



## AGENDA REPORT

**Meeting Date:** August 3, 2010

**Item Number:** D-1

**To:** Honorable Mayor & City Council

**From:** Susan Healy Keene, AICP, Director of Community Development *SHK*

**Subject:** AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING SECTION 10-3-2868 C. OF THE MUNICIPAL CODE REGARDING THE MAXIMUM SEATING CAPACITY OF RESTAURANTS IN HOTELS LOCATED OUTSIDE THE BUSINESS TRIANGLE.

**Attachments:**

1. Ordinance
2. Planning Commission Resolution No. 1580
3. July 8, 2010 Planning Commission Staff Report
4. Beverly Hills Municipal Code Section 10-3-2868

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### **RECOMMENDATION**

It is recommended that the City Council adopt an ordinance amending Section 10-3-2868 C. of the Municipal Code regarding the maximum seating capacity of restaurants in hotels located outside the Business Triangle.

### **INTRODUCTION**

The City Council is asked to consider an ordinance amending regulations pertaining to the maximum allowed seating capacities of restaurants located in hotels outside the Business Triangle. Current code provisions allow hotels to request, through the Conditional Use Permit process, up to one restaurant seat per hotel guestroom. The proposed amendment would allow hotels located outside the Business Triangle to request, through the Conditional Use Permit process, up to one and one-half (1.5) restaurant seats per guestroom, rather than the current limit of one seat per guestroom. This would allow a 50% increase in restaurant seats over what may currently be requested by hotels operating outside the Business Triangle. There is currently no maximum seating restriction placed on hotels inside the Business Triangle.

The proposed ordinance was initiated in connection with entitlements requested for a property located at 9360 Wilshire Boulevard (The Thompson Hotel) to allow for modifications to the hotel's restaurant and rooftop operations. The requests reviewed by the Planning Commission included increased rooftop capacity, increased restaurant capacity, and increased operating hours for the rooftop. Consequently, the applicant concurrently filed a request for the subject Zone Text Amendment in order to accommodate the increased restaurant capacities. A complete project description and analysis is outlined in the attached Planning Commission staff report, which is provided for reference as Attachment 3.

At its June 10, 2010 and July 8, 2010 meetings, the Planning Commission discussed the proposed Zone Text Amendment and associated entitlements and unanimously adopted a resolution recommending adoption of the Zone Text Amendment, as well as a resolution conditionally approving all other requested entitlements. However, the portions of the entitlements related to restaurant expansion are contingent upon approval of the Zone Text Amendment by the City Council, and will not come into effect until the ordinance amending restaurant seating capacities takes effect.

### **ZONE TEXT AMENDMENT**

The recommended Zone Text Amendment would modify Code Section 10-3-2868 C. (Regulations and Restrictions Applicable) of the Municipal Code, which regulates the development of hotels located outside the Business Triangle. The amendment would allow hotels located outside the Business Triangle to request up to one and one-half (1.5) restaurant seats per guestroom, rather than the current maximum of one restaurant seat per guestroom. Current code provisions require that any expansion of restaurant space within a hotel is subject to review pursuant to the Conditional Use Permit process, and the following finding would need to be made in reviewing any such request for restaurant expansion:

1. The proposed location of any such use will not be detrimental to adjacent property or to the public welfare.

In reviewing the Zone Text Amendment, the Planning Commission took into consideration the cumulative dining operations that currently take place in hotels outside the Business Triangle, as well as the fact that any such restaurant expansion must be reviewed pursuant to the Conditional Use Permit process. Because restaurant expansion within hotels is restricted by the Conditional Use Permit process, the Planning Commission determined that increasing the number of restaurant seats that may be requested by hotels would not serve as a carte blanche approval for increased dining areas, but would instead provide hotel operators with an entitlement process to request additional seating and demonstrate the merits of each application on a case-by-case basis.

The specific language and required findings set forth in the recommended Amendment are provided in the attached ordinance (Attachment 1).

### **ANALYSIS**

The recommended Zone Text Amendment is intended to serve hotels located outside the Business Triangle. Restaurants in hotels located outside the Business Triangle are limited in seating capacity so that the number of restaurant seats may not exceed the number of rooms

within the hotel. This restriction does not allow for the flexibility often desired by hotels, and may limit a hotel's ability to compete with hotels located outside the City of Beverly Hills. An increase in the amount of seating capacity that may be requested by hotels located outside the Business Triangle will serve to provide added flexibility and may allow for improved competitiveness.

With this amendment hotels may not expand restaurant seating capacity without the approval of a Conditional Use Permit. This Amendment provides an entitlement process (in the form of a Conditional Use Permit) by which additional seating could be requested. Each application would be reviewed on a case-by-case basis and the finding would need to be made by the reviewing authority based on the merits of each application. Because the amendment allows for added flexibility and competitiveness of hotels outside the Business Triangle, and provides for discretionary review of all restaurant expansions on a case-by-case basis, the amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

### **ENVIRONMENTAL DETERMINATION**

The Amendment has been reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA guidelines. Pursuant to the State CEQA Guidelines Section 15305, minor alterations in land use limitations, the Amendment qualifies for a Class 5 Categorical Exemption, and is not anticipated to have a significant environmental impact. The Class 5 exemption is applicable because the changes in land use limitations would result in minor modifications to the amount of restaurant seating capacity that could be provided within hotels, and would apply in the City's commercial areas where slopes are less than 20%. Further, any increase in restaurant space within hotels is subject to discretionary review and analysis on a case-by-case basis, pursuant to the issuance of a Conditional Use Permit.

### **FISCAL IMPACT**

No fiscal impact to the City is anticipated from a Council decision in this matter.

### **PUBLIC NOTICE**

A public hearing notice was mailed on July 23, 2010 to all property owners and residential occupants within a 300-foot radius of the subject property. Additionally, notice was published in the Beverly Hills Courier and the Beverly Hills Weekly, two newspapers of local circulation.

**RECOMMENDED ACTION**

It is recommended that the City Council introduce the ordinance amending Section 10-3-2868 C. of the Municipal Code regarding regulations applicable to the seating capacities of restaurants located in hotels outside the Business Triangle.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By \_\_\_\_\_

**ATTACHMENT 1**  
**Ordinance**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING SECTION 10-3-2868 C. OF THE MUNICIPAL  
CODE REGARDING THE MAXIMUM SEATING CAPACITY  
OF RESTAURANTS IN HOTELS LOCATED OUTSIDE THE  
BUSINESS TRIANGLE.

WHEREAS, on June 10, 2010 and July 8, 2010, the Planning Commission conducted a duly noticed public hearing to consider a proposed amendment to the maximum restaurant seating capacity of restaurants in hotels located outside the Business Triangle as set forth in the Beverly Hills Municipal Code and recommended that the City Council approve the proposed amendment.

WHEREAS, on August 3, 2010, the City Council conducted a duly noticed public hearing to consider proposed amendments to the maximum restaurant seating capacity of restaurants in hotels located outside the Business Triangle and introduced the Ordinance.

WHEREAS, the City Council hereby finds and concludes that the Amendment has 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"), and the City's environmental guidelines, and a Class 5 Categorical Exemption has been issued in accordance with the requirements of Section 15305 of the Guidelines to allow minor alterations in land use limitations. The Class 5 exemption is applicable because the changes in land use limitations would result in minor modifications to the amount of restaurant seating capacity that could be provided within hotels,

and would apply in the City's commercial areas where slopes are less than 20%. Further, any increase in restaurant space within hotels is subject to discretionary review and analysis on a case-by-case basis, pursuant to the issuance of a Conditional Use Permit.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BEVERLY HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Subsection C of Section 10-3-2868 (REGULATIONS AND RESTRICTIONS APPLICABLE) of Article 28.6 (HOTEL REGULATIONS) of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows, with all other subsections of Section 10-3-2868 remaining unchanged:

“C. Hotels developed outside of that triangular area bounded by Wilshire Boulevard, South Santa Monica Boulevard, and the alley between Crescent Drive and Cañon Drive shall be restricted as follows:

1. Public assembly areas shall be prohibited.
2. The maximum capacity of any separate public meeting room shall not exceed one-third (1/3) of the number of guestrooms in the hotel.
3. The aggregate maximum capacity of all restaurants shall not exceed one and one-half (1.5) times the number of guestrooms in the hotel.
4. The maximum number of floors shall not exceed four (4) provided the height limitation set forth in subsection 10-3-2726A of this chapter is maintained.”

