



AGENDA REPORT

Meeting Date: November 3, 2011

Item Number: D-1

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, Assistant Director of Community Development

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING VARIOUS PROVISIONS OF THE BEVERLY HILLS MUNICIPAL CODE RELATED TO REGULATION AND PERMITTING OF RESTAURANT USES

Attachments:

1. Ordinance
2. Proposed Text Amendments (Redline Version)
3. Planning Commission Resolution Recommending Amendments
4. Planning Commission Staff Report, dated September 8, 2011
5. Planning Commission Correspondence

RECOMMENDATION

It is recommended that the City Council introduce for first reading and adoption the subject ordinance.

BACKGROUND

The City Council directed staff to make recommendations that reduce typical restaurant application processing time to within 70 calendar days after application submittal and report back to the Council in six months. This report transmits those recommendations and summarizes the Planning Commission's comments and public input. Attached to this report is an ordinance that effectuates the recommended streamlining enhancements.

The recommendations in this report parallel the streamlining efforts of Mayor Brucker's Task Force on Government Efficiency, which is chaired by Vice Mayor Brien and co-chaired by Planning Commissioner, Noah Furie. The recommendations included with this report are influenced by comments received from the task force's work.

DISCUSSION

The Planning Commission staff report (Attachment 4) includes information detailing some of the challenges restaurateurs experience in opening a restaurant, including challenges related to local parking requirements and the discretionary review process. In addition to the local requirements, restaurants are also subject to approval from other agencies, including the County Health Department and, when selling alcohol, the State Department of Alcoholic Beverage Control (ABC).

Based in part on comments received from the Task Force on Governmental Efficiency, the Community Development Department is making the following enhancements that will benefit future restaurant owners:

- Preparing a comprehensive restaurant application to facilitate concurrent review
- Implementing electronic plan submittal software (benefits all application types)
- Coordinating with the county to allow electronic plan submittals from the city to the county (saving applicant time from submitting separately with the county)
- Approving more restaurant applications over the counter instead of requiring all plans to be submitted for plan check review
- Streamlining Inspection requests

While these improvements make the process less cumbersome and in most cases streamlines review, these changes alone would not consistently reduce restaurant processing times to less than 70 days. To achieve a more consistent review in less than 70 days it is recommended that the decision making authority on some discretionary actions be changed or the review process be modified. Notably, it is recommended that some decisions previously rendered by the Planning Commission be made by the Director, or designee, and that the architectural review process be modified.

The following recommendations reflect modifications made by the Planning Commission and are incorporated into the draft ordinance (Attachment 1):

Recommendation #1. Authorize the Director of Community Development, or designee, the discretion to grant up to 10 in-lieu parking spaces for new or expanded restaurants in the business triangle.

This has the effect of transferring Planning Commission authority to the Director for a small number of in-lieu parking spaces potentially eliminating 60 – 90 days of application processing and saving an applicant approximately \$11,600 in application fees. Requests for 11 or more spaces would continue to be evaluated by the Planning Commission at a public hearing.

Recommendation #2. Authorize the Director of Community Development, or designee, the discretion to approve Open Air Dining Permits on private property for those properties located on Canon Drive in the Business Triangle.

Commercial properties located within 170 of a residential zone are subject to the City's transition area regulations. The above amendment eliminates the RMCP (Multiple Family Residential Commercial Parking Zone) from this criterion. Eliminating the RMCP zone allows private property open air dining applications for commercial properties on the east side of Canon Drive generally between Brighton Way and Clifton Way to be reviewed by the Director. The Sunrise senior assisted living development and the city's senior housing project are located

in the RMCP zone. This is a mixed use zone in the city and intended to serve as a transition between commercial uses and other residential zones.

Recommendation #3. Change the staff-level approval threshold for outdoor dining on private property and within 170 feet of a residential zone from eight chairs to 12 chairs.

This change allows four additional chairs (total 12 maximum) located on private property and within the commercial/residential transition area to be approved by the Director. Requests for more than 12 chairs and meeting the other requirements will continue to be reviewed by the Planning Commission.

Since the Planning Commission's review of the proposed amendment, staff identified other sections of the municipal code that are affected by this specific recommendation. Accordingly, staff is proposing a comprehensive reorganization of the city's open air dining regulations. The reorganization will improve administration and make it easier for staff and applicants to understand and apply the open air dining regulations to a project. The revised open air dining regulations reflect the Planning Commission's recommendation as stated above and retains all existing processes and procedures except as follows:

- **Minor Outdoor Dining.** The Director currently reviews minor outdoor dining permits; however, those decisions can be appealed to the City Council. Staff recommends the appeal process proceed first to the Planning Commission and then to City Council, if necessary. This is similar to other rights of appeal in the code as they pertain to land use decisions and would allow the Commission an opportunity to make a decision and potentially resolve a dispute before it is heard by the Council. To date there have been no appeals of a minor outdoor dining permit application.
- **Review Authority for Reduced Parking Requests on Private Property.** The parking regulations provide that the City Council can, based upon findings, reduce the required parking for open air dining on private property. Staff recommends this request first be considered by the Planning Commission and, if necessary, acted upon by the City Council on appeal.
- **Elimination of the Development Plan Review Permit (DPR).** A DPR is required when open air dining is proposed on private property, has more than 12 chairs and, located is within 170 feet of an R1 or R4 zone (existing standards provide that a DPR is required for 8 or more chairs and includes the RMCP zone, but both of these provisions are being modified by the proposed ordinance). The DPR was required to establish a public review process before the Planning Commission. The findings for a DPR and an open air dining permit are essentially the same. Accordingly, the proposed ordinance eliminates the need for a DPR, but still requires a public review before the Planning Commission when the same criteria are met. This change will also save applicants over \$2,500 dollars in additional application fees.

All of the above changes are reflected in the draft ordinance. No other substantive changes are included in the reorganized Open Air Dining regulations.

The reorganization of this chapter also highlights needed changes to the municipal code from an organization and administration perspective. Conflicting and outmoded language throughout the zoning code makes it difficult to administer, increases the likelihood of administrative

mistakes and delays application processing. The City Council appropriated funds to begin making updates to the zoning code, which is expected to begin early next calendar year.

Recommendation #4. Change the administrative threshold for providing off-site restaurant parking from six to ten spaces; allow that parking to be provided within a 750 foot radius as opposed to the current 500 foot radius; and, allow a lease agreement to secure no more than 10 off-site spaces instead of a covenant.

The above reflects the Planning Commission recommendation; however, staff proposes striking the underlined portion. The change from six to ten spaces increases the amount of spaces that can be provided off-site without a discretionary review process. The change to the radius extends this opportunity to more properties and is still within a reasonable walking distance.

The lease provision would create an opportunity for more restaurants being established in the City. Most property owners are unwilling to record a covenant against their property to provide off-site parking for another use. A lease agreement is termed and, therefore, a property owner is not bound in perpetuity to make those spaces available long term. Allowing a lease for a small number of off-site spaces could make the difference in a restaurant being established or not. However, upon further discussion with the City Attorney's Office, staff recommends this provision be eliminated. While a termed lease may get a restaurant established and running, failure to renew the lease or find alternative offsite parking could require closure of the restaurant due to a lack of required parking. While this is ultimately a business decision and risk an owner would consider, the city may be in a position of having to proceed with costly and unpleasant revocation proceedings. As an interim measure the City Council could consider fees or penalties should a restaurant owner lose their leased parking, but this has other parking policy and management implications. Additionally, residential property owners could be impacted if a restaurant loses its off-site parking and no replacement parking is identified. While the challenges raised in this report are not insurmountable, staff requests an opportunity to further examine these and other issues with the Planning Commission prior to implementing this provision. Moreover, eliminating this provision would not negatively affect any streamlining recommendations made by the Planning Commission as this provision relates more to encouraging more restaurants in the city as opposed to streamlining.

Recommendation #5. Authorize the Director of Community Development, or designee, the discretion to approve temporary construction barricades that include graphic or sign representations.

The Director already has the authority to approve construction barricades, but this amendment would provide more discretion to include modest graphics to identify the new restaurant tenant. Standards would be followed that reflect the Architectural Commission's past review practice.

Architectural Review

Restaurants require architectural review for façade changes, new signs or outdoor dining. While staff has some administrative discretion, this review is minor and does typically include the types of changes requested by a new restaurant owner. Architectural review approval takes an average of two meetings. Because the commission meets once a month it can take up to 60 days to receive an approval, however, no permit can be issued until the end of the 14 day appeal period after the project has been approved. Moreover, after approval, there may be changes that are needed to the permit set of plans that may further extend the review period past the 70 day target.

Recommendation #6. The Planning Commission recommends the architectural review component be addressed in the following manner:

- Within 14 days after the filing of a complete application, an Architectural Commission restaurant subcommittee consisting of two members shall meet with the director, or his/her designee, to review the project. Applicant teams will be invited to the meeting.
Note: Two members instead of three are recommended in light of the City Council's direction to reduce the commission from seven to five members; two members would not constitute a quorum when those changes are implemented next year, but three members would be a quorum.
- If both of the subcommittee members agree the project is minor, the director shall approve the project and no further action is required. Director approvals are appealable to the Architectural Commission.
- If a project is determined not to be minor, or if no subcommittee meeting is held within 14 days, the application will be scheduled for the soonest available commission meeting.
- If required, the application would be reviewed at one public meeting before the Architectural Commission. The Commission may approve, approve with conditions or deny the project. If, however, the project requires further refinement, the Commission may direct the restaurant subcommittee to make a final action within 14 days. If so directed, the action of the subcommittee is final, but appealable to the City Council. In situations where the subcommittee is split on its decision, the project shall be deemed denied.

The process identified above has been incorporated into the draft ordinance. However, this process could take nearly 50 days to reach a final action and requires an additional 14 day appeal period before a permit could be issued for the exterior modifications. It is anticipated that the architectural review component described above would be the lengthiest part of the restaurant streamlining effort.

Staff recommended to the Planning Commission and continues to support a modified version of the fourth bullet above, which would end the process at the one architectural commission meeting and would not permit a continuation to the standing restaurant subcommittee. Additionally, staff recommends that in the event of a non-voting action, that the project would be deemed approved.

Planning/Architectural Commission Review

The Planning Commission was agreeable to transferring some discretionary review to staff in order to advance restaurant streamlining efforts. The Commission recommends retaining review authority over restaurants in the city's transition areas because of its proximity to residential properties. Staff identified other options for consideration that would promote restaurant uses in the city, however, except as presented above, the Commission generally favored focusing the proposed amendments on streamlining and not addressing policy changes to encourage more restaurants at this time.

As noted in the Planning Commission staff reports, the proposed restaurant streamlining recommendations would not apply to restaurants in hotels. Many existing hotels are located in residential zones or are in close proximity to residential uses and restaurants in hotels require a conditional use permit.

The Planning Commission also discussed the possibility of enclosing outdoor dining areas to protect patrons during inclement weather. However, this raised broader policy questions for the Commission as enclosed outdoor dining areas increase a restaurant's floor area under local regulations and may increase required parking. The Architectural Commission also discussed temporary enclosures and requested more time to study the matter and develop appropriate design guidelines. Staff will continue this discussion with both commissions and forward recommendations to the City Council as part of the broader zoning code update effort that will begin next calendar year.

At the request of the Planning Commission, the Architectural Commission reviewed the proposed restaurant streamlining recommendations and offered some suggested changes to the Planning Commission. In general, the Architectural Commission supports streamlining, but would prefer to retain a review process that is similar to current practice, with better use of a restaurant subcommittee. The Architectural Commission believes streamlining and performance improvements can occur through better staff administration, oversight and improved quality control of applications being submitted to the Commission. Staff has implemented a number of changes to improve administration, which will be presented to the City Council as part of its report on the Task Force on Governmental Efficiency. And, while it is anticipated there will be better quality applications for the Architectural Commission to review, this alone would not reduce restaurant streamlining to less than the desired 70 days.

Environmental Analysis

It can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or particular land uses, and to the extent that future projects are proposed, appropriate CEQA review would be undertaken. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Public Notice

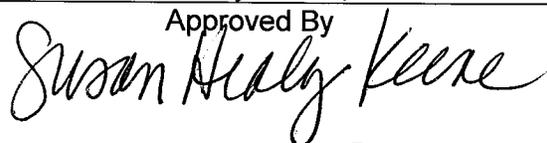
This is a continued hearing from the October 18, 2011 City Council Meeting. Notice of the hearing was advertised in the Beverly Hills Courier on October 7, 2011 and the Beverly Hills Weekly on October 13, 2011. The hearing was continued to November 3, 2011. Additional courtesy notices were republished in the Beverly Hills Courier on October 21, 2011 and the Beverly Hills Weekly on October 27, 2011. At the time this report was prepared, no letters or phone calls were received. However, the Planning Commission did receive three letters, which are attached to this report (Attachment 5).

FISCAL IMPACT

It is anticipated that the recommendations in this report would reduce the amount of application fee revenue received by the Community Development Department by approximately \$16,500 annually. This is principally due to the fact that administrative applications have lower fees than applications that require commission review. However, streamlining the process will allow businesses to open up earlier resulting in enhanced tax revenues to the City.

Susan Healy Keene, AICP

Approved By



Attachment 1

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING VARIOUS PROVISIONS OF THE BEVERLY
HILLS MUNICIPAL CODE RELATED TO REGULATION
AND PERMITTING OF RESTAURANT USES

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

Section 1. The City Council hereby amends Section 8-3-2 of Chapter 3 of Title 8 of the
Beverly Hills Municipal Code to read as follows:

“8-3-2: EXCEPTIONS:

The following shall be exempt from the provisions of section 8-3-1 of this chapter:

- A. Activities and installations for which a permit is issued under chapter 2 of this title.
- B. Newsracks for which a permit has been issued under title 4, chapter 3, article 6 of this code.
- C. Public utilities which have an existing easement for utility service.
- D. Producers of agricultural products or other vendors with written permission from the city to operate in the public right of way during a "farmers' market" as defined in chapter 6 of this title.
- E. Special events for which a permit has been issued under title 4, chapter 8 of this code.”

Section 2. The City Council hereby amends Section 10-3-1960 of Article 19.5 of Chapter 3
of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-1960: VIOLATIONS AND REMEDIES:

- A. The operation of a business in violation of this article is a nuisance. Each person violating this article is subject to all remedies allowed by law.”

Section 3. The City Council hereby amends Numbers 7 and 8 in the Table in subsection (B)
of Section 10-3-2730 of Article 27 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code

to read as follows, with all other portions of Section 10-3-2730 remaining in place without modification:

7. Open air dining on public property	No additional parking required.
8. Open air dining on private property	Parking shall be provided as required for indoor dining pursuant to this section except that the planning commission may establish parking requirements for open air dining areas that are different than those set forth in this section if the planning commission determines that the open air dining area will generate a need for parking different than the amount of parking required by this section or the planning commission determines that parking demand will be met by means other than those means specified in this section

Section 4. The City Council hereby amends Section 10-3-2733 of Article 27 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-2733: PARKING IN NONRESIDENTIAL ZONES; LOCATION AND SHIELDING OF FACILITIES:

Except as provided in this section, in all nonresidential zones, required parking shall be provided on site. However, the director of community development may, pursuant to the provisions of article 36 of this chapter, approve a minor accommodation permit for up to ten (10) spaces to be located off site within seven hundred and fifty feet (750') of the use site if the director finds that the proposal would not have a significant, adverse effect on traffic and parking in the area. The planning commission may grant a conditional use permit authorizing off site parking in excess of ten (10) spaces within seven hundred and fifty feet (750') of the use site.

Additionally, except for required entrances and exits, all parking structures in nonresidential zones shall be constructed so as to shield the automobiles from horizontal view in all directions and so as to comply with the noise abatement provisions of this code and shall be enclosed with solid walls when such parking structures are adjacent to a residentially zoned property or separated from such a property solely by a street or alley.”

Section 5. The City Council hereby amends Section 10-3-3007 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3007: ARCHITECTURAL REVIEW REQUIRED:

A. 1. Approval: No building, structure, sign, wall, fence, or landscaping located in any zone other than a single-family (one-family) residential zone shall be erected, constructed, altered, or remodeled unless the elevations and plans for the exterior portions and areas and the interiors of mall areas, as defined in section 10-3-100 of this chapter, have first been reviewed and approved by the architectural commission, or by the council on appeal.

2. Exception: Notwithstanding the provisions of subsection A1 of this section, temporary seasonal decorations may be displayed on private property, without architectural review, during the period between November 15 of each year and January 10 of the following year.

B. No exterior portion or area of an existing building, structure, sign, wall, fence, or other improvement to real property, or the interior of any mall area, located in any zone other than a residential zone shall be painted, repainted, textured, or retextured unless the plans, colors, and textures for such work have been reviewed and approved by the architectural commission, or by the council on appeal.

C. No permit shall be issued for any work described in subsections A and B of this section and unless the necessary approval required therefor is first granted.

Prior to the commencement of any work described in subsections A and B of this section, an application for approval shall be made in writing to the architectural commission pursuant to the procedure set forth in this article.

D. Notwithstanding the issuance of an open air dining permit pursuant to article 35 of this chapter, no open air dining operations shall be established unless the plans for all improvements, fixtures, structures and facilities to be located in the public right of way have been reviewed and approved by the architectural commission, or by the council on appeal. For the purposes of this subsection "facilities" shall include, but not be limited to, tables and chairs.

E. When in the opinion of the director, the approval of an application for a minor or insignificant permit does not defeat the purposes and objectives of this article, the official may grant the approval without submitting the matter to the architectural commission for its approval, notwithstanding any other provision of this section or this article. The decision of the director may be appealed to the architectural commission by filing an appeal petition with the director no later than fourteen (14) days after the official's decision. The petition shall be on a form designated by the director.

F. Notwithstanding the provisions of this section, architectural review may be a condition of the granting of a conditional use permit or a variance when required for any use or improvement in a residential zone.

G. Notwithstanding any other provision of this section, architectural review shall be a condition of the grant of a sign accommodation pursuant to chapter 4, article 9 of this title.

H. Notwithstanding any other provision of this code, architectural review shall be a condition precedent to the approval of a final map to convert an existing multi-family residential apartment building to a common interest development project or to convert a common interest development previously created prior to January 1, 2006, to another form of common interest development in accordance with chapter 2, article 7 of this title for any building that the planning commission determined to be a "character contributing building" in accordance with section 10-2-707 of this title and, based on that determination, granted a waiver of any of the requirements of said article 7."

Section 6. The City Council hereby amends Section 10-3-3016 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"10-3-3016: FILING FEES:

A. Applications for architectural review by the director as set forth in subsection 10-3-3007E of this article shall be accompanied by a filing fee as established by the City Council.

B. Applications for architectural review required to be submitted to the architectural commission for approval shall be accompanied by a filing fee as established by the City Council.

C. Notwithstanding the provisions of subsections A and B of this section, no fee shall be required for any architectural review required by subsection 10-3-3007B of this article.”

Section 7. The City Council hereby adds a new Section 10-3-3017 to Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3017: RESTAURANTS:

The commission chair shall appoint a two member restaurant subcommittee to review certain restaurant applications. The chair may select an alternate member or members in the event the restaurant subcommittee members are unable to meet within 14 days of an application filing that is subject to the provisions of this Section. In the event a subcommittee meeting does not occur within 14 days, the matter shall be scheduled for the next available commission meeting.

Upon the filing of a complete application with the community development department for a project that requires architectural review and is solely related to a restaurant use, the following regulations shall apply:

- A. Within 14 days of the date on which an application is deemed complete, the restaurant subcommittee of the Architectural Commission and the director, or his/her designee, shall meet for the purposes of determining whether the project is minor and not subject to review before the Architectural Commission. The Architectural Commission restaurant subcommittee decision that the project is minor must be unanimous, otherwise the matter shall be scheduled for the next available Architectural Commission meeting. Projects determined minor shall be approved by the director or designee.
- B. For projects that require review before the Architectural Commission, the application shall be approved, approved with conditions, or denied in one meeting. The commission shall not have the authority to impose conditions of approval requiring further review by any authority other than the director, except as provided below. If no action is rendered at the meeting, the application shall be deemed denied.
 1. The Architectural Commission may delegate final action to the restaurant subcommittee. If delegated, the restaurant subcommittee shall make a

decision within 14 days after the Architectural Commission meeting. A unanimous approval of the restaurant subcommittee is required for the project to be approved. All other action by the restaurant subcommittee, including a failure of the subcommittee to meet within 14 days, shall be determined to be a technical denial. Final decisions of the restaurant subcommittee pursuant to this subsection shall be appealable to the City Council pursuant to Municipal Code Chapter 4, Article 1.

