliminarily approved types of ancillary uses that can be established without Planning Commission Review. Such a list could be integrated into the proposed code language and could include any of the following:

- Pet Wellness Center in a retail space
- Pet adoption area in a retail space
- Educational use in a retail space related to the goods being sold on site
- Daycare area for commercial space
- Demonstration area for a retail space

Pet Food Express Project

With the adoption of the zone text amendment, the applicant would be able to establish the proposed pet wellness center at the subject retail location. Issues related to the Pet Food Express Project that the Planning Commission may wish to consider are:

Traffic and Parking: The pet wellness center will occupy less than 300 square feet in the existing commercial building at the site. There are 24 parking spaces in the parking lot for the Pet Food Express businesses. The wellness center will operate on a walk-in basis and would not take appointments. The wellness center could increase the demand for parking at the business due to the new amenity provided; however, it is anticipated that many of the wellness center customers would visit the Wellness Center while they are shopping for goods in the retail portion of the store.

Pet wellness use: The pet wellness center is a use that would support the existing retail space and provide the public with an amenity that is not currently found in the City. The wellness center is located entirely within the existing building, and it is unlikely that there would be noise impacts from animals from the pet wellness center use. The wellness center would be operated by a group that operates similar type centers in other retail locations.

Streetscape and Urban Design: This project would have no impact on the streetscape and urban design of the area, as it will not result in any changes to the existing exterior of the storefront.

CONCLUSION

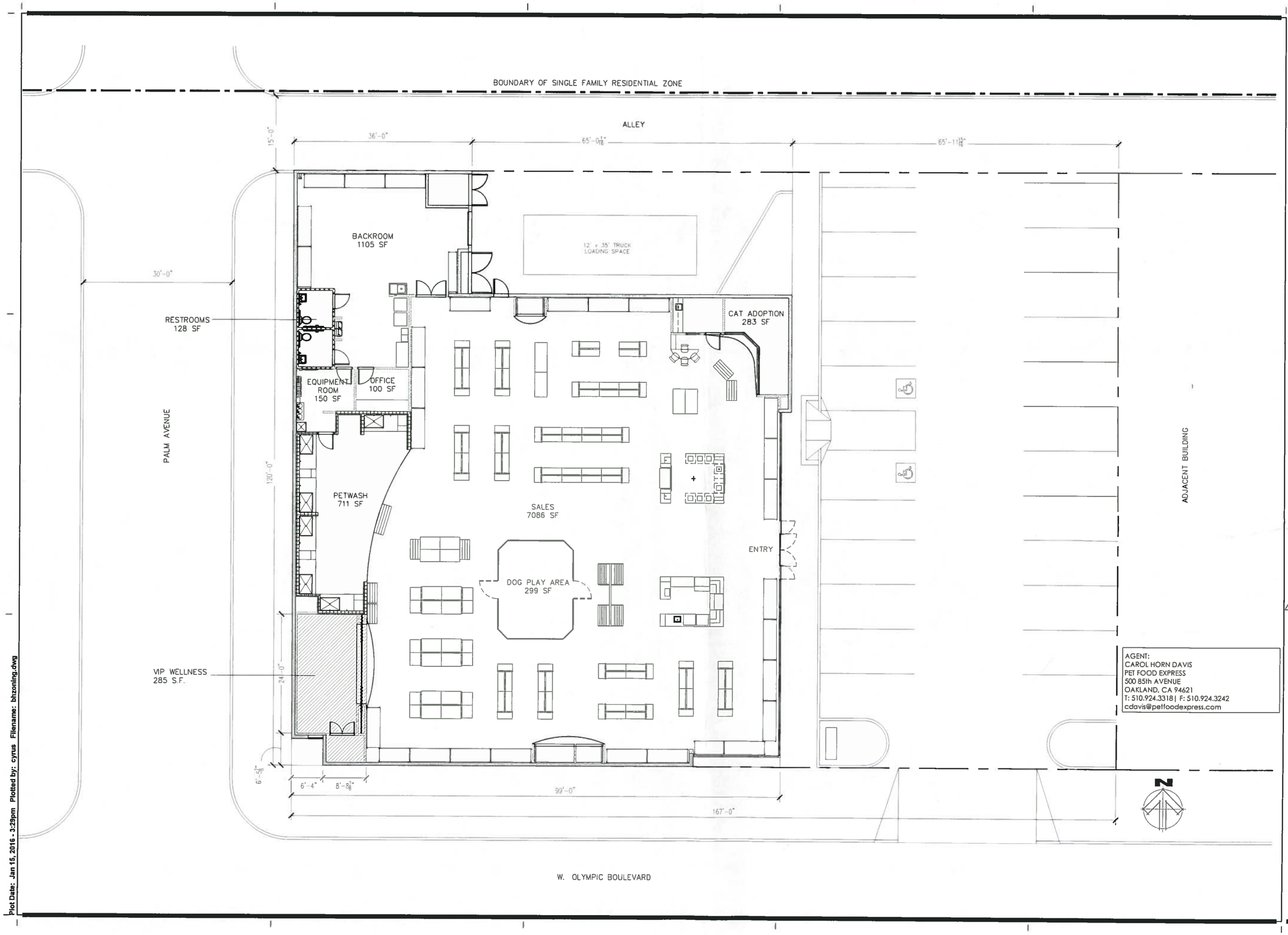
The proposed Zone Text Amendment would allow the establishment of a pet wellness center as an ancillary use to a pet retail establishment located in a building at 9153 Olympic Boulevard. Staff recommends approval of the proposed Zone Text Amendment.

Report Reviewed By:

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

Attachment 4

Proposed Floor Plan



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DATE	ISSUE
12.09.15	PLANNING

SEAL/SIGNATURE

DRAWING DESCRIPTION
FLOOR PLAN

SCALE 1/8" = 1'-0"

Z 2

Plot Date: Jan 15, 2016 - 3:29pm Plotted by: cyrus Filename: bhzoning.dwg