Section 2. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 3. 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 4. 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:

\_\_\_\_\_  
JIMMY DELSHAD  
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:

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager  
  
\_\_\_\_\_  
SUSAN HEALY KEENE  
Director of Community Development

# **ATTACHMENT 2**

## **Planning Commission Resolution**

RESOLUTION NO. 1580

A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF BEVERLY HILLS  
RECOMMENDING ADOPTION OF AN ORDINANCE  
OF THE CITY OF BEVERLY HILLS AMENDING  
RESTAURANT SEATING REGULATIONS  
APPLICABLE TO HOTELS LOCATED OUTSIDE THE  
BUSINESS TRIANGLE.

WHEREAS, the Planning Commission has considered the proposed amendment 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 10, 2010 and July 8, 2010, at which times it received oral and documentary evidence relative to the proposed Amendments; and

WHEREAS, the Planning Commission finds that the proposed Amendment is required for the public health, safety, and general welfare, and that such Amendment is 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 Amendment has 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"), and the City's environmental guidelines, and a Class 5 Categorical Exemption has been issued in accordance with the requirements of Section 15305 of the Guidelines to allow minor alterations in land use limitations. The Class 5 exemption is applicable because the changes in land use limitations would result in minor modifications to the amount of restaurant seating capacity that could be provided within hotels. Further, any increase in restaurant space within hotels is subject to discretionary review and analysis on a case-by-case basis, pursuant to the issuance of a Conditional Use Permit.

Section 2. The Planning Commission does hereby find that the proposed Zone Text Amendment is intended to serve hotels located Outside the Business Triangle. Restaurants in hotels located outside the Business Triangle are limited in seating capacity so that the number of restaurant seats may not exceed the number of rooms within the hotel. This restriction does not allow for the flexibility often required by hotels, and may limit a hotel's ability to compete with hotels located outside the City of Beverly Hills. An increase in the amount of seating capacity that may be requested by hotels located outside the Business Triangle will serve to provide added flexibility, and may allow for improved competitiveness.

Hotels may not expand restaurant seating capacity without the approval of a Conditional Use Permit. This Amendment is not a carte blanche approval for hotels to increase restaurant capacities, and instead provides for an entitlement process (in the form of a Conditional Use Permit) by which additional seating could be requested. Each application would be reviewed on a case-by-case basis and findings would need to be made by the reviewing authority based on the merits of each application. Because the amendment allows for added flexibility and competitiveness of hotels outside the Business Triangle, and provides for

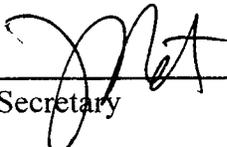
discretionary review of all restaurant expansions on a case-by-case basis, the amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

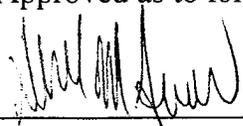
Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

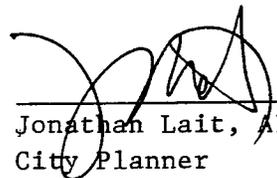
Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **JULY 8, 2010**

  
\_\_\_\_\_  
Lili Bosse  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:  
  
\_\_\_\_\_  
Secretary

Approved as to form:  
  
\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

Approved as to content:  
  
\_\_\_\_\_  
Jonathan Lait, AICP  
City Planner

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )     SS.  
CITY OF BEVERLY HILLS         )

I, JONATHAN LAIT, 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. 1580 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on July 8, 2010, 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 Cole, Corman, Furie, Vice Chair Yukelson, and Chair Bosse.
- NOES:           None.
- ABSTAIN:       None.
- ABSENT:        None.

  
\_\_\_\_\_  
JONATHAN LAIT, AICP  
Secretary of the Planning Commission /  
City Planner  
City of Beverly Hills, California

# **ATTACHMENT 3**

**July 8, 2010 Planning Commission Staff Report**



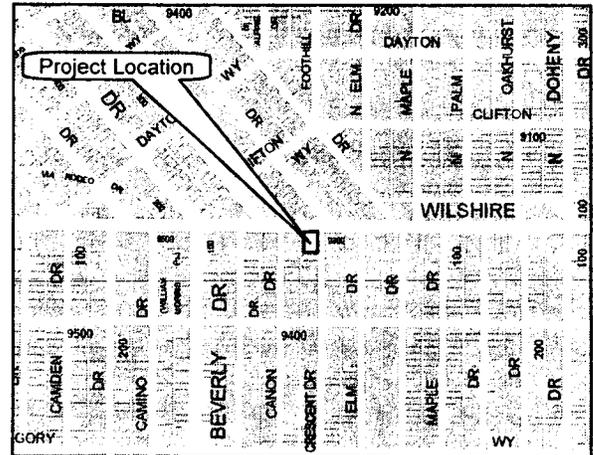
STAFF REPORT  
CITY OF BEVERLY HILLS

For the Planning Commission  
Meeting of July 8, 2010

TO: Planning Commission

FROM: Ryan Gohlich,  
Associate Planner

THROUGH: David Reyes   
Acting City Planner



**SUBJECT:** A request for a Zone Text Amendment to Section 10-3-2868 of the Beverly Hills Municipal Code regarding the seating capacity of restaurants in hotels outside the Business Triangle, a request to renew and modify a Conditional Use Permit that restricts hotel operations, a request to renew a Development Plan Review permit that allows outdoor dining and a rooftop gymnasium, a request for an Extended Hours Permit to extend the permissible hours of rooftop uses, and modification of an existing variance for the property located at **9360 Wilshire Boulevard**.

**RECOMMENDATION**

It is recommended that the Planning Commission adopt the attached resolutions recommending City Council approval of the proposed Zone Text Amendment and conditional approval the requests for Conditional Use Permit, Development Plan Review permit, Extended Hours Permit and Variance.

**SUMMARY**

This application to modify hotel restaurant and rooftop operations was previously reviewed by the Commission at its June 10, 2010 meeting. At that meeting the Commission conditionally approved the requested entitlements, and directed staff to prepare resolutions memorializing this action. The attached resolutions incorporate the additional conditions of approval requested by the Commission, and the June 10, 2010 staff report is attached for reference.

Planning Commission Staff Report  
9360 Wilshire Boulevard  
July 8, 2010



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Ryan Gohlich  
Associate Planner

Attachments:

1. Draft Resolution Recommending Adoption of Zone Text Amendment
2. Draft Resolution Approving Entitlements
3. June 10, 2010 Staff Report

***ATTACHMENT 3***

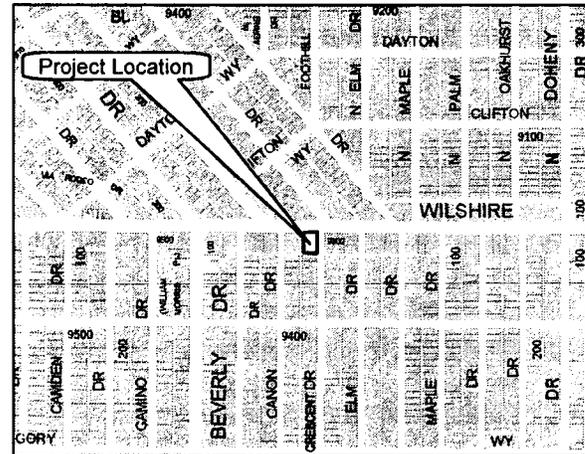
***June 10, 2010 Staff Report***



STAFF REPORT  
CITY OF BEVERLY HILLS

For the Planning Commission  
Meeting of June 10, 2010

**TO:** Planning Commission  
**FROM:** Ryan Gohlich,  
Associate Planner  
**THROUGH:** Jonathan Lait, AICP,  
City Planner



**SUBJECT:** A request for a Zone Text Amendment to Sections 10-3-2868 of the Beverly Hills Municipal Code regarding the seating capacity of restaurants in hotels outside the Business Triangle, a request to renew and modify a Conditional Use Permit that restricts hotel operations, a request to renew a Development Plan Review permit that allows outdoor dining and a rooftop gymnasium, a request for an Extended Hours Permit to extend the permissible hours of rooftop uses, and modification of an existing variance for the property located at **9360 Wilshire Boulevard**.