- C. Applications that include a request for a sign accommodation shall comply with Chapter 4 of this Title 10, however, such applications shall not be subject to the public notice requirements in Section 10-4-904.
- D. Applications for temporary construction barricades that include graphics and will remain in place for less than six months shall be approved or denied by the director of community development. The director may forward any construction barricade application to the architectural commission to be processed pursuant to subsection B. Temporary construction barricades with graphics that will remain in place for a period of six months or longer shall require architectural commission review pursuant to subsection B.”

Section 8. The City Council hereby amends Section 10-3-3100 of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3100: DEVELOPMENT PLAN REVIEW REQUIRED:

Notwithstanding any other provision of this code, or ordinance of the city of Beverly Hills, the following shall not be permitted to be established unless a development plan is approved pursuant to the provisions of this article establishing a development plan review procedure:

- A. All uses involving new construction that requires the issuance of a building permit other than new construction subject to a discretionary permit under this chapter (excluding architectural review) or any other interim zoning ordinance of the city;
- B. All rooftop gymnasiums and lunchrooms permitted pursuant to section 10-3-3109 of this article.
- C. All projects constructed pursuant to a density bonus permit.
- D. All new parking lots.

A new parking lot shall mean a parking lot established in a location not previously used for parking purposes.

E. Conversion of parking to a commercial parking lot.

Parking shall be considered to be converted to a commercial parking lot upon the initial posting of signs advertising the availability of such parking to the general public. Nothing in this subsection shall require development plan review of an existing parking lot that currently contains signage advertising the availability of parking to the general public. Signage indicating the availability of parking for patrons or employees of a commercial establishment shall not be considered to be signage advertising the availability of parking to the general public.

F. All common interest development projects, as defined in chapter 2, article 7 of this title.”

Section 9. The City Council hereby amends Section 10-3-3101 of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3101: EXEMPTIONS FROM DEVELOPMENT PLAN REVIEW:

The development plan review procedure required by this article shall not apply to the following:

A. Single-family residences and accessory uses permitted in single-family zones except single-family residences constructed pursuant to a density bonus permit.

B. Signs.

C. Sculptures or other types of artwork.

D. Landscaping not involving any new construction of buildings or structures on the site.

E. Facade remodeling of existing buildings or structures not increasing the square footage by two thousand five hundred (2,500) square feet or more, or the height of the building or structure.

F. Awnings.

G. Encroachment permits approved by the city council.

H. New construction involving less than two thousand five hundred (2,500) square feet of new or additional floor area that does not increase the height of the structure or building and is not for the purpose of establishing a rooftop gymnasium or lunchroom pursuant to section 10-3-3109 of this article, or an automatic teller machine adjacent to a public right of way.

- I. Resurfacing, restriping and similar alteration of an existing legally nonconforming surface parking facility.
- J. Satellite dish antennas permitted as accessory uses pursuant to section 10-3-4503 of this chapter.
- K. Wireless telecommunication antenna facilities permitted without a conditional use permit pursuant to section 10-3-4509 of this chapter.”

Section 10. The City Council hereby amends Section 10-3-3102 of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3102: REVIEWING AUTHORITY FOR DEVELOPMENT PLAN REVIEW APPLICATIONS:

- A. The planning commission shall be the reviewing authority for all development plan review applications involving the following:
 - 1. Projects in the C-5 or public service zone involving new construction with a floor area ratio greater than 1.5, other projects in those zones involving more than forty thousand (40,000) square feet of new or additional floor area, and projects in any other zone involving more than fifteen thousand (15,000) square feet of new or additional floor area.
 - 2. Multi-family residential projects involving five (5) or more new units.
 - 3. Any project requiring the granting of a variance.
 - 4. Rooftop gymnasiums and lunchrooms in the C-3, C-R, C-3A, and C-3B zones.
 - 5. Any project referred to the planning commission by the planning director.
 - 6. All common interest development projects, as defined in article 7, chapter 2 of this title.
 - 7. Any project constructed pursuant to a density bonus permit.

The reviewing authority for all other projects subject to the provisions of this article shall be the city planning director or such other person that may be designated by the city manager. The planning director or such other designated person may refer to the planning commission any project that the director or other designated person deems appropriate for review by the commission due to the size, location, or other characteristics or impacts of the project.”

Section 11. The City Council hereby amends Section 10-3-3104 of Article 31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3104: STANDARD OF REVIEW OF DEVELOPMENT PLAN REVIEW APPLICATIONS:

Except as provided in this section for development plans to be located in the C-5 zone and reviewed by the director of planning and community development, the reviewing authority shall approve a development plan review application only if it makes all of the following findings:

A. The proposed plan is consistent with the general plan and any specific plans adopted for the area.

B. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

For those proposed plans to be located in the C-5 zone that are reviewed by the planning commission, the commission shall consider the factors set forth in section 10-3-2021 of this chapter as part of the commission's determination regarding whether a project will promote harmonious development of the area.

C. 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.

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

E. The proposed plan will not be detrimental to the public health, safety or general welfare.

In approving a development plan application, the reviewing authority may impose such conditions as it deems appropriate to protect the public health, safety and general welfare.

With regard to development plans to be located in the C-5 zone and to be reviewed by the director of planning and community development, the review of the director shall be ministerial and limited to whether such building conforms to the requirements of the C-5 zone.”

Section 12. The City Council hereby deletes Sections 10-3-3107 (PARKING REQUIREMENTS FOR OPEN AIR DINING) and 10-3-3108 (SUSPENSION OF OPEN AIR

DINING PRIVILEGES), and renumbers former Sections 10-3-3109 (ROOFTOP USES) through 10-3-3110 (COMMON INTEREST DEVELOPMENT PROJECTS) accordingly as sections 10-3-3107 through 10-3-3108.

Section 13. The City Council hereby amends Section 10-3-3307 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3307: REVIEW OF IN-LIEU PARKING APPLICATIONS: Persons desiring to participate in the in-lieu parking district established by this article shall submit an application for participation to the director of community development. If the director determines that such application meets the requirements set forth in sections 10-3-3302 through 10-3-3306 of this article, then the director shall schedule a hearing on that application before the planning commission, unless the application is solely for a restaurant use and the number of in lieu parking spaces requested is 10 or less, in which case the director shall have the authority to approve the request without conducting a hearing. Written notice of any required hearing shall be mailed to the applicant by United States mail, at least ten days prior to the hearing. Furthermore, if the applicant has concurrently filed other applications which require a hearing before the planning commission, then the hearing regarding the application for participation in the district shall be combined with such other hearing. Similarly, notice of the application for participation in the district shall be combined with the notice of any other application that will be reviewed concurrently by the planning commission.”

Section 14. The City Council hereby amends Section 10-3-3308 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3308: STANDARD OF REVIEW:

The planning commission or director pursuant to the provisions of Section 10-3-3307 shall approve an application for participation in the in-lieu parking district only if the commission or director makes the following findings:

A. Participation in the in-lieu parking district, as approved, will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

B. Participation in the in-lieu parking district, as approved, will not create any significantly adverse traffic safety impacts, pedestrian-vehicle conflicts, or parking impacts.

C. Participation in the in-lieu parking district will not be detrimental to the public health, safety and welfare.

The commission or director may restrict participation in the in-lieu parking district by requiring the provision of a minimum amount of on site parking if the commission or director determines that such restriction is necessary to allow the commission or director to make the findings set forth in this section.”

Section 15. The City Council hereby amends Section 10-3-3309 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3309: APPEALS:

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code. Any decision of the planning commission pursuant to this article may be appealed to the city council in the manner provided by title 1, chapter 4, article 1 of this code.”

Section 16. The City Council hereby amends Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code in its entirety to read as follows:

“Article 35. Open Air Dining

10-3-3501: Open Air Dining Permits
10-3-3502: Open Air Dining in the Public Right of Way; Requirements
10-3-3503: Reviewing Authority
10-3-3504: Notice
10-3-3505: Standard of Review
10-3-3506: Open Air Dining Permit; Conditions
10-3-3507: Bonding and Insurance
10-3-3508: Decision and Appeals
10-3-3509: Suspension and Revocation of Open Air Dining Permit

10-3-3501: OPEN AIR DINING PERMITS:

A. No open air dining use shall be established in the public right of way or on private property unless an open air dining permit is approved pursuant to this article 35.

B. Parking shall be provided for all open air dining uses pursuant to the provisions of section 10-3-2730 of this chapter.

C. An application for an open air dining permit shall be filed with the planning and community development department in a form prescribed by that department.

D. If approved, an open air dining permit shall be valid for a period of five (5) years and may be renewed for one additional five (5) year period on the same terms and conditions as set forth in the original approval.

E. The city council may establish by resolution fees for the review of such applications.

10-3-3502: OPEN AIR DINING IN THE PUBLIC RIGHT OF WAY;
REQUIREMENTS:

A. Any open air dining area proposed to be located in the public right of way shall comply with all of the following requirements:

1. A minimum distance of not less than five foot (5') wide pedestrian travel aisle shall be maintained on the public right of way at all times; to assure the required pedestrian travel aisle, all open air dining areas shall be set back a minimum of five feet (5') from the edge of the curb and any fixed sidewalk obstruction including, without limitation, curb lines, tree wells, street trees, parking meters, water hydrants, light poles, utility equipment boxes, newspaper racks and bus benches.

2. Umbrellas located in the open air dining area shall have a minimum seven foot (7') clearance from the ground to the lowest element of the umbrella and shall be located completely within the open air dining areas permitted boundaries.

3. Portable heaters shall be located a minimum of three feet (3') from any combustible material and shall be located completely within the open air dining areas permitted boundaries.

4. Unless a permanent structure is approved pursuant to the permit, all fixtures and furniture used in an open air dining area shall be removed from the public right of way and stored out of public view during nonbusiness hours. At the discretion of the reviewing authority, open air dining areas with more than twelve (12) chairs may be required to provide a permanent barrier delineating the usable open air dining area from the remaining area of the public right of way.

5. Areas used for outdoor dining shall not extend beyond the building frontage for the associated restaurant space.

6. The material and design of the furniture and barrier, if any, shall be reviewed and approved pursuant to section 10-3-3007 of this chapter prior to installation.

7. An encroachment permit allowing establishment of an open air dining area must be obtained from the public works department in a form satisfactory to the city attorney.

8. Areas used for open air dining in the public right of way shall comply with all applicable provisions of the Uniform Building Code, including, but not limited to, maintaining proper building egress and ingress at all times, observing maximum seating capacities, providing proper circulation, and providing appropriate access to persons with disabilities.

B. An annual rental fee shall be imposed on the use or operation of open air dining areas located in the public right of way. The rental fee schedule shall be set by resolution of the city council. In the event that a permit is suspended pursuant to section 10-3-3509 of this article, rental fees shall not be required to be paid during the period of suspension.

10-3-3503: REVIEWING AUTHORITY:

A. Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of community development. If, in the opinion of the director, an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request.

B. The reviewing authority for an open air dining permit for an open air dining area serving more than twelve (12) persons located on private property within one hundred seventy feet (170') of an R-1 or R-4 zone shall be the planning commission.

C. A public hearing shall be held by the planning commission on all applications for which it is the reviewing authority. In addition to the notice requirements pursuant to section 10-3-3504 of this chapter, at least ten (10) days prior to such hearing, notice of the time, place and purpose of the public hearing shall be sent by first class mail to each owner of property in a residential zone within a distance of five hundred feet (500') of the exterior boundaries of the subject property and to each owner of property in any other zone within three hundred feet (300') of the exterior boundaries of the subject property. Such notice shall be sent to the property owners whose names and addresses appear on the last equalized county assessment roll.

D. Notwithstanding the provisions of this section, if the application for an open air dining permit accompanies an application for any other type of discretionary approval from the planning commission or city council for the same site area, the planning commission or city council, as appropriate, shall be the reviewing authority for the application and shall conduct a noticed public hearing regarding the request.

10-3-3504: NOTICE:

Notices in connection with the open air dining permit approval process shall be provided in accordance with Section 10-3-3602 of this chapter.

10-3-3505: STANDARD OF REVIEW:

The reviewing authority shall approve an open air dining permit application if all of the following findings can be made:

- A. The proposed open air dining use is consistent with the general plan and any specific plans adopted for the area.
- B. The proposed open air dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.
- C. The nature, configuration, location, density, and manner of operation of any open air dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
- D. The proposed open air dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way.
- E. The proposed open air dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demands.
- F. The proposed open air dining use will not create any significantly adverse impacts on neighboring properties as a result of:
 - 1. The accumulation of garbage, trash or other waste;
 - 2. Noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant;
 - 3. Light and glare; or
 - 4. Odors and noxious fumes.
- G. The proposed open air dining use will not be detrimental to the public health, safety, or general welfare.

10-3-3506: OPEN AIR DINING PERMIT; CONDITIONS:

In approving an open air dining permit, the reviewing authority may impose such conditions as may be reasonably necessary to protect the public health, safety and general welfare, and to ensure that the proposed open air dining use is established and conducted in a manner which is consistent with this article and the development standards for the

underlying commercial zone. The conditions imposed by the reviewing authority may include, but shall not be limited to:

- A. The appropriate setback for the proposed open air dining use;
- B. Pedestrian access and safety;
- C. Parking requirements;
- D. Barrier requirements;
- E. The time limit on the permit.

10-3-3507: BONDING AND INSURANCE:

Upon issuance pursuant to this article of an open air dining permit for a dining area in the public right of way, the permittee shall post and at all times while the permit is in existence, maintain a security bond and insurance.

A. The amount and form of the bond shall be designated by the reviewing authority at the time of approval of the open air dining permit, and shall be in an amount which is determined to be sufficient for removal of the open air dining area in the event the permittee fails to comply with the conditions of the permit. The form and content of the bond shall be satisfactory to the city attorney. The bond may be waived where it is determined that the potential for any injury to the city from the existence of the open air dining area is minimal. Any security bond required by this section may be cash, or cash equivalent security approved by the city attorney and the risk manager, or a bond in accordance with title 3, chapter 4 of this code.

B. The amount of insurance shall be designated by the city risk manager at the time of approval of the open air dining permit, and shall be in an amount which is determined to be sufficient to adequately protect the city, persons, and property from injuries or damages which may be caused by the use or operation of the open air dining area authorized by the permit. Insurance which is required under this section shall comply with the provisions of title 3, chapter 4 of this code.

10-3-3508: DECISION AND APPEALS:

The applicant or any person aggrieved by any decision of the planning commission regarding an open air dining permit may appeal the decision to the city council in the manner provided by title 1, chapter 4, article 1 of this code. Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code.

10-3-3509: SUSPENSION AND REVOCATION OF OPEN AIR DINING PERMIT:

If the director of community development, with the advice of the city engineer, determines that evidence could be presented to the planning commission which may support grounds for revocation or suspension of an open air dining permit, and the director believes that the planning commission may find that such evidence is adequate to support revocation or suspension, then the director may initiate a revocation or suspension proceeding before the planning commission.

Upon initiation of a revocation or suspension proceeding, the planning commission shall hold a public hearing regarding the possible revocation or modification of the open air dining permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of the original permit. The planning commission, after such hearing, may revoke or suspend the open air dining permit if the commission determines that:

- A. The permittee has violated any condition imposed on the permit approval, or violated any provision of this code that governs, in whole or in part, the activity for which the permit was granted or the land on which it is located; or
- B. The permit was obtained in a fraudulent manner;
- C. The operation of the open air dining use constitutes or creates a nuisance; or
- D. The operation of the open air dining use violates any provision of article 19.5 of this chapter.”

Section 17. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or particular land uses, and to the extent that future projects are proposed, appropriate CEQA review would be undertaken. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 18. 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 19. Publication.

The City Clerk 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.

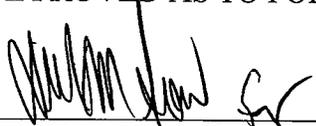
ADOPTED:

BARRY BRUCKER
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

Proposed Text Amendments (Redline Version)

8-3-2: EXCEPTIONS:

The following shall be exempt from the provisions of section 8-3-1 of this chapter:

- A. Activities and installations for which a permit is issued under chapter 2 of this title.
- B. Newsracks for which a permit has been issued under title 4, chapter 3, article 6 of this code.
- C. Public utilities which have an existing easement for utility service.
- D. ~~Open air dining areas for which a permit is issued pursuant to section 10-3-3505 of this code.~~
- E. Producers of agricultural products or other vendors with written permission from the city to operate in the public right of way during a "farmers' market" as defined in chapter 6 of this title.
- F. Special events for which a permit has been issued under title 4, chapter 8 of this code.

10-3-1960: VIOLATIONS AND REMEDIES:

- A. The operation of a business in violation of this article is a nuisance. Each person violating this article is subject to all remedies allowed by law.
- B. ~~The violation of any provision set forth in this article by any business for which an open air dining permit has been granted pursuant to article 35 of this chapter shall constitute sufficient grounds for the revocation of said open air dining permit, pursuant to the procedures set forth in article 35 of this chapter.~~

10-~~273-30~~2730: PARKING; REQUIREMENTS

7. Open air dining ~~authorized pursuant to section 10-3-3505 of this chapter~~ on public property No additional parking required.

8. Open air dining ~~pursuant to an open air dining plan as provided in article 35 of this chapter~~ on private property Parking shall be provided as required for indoor dining pursuant to this section except that the ~~city council~~ planning commission may establish parking requirements for open air dining areas that are different than those set forth in this section if the ~~council~~ planning commission determines that the open air dining area will generate a need for parking different than the amount of parking required by this section or the ~~council~~ planning commission determines that parking demand will be met by means other than those means specified in this section

10-3-2733: PARKING IN NONRESIDENTIAL ZONES; LOCATION AND SHIELDING OF FACILITIES:

Except as provided in this section, in all nonresidential zones, required parking shall be provided on site. However, the director of ~~planning and~~ community development may, pursuant to the provisions of article 36 of this chapter, approve a minor accommodation permit for up to ~~sixteen~~ (610) spaces to be located off site within ~~five~~ seven hundred and fifty feet (~~500~~ 750') of the use site if the director finds that the proposal would not have a significant, adverse effect on traffic and parking in the area. The planning commission may grant a conditional use permit

authorizing off site parking in excess of ~~six~~ten (~~6~~10) spaces within ~~five~~seven hundred and fifty feet (~~500~~750') of the use site.

Additionally, except for required entrances and exits, all parking structures in nonresidential zones shall be constructed so as to shield the automobiles from horizontal view in all directions and so as to comply with the noise abatement provisions of this code and shall be enclosed with solid walls when such parking structures are adjacent to a residentially zoned property or separated from such a property solely by a street or alley.

10-3-3007: ARCHITECTURAL REVIEW REQUIRED:

A. 1. Approval: No building, structure, sign, wall, fence, or landscaping located in any zone other than a single-family (one-family) residential zone shall be erected, constructed, altered, or remodeled unless the elevations and plans for the exterior portions and areas and the interiors of mall areas, as defined in section 10-3-100 of this chapter, have first been reviewed and approved by the architectural commission, or by the council on appeal.

2. Exception: Notwithstanding the provisions of subsection A1 of this section, temporary seasonal decorations may be displayed on private property, without architectural review, during the period between November 15 of each year and January 10 of the following year.

B. No exterior portion or area of an existing building, structure, sign, wall, fence, or other improvement to real property, or the interior of any mall area, located in any zone other than a residential zone shall be painted, repainted, textured, or retextured unless the plans, colors, and

textures for such work have been reviewed and approved by the architectural commission, or by the council on appeal.

C. No permit shall be issued for any work described in subsections A and B of this section and unless the necessary approval required therefor is first granted.

Prior to the commencement of any work described in subsections A and B of this section, an application for approval shall be made in writing to the architectural commission pursuant to the procedure set forth in this article.

D. Notwithstanding the issuance of an open air dining ~~plan approval~~permit pursuant to article 35 of this chapter, no open air dining operations shall be established unless the plans for all improvements, fixtures, structures and facilities to be located in the public right of way have been reviewed and approved by the architectural commission, or by the council on appeal. For the purposes of this subsection "facilities" shall include, but not be limited to, tables and chairs.

E. When in the opinion of the ~~city planning official~~director, the approval of an application for a minor or insignificant permit does not defeat the purposes and objectives of this article, the official may grant the approval without submitting the matter to the architectural commission for its approval, notwithstanding any other provision of this section or this article. The decision of the ~~city planning official~~director may be appealed to the architectural commission by filing an appeal petition with the ~~city planning official~~director no later than fourteen (14) days after the official's decision. The petition shall be on a form designated by the ~~city planning official~~director.

F. Notwithstanding the provisions of this section, architectural review may be a condition of the granting of a conditional use permit or a variance when required for any use or improvement in a residential zone.

G. Notwithstanding any other provision of this section, architectural review shall be a condition of the grant of a sign accommodation pursuant to chapter 4, article 9 of this title.