**RECOMMENDATION**

It is recommended that the Planning Commission direct staff to prepare a resolution recommending City Council approval of the proposed Zone Text Amendment and a resolution approving the requests for Conditional Use Permit, Development Plan Review permit, and Variance, but denying the request for Extended Hours Permit and increased rooftop occupancy.

**EXECUTIVE SUMMARY**

The applicant requests renewal of all existing entitlements and approval to expand upon and modify hotel dining and rooftop operations. The proposal includes added outdoor dining along Wilshire Boulevard (36 additional seats), added indoor dining at the first floor and mezzanine levels of the hotel (26 additional seats), increased rooftop occupancy from 92 persons to 195 persons, expanded rooftop hours from 1:00 AM to 2:00 AM, and a new stove within an existing rooftop food preparation room. These operational changes result in the need for a Zone Text Amendment, a Conditional Use Permit, an Extended Hours Permit, and modification of a previously issued Variance.

<b>GENERAL INFORMATION</b>	
<b>Applicant</b>	Mitch Dawson
<b>Project Owner</b>	Beverly Pavillion, LLC
<b>Zoning District</b>	C-3
<b>Permit Streamlining Act Deadline</b>	Not applicable to legislative actions

### **BACKGROUND**

The subject property was developed in the early 1960s, and although ownership has changed several times over the years, the property has always been used as a hotel. Development of the property was approved by the City Council pursuant to the issuance of a variance (Attachment 4) for increased height and floor area, and this development included a restaurant and rooftop pool. A condition of the variance limits the maximum floor area of restaurant and bar area to 1,500 square feet. In 2006 a Conditional Use Permit and Development Plan Review permit was granted by the Planning Commission (Resolution No. 1418, Attachment 3) to allow expanded rooftop uses including a larger pool deck, a bar/lounge area, a rooftop gymnasium, and a rooftop food preparation room. As a condition of approval, and to prevent detriment to the surrounding residential properties, rooftop occupancy was limited to 92 persons (excluding hotel staff) and rooftop hours were limited to 1:00 AM.

The work associated with these entitlements has been completed and is fully operational. However, a condition of approval imposed by the Planning Commission in 2006 called for the Conditional Use Permit and Development Plan Review permit to expire one year after the original issuance, unless a renewal was applied for and granted. The purpose for the one-year expiration was to provide the Commission with an opportunity to re-review the entitlements and make any modifications that might be needed in order to ensure that the project would function as the Commission had originally intended. The one-year expiration has since passed, and renewal of the entitlements must be granted in order for the hotel to continue current rooftop and outdoor dining operations. Because the applicant has submitted the subject application and renewal request, no action has been taken by the City to terminate the rooftop uses.

### **SITE CONDITIONS**

The subject site is located on the south side of Wilshire Boulevard, immediately outside the Business Triangle, in the City's C-3 commercial zone. The site area consists of 16,440 square feet, and is currently developed with an eight-story hotel (three levels are used for vehicle parking) that is approved for up to 114 guestrooms. The site is

surrounded by commercial properties along Wilshire Boulevard, and multi-family residential properties are located immediately north and south of Wilshire Boulevard. The multi-family residential properties typically vary between three and four stories in height, and are generally separated from the commercial uses along Wilshire Boulevard by a 15-20 foot alley.

**PROJECT DESCRIPTION**

As proposed, the project would renew the hotel's existing entitlements, allow additional dining areas, allow direct entry/access to the restaurant from Wilshire Boulevard, allow increased rooftop occupancy, allow increased hours of operation at the rooftop, and allow modification of an existing rooftop food preparation room so that a stove may be provided. The table below outlines the existing conditions and proposed changes within the hotel as they relate to the project.

<b>Zoning Information</b>		
	<b>Existing</b>	<b>Proposed</b>
<b>Use</b>	Commercial - Hotel	No Change
<b>Guestrooms</b>	114	No Change
<b>Height</b>	100 Feet (per 1961 variance)	No Change
<b>Parking</b>	118 spaces required	131 on-site and 250 off-site
<b>Rooftop Hours</b>	5:00 AM - 1:00 AM	5:00 AM - 2:00 AM
<b>Rooftop Occupancy</b>	92 persons	195 persons
<b>Restaurant and Bar Floor Area</b>	1,500 square feet (per original variance)	2,007 square feet
<b>Restaurant Seats</b>	102	156
<b>Outdoor Dining [no rooftop]</b>	500 square feet	926 square feet

**DISCUSSION**

The applicant seeks to renew and modify the approvals granted by the Planning Commission in 2006, which allowed for outdoor dining on private property and rooftop uses. There are three components associated with this project: 1) Renewal of existing entitlements; 2) Expansion and modification to existing dining and bar areas; and 3) Expansion and modification to the existing rooftop use. Each of these components is further discussed below.

***RENEWAL OF EXISTING ENTITLEMENTS***

In approving the outdoor dining and the rooftop uses in 2006, the Planning Commission required a yearly renewal. Specifically, Condition No. 11 of Planning Commission Resolution No. 1418 (Page 14 of Attachment 3) states that:

*...the City may extend the permits for additional one-year terms if the reviewing authority determines that the open air dining and the rooftop uses are operating in a manner substantially the same as described to the Planning Commission and*

*approved by the Planning Commission, are abiding by the conditions imposed by the Planning Commission, and are not creating an adverse impact on the surrounding area.*

Staff has reviewed the administrative record, conducted a site visit, and analyzed the previous approval and has determined that the open air dining and rooftop uses have been established consistent with the project previously approved by the Planning Commission. With respect to the outdoor dining, the exterior walls facing Wilshire Boulevard have been set back from the front façade approximately 12 feet and, although no restaurant is currently conducting outdoor dining within the approved area, it was previously maintained by Bond Street Restaurant and consisted of eight tables and 32 chairs, consistent with the approved project. The rooftop was approved to allow the establishment of a 1,817 square foot addition to the lower roof area comprised of a gym, men's and women's restroom facilities, and a service/prep room, a 2,000 square foot extension of the pool deck area and two trellis structures. The service/prep room was established to support the bar grill located at the northern portion of the lower roof. A site visit by staff on March 23, 2010 confirmed that these components have been established in accordance with the approved plans. Additionally, signage has been installed on the rooftop indicating a maximum capacity of 92 persons on the rooftop, as required.

In addition to regulating the size and location of these improvements, the Planning Commission imposed conditions of approval regarding the operational aspects of the outdoor dining and rooftop uses to protect the adjacent neighborhood. Staff has reviewed applicable Code Enforcement files and Police Department records regarding complaints involving the Thompson Hotel. A total of 38 complaints associated with the property (36 calls to the Police Department and 2 Code Enforcement cases) have been documented over the past two years. For comparison purposes, staff researched noise complaints at two similarly-sized hotels outside the Business Triangle (one with rooftop uses and one without) and discovered that each hotel had received two complaints or less over the past two years. The complaints from the Thompson are generally associated with loud music, parties or noise, and have predominantly been reported by properties within 200 feet of the hotel. No citations were issued in connection with these complaints, and 25 of the 36 calls to Police resulted corrective action being needed. There are currently no open code enforcement cases. The applicant has indicated that the manager/operator of the rooftop area for which these complaints were generated has been replaced as of mid 2009.

#### **DINING AND BAR AREA**

Indoor Expansion: The applicant seeks to increase the existing dining and bar area, both within the hotel and within the public right-of-way. The hotel is currently operating the restaurant/food service aspects of the operation since the departure of Bond Street and is seeking to establish a new restaurant operator. The existing approved indoor dining and bar area is 1,245 square feet. The project would add 762 square feet of indoor dining and bar area for a total of 2,007 square feet. As proposed, the existing

indoor seating capacity would be increased from 70 to 88 persons. The added area is primarily the result of existing, unpermitted dining and bar area located within the mezzanine level that totals approximately 762 square feet. It is unknown when this dining area was established, but it was not identified in the administrative record of the 2006 Planning Commission approval for the hotel. In addition to the proposed expansion of restaurant seating area, the proposal includes a new entrance on Wilshire Boulevard that would provide direct access to the restaurant.

Outdoor Expansion: A section of the Wilshire Boulevard frontage of the hotel has been setback 12-feet to create an outdoor patio area that is approved for up to 8 tables and 32 chairs. The proposed project would add a 426 square foot outdoor dining area within the public right-of way adjacent to the existing patio area with 11 tables and 36 chairs.

The amount of dining and bar area that the Thompson Hotel can provide is limited by the City's hotel regulations and the original variance which permitted the hotel's establishment. Current code provisions limit restaurant seating within hotels outside the Business Triangle to a capacity of not more than one seat per guestroom, which in this case, is 114 seats (the hotel's current configuration provides a total of 102 indoor and outdoor seats). Additionally, the 1961 Variance limited the amount of dining and bar floor area in the hotel to 1,500 square feet. As described below, the applicant requests approval of a Zone Text Amendment, an amendment to existing variance and modification of the existing Conditional Use Permit to allow the proposed restaurant expansion direct access to the restaurant.

## **ANALYSIS**

### *RENEWAL OF EXISTING ENTITLEMENTS*

The Thompson Hotel is required to seek Planning Commission approval for an annual renewal of its previously approved outdoor dining and rooftop uses to ensure they are operating according to approved plans without adversely affecting the surrounding area. The outdoor dining and rooftop areas have been established consistent with the approved plans and staff has not identified any code enforcement issues or complaints associated with the rooftop gym or the outdoor dining area and does not believe that renewal of these aspects of the hotel's operations are impacting the surrounding area.

Conversely, the rooftop operations have resulted in numerous complaints to the Police Department. These complaints have not resulted in citations, as it has generally been the City's policy to verbally alert hotel staff to the issue, and if compliance is achieved the case is closed. The Planning Commission's previous approval contained specific conditions related to the rooftop use to offset potential impacts to the surrounding area, including:

- Limiting rooftop occupancy;

- Prohibiting Live entertainment;
- Limiting the noise level of pre-recorded (DJ) music to not be audible beyond the hotel's property lines;
- Restricting the hours of operation of rooftop uses; and
- Reduced parking rates for non-hotel rooftop guests.

The number of complaints received over the past two years shows that the rooftop use may be disproportionately impacting nearby residents adjacent to this hotel as compared to other similar hotel operations. Further, it suggests that existing conditions of approval may not be adequate. In order to address noise issues, the applicant has indicated that manager/operator of the rooftop area has been dismissed. The applicant also directed the preparation of a noise study regarding rooftop uses and proposes the following additional conditions be added to the renewed entitlement:

1. All speakers located on the rooftop areas shall be installed at the base of the perimeter wall around the deck areas. Further, no speakers shall be permitted to be installed on the rooftop cabana and trellis structures.
2. Volume controls for the sound system shall be fitted with a locked cover to prevent tampering with the volume levels. Additionally, only hotel management shall be provided with access to the volume controls.

Establishing a new operator that understands the rooftop's potential for impacts to the adjacent neighbors along with the above conditions is anticipated to address noise impacts from rooftop activity. However, staff recommends that continuance of the existing rooftop use be extended for a 6 month period, subject to all previous conditions of approval, as well as the following new conditions, which are in addition to the recommendations of the applicant's noise consultant:

- All speakers within the premises shall be located in such a manner so as to direct all sound towards patrons and otherwise prevent the possibility of sound being plainly audible beyond the property line. Further, the sound levels shall be balanced with an equalizer that will allow for the attenuation of bass frequencies to limit noise from escaping beyond the perimeter walls.
- The applicant shall set up an initial sound demonstration for review by City staff once all modifications to the sound system have occurred to demonstrate compliance with all conditions of approval.
- The applicant shall mail or otherwise distribute Thompson Hotel management contact information to all property owners and residential occupants within 500 feet of the establishment, along with 24-hour contact information for dedicated security personnel.

- There shall be no dancing allowed on the rooftop area at any time, as dancing constitutes a “nightclub” under the City’s codes, and nightclubs are not permitted to operate outside the Business Triangle.
- The applicant shall submit a new application and the Planning Commission shall hold a hearing 6 months from the implementation of the above conditions to ensure that the use is not adversely impacting the surrounding area.

### *DINING AND BAR AREAS*

The applicant’s request to expand the indoor and outdoor dining areas of the hotel is not anticipated to result in impacts to the surrounding area. The project would add 762 square feet of indoor dining and bar area and increase the number of available seats from 70 to 88 persons. Outdoors, the proposal includes a 462 square foot area with capacity for up to 36 seats in addition to the 32 seats currently provided. Approval of this request would therefore result in a total of 156 indoor/outdoor seats.

Existing conditions of approval related to the hotel restaurant require valet parking at all times, reduced parking rates for non-hotel patrons, restrict entry along Crescent Drive for emergency use only and require that all vehicles exit the site onto Wilshire Boulevard after midnight. Staff further recommends that the hotel explore options for valet service along Wilshire Boulevard during dinner hours and that access onto Crescent Drive be further restricted beginning at 10:00 PM versus midnight. The hotel provides adequate parking for the proposed expansion and existing and proposed conditions of approval related to the restaurant use are anticipated to mitigate potential adverse impacts to the surrounding properties.

Dedicated Entrance from Wilshire: The hotel was previously prohibited from having direct access to the restaurant from Wilshire Boulevard. This restriction was in place because the restaurant use was previously considered to be appurtenant to the hotel use. Providing direct access to the restaurant from Wilshire Boulevard, as requested by the applicant, causes the restaurant use to no longer be considered as appurtenant and triggers a need for additional parking. As identified below, sufficient parking is provided both on- and off-site in order to accommodate the request for direct access to the restaurant from Wilshire Boulevard. Further, the valet parking operation, as well as existing parking restrictions on the surrounding residential streets, will prevent the restaurant from causing a parking impact.

Zone Text Amendment: The City’s hotel regulations limit the seating capacity of restaurants in hotels outside the Business Triangle to not more than one seat per guestroom. The applicant suggests that this provision restricts hotels located outside the Business Triangle and prevents them from being competitive with hotels inside the Business Triangle. The proposed amendment would modify the seating limitations to allow one and one-half (1.5) seats per guestroom.

The proposed amendment would modify Section 10-3-2868 C.3 as follows:

3. *The aggregate maximum capacity of all restaurants shall not exceed one and one-half (1.5) times the number of guestrooms in the hotel.*

This amendment would apply to all hotels located outside the Business Triangle (11 hotels exist today), and could potentially allow for a 50% increase in restaurant capacity beyond what could be permitted under the current code. The City's historic records are unclear as to how the current seating capacity limitations were arrived at, but the records that are available suggest that the limitation has to do with limiting special events and banquet facilities, which often generate concentrated impacts beyond what might be experienced during day-to-day hotel operations.