H. Notwithstanding any other provision of this code, architectural review shall be a condition precedent to the approval of a final map to convert an existing multi-family residential apartment building to a common interest development project or to convert a common interest development previously created prior to January 1, 2006, to another form of common interest development in accordance with chapter 2, article 7 of this title for any building that the planning commission determined to be a "character contributing building" in accordance with section 10-2-707 of this title and, based on that determination, granted a waiver of any of the requirements of said article 7.

10-3-3016: FILING FEES:

A. Applications for ~~staff~~ architectural review by the director as set forth in subsection 10-3-3007E of this article shall be accompanied by a filing fee ~~of fifteen dollars (\$15.00), no part of which shall be returnable to the applicant~~ as established by the City Council.

B. Applications for architectural review required to be submitted to the architectural commission for approval shall be accompanied by a filing fee ~~of one hundred twenty dollars (\$120.00), no part of which shall be returnable to the applicant~~ as established by the City Council.

C. Notwithstanding the provisions of subsections A and B of this section, no fee shall be required for any architectural review required by subsection 10-3-3007B of this article.

10-3-3017: RESTAURANTS:

The commission chair shall appoint a two member restaurant subcommittee to review certain restaurant applications. The chair may select an alternate member or members in the event the restaurant subcommittee members are unable to meet within 14 days of an application filing that is subject to the provisions of this Section. In the event a subcommittee meeting does not occur within 14 days, the matter shall be scheduled for the next available commission meeting.

Upon the filing of a complete application with the community development department for a project that requires architectural review and is solely related to a restaurant use, the following regulations shall apply:

- A. Within 14 days of the date on which an application is deemed complete, the restaurant subcommittee of the Architectural Commission and the director, or his/her designee, shall meet for the purposes of determining whether the project is minor and not subject to review before the Architectural Commission. The Architectural Commission restaurant subcommittee decision that the project is minor must be unanimous, otherwise the matter shall be scheduled for the next available Architectural Commission meeting. Projects determined minor shall be approved by the director or designee.
- B. For projects that require review before the Architectural Commission, the application shall be approved, approved with conditions, or denied in one meeting. The commission shall not have the authority to impose conditions of approval requiring further review by any authority other than the director, except as provided below. If no action is rendered at the meeting, the application shall be deemed denied.
1. The Architectural Commission may delegate final action to the restaurant subcommittee. If delegated, the restaurant subcommittee shall make a decision within 14 days after the Architectural Commission meeting. A unanimous approval of the restaurant subcommittee is required for the project to be approved. All other action by the restaurant subcommittee, including a failure of the subcommittee to meet within 14 days, shall be determined to be a technical denial. Final decisions of the restaurant subcommittee pursuant to this subsection shall be appealable to the City Council pursuant to Municipal Code Chapter 4, Article 1.
- C. Applications that include a request for a sign accommodation shall comply with Chapter 4 of this Title 10, however, such applications shall not be subject to the public notice requirements in Section 10-4-904.
- D. Applications for temporary construction barricades that include graphics and will remain in place for less than six months shall be approved or denied by the director of community development. The director may forward any construction barricade application to the architectural commission to be processed pursuant to subsection B. Temporary construction barricades with graphics that will remain in place for a period of six months or longer shall require architectural commission review pursuant to subsection B.

10-3-3100: DEVELOPMENT PLAN REVIEW REQUIRED:

Notwithstanding any other provision of this code, or ordinance of the city of Beverly Hills, the following shall not be permitted to be established unless a development plan is approved pursuant to the provisions of this article establishing a development plan review procedure:

A. All uses involving new construction that requires the issuance of a building permit other than new construction subject to a discretionary permit under this chapter (excluding architectural review) or any other interim zoning ordinance of the city;

~~B. All uses involving open air dining for more than two (2) tables or seating for more than eight (8) persons on a site located within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone, but not in a public right of way; and~~C. All rooftop gymnasiums and lunchrooms permitted pursuant to section 10-3-3109 of this article.

~~D~~C. All projects constructed pursuant to a density bonus permit.

~~Existing uses involving open air dining on a site located within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone, but not in a public right of way, shall file an application for a temporary open air dining permit prior to December 13, 1990. Applications for temporary open air dining permits shall be reviewed and processed pursuant to the procedures and standards governing applications for development plan review approval.~~

~~An application for development plan review approval shall be filed with the planning and community development department in the form prescribed by that department. The council may establish fees for the review of such applications by resolution.~~

~~Uses involving open air dining areas which contain less than two (2) tables and serve less than eight (8) persons on a site located within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone or in the public right of way shall file an application for an open air dining permit pursuant to section 10-3-3505 of this chapter.E.~~

D. All new parking lots.

A new parking lot shall mean a parking lot established in a location not previously used for parking purposes.

~~F.~~ E. Conversion of parking to a commercial parking lot.

Parking shall be considered to be converted to a commercial parking lot upon the initial posting of signs advertising the availability of such parking to the general public. Nothing in this subsection shall require development plan review of an existing parking lot that currently contains signage advertising the availability of parking to the general public. Signage indicating the availability of parking for patrons or employees of a commercial establishment shall not be considered to be signage advertising the availability of parking to the general public.

~~G.~~ F. All common interest development projects, as defined in chapter 2, article 7 of this title.

10-3-3101: EXEMPTIONS FROM DEVELOPMENT PLAN REVIEW:

The development plan review procedure required by this article shall not apply to the following:

A. Single-family residences and accessory uses permitted in single-family zones except single-family residences constructed pursuant to a density bonus permit.

B. Signs.

- C. Sculptures or other types of artwork.
- D. Landscaping not involving any new construction of buildings or structures on the site.
- E. Facade remodeling of existing buildings or structures not increasing the square footage by two thousand five hundred (2,500) square feet or more, or the height of the building or structure.
- F. Awnings.
- G. Encroachment permits approved by the city council.
- H. New construction involving less than two thousand five hundred (2,500) square feet of new or additional floor area that does not increase the height of the structure or building and is not for the purpose of establishing ~~an open air dining use~~, a rooftop gymnasium or lunchroom pursuant to section 10-3-3109 of this article, or an automatic teller machine adjacent to a public right of way.
- I. Resurfacing, restriping and similar alteration of an existing legally nonconforming surface parking facility.
- J. Satellite dish antennas permitted as accessory uses pursuant to section 10-3-4503 of this chapter.
- K. Wireless telecommunication antenna facilities permitted without a conditional use permit pursuant to section 10-3-4509 of this chapter.

10-3-3102: REVIEWING AUTHORITY FOR DEVELOPMENT PLAN REVIEW APPLICATIONS:

A. The planning commission shall be the reviewing authority for all development plan review applications involving the following:

1. Projects in the C-5 or public service zone involving new construction with a floor area ratio greater than 1.5, other projects in those zones involving more than forty thousand (40,000) square feet of new or additional floor area, and projects in any other zone involving more than fifteen thousand (15,000) square feet of new or additional floor area.
2. Multi-family residential projects involving five (5) or more new units.
3. Any project requiring the granting of a variance.
4. ~~Open air dining as defined in subsection 10-3-3100B of this article except as provided in subsection B of this section.~~ Rooftop gymnasiums and lunchrooms in the C-3, C-R, C-3A, and C-3B zones.
- ~~6.5.~~ Any project referred to the planning commission by the planning director.
- ~~7.6.~~ All common interest development projects, as defined in article 7, chapter 2 of this title.
- ~~8.7.~~ Any project constructed pursuant to a density bonus permit.

~~Except as provided in subsection B of this section, the~~The reviewing authority for all other projects subject to the provisions of this article shall be the city planning director or such other person that may be designated by the city manager. The planning director or such other designated person may refer to the planning commission any project that the director of other designated person deems appropriate for review by the commission due to the size, location, or other characteristics or impacts of the project.

~~B. The city council shall be the reviewing authority for development plan review applications which exclusively involve open air dining, as defined in subsection 10-3-3100B of this article, and which are filed in connection with an application for an open air dining plan required by section 10-3-3502 of this chapter.~~

10-3-3104: STANDARD OF REVIEW OF DEVELOPMENT PLAN REVIEW APPLICATIONS:

Except as provided in this section for development plans to be located in the C-5 zone and reviewed by the director of planning and community development, the reviewing authority shall approve a development plan review application only if it makes all of the following findings:

- A. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
- B. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

For those proposed plans to be located in the C-5 zone that are reviewed by the planning commission, the commission shall consider the factors set forth in section 10-3-2021 of this chapter as part of the commission's determination regarding whether a project will promote harmonious development of the area.

C. 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.

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

E. The proposed plan will not be detrimental to the public health, safety or general welfare.

~~In addition, when evaluating an application involving open air dining, the reviewing authority shall approve the application only if:~~

~~1. The proposed plan will not create any significantly adverse parking impacts as a result of employee or patron parking demand.~~

~~2. The proposed plan will not create any significantly adverse impacts on neighboring properties as a result of:~~

~~a. The accumulation of garbage, trash or other waste;~~

~~b. Noise created by the operation of the restaurant or by employees or visitors entering or exiting the restaurant;~~

~~e. Light and glare;~~

~~d. Odors or noxious fumes.~~

In approving a development plan application, the reviewing authority may impose such conditions as it deems appropriate to protect the public health, safety and general welfare.

With regard to development plans to be located in the C-5 zone and to be reviewed by the director of planning and community development, the review of the director shall be ministerial and limited to whether such building conforms to the requirements of the C-5 zone.

~~10-3-3107: PARKING REQUIREMENTS FOR OPEN AIR DINING:~~

~~The planning commission may establish parking requirements for open air dining permitted pursuant to this article that are different than those parking requirements established in section 10-3-2730 of this chapter if the planning commission determines that the open air dining use will generate a need for parking different than the amount of required parking under section 10-3-2730 of this chapter or the commission determines that parking demand will be met by means other than those means specified in section 10-3-2730 of this chapter.~~

~~10-3-3108: SUSPENSION OF OPEN AIR DINING PRIVILEGES:~~

~~If the director of building and safety determines that there has been a violation of any condition imposed pursuant to a development plan approval that involves open air dining uses, any condition imposed pursuant to an open air dining plan, or any condition imposed pursuant to an open air dining permit, then the director of building and safety may suspend such approval, plan or permit for a period not to exceed eight (8) weeks. In addition, if the decision making body for the original open air dining approval determines that there has been a violation of any condition~~

~~imposed pursuant to a development plan approval that involves open air dining uses, any condition imposed pursuant to an open air dining plan, or any condition imposed pursuant to an open air dining permit, then that body may, after notice and hearing pursuant to section 10-3-3103 of this article, revoke such approval, plan or permit. If the director of planning and community development served as the decision maker for the original open air dining approval, then, for the purposes of this section, the planning commission shall be considered the decision making body with regard to that approval.~~

10-3-3307: REVIEW OF IN-LIEU PARKING APPLICATIONS:

Persons desiring to participate in the in-lieu parking district established by this article shall submit an application for participation to the director of ~~planning and~~ community development. If the director determines that such application meets the requirements set forth in sections 10-3-3302 through 10-3-3306 of this article, then the director shall schedule a hearing on that application before the planning commission. ~~Written notice of such~~, unless the application is solely for a restaurant use and the number of in lieu parking spaces requested is 10 or less, in which case the director shall have the authority to approve the request without conducting a hearing. Written notice of any required hearing shall be mailed to the applicant by United States mail, at least ten days prior to the hearing. Furthermore, if the applicant has concurrently filed other applications which require a hearing before the planning commission, then the hearing regarding the application for participation in the district shall be combined with such other hearing. Similarly, notice of the application for participation in the district shall be combined with the notice of any other application that will be reviewed concurrently by the planning commission.

10-3-3308: STANDARD OF REVIEW:

The planning commission or director pursuant to the provisions of Section 10-3-3307 shall approve an application for participation in the in-lieu parking district only if the commission or director makes the following findings:

- A. Participation in the in-lieu parking district, as approved, will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
- B. Participation in the in-lieu parking district, as approved, will not create any significantly adverse traffic safety impacts, pedestrian-vehicle conflicts, or parking impacts.
- C. Participation in the in-lieu parking district will not be detrimental to the public health, safety and welfare.

The commission or director may restrict participation in the in-lieu parking district by requiring the provision of a minimum amount of on site parking if the commission or director determines that such restriction is necessary to allow the commission or director to make the findings set forth in this section.

10-3-3309: APPEALS:

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code.

Any decision of the planning commission pursuant to this article may be appealed to the city council in the manner provided by title 1, chapter 4, article 1 of this code.

Article 35. Open Air Dining

10-3-3501: ~~Standards For~~ Open Air Dining Permits.

10-3-3502: ~~Reviewing Authority~~

~~10-3-3503:~~ Open Air Dining ~~In The~~in the Public ~~Rights Of~~Right of Way; ~~Permit Required~~

~~10-3-3504: Minor Open Air Dining Permit~~

~~10-3-3505: Open Air Dining In The Public Rights Of Way; Requirements~~Requirements

10-3-3503: Reviewing Authority

10-3-3504: Notice

10-3-3505: Standard of Review

10-3-3506: Open Air Dining ~~Within One Hundred Seventy Feet Of An R-1, R-4, Or RMCP~~
~~Zone~~

~~10-3-3507: Notice~~

~~10-3-3508: Standard Of Review~~

~~10-3-3509: Open Air Dining~~ Permit; Conditions

~~10-3-3510: Parking Requirements For Open Air Dining~~

~~10-3-3511~~3507: Bonding ~~And~~and Insurance

10-3-~~3512~~3508: Decision ~~And~~and Appeals

10-3-~~3513: Established Open Air Dining Uses~~

~~10-3-3514~~3509: Suspension ~~And~~and Revocation ~~Of~~of Open Air Dining Permit

10-3-3501: ~~STANDARDS FOR OPEN AIR DINING: Open air dining shall be a permitted use in commercial zones provided that the use meets the following conditions~~ PERMITS:

A. ~~Parking is provided pursuant to the provisions of section 10-3-2730 of this chapter, unless different parking requirements are established for the~~ No open air dining use shall be established in accordance with the provisions of section 10-3-3510 of this article, the public right of way or on private property unless an open air dining permit is approved pursuant to this article 35.

B. ~~No area used~~ Parking shall be provided for all open air dining ~~shall be located in the public right of way except as provided in this article~~ uses pursuant to the provisions of section 10-3-2730 of this chapter.

C. ~~No area used for open air dining shall be located on a site within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone except as otherwise provided in section 10-3-3506 of this article.~~

~~10-3-3502: REVIEWING AUTHORITY:~~

~~A. Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of planning and community development. If, in the opinion of the director, an application merits review by the city council, the director may refer such application to the city council and the city council shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request for an open air dining permit.~~

~~B. Notwithstanding the provisions of subsection A of this section, if the application for an open air dining permit accompanies an application for any other type of discretionary approval from the planning commission or city council for the same site area, the planning commission or city council, as appropriate, shall be the reviewing authority for the application for an open air dining permit and shall conduct a noticed public hearing regarding the request for an open air dining permit.~~

~~10-3-3503: OPEN AIR DINING IN THE PUBLIC RIGHTS OF WAY; PERMIT REQUIRED: No open air dining use shall be established in the public right of way unless an open air dining permit is approved by the appropriate reviewing authority in accordance with the provisions of this article. An application for approval of An application for an open air dining permit shall be filed with the planning and community development department in a form prescribed by that department. ~~The city council may establish by resolution fees for the review of such applications~~~~

D. If approved, an open air dining permit shall be valid for a period of five (5) years and may be renewed for one additional five (5) year period on the same terms and conditions as set forth in the original approval.

~~10-3-3504: MINOR OPEN AIR DINING PERMIT:~~

~~At the discretion of the applicant, open air dining areas which serve no more than eight (8) persons may be established in the public right of way pursuant to a minor open air dining permit.~~

~~An application for approval of a minor open air dining permit shall be filed with the city planning and community development department in a form prescribed by that department~~E. The city council may establish by resolution fees for the review of such applications. ~~Minor open air dining permits shall be valid for one year and must be renewed annually. Open air dining uses permitted under a minor open air dining permit shall comply with all other provisions of this article unless otherwise provided herein.~~

10-3-~~3505~~3502: OPEN AIR DINING IN THE PUBLIC ~~RIGHTS~~RIGHT OF WAY;
REQUIREMENTS:

A. Any open air dining area proposed to be located in the public right of way shall comply with all of the following requirements:

1. A minimum distance of not less than five foot (5') wide pedestrian travel aisle shall be maintained on the public right of way at all times; to assure the required pedestrian travel aisle, all open air dining areas shall be set back a minimum of five feet (5') from the edge of the curb and any fixed sidewalk obstruction including, without limitation, curb lines, tree wells, street trees, parking meters, water hydrants, light poles, utility equipment boxes, newspaper racks and bus benches.
2. Umbrellas located in the open air dining area shall have a minimum seven foot (7') clearance from the ground to the lowest element of the umbrella and shall be located completely within the open air dining areas permitted boundaries.
3. Portable heaters shall be located a minimum of three feet (3') from any combustible material and shall be located completely within the open air dining areas permitted boundaries.

4. Unless a permanent structure is approved pursuant to the permit, all fixtures and furniture used in an open air dining area shall be removed from the public right of way and stored out of public view during nonbusiness hours. At the discretion of the reviewing authority, open air dining areas with more than ~~eight~~twelve (812) chairs may be required to provide a permanent barrier delineating the usable open air dining area from the remaining area of the public right of way.

5. Areas used for outdoor dining shall not extend beyond the building frontage for the associated restaurant space.

6. The material and design of the furniture and barrier, if any, shall be reviewed and approved ~~by the architectural committee~~pursuant to section 10-3-3007 of this chapter prior to installation.

7. An encroachment permit allowing establishment of an open air dining ~~permit shall~~area must be ~~issued by~~obtained from the public works department in a form satisfactory to the city attorney.

8. Areas used for open air dining in the public right of way shall comply with all applicable provisions of the Uniform Building Code, including, but not limited to, maintaining proper building egress and ingress at all times, observing maximum seating capacities, providing proper circulation, and providing appropriate ~~handicap~~ access to persons with disabilities.

B. An annual rental fee shall be imposed on the use or operation of open air dining areas located in the public right of way. The rental fee schedule shall be set by resolution of the city council. In the event that a permit is suspended pursuant to section 10-3-~~3514~~3509 of this article, rental fees shall not be required to be paid during the period of suspension.

~~10-3-3506: OPEN AIR DINING WITHIN ONE HUNDRED SEVENTY FEET OF AN R-1, R-4, OR RMCP ZONE:~~3503: REVIEWING AUTHORITY:

~~A. Open air dining shall not be permitted to be established within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone unless permitted pursuant to article 31 of this chapter.~~Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of community development. If, in the opinion of the director, an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request.

~~B. Open air dining areas which serve no more than eight (8) persons shall not be permitted to be established within one hundred seventy feet (170') of an R-1, R-4, or RMCP zone unless permitted pursuant to a minor open air dining permit.~~

~~10-3-3507: NOTICE:~~

~~A. A notice of application, in a form approved by the city, shall be posted in a conspicuous place on the subject site within three (3) days after an application for an open air dining permit has been deemed complete. Such notice shall be visible from a distance of sixty feet (60') and shall remain posted in such conspicuous place for no less than ten (10) days. Within five (5) days of posting, the applicant for an open air dining permit shall submit an affidavit to the city certifying such notice has been posted in compliance with this section.~~

~~B. A notice of intended decision regarding an application for an open air dining permit shall be mailed at least ten (10) days prior to any decision rendered by the director of planning and community development to all property owners and residential occupants within one hundred feet (100') of the exterior boundaries of a project site.~~The reviewing authority for an open air dining permit for an open air dining area serving more than twelve (12) persons located on private property within one hundred seventy feet (170') of an R-1 or R-4 zone shall be the planning commission.

C. A ~~notice of~~ public hearing shall be ~~mailed~~ held by the planning commission on all applications for which it is the reviewing authority. In addition to the notice requirements pursuant to section 10-3-3504 of this chapter, at least ten (10) days prior to ~~any hearing held by a reviewing authority other than the director of planning and community development, by United States mail, postage paid, to all property owners and occupants within one hundred feet (100~~ such hearing, notice of the time, place and purpose of the public hearing shall be sent by first class mail to each owner of property in a residential zone within a distance of five hundred feet (500') of the exterior boundaries of a project site, as shown on the latest the subject property and to each owner of property in any other zone within three hundred feet (300') of the exterior boundaries of the subject property. Such notice shall be sent to the property owners whose names and addresses appear on the last equalized county assessment roll.

D. ~~When a decision regarding an open air dining permit is rendered by the director of planning and community development, then a notice of decision shall be mailed in the same manner as the notice of intended decision.~~ Notwithstanding the provisions of this section, if the application for an open air dining permit accompanies an application for any other type of discretionary approval from the planning commission or city council for the same site area, the planning commission or city council, as appropriate, shall be the reviewing authority for the application and shall conduct a noticed public hearing regarding the request.