Staff has been unable to determine whether the current seating restrictions prevent hotels outside the Business Triangle from being competitive with hotels inside the Business Triangle as suggested by the applicant (Attachment 1). The table below identifies all hotels located outside the Business Triangle and provides information on each hotel's restaurant seating to guestrooms ratio. The data suggests (but is not conclusive) that hotels outside the Business Triangle generally do not require additional restaurant seating to be competitive, as the majority of hotels are not operating at the maximum capacities permitted under the current code; however, it is not unreasonable to assume that the individual needs of each hotel can vary significantly, and that there may also be a need to compete with hotels outside Beverly Hills.

<b>Hotels Outside the Business Triangle</b>				
<b>Name</b>	<b>Address</b>	<b>Rooms</b>	<b>Existing Restaurant Seating*</b>	<b>Restaurant Seating to Rooms Ratio</b>
Avalon Beverly Hills	9400 Olympic Blvd.	84	150	1.79 : 1
Beverly Hills Hotel	9641 Sunset Blvd.	204	160	0.78 : 1
Beverly Hilton	9876 Wilshire Blvd.	558	365	0.65 : 1
Beverly Terrace Hotel	469 N. Doheny Dr.	39	120	3.08 : 1
Beverly Wilshire Hotel	9500 Wilshire Blvd.	385	240	0.62 : 1
L'Ermitage	9291 Burton Way	117	60	0.51 : 1
Maison 140	140 Lasky Dr.	43	0	N/A
Mosaic Hotel	125 Spalding Dr.	49	45	0.92 : 1
Peninsula Beverly Hills	9882 S. Santa Monica Blvd.	212	190	0.90 : 1
Reeves Hotel	120 S. Reeves Dr.	32	Under Renovation	N/A
Thompson Hotel	9360 Wilshire Blvd.	114	102	0.90 : 1

\* The numbers displayed for existing restaurant seating are based solely on information obtained directly from the individual restaurant/hotel operators, and may or may not accurately reflect past entitlements or approvals.

Such an amendment would not serve as a carte blanche approval for expanded restaurant capacities throughout the City because any such expansion would be subject to a Conditional Use Permit reviewed by the Planning Commission on a case-by-case basis.

The amendment would provide for added flexibility and allow for operational changes to take place as markets change with time. Further, anytime restaurant space is added to a hotel, the space must be assessed to determine if it is appurtenant to the hotel or if it is primarily intended for use by the general public. Restaurant space that is intended for use by the general public is required to provide additional parking, and this requirement prevents hotels from expanding restaurant areas without providing adequate, code-complying parking. In the case of the subject property, additional parking is required and provided for the expanded areas.

Parking: The increase of the interior restaurant, bar and lounge area to 2,007 square feet represents a 507 square foot increase over what existing approvals otherwise allow for. The increase requires 11 additional parking spaces beyond the existing parking required for the hotel. The current hotel configuration requires 118 parking spaces, while 131 parking spaces are provided on-site, resulting in a surplus of 13 spaces. This surplus allows the hotel to accommodate the added requirement of 11 spaces for the new restaurant, bar and lounge areas in order to be in compliance with current code requirements.

In addition to the request to allow increased interior restaurant spaces, the applicant has proposed 426 square feet of outdoor dining area with the right-of-way adjacent to the existing patio dining. Section 10-3-3510<sup>1</sup> of the Beverly Hills Municipal Code allows for the reviewing authority to modify parking requirements for outdoor dining and bar uses if the reviewing authority determines that parking demand will be satisfied by other means. The applicant has submitted a lease agreement (Attachment 5) between the hotel and the owners of 100 North Crescent Drive (immediately across Wilshire Boulevard from the subject property). The lease agreement provides the hotel with 250 off-site parking spaces that are available daily from 6:00 PM to 2:00 AM, which would be sufficient to accommodate the 10 parking spaces required for the proposed outdoor dining area. The hotel's existing rooftop and restaurant operations have not resulted in any identified parking impacts. Because restaurant and rooftop activities associated with the hotel predominantly occur during evening hours, the proposed increase in dining capacity is not anticipated to result in any parking impacts during daytime operations.

A parking demand analysis has also been prepared by the applicant to assess the parking demand (versus code requirement) associated with all uses of the hotel,

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<sup>1</sup> BHMC §10-3-3510: "... upon application to the planning and community development department, an applicant may request that the reviewing authority establish different parking requirements for that area used for open air dining. The reviewing authority may establish parking requirements different than those parking requirements contained in section 10-3-2730 of this chapter if the reviewing ... determines that parking demand will be met by means other than those means specified in section 10-3-2730 of this chapter.

including the increased restaurant and rooftop occupancies (Attachment 6). Staff has reviewed the parking study and supports its conclusions. The parking analysis concludes that a maximum parking demand of 251 parking spaces would be needed to accommodate all proposed operations and a combined total of 381 on- and off-site parking spaces are available. This results in a parking supply that exceeds estimated parking demand by approximately 52%. Further, on-street parking is prohibited on the east side of South Crescent Drive, and a one-hour parking limit is enforced on the west side of South Crescent Drive, which prevents hotel patrons from parking in the residential neighborhood. Therefore, adequate parking for the increased bar and dining areas is provided by the hotel.

Variance: The hotel was originally approved in 1961 pursuant to a Variance issued by the City Council to allow increased height and floor area for the structure. One of the conditions of approval restricted the combined floor area of restaurant and bar areas to 1,500 square feet. The applicant proposes that this condition be stricken from the Variance to allow the proposed 2,007 square feet of restaurant and bar area. Although detailed information regarding the grounds for this condition no longer exists, a reasonable assumption is that this limitation was based on the layout of the hotel as submitted for review by the Council and the amount of parking to be provided. Because hotel operations have changed over the years to keep up with changing markets, it may be appropriate to review the current needs of the hotel and either strike or modify this condition. Such an action would not undermine the original approval, and the above discussions demonstrate that sufficient parking would be provided to accommodate any increase in restaurant and bar area.

#### *EXPANSION OF ROOFTOP USES*

The project includes a request for intensification of rooftop uses through increased occupancy and hours of operation. Existing approvals permit the rooftop areas of the hotel to be used between the hours of 5:00 AM and 1:00 AM and restrict occupancy to 92 persons. The applicant proposes to extend this timing for one additional hour to allow patrons to use the rooftop areas until 2:00 AM and increase occupancy to 195 persons. The applicant has submitted a noise study indicating that, with the additional conditions in place, the proposed expansion would not result in any noise impacts (Attachment 7).

In light of the complaints generated by late-night rooftop activities, staff recommends that a future review of the existing (92 persons, 1:00 AM restriction) rooftop uses be conducted after implementation of additional conditions to mitigate noise impacts from the roof. If the future review concludes that the use is not resulting in any impacts to the surrounding area, it would then be appropriate to consider an increase in activity levels on the roof.

#### *ENTITLEMENTS REQUIRED*

The proposed the entitlements before the Commission are more clearly outlined and discussed as follows:

1. **Zone Text Amendment:** The applicant requests an amendment to Section 10-3-2868 C.3<sup>2</sup> of the Beverly Hills Municipal Code. Current code provisions limit restaurant seating within hotels outside the Business Triangle to a capacity of not more than one seat per guestroom. The applicant seeks to add additional seating beyond this restriction, and is therefore seeking to amend this provision to allow the number of restaurant seats to be set at one and one-half (1.5) seats per guestroom. Specifically, the Zone Text Amendment would allow for the proposed number of seats within the subject property, and would also apply to other hotels outside the Business Triangle.
2. **Conditional Use Permit:** Pursuant to Section 10-3-2862<sup>3</sup> of the Beverly Hills Municipal Code, a Conditional Use Permit is required whenever existing uses within a hotel are modified/expanded, or if entrances to a hotel are modified. Subsequently, the applicant seeks to modify the existing Conditional Use Permit to allow increased restaurant/lounge space, a new entrance on Wilshire Boulevard to provide direct access to the restaurant space, increased capacity on the rooftop pool-deck and bar area, and modifications to the rooftop food preparation room.
3. **Development Plan Review:** A Development Plan Review permit was previously granted by the Planning Commission in 2006 (resolution No. 1418) to allow outdoor dining areas along Wilshire Boulevard (on private property) and at the rooftop bar/lounge area, and also included approval of a rooftop gymnasium for hotel guests and employees. Pursuant to Condition 11 of Planning Commission Resolution No. 1418, the Development Plan Review permit expired one year from the date of issuance and must be renewed.
4. **Extended Hours Permit:** Because the hotel is located outside the Business Triangle, an Extended Hours Permit is required whenever business operations take place outside the hours of 10:00 PM and 7:00 AM. The hotel currently provides service 24 hours per day; however, the rooftop pool-deck and bar area are currently prohibited from operating beyond 1:00 AM, pursuant to Condition 14 of Planning Commission Resolution No. 1418 (Attachment 3) in order to prevent impacts to the surrounding residential neighborhoods. The applicant requests that the Extended Hours Permit be modified to allow patrons within the rooftop pool-deck and bar area until 2:00 AM.

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<sup>2</sup> BHMC §10-3-2868 C.3: "The aggregate maximum capacity of all restaurants shall not exceed the number of guestrooms in the hotel."

<sup>3</sup> BHMC §10-3-2862: "...any new or relocated outdoor recreation or dining facilities, any relocation of public entrances to the building or any intensification of hotel use that would allow either a greater number of guests to reside at a hotel or would allow the total capacity of function rooms or areas to increase shall require the issuance of a conditional use permit."

5. **Variance:** Construction of the subject property was originally approved under a Variance granted by the City Council in 1961 pursuant to Resolution No. 3013 (Attachment 4). The Variance allowed for increased height and floor area beyond what was permitted by-right at the time the project was constructed. One of the conditions of approval within the Variance states that "the total floor area devoted to dining and bar use shall not exceed 1,500 square feet." The requested expansion will exceed 1,500 square feet and the applicant seeks to strike this condition from the original Variance. Although detailed records of the original approval no longer exist, it is reasonable to assume that this limitation was based on the layout of the hotel as submitted for review by the Council and the amount of parking to be provided.

## **FINDINGS**

### **Zone Text Amendment**

The Planning Commission may recommend that the City Council approve the proposed Zone Text Amendment if the Commission is able to find that the amendment will result in a benefit to the following:

- 1) ***The public interest, health, safety, morals, peace, comfort, convenience, or general welfare.***

The proposed Zone Text Amendment will provide provisions for hotels located outside the Business Triangle to have restaurant seating occupancies that are set at a maximum of one and one-half times the number of guestrooms, rather than the current restaurant seating capacity of one per each guestroom. There is currently no such limit imposed on hotels located inside the Business Triangle. The amendment would provide added flexibility for those hotels outside the Business Triangle and would allow them to remain competitive with hotels located outside Beverly Hills. The amendment is not a carte blanche approval for hotels to increase restaurant capacities, and instead provides for an entitlement process (in the form of a Conditional Use Permit) by which additional seating could be requested. Each application would be reviewed on a case-by-case basis and findings would need to be made by the reviewing authority based on the merits of each application. Because the amendment allows for added flexibility and competitiveness of hotels outside the Business Triangle, and provides for discretionary review of all restaurant expansions on a case-by-case basis, the amendment serves to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

### **Conditional Use Permit**

The Planning Commission may approve the requested Conditional Use Permit if the Commission is able to find as follows:

**1) *The proposed location of any such use will not be detrimental to adjacent property or to the public welfare.***

The renewal and amendment of the Conditional Use Permit, as conditioned, will result in hotel operations that are substantially similar to existing and previously approved hotel operations. Based on the operating history of the hotel, restaurant operations have not resulted in detriment to adjacent property or to the public welfare; however, rooftop uses have generated noise that has disrupted adjacent properties. As such, specific operational conditions imposed on the subject property as a part of this review will prevent future detriment to the area. Further, the conditions of approval require reassessment of the subject property six months from the implementation of the added conditions of approval.

In regard to the requested amendments to the Conditional Use Permit, the proposed increase in rooftop occupancy to 195 persons (excluding hotel staff) is anticipated to be detrimental to the surrounding area, as increased occupancy will result in increased noise levels. The current 92 person rooftop occupancy limit has generated noise complaints, and it is anticipated that the proposed 112% increase in rooftop occupancy would result in increased impacts to the surrounding neighborhood. Subsequently, until such time as the applicant is able to demonstrate that the rooftop uses are not resulting in noise complaints, the findings cannot be made to support an increase in rooftop occupancy.

In regard to the expansion of interior restaurant uses and providing direct restaurant access on Wilshire Boulevard, the proposal would result in a 507 square foot increase in restaurant, bar and lounge floor area. This is a 34% increase over previously approved restaurant uses; however, the increase is limited to interior areas only, and restaurant uses have been a component of the hotel since its construction in the 1960s. Sufficient parking would be provided to accommodate the requested increase, and a direct entrance to the restaurant on Wilshire Boulevard would be located along a commercial corridor. Because the proposed increase in restaurant uses is consistent with past operations and an access point would be provided along Wilshire Boulevard, rather than Crescent Drive, the proposed increase is not anticipated to be detrimental to adjacent property or the public welfare.

In regard to the added outdoor dining areas along Wilshire Boulevard, the proposal would result in a 426 square foot increase over current outdoor dining. The outdoor dining would be enclosed by a railing-type barrier, and would be limited to the Wilshire Boulevard side of the hotel, which is a

commercial corridor. The expanded outdoor dining area will help to enliven the streetscape, and is in the same general location as existing outdoor dining areas. Parking for the outdoor dining areas will be provided at 100 North Crescent Drive. For the reasons stated above, the outdoor dining areas will not be detrimental to adjacent property or the public welfare.

In regard to the installation of a stove in the existing rooftop food preparation room, the proposal is substantially consistent with existing conditions and will not result in any added floor area or noticeable change to operations. Further, the food preparation room is fully enclosed. Therefore, the addition of a stove to the existing facilities will not result in detriment to adjacent property or the public welfare.

### **Development Plan Review**

The Planning Commission may approve the requested Development Plan Review if the Commission is able to find as follows:

- 1) The proposed plan is consistent with the general plan and any specific plans adopted for the area.***

The proposed plan was previously reviewed for consistency with the general plan and any specific plans adopted for the area, and was determined to be in compliance. The proposal is for renewal of a previous approval, and does not change the previous findings.

- 2) The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.***

The proposed plan was previously found to promote harmonious development of the area and to not adversely affect existing and anticipated development in the vicinity. The proposal is for renewal of a previous approval, and does not change the previous findings.

- 3) The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.***

The proposed plan was previously found to not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property. However, noise complaints generated by rooftop uses at the subject property have adversely interfered with the use and enjoyment of residential properties in the vicinity of the subject property. Subsequently, additional operational conditions are required in order to prevent adverse impacts to surrounding properties. This approval

incorporates additional conditions, as well as a provision to reassess the subject property six months from the implementation of the added conditions. Therefore, the added conditions and future reassessment of the property ensure that the rooftop uses will not interfere with the enjoyment of residential properties.

**4) *The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.***

The proposed plan was previously found to create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards. The proposal is for renewal of a previous approval, and does not change the previous findings.