10-3-3504: NOTICE:

Notices in connection with the open air dining permit approval process shall be provided in accordance with Section 10-3-3602 of this chapter.

10-3-~~3508~~3505: STANDARD OF REVIEW:

The reviewing authority shall approve an open air dining permit application if all of the following findings can be made:

- A. The proposed open air dining use is consistent with the general plan and any specific plans adopted for the area.
- B. The proposed open air dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.
- C. The nature, configuration, location, density, and manner of operation of any open air dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
- D. The proposed open air dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way.
- E. The proposed open air dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demands.
- F. The proposed open air dining use will not create any significantly adverse impacts on neighboring properties as a result of:
 - 1. The accumulation of garbage, trash or other waste;
 - 2. Noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant;
 - 3. Light and glare; or
 - 4. Odors and noxious fumes.
- G. The proposed open air dining use will not be detrimental to the public health, safety, or general welfare.

10-3-~~3509~~3506: OPEN AIR DINING PERMIT; CONDITIONS:

In approving an open air dining permit, the reviewing authority may impose such conditions as may be reasonably necessary to protect the public health, safety and general welfare, and to ensure that the proposed open air dining use is established and conducted

in a manner which is consistent with this article and the development standards for the underlying commercial zone. The conditions imposed by the reviewing authority may include, but shall not be limited to:

- A. The appropriate setback for the proposed open air dining use;
- B. Pedestrian access and safety;
- C. Parking requirements;
- D. Barrier requirements;
- E. The time limit on the permit.

~~10-3-3510: PARKING REQUIREMENTS FOR OPEN AIR DINING:~~ 3507: BONDING AND INSURANCE:

~~Parking for the proposed open air dining area shall be provided in accordance with the provisions of section 10-3-2730 of this chapter. However, upon application to the planning and community development department, on a form prescribed by that 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 authority determines that the open air dining use will generate a need for parking different than the amount of required parking under section 10-3-2730 of this chapter or the reviewing authority determines that parking demand will be met by means other than those means specified in section 10-3-2730 of this chapter.~~

~~10-3-3511: BONDING AND INSURANCE:~~

Upon issuance pursuant to this article of an open air dining permit ~~under section 10-3-3505 of this article~~ for a dining area in the public right of way, the permittee shall post and at all times while the permit is in existence, maintain a security bond and insurance.

A. The amount and form of the bond shall be designated by the reviewing authority at the time of approval of the open air dining permit, and shall be in an amount which is determined to be sufficient for removal of the open air dining area in the event the permittee fails to comply with the conditions of the permit. The form and content of the bond shall be satisfactory to the city attorney. The bond may be waived where it is determined that the potential for any injury to the city from the existence of the open air dining area is minimal. Any security bond required by this section may be cash, or cash equivalent security approved by the city attorney and the risk manager, or a bond in accordance with title 3, chapter 4 of this code.

B. The amount of insurance shall be designated by the city risk manager at the time of approval of the open air dining permit, and shall be in an amount which is determined to be sufficient to adequately protect the city, persons, and property from injuries or damages which may be caused by the use or operation of the open air dining area authorized by the permit. Insurance which is required under this section shall comply with the provisions of title 3, chapter 4 of this code.

10-3-~~3512~~3508: DECISION AND APPEALS:

The applicant or any person aggrieved by any decision ~~by a reviewing authority other than the city council~~ of the planning commission regarding an open air dining permit may appeal the decision to the city council in the manner provided by title 1, chapter 4, article 1 of this code.

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code.

~~10-3-3513: ESTABLISHED OPEN AIR DINING USES:~~

~~Any legally permitted open air dining use located in the public right of way and in existence before September 1, 1989, may continue, without alteration or expansion, until September 1, 1992, without obtaining an open air dining permit approval pursuant to this article. No open air dining use may be located in the public right of way after September 1, 1992, without obtaining open air dining permit approval pursuant to this article.~~10-3-35143509: SUSPENSION AND REVOCATION OF OPEN AIR DINING PERMIT:

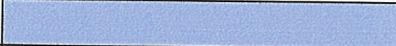
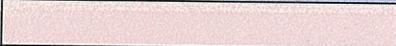
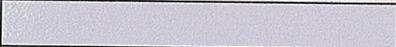
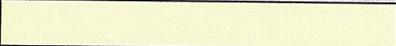
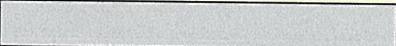
If the director of ~~planning and~~ community development, with the advice of the city engineer ~~and/or the director of building and safety~~, determines that evidence could be presented to the ~~city council~~planning commission which may support grounds for revocation or suspension of an open air dining permit, and the director believes that the ~~city council~~planning commission may find that such evidence is adequate to support revocation or suspension ~~of the open air dining permit~~, then the director may initiate a revocation or suspension proceeding before the ~~city council~~planning commission.

Upon initiation of a revocation or suspension proceeding, the ~~city council~~planning commission shall hold a public hearing regarding the possible revocation or modification of the open air dining permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of ~~an open air dining~~the original permit. The ~~city council~~planning commission, after such hearing, may revoke or suspend the open air dining permit if the ~~council~~commission determines that:

- A. The permittee has violated any condition imposed on the ~~open air dining~~ permit approval, or violated any provision of this code that governs, in whole or in part, the activity for which the ~~open air dining~~ permit was granted or the land on which it is located; or
- B. The ~~open air dining~~ permit was obtained in a fraudulent manner; ~~or~~
- C. The operation of the open air dining use constitutes or creates a nuisance; or
- D. The operation of the open air dining use violates any provision of article 19.5 of this chapter.

Document comparison by Workshare Professional on Thursday, October 27, 2011
11:42:19 AM

Input:	
Document 1 ID	interwovenSite://RWGDMS2/RWGIMAN1/1401982/1
Description	#1401982v1<RWGIMAN1> - BH - Old Dining Provisions (DV)
Document 2 ID	interwovenSite://RWGDMS2/RWGIMAN1/1402920/1
Description	#1402920v1<RWGIMAN1> - BH - Dining Regs Ord - NEW provisions
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	129
Deletions	141
Moved from	7
Moved to	7
Style change	0
Format changed	0
Total changes	284

Attachment 3

Planning Commission Resolution Recommending Amendments

RESOLUTION NO. 1619

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING ADOPTION OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS THAT AMENDS VARIOUS SECTIONS OF THE BEVERLY HILLS MUNICIPAL CODE THAT RELATE TO RESTAURANT USES

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 "Ordinance"); and,

WHEREAS, the Planning Commission considered the zone text amendment set forth in the proposed Ordinance at duly noticed public hearings on August 4, 2011, and September 8, 2011, at which times it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, the Planning Commission considered and hereby recommends to the City Council adoption of an ordinance substantially as set forth in Exhibit A, attached hereto and incorporated herein by reference; and,

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that such Ordinance 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. This project has been 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 Planning Commission has determined that the proposed ordinance is exempt from CEQA review requirements pursuant to a

Class 1 Categorical Exemption for operational changes within an existing commercial facility; therefore, under the authority provided by the CEQA Guidelines, no significant environmental impacts are anticipated. The records related to this determination are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210.

Section 2. The Planning Commission does hereby find that the proposed Amendment is intended to facilitate the timelier permitting of restaurant applications in existing commercial buildings by streamlining the permitting process through the City. This mainly involves transferring decision-making about minor changes in commercial areas from the City's Architectural Commission and Planning Commission to staff. The decisions that would be so transferred pertain to in-lieu parking for restaurants, open-air dining, off-site parking for restaurants and construction barricades for restaurants

The City's General Plan includes the following policies in the Land Use Element and Economic Sustainability Element that support the proposed Ordinance because they address the importance of diverse and vibrant commercial districts and of providing efficient City services to maintain the City's economic base:

Land Use Element Goal 9.1, "Diverse Districts and Corridors; Uses for Diverse Customers." This goal promotes uses that "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."

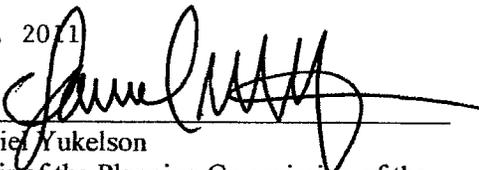
Economic Sustainability Element Goal ES 1.1, "Sustainable Economic Base; Fiscal Prudence." This goal states, "[T]he first key to economic sustainability is the efficient use of resources by an effective and streamlined local government with the ongoing mission of providing residents and community with superb value for money."

Section 3. The Planning Commission does hereby recommend that the City Council adopt the proposed 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 Planning Commission further recommends that the City Council direct the Architectural Commission to review and make recommendations related to the design aspects of temporary enclosures for outdoor restaurant space located on public property to address inclement weather.

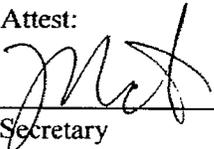
Section 5. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: September 8, 2011



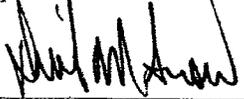
Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



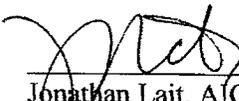
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
Assistant Director of Community Development /
City Planner

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

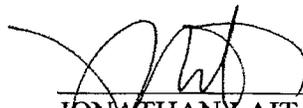
I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1619 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on September 8, 2011, 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 Furie, Rosenstein, Cole, Vice Chair Corman, and Chair Yukelson.

NOES: None.

ABSTAIN: None.

ABSENT: None.



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

EXHIBIT A

[DRAFT] ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING VARIOUS PROVISIONS OF THE BEVERLY
HILLS MUNICIPAL CODE RELATED TO REGULATION
AND PERMITTING OF RESTAURANT USES

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

Section 1. The City Council hereby amends Section 10-3-2733 of Article 27 of Chapter 3 of
Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-2733: PARKING IN NONRESIDENTIAL ZONES; LOCATION AND
SHIELDING OF FACILITIES:

Except as provided in this section, in all nonresidential zones, required parking shall be
provided on site. However, the director of community development may, pursuant to the
provisions of article 36 of this chapter, permit up to ten (10) spaces to be located off site
within seven hundred and fifty feet (750') of the use site if the director finds that the
proposal would not have a significant, adverse effect on traffic and parking in the area.
The planning commission may grant a conditional use permit authorizing off site parking
in excess of ten (10) spaces within seven hundred and fifty feet (750') of the use site.

Additionally, except for required entrances and exits, all parking structures in
nonresidential zones shall be constructed so as to shield the automobiles from horizontal
view in all directions and so as to comply with the noise abatement provisions of this
code and shall be enclosed with solid walls when such parking structures are adjacent to a
residentially zoned property or separated from such a property solely by a street or alley.”

Section 2. The City Council hereby amends Section 10-3-2734 of Article 27 of Chapter 3 of
Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-2734: PARKING; COVENANTS AND LEASE AGREEMENTS:

A. When parking is to be provided off the regularly subdivided lot on which the
structure, or some portion thereof, is located, the owner or lessee of record of the
development site shall furnish satisfactory evidence to the planning official that he owns
or has available sufficient property to provide the minimum off street parking required by
the provisions of section 10-3-2730 of this article. Whether parking is to be provided on

EXHIBIT A

property owned by the applicant or is in another ownership, there shall have been recorded in the office of the county recorder, prior to the issuance of any building permit, a covenant executed by the owners of such property for the benefit of the city, in a form approved by the city attorney, to the effect that the owners will continue to maintain such parking space so long as such structure or improvement exists. Such covenant shall also recite that the title to and right to use the lots upon which the parking space is to be provided will be subservient to the title to the premises upon which the structure is to be erected and shall warrant that such lots are not and will not be made subject to any other covenant or contract for such use without the prior written consent of the city. In the event the owners of such structure should thereafter provide parking space equal in area within the same distance and under the same conditions as to ownership upon another lot than the premises made subservient in a prior such covenant, the city will, upon a written application therefor, accompanied by the filing of a similar covenant, release such original subservient premises from such prior covenant, and the owners shall furnish at their own expense such title reports or other evidence as the city may require to ensure compliance with the provisions of this section.

B. For restaurant uses, when parking is to be provided off the regularly subdivided lot on which the restaurant is located, the owner and operator of the restaurant may meet its parking obligations either by complying with the covenant requirements of Subsection A of this section, or, if the number of off-site parking spaces requested does not exceed ten (10), by submitting for approval by the director of community development a lease agreement or lease agreements demonstrating that it has rights to the required off-site parking spaces for which it seeks credit.

C. Restaurant owners that submit and receive approval for a lease agreement or lease agreements consistent with subsection B annually shall provide documentation that the lease remains in place and continues to entitle the owner or operator of the restaurant to use of the off-site parking spaces. The documentation shall consist of an affidavit from owner and operator of the restaurant that it has a valid lease or leases for the off-site parking spaces, a copy of any such lease or leases for the off-site parking spaces, an exhibit showing the location of the off-site parking spaces, and the applicable review fee as may be adopted by the City. ”

Section 3. The City Council hereby amends Section 10-3-3016 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3016: FILING FEES:

A. Applications for staff architectural review as set forth in subsection 10-3-3007E of this article shall be accompanied by a filing fee as established by the City Council.

EXHIBIT A

B. Applications for architectural review required to be submitted to the architectural commission for approval shall be accompanied by a filing fee as established by the City Council.

C. Notwithstanding the provisions of subsections A and B of this section, no fee shall be required for any architectural review required by subsection 10-3-3007B of this article.”

Section 4. The City Council hereby adds a new Section 10-3-3017 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3017: RESTAURANTS:

The commission chair shall appoint a two member restaurant subcommittee to review certain restaurant applications. The chair may select an alternate member or members in the event the restaurant subcommittee members are unable to meet within 14 days of an application filing that is subject to the provisions of this Section. In the event a subcommittee meeting does not occur within 14 days, the matter shall be scheduled for the next available commission meeting. The subcommittee shall not have any authority to review an application after it has been considered by the commission.

Upon the filing of a complete application with the community development department for a project that requires architectural review and is solely related to a restaurant use, the following regulations shall apply:

- A. Within 14 days of the date on which an application is deemed complete, the restaurant subcommittee of the Architectural Commission and the director, or his/her designee, shall meet for the purposes of determining whether the project is minor and not subject to review before the Architectural Commission. The Architectural Commission restaurant subcommittee decision that the project is minor must be unanimous, otherwise the matter shall be scheduled for the next available Architectural Commission meeting. Projects determined minor shall be approved by the director.
- B. For projects that require review before the Architectural Commission, the application shall be approved, approved with conditions, or denied in one meeting. The commission shall not have the authority to impose conditions of approval requiring further review by any authority other than the director, except as provided below. If no action is rendered at the meeting, the application shall be deemed denied.
 1. The Architectural Commission may delegate final action to the restaurant subcommittee. If delegated, the restaurant subcommittee shall make a decision within 14 days after the Architectural Commission meeting. A unanimous approval of the restaurant subcommittee is required for the project to be approved. All other action by the restaurant subcommittee,

EXHIBIT A

including a failure of the subcommittee to meet within 14 days, shall be determined to be a technical denial. Final decisions of the restaurant subcommittee pursuant to this subsection shall be appealable to the City Council pursuant to Municipal Code Chapter 4, Article 1.

- C. Applications that include a request for a sign modification shall comply with Chapter 4 of this Title 10, however, such applications shall not be subject to the public notice requirements in Section 10-4-904.
- D. Applications for temporary construction barricades that will remain in place for less than six months shall be approved or denied by the director of community development. The director may forward any construction barricade application to the architecture commission to be processed pursuant to subsection B. Temporary construction barricades that will remain in place for a period of six months or longer shall require architectural commission review pursuant to subsection B.”

Section 5. The City Council hereby amends Section 10-3-3307 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3307: REVIEW OF IN-LIEU PARKING APPLICATIONS: Persons desiring to participate in the in-lieu parking district established by this article shall submit an application for participation to the director of community development. If the director determines that such application meets the requirements set forth in sections 10-3-3302 through 10-3-3306 of this article, then the director shall schedule a hearing on that application before the planning commission, unless the application is solely for a restaurant use and the number of in lieu parking spaces requested is 10 or less, in which case the director shall have the authority to approve the request without conducting a hearing. Written notice of any required hearing shall be mailed to the applicant by United States mail, at least ten days prior to the hearing. Furthermore, if the applicant has concurrently filed other applications which require a hearing before the planning commission, then the hearing regarding the application for participation in the district shall be combined with such other hearing. Similarly, notice of the application for participation in the district shall be combined with the notice of any other application that will be reviewed concurrently by the planning commission.”

EXHIBIT A

Section 6. The City Council hereby amends Section 10-3-3308 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3308: STANDARD OF REVIEW:

The planning commission or director pursuant to the provisions of Section 10-3-3307, shall approve an application for participation in the in-lieu parking district only if the commission or director makes the following findings:

A. Participation in the in-lieu parking district, as approved, will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

B. Participation in the in-lieu parking district, as approved, will not create any significantly adverse traffic safety impacts, pedestrian-vehicle conflicts, or parking impacts.

C. Participation in the in-lieu parking district will not be detrimental to the public health, safety and welfare.

The commission or director may restrict participation in the in-lieu parking district by requiring the provision of a minimum amount of on site parking if the commission or director determines that such restriction is necessary to allow the commission or director to make the findings set forth in this section.”

Section 7. The City Council hereby amends Section 10-3-3309 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3309: APPEALS:

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code. Any decision of the planning commission pursuant to this article may be appealed to the city council in the manner provided by title 1, chapter 4, article 1 of this code.”

Section 8. The City Council hereby amends subsection C of Section 10-3-3501 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3501 remaining in place without modification:

EXHIBIT A

“C. No area used for open air dining shall be located on a site within one hundred seventy feet (170') of an R-1 or R-4 zone except as otherwise provided in section 10-3-3506 of this article.”

Section 9. The City Council hereby amends subsection A of Section 10-3-3502 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3502 remaining in place without modification:

“A. Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of community development. If, in the opinion of the director, an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request for an open air dining permit.”

Section 10. The City Council hereby amends Section 10-3-3506 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3506: OPEN AIR DINING WITHIN ONE HUNDRED SEVENTY FEET OF AN R-1OR R-4 ZONE:

A. Open air dining shall not be permitted to be established within one hundred seventy feet (170') of an R-1or R-4 zone unless permitted pursuant to article 31 of this chapter.

B. Open air dining areas which serve no more than twelve (12) persons shall not be permitted to be established within one hundred seventy feet (170') of an R-1or R-4 zone unless permitted pursuant to a minor open air dining permit.”

Section 11. The City Council hereby amends Section 10-3-3512 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3512: DECISION AND APPEALS:

The applicant or any person aggrieved by any decision by the planning commission regarding an open air dining permit may appeal the decision to the city council in the manner provided by title 1, chapter 4, article 1 of this code. Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set fort in title 1, chapter 4, article 1 of this code.”

EXHIBIT A

Section 12. The City Council hereby amends the first paragraph of Section 10-3-3514 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3514 remaining in effect without modification:

“If the director of community development, with the advice of the city engineer, determines that evidence could be presented to the city council which may support grounds for revocation or suspension of an open air dining permit, and the director believes that the city council may find that such evidence is adequate to support revocation or suspension of the open air dining permit, then the director may initiate a revocation or suspension proceeding before the city council.”

Section 13. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or particular land uses, and to the extent that future projects are proposed, appropriate CEQA review would be undertaken. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 14. 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 15. Publication.

The City Clerk 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.

EXHIBIT A

ADOPTED:

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

Attachment 4

Planning Commission Staff Report, dated September 8, 2011



City of Beverly Hills

Planning Division

455 N. Rexford Drive Beverly Hills, CA 90210
TEL. (310) 458-1140 FAX. (310) 858-5966

Planning Commission Report

Meeting Date: September 8, 2011

Subject: **Streamlining Restaurant Review Procedures** Approval of a resolution recommending the City Council adopt an ordinance that amends various sections of the Beverly Hills Municipal Code that relate to the regulation and permitting of restaurant uses.

PROJECT APPLICANT: CITY OF BEVERLY HILLS

Recommendation: It is recommended that the planning commission adopt the attached resolution.

REPORT SUMMARY

This report summarizes the planning commission's discussion from the last public hearing and includes a resolution with proposed text amendment language for review and final action. The proposed amendments relate to changes to the architectural commission review process, in lieu parking, open air dining, off-site parking, and construction barricades, as they pertain to restaurant uses.

Attachment(s):

- A. Resolution and Draft Ordinance
- B. Municipal Code Redline (Existing / Proposed)
- C. Planning Commission Staff Report, dated August 4, 2011
- D. Architectural Commission Summary, dated August 17, 2011

Report Author and Contact Information:

Jonathan Lait, AICP
(310) 285-1118
jlait@beverlyhills.org

BACKGROUND

The planning commission conducted a public hearing on August 4, 2011 to consider municipal code amendments related to restaurant uses. Attachment 2 includes the prior Planning commission report that describes the purpose and explanation of the proposed amendments. This report summarizes and addresses the planning commission comments from the last meeting and includes draft text amendment language.

DISCUSSION

The planning commission considered five recommended changes to streamline restaurant processing and discussed other regulatory options that were identified as restaurant promoting changes, as opposed to streamlining. Some recommendations were supported and are included in the draft resolution, others rejected and not included.

In Lieu Parking

Recommendation #1. Authorize the director of community development, or designee, the authority to grant up to 10 in-lieu parking spaces for new or expanded restaurants.

This recommendation was supported by a majority of the commission. If approved by the City Council, the director of community development would have the authority, pursuant to the same findings now considered by the planning commission, to approve or deny limited in-lieu parking requests.

The recommendation has the potential to save an applicant up to 90 days of application processing and a minimum of \$9,000 in application fees.

Open Air Dining

Recommendation #2. Authorize the director of community development to approve Open Air Dining Permits regardless of the number of tables and chairs requested. However, enable the director to exercise discretion and forward to the planning commission any Open Air Dining Permit on private property that may have the potential to adversely impact adjacent residential properties.

This recommendation was modified by the commission. Present code allows the director to approve open air dining on public property. Open air dining on private property can be approved by the director if it is located more than 170 feet away from a R1, R4, or RMCP zone, or within 170 feet if limited to eight chairs.

The commission recommends retaining the authority over open air dining in the transition zone, but eliminated the RMCP zone from the 170 feet standard. This would allow restaurants on Canon Drive to provide private outdoor dining without having to obtain planning commission approval. If approved by the City Council, the director would have the authority to approve private property open air dining in the business triangle and in limited instances along the commercial corridors. Requests for open air dining with more than 8 chairs on private property and located within 170 of a R1 or R4 use will continue to be subject to planning commission approval.

This recommendation will benefit properties on North Canon Drive in the business triangle. Those restaurants that are able to take advantage of this provision could save up to 90 days in application processing and approximately \$15,000 in applications fees.

The planning commission also discussed the possibility of increasing the number of chairs that could be approved by the direction, which are currently eight chairs. The attached resolution does not include any change, but such a change could be incorporated at the meeting with commission direction.

Architectural Commission Review

- Recommendation #3. Authorize the director of community development, or designee, the authority to approve or deny façade modifications, outdoor furniture, landscaping and signs for restaurant tenant spaces less than 25 feet in width.
- Recommendation #4. Authorize the director of community development, or designee, the authority to approve temporary construction barricades regardless of graphic or sign representation.
- Recommendation #5. For projects with a tenant frontage greater than 25 feet, authorize the director of community development, or designee the discretion to submit for a one-time courtesy review before the AC, plans for the proposed restaurant storefront. The ACs comments would be advisory and the matter would not be extended to a subsequent meeting.

A series of architectural commission-related recommendations were proposed (Recommendations 3-5). Recommendations 3 and 5 were rejected in favor of an alternative approach. Recommendation 4 was supported.

The planning commission favored some level of review by the architectural commission or a subset of the commission; however, there was also interest in limiting the time of that review. Specifically, the commission was interested in the use of a standing restaurant subcommittee to serve as the review authority and only when necessary, include the full commission.

The architectural commission considered these comments and supports the use of subcommittees, including using subcommittees for final approval. A summary of the architectural commission comments from their August 17, 2011 meeting is included with this report as Attachment D. The architectural commission also supported the possibility of multiple reviews by the commission, but only when necessary. The commission supports subcommittee reviews either before, after or before and after a commission meeting as appropriate.

The use of subcommittees can be challenging from timing, legal and predictability perspectives. While certain complex or challenging projects benefit from subcommittees, the use of subcommittees on design-related cases, particularly after the architectural commission renders a final action, places constraints on subcommittee members, staff and the applicant. A final action of the commission is appealable within 14 days after the decision. If subcommittees and applicants do not meet within 14 days or if there is disagreement on key issues, an applicant's ability to exercise their due process can be affected. Accordingly, staff does not support the use of subcommittees for deferred approvals after the commission has rendered a final decision. However, use of subcommittees prior to final action can be

used and a recommended approach is provided below. The following has not been considered by the architectural commission as this approach was drafted after their meeting.

The draft ordinance includes the following key components related to architectural review:

- Within 14 days after the filing of a complete application, an architectural commission restaurant subcommittee consisting of two members shall meet with the director, or his/her designee, to review the project. Applicant teams will be invited to the meeting.
Note: Two members instead of three are recommended in light of the City Council's direction to reduce the commission from seven to five members; two members would not constitute a quorum when those changes are implemented next year, but three members would be a quorum.
- If both of the subcommittee members agree the project is minor, the director shall approve the project and no further action is required. Director approvals are appealable to the architectural commission.
- If a project is determined not to be minor, or if no subcommittee meeting is held within 14 days, the application will be scheduled for the soonest available commission meeting.
- The application would be reviewed at one meeting of the architectural commission. The commission may approve, approve with conditions or deny the project. Project components that require further refinement can be deferred to the director but not to a subcommittee or subsequent commission meeting. If no action is taken, the project will be considered approved.

This alternative achieves the following:

- ensures the architectural commission maintains a significant role in reviewing the design-related aspects of restaurant applications
- fosters quicker reviews by authorizing a subcommittee to distinguish minor (administratively approved) projects from those that require full commission review (discretionary action)
- reduces the length of time by limiting projects to one subcommittee review and one commission meeting
- addresses administrative and legal challenges when using subcommittees

The planning commission in its deliberation on this topic also considered a standing subcommittee meeting occurring approximately two weeks after a regularly scheduled architectural commission meeting. Staff recommends the ordinance not prescribe this standard and instead let the commission chair and subcommittee members develop a schedule that meets their schedules and provides flexibility.

The draft ordinance also includes the elimination of a public notification requirement for sign accommodations. Sign accommodations authorize certain deviations from the sign code. This is the only architectural commission-related application that requires any public notice. The radius notice is 100 feet and is required to be mailed 10 days in advance of the meeting.

Staff is unable to identify any project in recent history where the sign accommodation notice resulted in an interested member of the public calling the city for project information or attending a public hearing. Moreover, the commission frequently considers requests for sign accommodations without the public participating in the meeting despite the notice. While public notification is appropriate for other projects, it does not seem necessary for this application. Additionally, the need for a ten day notice could delay a restaurateur from meeting the next architectural commission meeting if the subcommittee meeting were scheduled close to a regularly scheduled commission meeting.

The architectural commission also discussed standards for barricades that would temporarily enclose outdoor dining areas. However, for similar reasons articulated by some members of the planning commission, there was a desire for more dialogue. Accordingly no recommendations were transmitted with respect to temporary enclosures. The attached resolution does not include any language regarding temporary enclosures and staff will schedule this as a future discussion item before both commissions.

Additional Options to Promote Restaurant Uses

The planning commission considered the following items and made recommendations to include or not include in the draft ordinance as presented below:

1. Increase threshold for administratively approving off-site parking from 6 to 10 spaces as is being proposed for the in-lieu parking.

This amendment has been included in the draft ordinance.

2. Eliminate the covenant provision for off-site parking and require a lease instead.

This amendment has been included in the draft ordinance, but modified to restrict the maximum amount of off premise spaces to ten (10) and includes a cost recovery verification component.

3. Extend the radius threshold for off-site parking from the current 500 feet to 1,000 feet.

This amendment has been included, but modified to reflect a 750 foot radius.

4. Change the 1,000 square feet of restaurant dining and bar area limitation for a single property to be 1,000 square feet of restaurant and dining area *per restaurant space*. Present code permits only up to 1,000 square feet of dining and bar area on each property to take advantage of the reduced parking requirement (1 space per 350 square feet). Restricting each restaurant space to 1,000 square feet of dining and bar area, but allowing the cumulative dining and bar area to exceed 1,000 square feet per property could encourage more restaurants in the city and improve administrative recording keeping of these requests.

This modification was not supported by a majority the planning commission and is therefore not included in the draft ordinance.

5. Allow restaurants with outdoor dining an opportunity to temporarily enclose that space (located on public property) due to inclement weather. Such enclosures would need to meet applicable life/safety codes, including fire protection, and meet certain aesthetic considerations.

This modification was not supported by a majority of the planning commission and is therefore not included in the draft ordinance.

6. Consider changes to the in-lieu parking program to establish a flat fee for restaurants (new restaurants and expansions to existing restaurants).

This modification was not supported by the planning commission and is therefore not included in the draft ordinance.

Administrative Changes

As previously noted, there are a number of administrative changes that will occur to facilitate application processing, including concurrent reviews, improved educational and public outreach materials and training.

Representatives of the architectural commission noted a major concern with the quality of the application material that reaches the commission and believes that improvements in that area alone could facilitate application processing. Staff agrees, but these changes alone are insufficient to consistently achieve the 70 day review timeframe. However, staff has completed updates to the application and has been in contact with frequent users of both design-related commissions. Additionally, changes have been made to staff reports that will facilitate more timely reviews.

These changes were designed for two primary reasons: improve commission efficiency and facilitate a more timely review at less cost to applicants. Recent changes to the application fee structure are designed to encourage more complete and professionally drawn plans, which could reduce the cost and number of meetings and, therefore, carrying costs associated with development. These and other changes will be implemented next month.

As with other recently considered amendments, staff will continue to monitor effectiveness and report to commissions on a regular basis. Staff will work closely with the architectural commission and report on restaurant projects that have been approved by the director in order to receive feedback and refine the program.

ENVIRONMENTAL ASSESSMENT

This project has been 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 project qualifies for a Class 1 Categorical Exemption for operational changes within an existing commercial facility, and the project has been determined not to have a significant environmental impact and is exempt from the provisions of CEQA.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Newspaper Notice	10 Days	July 24, 2011	July 22, 2011*	12

* The planning commission continued to the public hearing to September 8, 2011 and, therefore, no additional public notice was required.

Public Comment

The planning commission received comments from members of the public at the hearing, which was recorded and available online. No additional correspondence has been received subsequent to the last hearing.

NEXT STEPS

Following the planning commission's action on the subject resolution, the matter will be scheduled for a public hearing before the City Council in October. It is anticipated that the effective date of the ordinance would occur before the end of the calendar year.

Report Reviewed By:



Jonathan Lait, AICP, City Planner

ATTACHMENT A

PLANNING COMMISSION RESOLUTION AND DRAFT ORDINANCE

RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF BEVERLY HILLS RECOMMENDING ADOPTION
OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS
THAT AMENDS VARIOUS SECTIONS OF THE BEVERLY
HILLS MUNICIPAL CODE THAT RELATE TO
RESTAURANT USES

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 "Ordinance"); and,

WHEREAS, the Planning Commission considered the zone text amendment set forth in the proposed Ordinance at duly noticed public hearings on August 4, 2011, and September 8, 2011, at which times it received oral and documentary evidence relative to the proposed Amendment; and,

WHEREAS, the Planning Commission considered and hereby recommends to the City Council adoption of an ordinance substantially as set forth in Exhibit A, attached hereto and incorporated herein by reference; and,

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that such Ordinance 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. This project has been 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 Planning Commission has determined that the proposed ordinance is exempt from CEQA review requirements pursuant to a

Class 1 Categorical Exemption for operational changes within an existing commercial facility; therefore, under the authority provided by the CEQA Guidelines, no significant environmental impacts are anticipated. The records related to this determination are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210.

Section 2. The Planning Commission does hereby find that the proposed Amendment is intended to facilitate the timelier permitting of restaurant applications in existing commercial buildings by streamlining the permitting process through the City. This mainly involves transferring decision-making about minor changes in commercial areas from the City's Architectural Commission and Planning Commission to staff. The decisions that would be so transferred pertain to in-lieu parking for restaurants, open-air dining, off-site parking for restaurants and construction barricades for restaurants

The City's General Plan includes the following policies in the Land Use Element and Economic Sustainability Element that support the proposed Ordinance because they address the importance of diverse and vibrant commercial districts and of providing efficient City services to maintain the City's economic base:

Land Use Element Goal 9.1, "Diverse Districts and Corridors; Uses for Diverse Customers." This goal promotes uses that "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."

Economic Sustainability Element Goal ES 1.1, "Sustainable Economic Base; Fiscal Prudence." This goal states, "[T]he first key to economic sustainability is the efficient use of resources by an effective and streamlined local government with the ongoing mission of providing residents and community with superb value for money."

Section 3. The Planning Commission does hereby recommend that the City Council adopt the proposed 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:

Daniel Yukelson
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
Assistant Director of Community Development /
City Planner

EXHIBIT A

[DRAFT] ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING VARIOUS PROVISIONS OF THE BEVERLY
HILLS MUNICIPAL CODE RELATED TO REGULATION
AND PERMITTING OF RESTAURANT USES

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

Section 1. The City Council hereby amends Section 10-3-2733 of Article 27 of Chapter 3 of
Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-2733: PARKING IN NONRESIDENTIAL ZONES; LOCATION AND
SHIELDING OF FACILITIES:

Except as provided in this section, in all nonresidential zones, required parking shall be provided on site. However, the director community development may, pursuant to the provisions of article 36 of this chapter, permit up to ten (10) spaces to be located off site within seven hundred and fifty feet (750') of the use site if the director finds that the proposal would not have a significant, adverse effect on traffic and parking in the area. The planning commission may grant a conditional use permit authorizing off site parking in excess of ten (10) spaces within seven hundred and hundred feet (750') of the use site.

Additionally, except for required entrances and exits, all parking structures in nonresidential zones shall be constructed so as to shield the automobiles from horizontal view in all directions and so as to comply with the noise abatement provisions of this code and shall be enclosed with solid walls when such parking structures are adjacent to a residentially zoned property or separated from such a property solely by a street or alley.”

Section 2. The City Council hereby amends Section 10-3-2734 of Article 27 of Chapter 3 of
Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-2734: PARKING; COVENANTS AND LEASE AGREEMENTS:

A. When parking is to be provided off the regularly subdivided lot on which the structure, or some portion thereof, is located, the owner or lessee of record of the development site shall furnish satisfactory evidence to the planning official that he owns or has available sufficient property to provide the minimum off street parking required by the provisions of section 10-3-2730 of this article. Whether parking is to be provided on

EXHIBIT A

property owned by the applicant or is in another ownership, there shall have been recorded in the office of the county recorder, prior to the issuance of any building permit, a covenant executed by the owners of such property for the benefit of the city, in a form approved by the city attorney, to the effect that the owners will continue to maintain such parking space so long as such structure or improvement exists. Such covenant shall also recite that the title to and right to use the lots upon which the parking space is to be provided will be subservient to the title to the premises upon which the structure is to be erected and shall warrant that such lots are not and will not be made subject to any other covenant or contract for such use without the prior written consent of the city. In the event the owners of such structure should thereafter provide parking space equal in area within the same distance and under the same conditions as to ownership upon another lot than the premises made subservient in a prior such covenant, the city will, upon a written application therefor, accompanied by the filing of a similar covenant, release such original subservient premises from such prior covenant, and the owners shall furnish at their own expense such title reports or other evidence as the city may require to ensure compliance with the provisions of this section.

B. For restaurant uses, when parking is to be provided off the regularly subdivided lot on which the restaurant is located, the owner and operator of the restaurant may meet its parking obligations either by complying with the covenant requirements of Subsection A of this section, or, if the number of off-site parking spaces requested does not exceed ten (10), by submitting for approval by the director of community development a lease agreement or lease agreements demonstrating that it has rights to the required off-site parking spaces for which it seeks credit.

C. Restaurant owners that submit and receive approval for a lease agreement or lease agreements consistent with subsection B annually shall provide documentation that the lease remains in place and continues to entitle the owner or operator of the restaurant to use of the off-site parking spaces. The documentation shall consist of an affidavit from owner and operator of the restaurant that it has a valid lease or leases for the off-site parking spaces, a copy of any such lease or leases for the off-site parking spaces, an exhibit showing the location of the off-site parking spaces, and the applicable review fee as may be adopted by the City. ”

Section 3. The City Council hereby amends Section 10-3-3016 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3016: FILING FEES:

A. Applications for staff architectural review as set forth in subsection 10-3-3007E of this article shall be accompanied by a filing fee as established by the City Council.

EXHIBIT A

B. Applications for architectural review required to be submitted to the architectural commission for approval shall be accompanied by a filing fee as established by the City Council.

C. Notwithstanding the provisions of subsections A and B of this section, no fee shall be required for any architectural review required by subsection 10-3-3007B of this article.”

Section 4. The City Council hereby adds a new Section 10-3-3017 of Article 30 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3017: RESTAURANTS:

The commission chair shall appoint a two member restaurant subcommittee to review certain restaurant applications. The chair may select an alternate member or members in the event the restaurant subcommittee members are unable to meet within 14 days of an application filing that is subject to the provisions of this Section. In the event a subcommittee meeting does not occur within 14 days, the matter shall be scheduled for the next available commission meeting. The subcommittee shall not have any authority to review an application after it has been considered by the commission.

Upon the filing of a complete application with the community development department for a project that requires architectural review and is solely related to a restaurant use, the following regulations shall apply:

- A. Within 14 days of the date on which an application is deemed complete, the restaurant subcommittee of the Architectural Commission and the director, or his/her designee, shall meet for the purposes of determining whether the project is minor and not subject to review before the Architectural Commission. The Architectural Commission restaurant subcommittee decision that the project is minor must be unanimous, otherwise the matter shall be scheduled for the next available Architectural Commission meeting. Projects determined minor shall be approved by the director.
- B. For projects that require review before the Architectural Commission, the application shall be approved, approved with conditions, or denied in one meeting. The commission shall not have the authority to impose conditions of approval requiring further review by any authority other than the director. If no decision is rendered at the meeting, the application shall be deemed approved.
- C. Applications that include a request for a sign modification shall comply with Chapter 4 of this Title 10, however, such applications shall not be subject to the public notice requirements in Section 10-4-904.
- D. Applications for temporary construction barricades that will remain in place for less than six months shall be approved or denied by the director of community

EXHIBIT A

development. The director may forward any construction barricade application to the architecture commission to be processed pursuant to subsection B. Temporary construction barricades that will remain in place for a period of six months or longer shall require architectural commission review pursuant to subsection B.”

Section 5. The City Council hereby amends Section 10-3-3307 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3307: REVIEW OF IN-LIEU PARKING APPLICATIONS: Persons desiring to participate in the in-lieu parking district established by this article shall submit an application for participation to the director of community development. If the director determines that such application meets the requirements set forth in sections 10-3-3302 through 10-3-3306 of this article, then the director shall schedule a hearing on that application before the planning commission, unless the application is solely for a restaurant use and the number of in lieu parking spaces requested is 10 or less, in which case the director shall have the authority to approve the request without conducting a hearing. Written notice of any required hearing shall be mailed to the applicant by United States mail, at least ten days prior to the hearing. Furthermore, if the applicant has concurrently filed other applications which require a hearing before the planning commission, then the hearing regarding the application for participation in the district shall be combined with such other hearing. Similarly, notice of the application for participation in the district shall be combined with the notice of any other application that will be reviewed concurrently by the planning commission.

”

EXHIBIT A

Section 6. The City Council hereby amends Section 10-3-3308 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3308: STANDARD OF REVIEW:

The planning commission or director pursuant to the provisions of Section 10-3-3307, shall approve an application for participation in the in-lieu parking district only if the commission or director makes the following findings:

A. Participation in the in-lieu parking district, as approved, will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

B. Participation in the in-lieu parking district, as approved, will not create any significantly adverse traffic safety impacts, pedestrian-vehicle conflicts, or parking impacts.

C. Participation in the in-lieu parking district will not be detrimental to the public health, safety and welfare.

The commission or director may restrict participation in the in-lieu parking district by requiring the provision of a minimum amount of on site parking if the commission or director determines that such restriction is necessary to allow the commission or director to make the findings set forth in this section.”

Section 7. The City Council hereby amends Section 10-3-3309 of Article 33 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3309: APPEALS:

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code. Any decision of the planning commission pursuant to this article may be appealed to the city council in the manner provided by title 1, chapter 4, article 1 of this code.”

Section 8. The City Council hereby amends subsection C of Section 10-3-3501 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3501 remaining in place without modification:

EXHIBIT A

“C. No area used for open air dining shall be located on a site within one hundred seventy feet (170') of an R-1 or R-4 zone except as otherwise provided in section 10-3-3506 of this article.”

Section 9. The City Council hereby amends subsection A of Section 10-3-3502 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3502 remaining in place without modification:

“A. Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of community development. If, in the opinion of the director, an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request for an open air dining permit.”