**5) *The proposed plan will not be detrimental to the public health, safety or general welfare, and will not result in:***

- a. Any significantly adverse parking impacts as a result of employee or patron parking demand;***
- b. Any significantly adverse impacts on neighboring properties as a result of the accumulation of garbage, trash, or other waste;***
- c. Any significantly adverse impacts on neighboring properties as a result of noise created by the operation of the restaurant or by employees or visitors entering or exiting the restaurant;***
- d. Any significantly adverse impacts on neighboring properties as a result of light and glare; and***
- e. Any significantly adverse impacts on neighboring properties as a result of odors or noxious fumes.***

The proposed plan was previously reviewed and determined to not create impacts related to parking, accumulation of garbage, noise, light and glare, or odors and fumes. Although these findings were previously made, noise complaints generated by rooftop uses at the subject property have demonstrated that the hotel does generate adverse impacts related to noise. Subsequently, additional operational conditions are required in order to prevent such noise-related impacts to surrounding properties. This approval for renewal incorporates additional conditions, as well as a provision to reassess the subject property six months from the implementation of the added conditions. Therefore, with the added operational conditions and future reassessment of the property, the project can be found to not adversely impact parking, accumulation of garbage, noise, light and glare, or odors and fumes.

### **Extended Hours Permit**

The Planning Commission shall grant an Extended Hours Permit if it finds that the extended hours operation will not substantially disrupt the peace, and quiet of the adjacent neighborhood as a result of any of the following:

**1) *The accumulation of garbage, litter, or other waste, both on and off of the subject site;***

The request for Extended Hours is related to rooftop uses only. Collection of garbage, litter, and other waste is carried out by hotel staff during regular operation of the rooftop areas. An increase in operating hours can be accommodated by existing resources and staff, and the proposal is not anticipated to result in the accumulation of garbage, litter, or other waste.

**2) *Noise created by the extended hours operation or by employees or visitors entering or exiting the extended hours operation;***

Noise complaints identified by staff are predominantly related to late-night rooftop operations at the hotel. Approximately 38 complaints have been received by the City over the past two years. This level of complaints is unacceptable, and further extending the hours of operation at the rooftop areas would exacerbate the situation. Therefore, extending the hours of operation would be detrimental to the surrounding neighborhood, and this finding cannot be made in support of the request at this time.

**3) *Light and glare;***

The proposed Extended Hours would not result in any added light and glare beyond what currently exists at the subject property, and the City has not received any complaints that would suggest that light and glare is impacting the surrounding neighborhood. Therefore, extending the rooftop hours of operation by one hour is not anticipated to create any adverse impacts related to light and glare.

**4) *Odors and noxious fumes;***

The proposed Extended Hours would not result in any added odors or noxious fumes beyond what currently exists at the subject property, and the City has not received any complaints that would suggest that odors and noxious fumes are impacting the surrounding neighborhood. Therefore, extending the rooftop hours of operation by one hour is not anticipated to create any adverse impacts related odors and noxious fumes.

**5) *Pedestrian queuing;***

The requested Extended Hours Permit is related to rooftop uses only, and the request is for one additional hour beyond current operations. Because

the request is related to rooftop activities, rather than ground-floor activities, no adverse impacts related to pedestrian queuing are anticipated to occur as a result of the project.

**6) *Crime or peril to personal safety and security;***

The requested Extended Hours Permit is related to rooftop uses only, and the request is for one additional hour beyond current operations. The request is related to rooftop activities, rather than ground-floor activities, and patrons of the hotel typically utilize the hotel's valet parking operation or park within the Business Triangle, as parking on the residential streets is regulated by permits. Because patrons are typically contained within the subject property and the request is for a one hour increase, the proposal is not anticipated to result in added crime or peril to personal safety and security.

**7) *Use of residential streets for parking which is likely to cause activity associated with the subject extended hours operation to intrude substantially into a residential area;***

Parking on residential streets in the vicinity of the subject property is regulated by permits and a one-hour time restriction for vehicles without permits, which prevents patrons from parking in these areas. Because the subject property is immediately adjacent to the Business Triangle, it is more likely that patrons not utilizing the hotel's valet services would park on the City's commercial streets rather than residential streets. Further, the parking demand analysis indicates that sufficient parking is available to accommodate all uses within the subject property without causing overflow onto adjacent streets. Therefore, the proposed project is not anticipated to result in adverse parking impacts and intrusion into residential areas.

**8) *Effects on traffic volumes and congestion on local residential streets; and***

The request for Extended Hours does not modify existing hotel operations or capacities. Further, the Extended Hours Permit would provide for an additional hour of operation until 2:00 AM. This time period (early AM) typically has lower traffic volumes (as compared to peak hours). Therefore, an operational increase of one hour is not anticipated to adversely impact traffic volumes and congestion on local residential streets.

**9) *Cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.***

The location of the subject property is along the Wilshire Boulevard commercial corridor. The corridor is primarily comprised of office buildings and retail stores that generally do not operate beyond 10:00 PM.

Therefore, the proposed project would not result in a concentration of extended hours operations within the vicinity of the subject property.

### **Variance**

The Planning Commission may approve the requested Variance if it is able to find that:

- 1) *Because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and***

The findings for the Variance were previously made by the City Council pursuant to Resolution No. 3013. The Variance was granted for the purposes of increased height and floor area, and not for the purposes of allowing restaurant and bar space. The proposal to modify the condition of approval regarding restrictions on restaurant and bar floor area does not alter the basis by which the findings were previously made for increased height and floor area. As such, the findings to allow increased height and floor area on the subject property can continue to be made and are unaffected by changes to restaurant and bar floor area.

- 2) *Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges in the vicinity and zone in which the subject property is situated.***

The Variance approved by the City Council pursuant to Resolution No. 3013 was previously determined to not constitute a grant of special privileges. The Variance was granted for the purposes of increased height and floor area, and not for the purposes of allowing restaurant and bar space. The proposal to modify the condition of approval regarding restrictions on restaurant and bar floor area does not alter the basis by which the findings were previously made for increased height and floor area. As such, the findings to allow increased height and floor area on the subject property can continue to be made and are unaffected by changes to restaurant and bar floor area.

### **PUBLIC NOTICE AND COMMENTS**

Notice of the proposed project and public hearing was posted in two newspapers of local circulation and was mailed on May 29, 2010 to all property owners and residential tenants within a 300-foot radius of the property. As of the date of preparation of this staff report, several comments have been received in opposition to the proposed project, and are provided as Attachment 2.

## **ENVIRONMENTAL DETERMINATION**

The project has been reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA guidelines. Pursuant to the State CEQA Guidelines Section 15301, existing facilities, and Section 15305, minor alterations in land use limitations, the project qualifies for a Class 1(a) and Class 5 Categorical Exemption, and is not anticipated to have a significant environmental impact. The Class 1(a) exemption is applicable to minor interior modifications and operational changes within existing structures that would not result in a significant environmental impact, and the Class 5 exemption is applicable because the changes in land use limitations would result in minor modifications to the amount of restaurant space that could be provided within hotels. Further, any increase in restaurant space within hotels is subject to discretionary review and analysis on a case-by-case basis.

## **RECOMMENDATION**

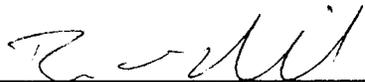
Based on the foregoing analysis staff recommends that the Planning Commission direct staff to prepare a resolution recommending City Council approval of the proposed Zone Text Amendment and a resolution approving the requests for Conditional Use Permit, Development Plan Review permit, and Variance, but denying the request for Extended Hours Permit and increased rooftop occupancy. Further, staff recommends the following conditions of approval:

1. Expansion of the hotel restaurant capacity beyond 114 persons shall not become effective unless and until the proposed Zone Text Amendment regarding the capacity of restaurants in hotels outside the Business Triangle has been adopted by the City Council and has taken effect.
2. Condition d. of City Council Resolution No. 3013, which limits the total floor area of dining and bar uses on the subject property to a maximum of 1,500 square feet, shall be deleted in its entirety. Expansion of restaurant and bar floor area shall instead be controlled by the parking requirements contained in the Beverly Hills Municipal Code, and subject to review in accordance with the City's Conditional Use Permit processing standards.
3. Unless specifically modified by this Resolution, all conditions of approval contained in City Council Resolution No. 3013 shall remain in full force and effect throughout the life of the project.
4. Unless specifically modified by this Resolution, all conditions of approval contained in Planning Commission Resolution No. 1418 shall remain in full force and effect throughout the life of the project.

5. The maximum occupancy of all rooftop areas, excluding hotel staff, shall be limited to 92 persons unless and until the Planning Commission modifies this restriction at a future hearing.
6. Security personnel shall be stationed at the rooftop elevator lobby at all times. These personnel shall keep a separate tally of all persons accessing the rooftop areas and ensure that the maximum occupancy, excluding hotel staff, does not exceed 92 persons at any time.
7. Security personnel shall be stationed on the ground-floor of the hotel's valet parking area, adjacent to the alley, and shall prevent patrons from entering the alley after 10:00 PM. Patrons shall instead be directed to use the Wilshire Boulevard access points.
8. Use of all unenclosed rooftop areas shall be prohibited between the hours of 1:00 AM and 5:00 AM unless and until the Planning Commission modifies this restriction at a future hearing.
9. Outdoor dining areas located on the public right-of-way shall be limited to the north side of the building, which fronts on Wilshire Boulevard. Outdoor dining on the public right-of-way shall not be permitted to take place on the east side of the building, which fronts on South Crescent Drive.
10. The property owner of 9360 Wilshire Boulevard shall maintain a lease agreement with the property owner of the property located at 100 North Crescent Drive for the purposes of providing additional parking. Said lease agreement shall provide a minimum of 250 parking spaces at 100 North Crescent Drive for the exclusive use by the property located at 9360 Wilshire Boulevard between the hours of 6:00 PM and 2:00 AM, seven days per week. The lease agreement shall remain in place throughout the life of the project, and a copy of the agreement shall be furnished to the City upon request.
11. The subject property shall be required to maintain a minimum of 129 on-site parking spaces at all times.
12. All speakers located on the rooftop areas shall be installed at the base of the perimeter wall around the deck areas. Further, no speakers shall be permitted to be installed on the rooftop cabana and trellis structures.
13. All speakers within the premises shall be located in such a manner so as to direct all sound towards patrons and otherwise prevent the possibility of sound being plainly audible beyond the property line. Further, the sound levels shall be balanced with an equalizer that will allow for the attenuation of bass frequencies to limit noise from escaping beyond the perimeter walls.

14. Volume controls for the sound system shall be fitted with a locked cover to prevent tampering with the volume levels. Additionally, only hotel management shall be provided with access to the volume controls.
15. The applicant shall set up an initial sound demonstration for review by City staff once all modifications to the sound system have occurred to demonstrate compliance with all conditions of approval.
16. The applicant shall mail or otherwise distribute Thompson Hotel management contact information to all property owners and residential occupants within 500 feet of the establishment, along with 24-hour contact information for dedicated security personnel.
17. No live entertainment shall be permitted on the rooftop area at any time.
18. There shall be no dancing allowed on the rooftop area at any time, as dancing constitutes a "nightclub" under the City's codes, and nightclubs are not permitted to operate outside the Business Triangle.
19. The establishment shall provide access to Fire Department, Law Enforcement, and/or Code Enforcement Officers at any time.
20. In the event that the establishment violates or fails to comply with any of these conditions, the City may take action to cure such violation, including but not limited to, revocation of this permit.
21. The Planning Commission shall re-review this permit six months from the date of implementation of all conditions of approval to determine if the conditions contained in this approval are adequately minimizing disturbances to the adjacent residential properties. Additionally, during the Commission's re-review of this permit, the applicant may request that the Commission revisit the requested increases in rooftop operating hours and maximum capacity limitations.
22. Free parking shall be provided to hotel employees, including any consultants or agents retained by the hotel operator in connection with the operation of said facility, at all times.
23. The project shall be built in substantial conformance with the plans as conditioned and approved by the Planning Commission on June 10, 2010.

Planning Commission Staff Report  
9360 Wilshire Boulevard  
June 10, 2010



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Ryan Gohlich  
Associate Planner

Attachments:

1. Letter From Applicant Supporting Project
2. Letters From Residents Opposing Project
3. Planning Commission Resolution No. 1418
4. City Council Resolution No. 3013
5. Lease Agreement For 250 Off-Site Parking Spaces
6. Parking Demand Analysis
7. Rooftop Noise Study/Analysis

# **ATTACHMENT 4**

**Beverly Hills Municipal Code Section 10-3-2868**

**10-3-2868: REGULATIONS AND RESTRICTIONS APPLICABLE:**

- A. Except as otherwise provided in this article, the C-3 zone regulations shall be applicable to any hotel development under this article.
- B. Hotels may not be developed on lots which abut or are separated only by an alley from the R-1 zones.
- C. Hotels developed outside of that triangular area bounded by Wilshire Boulevard, South Santa Monica Boulevard, and the alley between Crescent Drive and Cañon Drive shall be restricted as follows:
  - 1. Public assembly areas shall be prohibited.
  - 2. The maximum capacity of any separate public meeting room shall not exceed one-third (1/3) of the number of guestrooms in the hotel.
  - 3. The aggregate maximum capacity of all restaurants shall not exceed the number of guestrooms in the hotel.
  - 4. The maximum number of floors shall not exceed four (4) provided the height limitation set forth in subsection 10-3-2726A of this chapter is maintained.
- D. With respect to hotel facilities located within the triangular area bounded by Wilshire Boulevard, South Santa Monica Boulevard, and the alley between Crescent Drive and Cañon Drive, the following provisions shall apply:
  - 1. The floor area, whether permitted by the provisions of this chapter or by the provisions of prior applicable law, of a legally nonconforming hotel facility may be increased by not more than fifteen percent (15%), provided that in connection with such increase, the following conditions are satisfied:
    - a. At least fifteen percent (15%) of the total floor area, inclusive of the increased area, is street level retail space added to the hotel facility;
    - b. A finding is made in the approval of a conditional use permit that, because of the location of the hotel, the addition of the retail space will promote the retail character of the area, and will be compatible with and enhance the retail uses in the immediate vicinity by attracting and serving potential retail customers;
    - c. Any space added to the hotel facility in connection with such fifteen percent (15%) increase in the total floor area may include an increase in the height of the existing guestrooms so long as the existing overall height of the hotel facility is not increased; and
    - d. Any space added to the hotel facility in connection with such fifteen percent (15%) increase in the total floor area will not increase the number of hotel guestrooms or

otherwise intensify the hotel use or substantially increase any adverse impact of the hotel use on the surrounding retail uses.

2. Notwithstanding any provision of article 33 of this chapter to the contrary, hotel uses with retail facilities in a legally nonconforming building located within the triangular area bounded by Wilshire Boulevard, South Santa Monica Boulevard, and the alley between Crescent Drive and Cañon Drive may be eligible to participate in the "in lieu parking district" as defined in said article, subject to the application and hearing procedures, review standards, appeals process, fees and fee regulations, and other restrictions set forth in sections 10-3-3307 through 10-3-3310, and 10-3-3312 through 10-3-3317 of this chapter. (Ord. 84-O-1937, eff. 11-1-1984; amd. Ord. 98-O-2304, eff. 8-7-1998; Ord. 01-O-2389, eff. 1-10-2002)