Section 10. The City Council hereby amends Section 10-3-3506 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3506: OPEN AIR DINING WITHIN ONE HUNDRED SEVENTY FEET OF AN R-1OR R-4 ZONE:

A. Open air dining shall not be permitted to be established within one hundred seventy feet (170') of an R-1or R-4 zone unless permitted pursuant to article 31 of this chapter.

B. Open air dining areas which serve no more than eight (8) persons shall not be permitted to be established within one hundred seventy feet (170') of an R-1or R-4 zone unless permitted pursuant to a minor open air dining permit.”

Section 11. The City Council hereby amends Section 10-3-3512 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-3512: DECISION AND APPEALS:

The applicant or any person aggrieved by any decision by the planning commission regarding an open air dining permit may appeal the decision to the city council in the manner provided by title 1, chapter 4, article 1 of this code. Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set fort in title 1, chapter 4, article 1 of this code.”

EXHIBIT A

Section 12. The City Council hereby amends the first paragraph of Section 10-3-3514 of Article 35 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-3514 remaining in effect without modification:

“If the director of community development, with the advice of the city engineer, determines that evidence could be presented to the city council which may support grounds for revocation or suspension of an open air dining permit, and the director believes that the city council may find that such evidence is adequate to support revocation or suspension of the open air dining permit, then the director may initiate a revocation or suspension proceeding before the city council.”

Section 13. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or particular land uses, and to the extent that future projects are proposed, appropriate CEQA review would be undertaken. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 14. 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 15. Publication.

The City Clerk 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.

EXHIBIT A

ADOPTED:

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

ATTACHMENT B

MUNICIPAL CODE REDLINE (EXISTING / PROPOSED)

REDLINE SHOWING PROPOSED CHANGES TO EXISTING CODE SECTIONS
(9-2-2011)

10-3-2733: PARKING IN NONRESIDENTIAL ZONES; LOCATION AND SHIELDING OF FACILITIES:

Except as provided in this section, in all nonresidential zones, required parking shall be provided on site. However, the ~~director of planning and~~ community development may, pursuant to the provisions of article 36 of this chapter, permit up to ~~sixteen~~ (610) spaces to be located off site within ~~five~~ seven hundred and fifty feet (500750') of the use site if the director finds that the proposal would not have a significant, adverse effect on traffic and parking in the area. The planning commission may grant a conditional use permit authorizing off site parking in excess of ~~sixteen~~ (610) spaces within ~~five~~ seven hundred and fifty feet (500750') of the use site.

Additionally, except for required entrances and exits, all parking structures in nonresidential zones shall be constructed so as to shield the automobiles from horizontal view in all directions and so as to comply with the noise abatement provisions of this code and shall be enclosed with solid walls when such parking structures are adjacent to a residentially zoned property or separated from such a property solely by a street or alley.

10-3-2734: PARKING; COVENANTS AND LEASE AGREEMENTS:

A. When parking is to be provided off the regularly subdivided lot on which the structure, or some portion thereof, is located, the owner or lessee of record of the development site shall furnish satisfactory evidence to the planning official that he owns or has available sufficient property to provide the minimum off street parking required by the provisions of section 10-3-2730 of this article. Whether parking is to be provided on property owned by the applicant or is in another ownership, there shall have been recorded in the office of the county recorder, prior to the issuance of any building permit, a covenant executed by the owners of such property for the benefit of the city, in a form approved by the city attorney, to the effect that the owners will continue to maintain such parking space so long as such structure or improvement exists. Such covenant shall also recite that the title to and right to use the lots upon which the parking space is to be provided will be subservient to the title to the premises upon which the structure is to be erected and shall warrant that such lots are not and will not be made subject to any other covenant or contract for such use without the prior written consent of the city. In the event the owners of such structure should thereafter provide parking space equal in area within the same distance and under the same conditions as to ownership upon another lot than the premises made subservient in a prior such covenant, the city will, upon a written application therefor, accompanied by the filing of a similar covenant, release such original subservient premises from such prior covenant, and the owners shall furnish at their own expense such title reports or other evidence as the city may require to ensure compliance with the provisions of this section.

B. For restaurant uses, when parking is to be provided off the regularly subdivided lot on which the restaurant is located, the owner and operator of the restaurant may meet its parking obligations either by complying with the covenant requirements of Subsection A of this section, or, if the number of off-site parking spaces requested does not exceed ten (10), by submitting for

REDLINE SHOWING PROPOSED CHANGES TO EXISTING CODE SECTIONS
(9-2-2011)

approval by the director of community development a lease agreement or lease agreements demonstrating that it has rights to the required off-site parking spaces for which it seeks credit.

C. Restaurant owners that submit and receive approval for a lease agreement or lease agreements consistent with subsection B annually shall provide documentation that the lease remains in place and continues to entitle the owner of operator of the restaurant to use of the off-site parking spaces. The documentation shall consist of an affidavit from owner and operator of the restaurant that it has a valid lease or leases for the off-site parking spaces, a copy of any such lease or leases for the off-site parking spaces, an exhibit showing the location of the off-site parking spaces, and the applicable review fee as may be adopted by the City.

10-3-3016: FILING FEES:

A. Applications for staff architectural review as set forth in subsection 10-3-3007E of this article shall be accompanied by a filing fee of ~~fifteen dollars (\$15.00), no part of which shall be returnable to the applicant~~ as established by the City Council.

B. Applications for architectural review required to be submitted to the architectural commission for approval shall be accompanied by a filing fee of ~~one hundred twenty dollars (\$120.00), no part of which shall be returnable to the applicant~~ as established by the City Council.

C. Notwithstanding the provisions of subsections A and B of this section, no fee shall be required for any architectural review required by subsection 10-3-3007B of this article.

10-3-3017: RESTAURANTS:

The commission chair shall appoint a two member restaurant subcommittee to review certain restaurant applications. The chair may select an alternate member or members in the event the restaurant subcommittee members are unable to meet within 14 days of an application filing that is subject to the provisions of this Section. In the event a subcommittee meeting does not occur within 14 days, the matter shall be scheduled for the next available commission meeting. The subcommittee shall not have any authority to review an application after it has been considered by the commission.

Upon the filing of a complete application with the community development department for a project that requires architectural review and is solely related to a restaurant use, the following regulations shall apply:

A. Within 14 days of the date on which an application is deemed complete, the restaurant subcommittee of the Architectural Commission and the director, or his/her designee, shall meet for the purposes of determining whether the project is minor and not subject to review before the Architectural Commission. The Architectural Commission restaurant subcommittee decision that the project is minor must be unanimous, otherwise the matter shall be scheduled for the next available Architectural Commission meeting. Projects determined minor shall be approved by the director.

REDLINE SHOWING PROPOSED CHANGES TO EXISTING CODE SECTIONS
(9-2-2011)

- B. For projects that require review before the Architectural Commission, the application shall be approved, approved with conditions, or denied in one meeting. The commission shall not have the authority to impose conditions of approval requiring further review by any authority other than the director. If no decision is rendered at the meeting, the application shall be deemed approved.
- C. Applications that include a request for a sign modification shall comply with Chapter 4 of this Title 10, however, such applications shall not be subject to the public notice requirements in Section 10-4-904.
- D. Applications for temporary construction barricades that will remain in place for less than six months shall be approved or denied by the director of community development. The director may forward any construction barricade application to the architecture commission to be processed pursuant to subsection B. Temporary construction barricades that will remain in place for a period of six months or longer shall require architectural commission review pursuant to subsection B.

10-3-3307: REVIEW OF IN-LIEU PARKING APPLICATIONS:
Persons desiring to participate in the in-lieu parking district established by this article shall submit an application for participation to the director of ~~planning and~~ community development. If the director determines that such application meets the requirements set forth in sections 10-3-3302 through 10-3-3306 of this article, then the director shall schedule a hearing on that application before the planning commission. Written notice of such, unless the application is solely for a restaurant use and the number of in lieu parking spaces requested is 10 or less, in which case the director shall have the authority to approve the request without conducting a hearing. Written notice of any required hearing shall be mailed to the applicant by United States mail, at least ten days prior to the hearing. Furthermore, if the applicant has concurrently filed other applications which require a hearing before the planning commission, then the hearing regarding the application for participation in the district shall be combined with such other hearing. Similarly, notice of the application for participation in the district shall be combined with the notice of any other application that will be reviewed concurrently by the planning commission,

10-3-3308: STANDARD OF REVIEW:

The planning commission or director pursuant to the provisions of Section 10-3-3307, shall approve an application for participation in the in-lieu parking district only if the commission or director makes the following findings:

- A. Participation in the in-lieu parking district, as approved, will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
- B. Participation in the in-lieu parking district, as approved, will not create any significantly adverse traffic safety impacts, pedestrian-vehicle conflicts, or parking impacts.

REDLINE SHOWING PROPOSED CHANGES TO EXISTING CODE SECTIONS
(9-2-2011)

C. Participation in the in-lieu parking district will not be detrimental to the public health, safety and welfare.

The commission or director may restrict participation in the in-lieu parking district by requiring the provision of a minimum amount of on site parking if the commission or director determines that such restriction is necessary to allow the commission or director to make the findings set forth in this section.

10-3-3309: APPEALS:

Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set forth in title 1, chapter 4, article 1 of this code. Any decision of the planning commission pursuant to this article may be appealed to the city council in the manner provided by title 1, chapter 4, article 1 of this code.

10-3-3501: STANDARDS FOR OPEN AIR DINING:

Open air dining shall be a permitted use in commercial zones provided that the use meets the following conditions:

A. Parking is provided pursuant to the provisions of section 10-3-2730 of this chapter, unless different parking requirements are established for the open air dining use in accordance with the provisions of section 10-3-3510 of this article.

B. No area used for open air dining shall be located in the public right of way except as provided in this article.

C. No area used for open air dining shall be located on a site within one hundred seventy feet (170') of an ~~R-1, R-4.1~~ or ~~RMCP-R-4~~ zone except as otherwise provided in section 10-3-3506 of this article.

10-3-3502: REVIEWING AUTHORITY:

A. ~~A.~~ Unless otherwise specified, the reviewing authority for an open air dining permit shall be the director of ~~planning and~~ community development. If, in the opinion of the director, an application merits review by the ~~city council~~ planning commission, the director may refer such application to the ~~city council~~ planning commission and the ~~city council~~ planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the request for an open air dining permit.

B. B. Notwithstanding the provisions of subsection A of this section, if the application for an open air dining permit accompanies an application for any other type of discretionary approval from the planning commission or city council for the same site area, the planning commission or city council, as appropriate, shall be the reviewing authority for the application for an open air dining permit and shall conduct a noticed public hearing regarding the request for an open air dining permit.

REDLINE SHOWING PROPOSED CHANGES TO EXISTING CODE SECTIONS
(9-2-2011)

10-3-3506: OPEN AIR DINING WITHIN ONE HUNDRED SEVENTY FEET OF AN ~~R-1, R-4, OR RMCP4~~ ZONE:

A. Open air dining shall not be permitted to be established within one hundred seventy feet (170') of an ~~R-1, or R-4, or RMCP4~~ zone unless permitted pursuant to article 31 of this chapter.

B. Open air dining areas which serve no more than eight (8) persons shall not be permitted to be established within one hundred seventy feet (170') of an ~~R-1, or R-4, or RMCP4~~ zone unless permitted pursuant to a minor open air dining permit.

10-3-3512: DECISION AND APPEALS:

The applicant or any person aggrieved by any decision by ~~a reviewing authority other than the city council~~ the planning commission regarding an open air dining permit may appeal the decision to the city council in the manner provided by title 1, ~~chapter 4, article 1 of this code.~~ Any decision of the director pursuant to this article may be appealed to the planning commission in a manner consistent with the procedures set fort in title 1, chapter 4, article 1 of this code.

10-3-3514: SUSPENSION AND REVOCATION OF OPEN AIR DINING PERMIT:

If the director of ~~planning and community development, with the advice of the city engineer and/or the director of building and safety,~~ determines that evidence could be presented to the city council which may support grounds for revocation or suspension of an open air dining permit, and the director believes that the city council may find that such evidence is adequate to support revocation or suspension of the open air dining permit, then the director may initiate a revocation or suspension proceeding before the city council.

Upon initiation of a revocation or suspension proceeding, the city council shall hold a public hearing regarding the possible revocation or modification of the open air dining permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of an open air dining permit. The city council, after such hearing, may revoke or suspend the open air dining permit if the council determines that:

A. The permittee has violated any condition imposed on the open air dining permit approval, or violated any provision of this code that governs, in whole or in part, the activity for which the open air dining permit was granted or the land on which it is located; or

B. The open air dining permit was obtained in a fraudulent manner; or

C. The operation of the open air dining use constitutes or creates a nuisance.

ATTACHMENT C

PLANNING COMMISSION STAFF REPORT, DATED AUGUST 4, 2011



Planning Commission Report

Meeting Date: August 4, 2011

Subject: **Streamlining Restaurant Review Procedures** Discussion and possible direction to staff to prepare a resolution recommending to the City Council an ordinance amending various sections of the Beverly Hills Municipal Code that relate to restaurant uses, including possible amendments to: Article 27 (Other Use and Building Restrictions); Article 28.6 (Hotel Regulations); Article 30 (Architectural Commission, Architectural Review, And Procedure); Article 31 (Development Plan Review); Article 33 (In Lieu Parking); and, Article 35 (Open Air Dining). These amendments modify or eliminate certain restaurant-related permit requirements; shift the review authority of some permits from the City Council to the Planning Commissions and from the Planning Commission and Architectural Commission to the Director of Community Development; and, modifies standards related to off-site parking. Other amendments update outmoded references and seek to improve code administration.
PROJECT APPLICANT: CITY OF BEVERLY HILLS

Recommendation: It is recommended that the Planning Commission review the recommended amendments; provide direction to staff as appropriate; direct the preparation of a resolution and draft ordinance; and continue the public hearing to September 8, 2011.

REPORT SUMMARY

This report identifies approaches that would facilitate timelier permitting of restaurant applications and associated text amendments that would be required to complete most reviews within 70 days. An analysis of the amendments is presented as well as additional options to help promote more restaurant opportunities in the future. Included in this report are recommendations to implement these changes. It is anticipated that the subject public hearing would be continued and that the Planning Commission would direct staff to prepare a resolution and draft ordinance for its review in September.

Attachment(s):

- A. BHMC ARTICLE 19.5: COMMERCIAL-RESIDENTIAL TRANSITION;
GENERAL OPERATIONAL REQUIREMENTS
- B. [Public Notice](#)

Report Author and Contact Information:

Jonathan Lait, AICP
(310) 285-1118

jlait@beverlyhills.org

BACKGROUND

Last March Mayor Brucker created a Task Force on Governmental Efficiency that is chaired by Vice Mayor Brien and co-chaired by interim Planning Commissioner, Noah Furie. Additional task force members have been selected and several meetings have been held. Related to the goals of the task force, the Vice Mayor, with support of Mayor Brucker, directed staff to develop options to streamline restaurant permitting procedures. It is expected that options to reduce restaurant permitting (final action) to less than 70 calendar days be presented to the City Council within six months from the announcement, or September/October 2011.

To achieve this goal, staff is presenting a variety of recommendations to the Planning Commission (PC) and is conducting public hearings in accordance with that timeline. Some of the proposed amendments affect the review authority of the Architectural Commission (AC). The AC members have been informed and encouraged to participate in the hearing process before the PC. The recommendations presented in this report have not been reviewed or commented upon by the AC.

DISCUSSION

The specific direction to staff was to develop a process that would enable an application for a new restaurant to be completed within 70 calendar days after submittal. Processing includes the submittal, review and final action, which may either be the issuance of a building permit or denial. The 70 days does not include the time before application submittal or construction / inspection process that follows issuance of a building permit.

Challenges Opening and Sustaining a Restaurant

Restaurateurs report many challenges opening and maintaining a restaurant. Location constraints, marketing and promotion, hard and soft costs, and timing all contribute for many restaurants to a low profit margin. From a regulatory perspective, the time it takes to obtain permits and go through the inspection process can increase the initial start up costs. In addition to local regulations, restaurants are also regulated by the County Health Department and, when selling alcohol, the State Department of Alcoholic Beverage Control. The City does not have any authority or control over these outside entities. However, staff has begun a dialogue with the County to explore the possibility of taking on some of the health inspection or permitting procedures. At a minimum, the City could require items on plans that will be required by the County to help facilitate that process.

In Beverly Hills, one of the greatest regulatory challenges relates to parking. Restaurants tend to generate a greater demand for parking than other land uses and the existing built environment with its older buildings and limited on-site parking make it difficult or impossible to meet the parking requirements. Prior policy action by the City Council has allowed for certain sized restaurants, less than 1,000 square feet of dining and bar area, to be parked at the same ratio as a retail store, which is a significant benefit. Additionally, an in-lieu parking program in the Business Triangle is another option for restaurateurs looking to open in that location.

In addition to parking, the discretionary review process, whether at a staff level or before the PC and AC, introduces an unpredictable timeline. While the average timeline for each review authority is not excessive, these are averages. Accordingly, there are examples of some restaurants taking much longer to go through the review process.

Having a discretionary review component in the restaurant permitting process is the single greatest challenge in reducing that review to less than 70 days. For this reason, the recommendations in this report focus on the discretionary review components of the process.

Current Restaurant Application Process

There are generally three types of restaurant requests the city receives:

1. A change from one existing restaurant to another new restaurant
2. A change in use from a retail or office space to a new restaurant
3. A new restaurant associated with the construction of a new building

The first example generally requires less processing time and is the simplest to administer. While there may be changes to the internal floor plan, exterior modifications and new signs, most of these applications do not trigger any significant reviews other than AC review.

The second example requires greater staff time and may be more complicated from an applicant's perspective as tenant improvements for a kitchen, including grease traps, ventilation and other equipment, is not already in place. Additionally, provision for adequate parking must be analyzed, which can present challenges to an applicant if there is insufficient on-site parking.

The third example typically requires a more comprehensive review by both the PC and AC. Some of these projects may require environmental review and are typically associated with other land use proposals. For the purposes of this report, restaurants that fall into this category are not included. However, once the new building was constructed and a restaurant application filed, then, if the proposed amendments go forward, the applicant could expect to have the application acted upon within 70 days.

An application for a restaurant may require review by the PC, which typically takes 60 – 90 days to process. That review is followed by the AC and, if completed in two meetings, takes another 60 days (approximately). Each of those decisions is appealable to the City Council. Following the necessary reviews, an applicant may submit for plan check. Restaurant plan check times tend to vary based on complexity and range from two to six weeks for the first round of corrections. A typical plan check may have two or three rounds of corrections.

Staff Level Review

Restaurants are permitted by right in most commercial zones. When no discretionary applications are sought, staff can administratively process restaurant applications in less than 70 days. Staff has the authority to approve minor façade modifications and signs, and can approve up to six off-site parking spaces provided those spaces are located within 500 feet of the restaurant and a covenant is recorded on the property¹. Most property owners, however, are unwilling to record such a covenant and the city does not receive many requests for off-site parking.

Staff has the authority to approve open air dining permits on public property and limited approval (no more than eight chairs) on private property when located within 170 feet of a residential zone.

¹ BHMC Sections 10-3-2733 and 10-3-2734

Discretionary Review: Planning Commission

The PC is typically involved in restaurant reviews when requests are made for open air dining on private property, extended hours permits, or in lieu parking in the business triangle. The restaurant land use is permitted by right in most commercial areas and no public hearings are required to sell alcohol.

The PC has review authority for Open Air Dining Permits that include more than eight chairs when the restaurant is located within 170 feet of a residential zone. Extended Hours Permits are requested when a restaurateur wants to accept patrons after 10PM and the restaurant is located within 170 of residentially zoned property. Requests for in-lieu parking (only available in the Business Triangle) are also reviewed by the Planning Commission.

Discretionary Review: Architectural Commission

Applications for AC review typically involve requests to approve changes to the façade of the building, new signs and awnings, outdoor dining railings and furniture as well as landscaping.

Recommended Restaurant Streamlining Approach

To achieve a timelier review, staff recommends introducing more concurrent reviews, eliminating some discretionary requirements, eliminating some permits, and creating new application and public outreach material.

In Lieu Parking

As noted earlier, staff already has the administrative authority to approve a limited amount of off-site parking spaces. Evaluation of off-site parking is not substantively different than evaluating availability of parking spaces pursuant to the City's in-lieu parking program.

Recommendation #1. Authorize the Director of Community Development, or designee, the authority to grant up to 10 in-lieu parking spaces for new or expanded restaurants.

This has the effect of transferring PC authority to the Director for a small number of in-lieu parking spaces potentially eliminating 60 – 90 days of application processing and saving an applicant approximately \$11,600 in application fees. Requests for 11 or more spaces would continue to be evaluated by the PC at a public hearing.

Open Air Dining

The zoning code includes numerous standards to protect residential properties that are located within 170 feet of commercial uses. These are codified in the Transition Zone standards (Attachment 1). Notwithstanding these protections, open air dining still requires discretionary review when more than two tables or eight customers will be seated outdoors on private property. These properties remain subject to the hour restrictions set forth in the code and cannot accept new customers after 10PM. To accept customers after 10PM requires PC approval of an Extended Hours Permit. It is recommended that the PC remain the authority for Extended Hours Permits, but allow the Director to approve certain open air dining permits on private property.

Recommendation #2. Authorize the Director of Community Development to approve Open Air Dining Permits regardless of the number of tables and chairs requested. However, enable the Director to exercise discretion and forward to the Planning

Commission any Open Air Dining Permit on private property that may have the potential to adversely impact adjacent residential properties.

This has the effect of transferring PC authority to the Director for all Open Air Dining Permits, while providing the opportunity to send any case that may have an impact to the PC for review. It also has the potential to save an applicant 60 – 90 days of application processing and approximately \$15,000 in application fees.

Architectural Review

Most cases reviewed by the AC take two meetings. It is not possible to consistently review restaurant applications within 70 days and still maintain a discretionary review process that includes architectural review in its current forum. While an application for a building permit can be reviewed concurrent to architectural review, by the time the approval is granted, changes may be required on the building permit set of plans extending the review past 70 days.

To address this processing constraint, staff recommends the following:

- Recommendation #3. Authorize the Director of Community Development, or designee, the authority to approve or deny façade modifications, outdoor furniture, landscaping and signs for restaurant tenant spaces less than 25 feet in width.
- Recommendation #4. Authorize the Director of Community Development, or designee, the authority to approve temporary construction barricades regardless of graphic or sign representation.
- Recommendation #5. For projects with a tenant frontage greater than 25 feet, authorize the Director of Community Development, or designee the discretion to submit for a one-time courtesy review before the AC, plans for the proposed restaurant storefront. The ACs comments would be advisory and the matter would not be extended to a subsequent meeting.

To effectively implement this provision, it would be important to work with the AC to develop storefront guidelines that could be used by applicants and the Director, or designee, when reviewing the project. Additionally, it is anticipated that AC comments offered as a courtesy would be incorporated into the Director approval. Poor quality signs and outdoor dining furniture can cheapen the pedestrian experience. Accordingly, certain signs should be prohibited (signs on exposed raceways, for instance) and size limitations established. Guidelines on outdoor dining should also be established and reviewed by the AC. Presently, staff has the authority to approve signs of approximately 25 square feet as well as other minor façade alterations.

Implementing these changes would save an applicant approximately 60 days in application processing and approximately \$2,000.

Administrative Changes

There are other minor modifications that would be made to the zoning code based on direction received from the PC. These changes largely relate to the above recommendations and clarify recommended changes in review authority, including changes that would shift City Council review of certain Open Air

Dining Permits and requests for reduced parking to the Director and PC as appropriate. Further, current noticing requirements for outdoor dining would be eliminated when being processed administratively.

In addition to the code changes, staff anticipates preparing a restaurant application packet. This new application would facilitate concurrent processing of all applications. For instance, a restaurateur could submit for plan check, architectural review, encroachment permits (for open air dining), in-lieu parking and other components at the same time, instead of sequentially as is the case presently. Concurrent review alone, however, is insufficient to consistently achieve the 70 day review timeframe.

Additional Options to Promote Restaurant Uses

The following options are presented to the PC for its deliberation and possible recommendation to staff. The following are not recommendations as they do not relate specifically to improving application processing to the 70 day timeframe, but, if implemented, could make it easier for restaurateurs to open a business in the City. The options include:

1. Increase threshold for administratively approving off-site parking from 6 to 10 spaces as is being proposed for the in-lieu parking.
2. Eliminate the covenant provision for off-site parking and require a lease instead.
3. Extend the radius threshold for off-site parking from the current 500 feet to 1,000 feet.

Note: Options 1 and 2 may have more practical benefit along the commercial corridors. Within the Business Triangle, restaurant operators can take advantage of the in-lieu parking provision. The lease provision can present challenges at an administrative level from a tracking perspective.

4. Change the 1,000 square feet of restaurant dining and bar area limitation for a single property to be 1,000 square feet of restaurant and dining area *per restaurant space*. Present code permits only up to 1,000 square feet of dining and bar area on each property to take advantage of the reduced parking requirement (1 space per 350 square feet). Restricting each restaurant space to 1,000 square feet of dining and bar area, but allowing the cumulative dining and bar area to exceed 1,000 square feet per property could encourage more restaurants in the city and improve administrative recording keeping of these requests.
5. Allow restaurants with outdoor dining an opportunity to temporarily enclose that space (located on public property) due to inclement weather. Such enclosures would need to meet applicable life/safety codes, including fire protection, and meet certain aesthetic considerations.

Note: There are many restaurants that already have enclosures similar to that described in Option 5. However, most if not all of these enclosures have not been permitted.

6. Consider changes to the in-lieu parking program to establish a flat fee for restaurants (new restaurants and expansions to existing restaurants).

Other Considerations

Restaurants located on certain streets in the C5 zone require a conditional use permit. Because this specific requirement and the limited amount of anticipated restaurant activity in this area, staff recommends no restaurant-related changes for uses that require a conditional use permit.

Hotels throughout the City also have ancillary restaurant uses and are regulated by conditional use permits. Given the specific review already established for hotels, staff is not recommending any restaurant related changes to hotels, including nonconforming hotels in residential zones.

Finally, given the proximity to residential uses, no changes are recommended to the City's transition zone regulations. These standards include a number of protections for residents that have the potential for the greatest impact from commercial land uses, including restaurants. It is recommended that the public participation and public hearing reviews in this regard be retained notwithstanding the desire to streamline restaurant reviews.

ENVIRONMENTAL ASSESSMENT

This project has been 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 project qualifies for a Class 1 Categorical Exemption for operational changes within an existing commercial facility, and the project has been determined not to have a significant environmental impact and is exempt from the provisions of CEQA.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Newspaper Notice	10 Days	July 24, 2011	July 22, 2011	12

Public Comment

No public comments were received at the time this report was prepared.

NEXT STEPS

It is anticipated that the subject hearing will be continued to September 8, 2011 and the Planning Commission will act on a resolution forwarding a recommendation to the City Council of certain amendments to streamline restaurant review procedures. A City Council public hearing is anticipated in October 2011.

Report Reviewed By:



Jonathan Lait, AICP, City Planner

ATTACHMENT A

BHMC ARTICLE 19.5: COMMERCIAL-RESIDENTIAL TRANSITION; GENERAL OPERATIONAL REQUIREMENTS

~~1208 and 1208A of the Uniform Building Code, as amended by the 1998 California Building Code, or their successors.~~

~~3. All dwelling units shall be equipped with internal air conditioning.~~

~~B. Odors: Air conditioning systems for the residential component shall be located and designed in a manner sufficient to prevent adverse impacts from odors generated by the commercial component.~~

~~C. Miscellaneous:~~

~~1. Parking shall be located underground or behind a permitted use other than parking to prevent direct visibility from Crescent Drive and Wilshire Boulevard. Parking spaces for commercial tenants and their customers shall be physically separated from parking spaces for residents of the mixed use development so that entry to the parking area for the residential component is restricted to prohibit access by patrons and tenants of the commercial component.~~

~~2. Commercial and residential uses shall have separate entrances. Commercial freight elevators and entrances shall also be separate from the residential component. (Ord. 02-O-2417, eff. 1-3-2003)~~

~~10-3-1946: **APPLICATION OF TRANSITIONAL OPERATIONAL STANDARDS:** Unless otherwise provided in this article, all uses in a mixed use development shall comply with the general operational requirements set forth in section 10-3-1956 of this chapter. (Ord. 02-O-2417, eff. 1-3-2003)~~

ARTICLE 19.5. TRANSITION BETWEEN COMMERCIAL AND RESIDENTIAL USES

10-3-1951: **DEFINITIONS:** For the purposes of this article, certain words and phrases used in this article are defined as follows:

**ADJACENT TO A
RESIDENTIAL ZONE:**

A site that shares a property line with a residentially zoned property or is separated from a residentially zoned property by a public alley. Any portion of public right of way which abuts a residentially zoned property shall be deemed to be adjacent to a residential zone.

**COMMERCIAL
REFUSE BIN:**

A trash container which is designed for front loading refuse collection trucks and is utilized by a commercial establishment.

**COMMERCIAL-
RESIDENTIAL
TRANSITION AREA:**

That portion of a commercial zone or the RMCP zone that is located within one hundred seventy feet (170') of either a residential zone or the RMCP zone. "Commercial-residential transition area" shall also include sites located within a residential zone which are used primarily by commercial uses which were legally authorized prior to the change to a residential zone classification. Notwithstanding the foregoing, "commercial-residential transition area" shall not include either those properties located on the northerly side of the street on Santa Monica Boulevard, south roadway, or those properties located on the southerly side of the street on Wilshire Boulevard west of Santa Monica Boulevard, north roadway.

**DELIVERY, LOADING,
OR UNLOADING:**

The transfer of a shipment of goods, wares, merchandise, mail, or similar items, to or from a vehicle, or the loading of persons into a vehicle, or the unloading of persons from a vehicle.

EXTENDED HOURS:

The time between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. on the following weekday, and the time between the hours of ten o'clock (10:00) P.M. and nine o'clock (9:00) A.M. on the following weekend day or holiday.

**EXTENDED HOURS
OPERATION:**

A commercial use that receives patrons during extended hours. (Ord. 81-O-1797, eff. 6-11-1981; amd. Ord. 96-O-2270, eff. 11-27-1996; Ord. 99-O-2324, eff. 3-19-1999)

10-3-1952: **COMMERCIAL USE SETBACKS:** It shall be unlawful for any person to erect or construct any building, structure, or improvement, or any part thereof, on a site located in a nonresidential zone and located adjacent to a residential zone unless the following setbacks are maintained:

- A. If the nonresidential site abuts an alley which separates the nonresidential zone from the residential zone, no building, structure, or improvement, either above or less than eight feet (8') below the grade level, except a wall or other improvement otherwise permitted by this article shall be located within six feet (6') of the edge of the alley adjacent to such site; or
- B. If there is no alley between the nonresidential site and the residential zone, the following setbacks shall be maintained, except as otherwise permitted by this article:
1. No building, structure, or improvement located less than eight feet (8') below the grade level shall be located within six feet (6') of the property line abutting the residential zone.
 2. No building, structure, or improvement, or any part thereof, up to thirty feet (30') or two (2) stories in height, whichever is less, shall be located within ten feet (10') of the property line abutting the residential zone.
 3. No part of any building, structure, or improvement more than thirty feet (30') or two (2) stories in height, whichever is less, shall be located within twenty feet (20') of the property line abutting the residential zone.
- C. The director of planning and community development, pursuant to article 36 of this chapter, may permit improvements in the setback required by subsection B of this section as is necessary to accommodate building code requirements if the director of planning and community development finds that the proposal will be compatible with the adjacent residential area.
- D. If a retail department store is developed in accordance with the commercial retail planned development overlay zone (C-R-PD) standards set forth in article 18.2 of this chapter, subsections A and B of this section shall not apply, and such retail department store shall be developed in accordance with the setback requirements of said article 18.2 of this chapter. (Ord. 81-O-1797, eff. 6-11-1981; amd. Ord. 89-O-2081, eff. 12-7-1989; Ord. 96-O-2270, eff. 11-27-1996)

10-3-1953: WALLS REQUIRED FOR RESIDENTIAL-NONRESIDENTIAL TRANSITION: Notwithstanding the setback requirements of section 10-3-1952 of this article, no person shall erect, construct,

or enlarge any building, structure or improvement on a nonresidential site adjacent to a residential zone unless that person constructs a wall along the property line separating the residential and nonresidential uses.

A. **Nonresidential Site That Abuts An Alley:** If the nonresidential site is separated from the residential zone by an alley, then a three foot (3') high solid masonry wall shall be constructed and maintained along the property line that abuts the alley. There shall be no opening in such wall; provided, however, there may be an opening a maximum of twenty five feet (25') wide in such wall as is necessary to accommodate a driveway providing access to the parking area or loading dock of the structure from the alley when such access is otherwise permitted by the city engineer or the director of building and safety. The director of planning and community development, pursuant to article 36 of this chapter, may permit openings not exceeding a width of five feet (5') in such wall as is necessary to accommodate building code requirements if the director of planning and community development finds that the proposal will be compatible with the adjacent residential area.

1. **Materials Allowed:** A reviewing authority may allow the use of any wall material other than masonry, and may further allow a wall constructed of material other than masonry to be a maximum height of three feet six inches (3'6"), provided the reviewing authority finds that the alternative wall material or design and the additional height will not have a substantial adverse impact on the adjacent residential property.

2. **Minor Accommodation:** Notwithstanding the provisions of this subsection A, a reviewing authority may issue a minor accommodation pursuant to article 36 of this chapter to allow an opening of up to thirty feet (30') in width in a wall along the property line that abuts the alley, provided the reviewing authority finds that the increased size of the opening will not have a substantial adverse impact on traffic safety, noise, the scale and massing of the streetscape, or garden quality of the city.

B. **Nonresidential Site That Abuts A Residential Rear Property Line:** If the nonresidential site abuts the rear property line of a residential site, then a solid masonry wall shall be constructed and maintained along the nonresidential property line. The height of the wall shall be at least six feet (6'), but shall not exceed the maximum height permitted along the abutting residential property line.

1. Minor Accommodation: Notwithstanding the provisions of this subsection B, a reviewing authority may issue a minor accommodation pursuant to article 36 of this chapter to allow a wall of up to ten feet (10') in height along a property line abutting a residential rear property line, provided the reviewing authority finds that the wall will not have a substantial adverse impact on traffic safety, the scale and massing of the streetscape, or garden quality of the city.

A reviewing authority may also issue a minor accommodation to allow for any wall material other than masonry, provided the reviewing authority finds that the choice of alternate wall material will not have a substantial adverse impact on the privacy, security or residential quality of the adjacent residential property.

- C. Nonresidential Site That Abuts A Residential Side Property Line: If the nonresidential site abuts the side property line of a residential site, then a solid masonry wall shall be constructed and maintained along the nonresidential property line. Within the area abutting the front yard of the residential property, the wall shall be constructed at the maximum height permitted along the abutting residential property line. Within all other areas, the height of the wall shall be at least six feet (6'), but shall not exceed the maximum height permitted along the abutting residential property line.

1. Minor Accommodation: Notwithstanding the provisions of this subsection C, a reviewing authority may issue a minor accommodation pursuant to article 36 of this chapter to allow a wall of up to ten feet (10') in height along a property line abutting a residential side property line, provided the reviewing authority finds that the wall will not have a substantial adverse impact on traffic safety, the scale and massing of the streetscape, or garden quality of the city.

A reviewing authority may also issue a minor accommodation to allow for any wall material other than masonry, provided the reviewing authority finds that the choice of alternate wall material will not have a substantial adverse impact on the privacy, security or residential quality of the adjacent residential property.

- D. Finish: All walls constructed pursuant to this section shall be finished on each side of the wall. (Ord. 81-O-1797, eff. 6-11-1981; amd. Ord. 96-O-2270, eff. 11-27-1996; Ord. 98-O-2293, eff. 4-17-1998; Ord. 01-O-2389, eff. 1-10-2002; Ord. 02-O-2395, eff. 4-5-2002)

10-3-1954: LANDSCAPING OF SETBACKS FOR COMMERCIAL USES:

- A. Landscaping Plans: The setback area required pursuant to the provisions of section 10-3-1952 of this article shall be improved with landscaping in conformance with a plan which meets all of the following criteria and which has been reviewed and approved by the architectural commission in accordance with section 10-3-3007 of this chapter:
1. Landscaping shall be of a type and density to provide a texture, buffer, or screen between nonresidential and residential zones as deemed appropriate for the location by the architectural commission.
 2. Landscaping shall be of a type and size which will provide such texture, buffer, or screen to a reasonable extent when initially planted and which will grow to a size and configuration to achieve the full intent of such buffer within a reasonable amount of time.
 3. Plants shall be of an appropriate type so as to minimize the dropping of leaves or needles onto adjacent properties or alleys or shall be capable of being readily maintained so as to minimize such dropping.
 4. Plants shall have a root structure which will not displace or damage paved areas and which will not interfere with nearby utility systems.
- B. Landscaping Maintenance: Such landscaping shall be maintained in accordance with the provisions of a landscape maintenance plan approved by the architectural commission which shall provide for the irrigation, fertilization, trimming and replacement of plants on a schedule appropriate to the types and quantities of plants utilized in such landscaping. (Ord. 81-O-1797, eff. 6-11-1981; amd. Ord. 96-O-2270, eff. 11-27-1996)

10-3-1955: COMMERCIAL-RESIDENTIAL TRANSITION; GENERAL DEVELOPMENT REQUIREMENTS: Notwithstanding any other provision of this chapter, it shall be unlawful for any person to erect or construct any building, structure, or improvement, or any part thereof, on a site located in a nonresidential zone and located adjacent to a residential zone unless all of the following conditions are met:

- A. No mechanical venting faces any residential use;

- B. No mirrored or reflective glass or material is used on the facade of the building, structure, or improvement which faces any residential use;
- C. No loading dock faces any residential use; provided, however, this subsection shall not apply to any site which is not a corner site and which abuts an alley which separates the nonresidential zone from the residential zone; and
- D. The building, structure, or improvement is designed to allow for adequate sight lines for vehicular ingress to and egress from each adjacent residential use or alley. (Ord. 96-O-2270, eff. 11-27-1996)

10-3-1956: COMMERCIAL-RESIDENTIAL TRANSITION; GENERAL OPERATIONAL REQUIREMENTS:

- A. Except as provided in subsection B of this section, it shall be unlawful for any person to commence or conduct, either directly or indirectly, any commercial use on a site located in a commercial-residential transition area except in conformance with the following requirements:
 - 1. No deliveries shall be received, and no loading, or unloading shall be permitted during extended hours unless:
 - a. The deliveries, loading, or unloading operation is conducted entirely within an enclosed structure, or
 - b. The deliveries, loading, or unloading operation is conducted exclusively from a public right of way that is not adjacent to a residential zone or RMCP zone.
 - 2. Refuse shall not be deposited into a commercial refuse bin located outside of an enclosed structure on private property or on a public right of way that is adjacent to a residential zone or RMCP zone during extended hours unless such refuse is in sealed bags.
 - 3. Commercial refuse bins shall not be moved in a public right of way adjacent to a residential zone or RMCP zone, or within the area between a commercial structure and a residential zone or RMCP zone during extended hours, except by waste haulers operating pursuant to a franchise with the city that permits such activity during extended hours.

4. All commercial refuse bins shall be equipped with nonmetallic lids which shall remain closed at all times.

5. For those businesses operating pursuant to an extended hours permit issued pursuant to section 10-3-1958 of this article, the name and telephone number of a person who will be available during the operational hours of the business to address a problem with the subject establishment shall be posted in a conspicuous place on the exterior of the building housing the establishment. The sign shall not exceed four (4) square feet in size and the letters on the sign shall be not less than one-half inch ($\frac{1}{2}$ ") nor more than one inch (1") in height. The contact person shall be the business owner, business manager, or other similar person who has sufficient authority over the business to address problems that may disturb neighbors.

6. All doors facing a residential zone shall remain closed at all times during extended hours except for the immediate purpose of ingress or egress. All windows to food preparation areas that face a residential zone shall remain closed at all times during extended hours.

7. Employees, agents, associates, or contractors of a nonresidential use shall not congregate behind the nonresidential structure or in any open area or public right of way separating a nonresidential structure and a residential zone or RMCP zone during extended hours.

8. All businesses in the commercial-residential transition area shall comply with all provisions of title 5, chapter 1, article 1 of this code, regarding general noise regulations. In order to promote compliance with said provisions, and in addition to said provisions, all businesses in the commercial-residential transition area shall comply with the following requirements:

a. The employees, agents, associates, or contractors of a business shall not engage in conduct or activity which substantially or unreasonably disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area during extended hours.

b. No activity shall be conducted on the premises in a manner which substantially or unreasonably disturbs the peace and quiet of the surrounding neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area during extended hours.

c. The factors which shall be considered in determining whether activity described in subsections A8a and A8b of this section violates this section shall be the criteria specified under section 5-1-104 of this code, including, but not limited to, the following:

- (1) The volume of the noise;
- (2) Whether the nature of the noise is usual or unusual;
- (3) Whether the origin of the noise is natural or unnatural;
- (4) The volume of the background noise;
- (5) The proximity of the noise to residential sleeping facilities;
- (6) The time of day or night the noise occurs;
- (7) The duration of the noise;
- (8) Whether the noise is recurrent, intermittent, or constant.

B. The operational requirements set forth in subsection A of this section shall not apply to:

1. The following business classifications:

a. Professions and semiprofessions (classification C), as defined under subsection 3-1-219C of this code, excluding medical offices and medical laboratories as defined under section 10-3-100 of this chapter;

b. Residential or commercial property rental and leasing (classifications E and F), as defined under subsections 3-1-219E and F of this code;

c. Agencies, lenders, brokerages, and other similar services (classification G), as defined under subsection 3-1-219G of this code;

d. Depository financial institutions, branch and sales office locations (classification H), as defined under subsection 3-1-219H of this code;

e. Corporate offices; or

2. Hotels and hotel appurtenant service uses as defined in article 28.6 of this chapter; or
 3. Projects approved by the planning commission or the city council on an appeal through any of the following procedures when the resolution of approval specifically and explicitly addressed extended hours activities associated with the project:
 - a. Development plan review;
 - b. Conditional use permit;
 - c. Planned development review; or
 4. Vehicle fuel stations.
- C. A minor accommodation may be granted pursuant to the procedures and requirements of article 36 of this chapter, to relieve an applicant of one or more of the operational requirements prescribed by subsections A1 through A7 of this section if the director of planning and community development finds:
1. The applicant cannot comply with the subject requirements, and
 2. The applicant will comply with subsection A8 of this section. (Ord. 96-O-2270, eff. 11-27-1996; amd. Ord. 99-O-2324, eff. 3-19-1999; Ord. 05-O-2489, eff. 12-16-2005)

10-3-1957: **TRANSITIONAL USE LICENSES:**

- A. Except as provided in subsection C of this section, no commercial activity shall be commenced or conducted in a commercial-residential transitional area without a valid transitional use license and, if applicable, an extended hours permit. The department of finance administration shall issue a transitional use license upon compliance with the following requirements:
1. The applicant agrees in writing that:
 - a. The applicant has read and understands the requirements of this article; and
 - b. The subject business will, at all times, comply with all requirements of this article, including any conditions imposed pursuant to this article by the director of building and safety to ensure compliance with all requirements of this article; and

c. In the event that the director of planning and community development has a reasonable basis to believe that the subject business may be in violation of the requirements of this article or any other provision of this code, and that substantial progress is not being made toward the correction of such violation, the director of planning and community development shall have the authority to refer the subject business to the planning commission for revocation of the transitional use license.

2. The applicant submits a name and telephone number of a person who is available during operational hours of the business to address all problems with the subject establishment; and

3. The subject business does not have an uncured violation of this article, any other provision of this code, or any condition imposed on a transitional use license or extended hours permit pursuant to section 10-3-1959 of this article, except where substantial progress is being made toward the correction of such violation to the satisfaction of the director of building and safety or the director of planning and community development; and

4. A transitional use license has not been revoked for the subject business by the planning commission pursuant to section 10-3-1959 of this article.

- B. The planning commission may issue a transitional use license for a business whose transitional use license was previously revoked, if, after conducting a public hearing in accordance to the requirements specified in section 10-3-1959 of this article, the planning commission finds that the requirements specified under subsections A1 through A3 of this section have been met. In connection therewith, the planning commission may impose conditions on the approval of a transitional use license to ensure conformance to the requirements specified under subsections A1 through A3 of this section and to ensure that the permitted activity will not violate any provision of this code. The decision of the planning commission shall be appealable to the city council as provided by title 1, chapter 4, article 1 of this code.
- C. Notwithstanding subsection A of this section, no transitional use license shall be required for the uses exempted under subsection 10-3-1956B of this article.

- D. Filing Fees: No fee or charge shall be required for any application or form filed for a transitional use license. (Ord. 96-O-2270, eff. 11-27-1996)

10-3-1958: EXTENDED HOURS PERMITS:

- A. Except as provided in subsection H of this section, it shall be unlawful for any person to commence or conduct, either directly or indirectly, an extended hours operation on a site located in a commercial-residential transition area in the city of Beverly Hills without having procured an extended hours permit pursuant to the provisions of this article. Every person commencing or conducting any extended hours operation shall file an application for an extended hours permit with the department of planning and community development in a form prescribed by that department. The city council may, by resolution, establish fees for the review of such applications.
- B. A public hearing shall be held by the planning commission on all applications for an extended hours permit. The planning commission shall conduct such hearing, and shall issue a decision concerning the application, within ninety (90) days following the date an application is deemed complete. The deadline may be extended upon the request of the applicant. At least ten (10) days prior to such hearing, notice of the time, place, and purpose of the public hearing shall be sent by first class mail to each owner and occupant of a property in a single-family residential zone within a distance of five hundred feet (500') of the exterior boundaries of the subject property, and to each owner and residential occupant of property in a multiple-family residential or a nonresidential zone within three hundred feet (300') of the exterior boundaries of the project site. Such notice shall be sent to the property owners whose names and addresses appear on the latest equalized county assessment roll.
- C. 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;
 2. Noise created by the extended hours operation or by employees or visitors entering or exiting the extended hours operation;

3. Light and glare;
 4. Odors and noxious fumes;
 5. Pedestrian queuing;
 6. 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;
 8. Effects on traffic volumes and congestion on local residential streets; and
 9. Cumulative impacts relating to the existing concentration of extended hours operations in the vicinity of the proposed extended hours operation.
- D. To make the findings set forth under subsection C of this section, the planning commission may impose conditions of approval on a project to ensure that the factors set forth under subsection C of this section will not substantially disrupt the peace and quiet of adjacent residential and commercial uses or create significant environmental impacts on the community within the meaning of the California environmental quality act. Such conditions may include, without limitation, restrictions or modifications to the hours of operation requested by an applicant. The planning commission shall only impose conditions related to the impacts of an operation during extended hours.
- E. The decision of the planning commission shall be by resolution. The applicant or any person aggrieved by the decision may appeal the decision to the city council as provided in title 1, chapter 4, article 1 of this code. The city council shall conduct a hearing on the appeal in a timely manner.
- F. The operative date of the extended hours permit shall be the fifteenth day after the date upon which the applicant receives approval of the permit, provided no appeal has been filed on a timely basis pursuant to subsection E of this section.
- G. In the event that the planning commission has not acted on an application for an extended hours permit in accordance with the time limits specified under subsection B of this section, the application

shall be deemed approved upon the expiration of the time limit. An appeal period during which such approval may be appealed to the city council as prescribed in subsection E of this section shall commence upon the expiration and deemed approval date.

H. The provisions of this section shall not apply to any business that was legally operating during extended hours on December 27, 1996, as part of its customary weekly schedule of business operations. The provisions of this section shall also not apply to any business that was legally operating during extended hours on January 8, 1999, without the requirement of an extended hours permit, as part of its customary weekly schedule of business operations. These exemptions shall not be transferable by the existing business to a different business. For purposes of this section, a business shall be considered different from the existing business if:

1. The business has a different name, and
2. The business offers a product or type or style of service which, in the opinion of the director of planning, may result in additional patrons visiting the site during extended hours or additional vehicle trips to the site during extended hours.

Changes to product or service references in the name of a business shall not be considered a change to the name of the business.

Notwithstanding the foregoing, any business operating during extended hours pursuant to the exemptions set forth herein shall not expand its hours of extended hours operation in effect on January 8, 1999, except as permitted by an extended hours permit issued pursuant to this section, subject to the following exceptions:

a. Such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding a shorter period of extended hours operation in effect on January 8, 1999;

b. For any such business that was subject to and qualified for the exemption specified in this subsection H, as set forth in ordinance 96-O-2270, such business may expand its hours of extended hours operation up until and including twelve o'clock (12:00) midnight, notwithstanding there being no hours of extended hours operation in effect on January 8, 1999.

- I. Unless otherwise provided in the resolution granting an extended hours permit, the exercise of rights granted in such extended hours permit shall be exercised within one hundred eighty (180) days after the adoption of the final resolution granting such extended hours permit. The planning commission may grant a six (6) month extension of the time limit contained in this subsection, or in any resolution granting a discretionary approval, if an application therefore is made at least thirty (30) days prior to the expiration of the time limit, or any extension thereof. Such extension may be granted after a duly noticed public hearing held pursuant to the same procedures applicable to the approval of the original application, if the planning commission determines that conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and decision made at the time of the original approval. The time limit imposed pursuant to this subsection may not be extended beyond two (2) years after the adoption of the initial final resolution granting the extended hours permit. Any decision regarding an extension pursuant to this subsection may be appealed to the appropriate review authority in the manner provided by the same procedures applicable to the approval of the original application or, if no appeal procedures are specified, to the city council in the manner provided by title 1, chapter 4, article 1 of this code. (Ord. 96-O-2270, eff. 11-27-1996; amd. Ord. 99-O-2324, eff. 3-19-1999; Ord. 02-O-2411, eff. 11-22-2002)

10-3-1959: REFERRAL AND REVOCATION OF PERMITS AND LICENSES:

- A. The director of planning and community development and the director of building and safety shall develop administrative guidelines for addressing complaints and possible violations in connection with transitional use licenses and extended hours permits, and evaluating whether a business is in compliance with the provisions of this article and all other provisions of this code. The guidelines shall include examples of remedies that may be pursued by the city in response to violations of this article or other provisions of this code. The remedies will be available as alternatives to referral of transitional use licenses or extended hours permits to the planning commission for consideration of revocation of the license or permit. Such guidelines may be amended by the directors at the directors' discretion. Without regard to whether the city has pursued alternative remedies, if the director of planning and community development or the director of building and safety believes that a business may not

be in compliance with the provisions of this article or any other provision of this code, the director of planning and community development may refer the transitional use license or extended hours permit to the planning commission to consider revocation or conditioning the license or permit to ensure that the permitted activity operates in compliance with the provisions of this article and all other city laws.

- B. In the event that a transitional use license or extended hours permit is referred to the planning commission, the planning commission shall hold a public hearing regarding the possible revocation of the license or permit or the possible imposition of conditions to ensure compliance by the licensee or permittee with the provisions of this article and all other applicable city laws for which the licensee or permittee is found in violation. Notice of such hearing shall be provided as set forth in subsection C of this section. The planning commission, after such hearing, may revoke the transitional use license or extended hours permit if the commission determines that:

1. The permittee has violated a condition of the license or permit previously imposed pursuant to this section, or violated any provision of this code that governs the permitted activity; or

2. Misstatements or omissions of material facts were used in the acquisition of a transitional use license or extended hours permit.

In addition, should the planning commission find that the permittee is in violation of any provision of this article or other city law governing the permitted activity, the commission may allow the transitional use license or extended hours permit to remain in force, subject to conditions to correct and prevent a recurrence of said violation and to protect the peace and quiet of the adjacent neighborhood. In doing so, the planning commission may require all future license and permit approvals for the subject business to be subject to the same conditions.

- C. At least ten (10) days prior to any hearing by the planning commission, notice of the time, place, and purpose of the public hearing shall be sent by first class mail to each owner and occupant of property in a single-family residential zone within a distance of five hundred feet (500') of the exterior boundaries of the subject property, and to each owner and residential tenant of property within a multiple-family residential or nonresidential zone within three hundred feet (300') of the exterior boundaries of the subject property. Such notice shall be sent to the property owners whose

names and addresses appear on the latest equalized county assessment roll.

- D. The applicant or any person aggrieved by a decision of the planning commission pursuant to this article may appeal the decision to the city council as provided in title 1, chapter 4, article 1 of this code. (Ord. 96-O-2270, eff. 11-27-1996)

10-3-1960: VIOLATIONS AND REMEDIES:

- A. The operation of a business in violation of this article is a nuisance. Each person violating this article is subject to all remedies allowed by law.
- B. The violation of any provision set forth in this article by any business for which an open air dining permit has been granted pursuant to article 35 of this chapter shall constitute sufficient grounds for the revocation of said open air dining permit, pursuant to the procedures set forth in article 35 of this chapter. (Ord. 96-O-2270, eff. 11-27-1996)

~~ARTICLE 19.6: ADAPTIVE REUSE PLANNED
DEVELOPMENT OVERLAY ZONE (C-3 (AR))~~

~~10-3-1961: **C-3 (AR) ZONE CREATED:** There is hereby created an overlay zone designated as the adaptive reuse planned development overlay zone (C-3 (AR)). (Ord. 03-O-2422, eff. 3-7-2003)~~

~~10-3-1962: **APPLICATION OF C-3 (AR) ZONE:** The C-3 (AR) zone shall apply to lots 200 and 201 of tract 4988 in the city as per map book 54, pages 98 and 99, records of the county recorder. (Ord. 03-O-2422, eff. 3-7-2003)~~

~~10-3-1963: **DEFINITIONS:** Unless the context plainly requires otherwise, the following definitions shall govern this article:~~

~~**ADAPTIVE REUSE:** The conversion or renovation of an existing commercial development to residential uses or a combination of residential and commercial uses.~~

ATTACHMENT B

Public Notice

NOTICE OF PUBLIC HEARING

DATE: August 4, 2011
TIME: 1:30 PM, or as soon thereafter as the matter may be heard
LOCATION: Council Meeting Room
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

The Planning Commission of the City of Beverly Hills, at its REGULAR meeting on Thursday, August 4, 2011, will hold a public hearing beginning at **1:30 PM**, or as soon thereafter as the matter may be heard to consider:

Various amendments to the City of Beverly Hills' Municipal Code to facilitate and streamline application processing related to restaurant uses in the City's commercial districts, except the C5 district. The amendments affect the following articles: Article 27 (Other Use and Building Restrictions); Article 28.6 (Hotel Regulations); Article 30 (Architectural Commission, Architectural Review, And Procedure); Article 31 (Development Plan Review); Article 33 (In Lieu Parking); and, Article 35 (Open Air Dining). These amendments modify or eliminate certain restaurant-related permit requirements; shift the review authority of some permits from the City Council to the Planning Commission; and, from the Planning Commission and Architectural Commission to the Director of Community Development; and, modifies standards related to off-site parking. Other amendments update outmoded references and seek to improve code administration.

This project has been 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 subject project is exempt from CEQA pursuant to CEQA Guidelines Section 15305 in that the proposed action results in minor alterations in land use limitations that will not result in any changes in land use or density.

Any interested person may attend the meeting and be heard or present written comments to the Commission.

According to Government Code Section 65009, if you challenge the Commission's action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City, either at or prior to the public hearing.

If there are any questions regarding this notice, please contact **Jonathan Lait, AICP, City Planner** in the Planning Division at 310.285.1118, or by email at jlait@beverlyhills.org. Copies of the applications, plans, and Categorical Exemption are on file in the Community Development Department, and can be reviewed by any interested person at 455 North Rexford Drive, Beverly Hills, CA 90210.

Approved:

Jonathan Lait, AICP, City Planner

Mailed & Published: July 20, 2011

ATTACHMENT D

ARCHITECTURAL COMMISSION SUMMARY, DATED AUGUST 17, 2011

Architectural Commission Meeting

August 17, 2011

Summary of Architectural Commission's Recommendations to the Planning Commission regarding Restaurant Permit Streamlining

Commissioners supported the City's goal to approve projects as quickly as possible while maintaining the character and image of the City. The following actions are proposed to achieve this goal:

Commission-Level Review

It is noted that the Architectural Commission (AC) reviews, on average, one restaurant application per month.

1. Complete Applications. The AC needs to receive applications that are complete and of high quality to approve projects in one meeting.
Staff to present at the September AC meeting:
 - a revised AC application including a comprehensive submittal checklist;
 - examples of excellent previous AC submittals staff uses as examples for applicants.
 - Staff already changed the AC fee structure to provide incentives to applicants to provide complete and high-quality application packages by charging less if approval is achieved in fewer AC meetings.
2. Pre-AC Review Subcommittee. The AC Chair will have a standing authorization to appoint a Subcommittee for restaurant projects. The subcommittee could review a project two weeks before an AC meeting; depending on the state of an application, the review could be merely conceptual or could also include a pre-review to determine what is needed for a full Commission review. The Chair could appoint a standing membership or appoint members for individual projects in order to take into account Commissioners' schedules, spread the experience, etc.
3. AC Review: Conceptual and Regular. If a project is not ready for the Pre-Review Subcommittee two weeks before an AC meeting, the project may go to the AC for conceptual review or, if sufficiently complete, a regular AC review. During conceptual reviews, the AC will provide specific feedback to applicants. Whenever possible, the AC will direct staff or an AC subcommittee to give final approval of a project that has been conceptually approved at an AC meeting. The subcommittee would be appointed in the same way as the Pre-AC Review Subcommittee above.
4. Temporary Construction Barricades with Graphics. The AC concurred with staff's recommendation #4 to the Planning Commission that staff could be given the authority to approve temporary construction barricades for restaurant projects regardless of graphic or sign representation.

**Architectural Commission's Recommendation for Restaurant Permit Streamlining
August 17, 2011**

Commission-Level Review (Already Implemented)

5. Applications should be processed concurrently so they reach the AC as quickly as possible. Projects should not have to await full PC approval on issues (such as parking) that don't affect the AC review. Issues that do affect the AC review should be addressed early in the PC approval process.
6. Interior approvals for areas that are more than five feet from the façade should be processed separately and not await AC review (building permits for tenant improvements).

Staff-Level Review

7. The AC and staff concurred that it may not have been clear to the Planning Commission that staff currently approves many minor-level architectural review applications as follows:
 - Signage under 20 SF (where no sign accommodation is required)
 - Modifications to existing signs (no change in size, style or colors, no accommodation required)
 - Re-roofing
 - Minor façade modifications consistent with a previously approved façade (e.g. painting/stucco, maintenance of existing materials, touch-ups, etc.)
 - Window/door change-outs (no change in opening sizes or architectural style)
 - Awnings (recover and/or new), with some limitations, such as not a bright color or too many colors
 - Open air dining (not associated with a façade remodel), with some limitations, similar to those for awnings
 - Paving
 - Minor landscape changes
 - Mechanical equipment screening
 - Temporary construction barricades without graphics.
8. The AC will work with staff on guidelines to potentially expand staff-level review where appropriate.

Attachment 5

Planning Commission Correspondence

TILLES, WEBB, KULLA & GRANT
A LAW CORPORATION
433 NORTH CAMDEN DRIVE, SUITE 1010
BEVERLY HILLS, CA 90210

Ronald J. Grant
Stephen P. Webb
swebb@twkglaw.com

TELEPHONE (310) 888-3430
FAX (310) 888-3433

Norman S. Kulla, Retired
Mandy Tilles, Retired

MEMORANDUM

DATE: August 4, 2011
TO: Beverly Hills Planning Commission
FROM: Stephen P. Webb
RE: Streamlining Restaurant Review Procedures

The following are some comments for your consideration:

1. A mandatory pre-application meeting with staff to include the restaurateur, architect and landlord if possible. In my experience, such a meeting will not take over an hour, is imperative to make certain that all parties understand exactly what must be done; otherwise, applications in the permitting process will not work smoothly and take additional time. It is reasonable for the City to charge a fee for this pre-application meeting. No application should be processed without it.
2. The proposals will only work where discretion is, in fact, exercised and done so in a timely manner.
3. The City to provide funding for appropriate staffing.
4. Will the applicant and/or those who may be in opposition have the right to appeal the Director's decision?
5. Will posting of notices still be required?
6. The bigger issue is the time it takes to obtain health department approval. Can the city provide any assistance?

Items Staff No Longer Accommodates the Architectural Commission with:

RICHARD
DUBINS
9/8/11 DC MTL

1. Bus Tours
 - a. Afforded a Commission overview on the ride to projects being reviewed. At this time overt code violations were reported to the staff member from enforcement who was also on the ride with us.
 - b. Allowed a visual of a project as a group and because we asked questions on site it did reduce the time spent in meetings doing the same thing.
2. Monthly reports of Staff approvals
 - a. Every month we were given a report in our packet that allowed us to review Staff's project approvals.
3. Timely responses to requests for information
4. Staff Recommendations missing from Packet
 - a. When we get our packets each application used to have a clear staff recommendation based upon code application. Presently, there is only a basic statement of whatever the commission thinks>
 - b. We have certain items that we have requested information on that for over 10 months have not received the courtesy of a response or disposition on.
5. Sufficient meeting times
 - a. Our meetings have been reduced to 4 hours whether we have 6 applications to review or if there are 16. If there is a heavier load of applications we need to be able to meet earlier or longer. But, in no case should we have to arbitrarily rush through an application because there is not enough time. Every one deserves a fair hearing.

Ideas for Better communications - Staff and the Architectural Commission.

1. Have the counter person attend the last half hour of our meetings (when we have meeting reviews) so they are able to better understand our thinking on issues and we are better able to understand the projects they are reviewing.
2. Have staff submit a "punch list" to us which we supervise the creation of so that what is presented to us conforms to our needs for information. This one item alone could cut a great deal of the time spent in meetings. This has been in process for two years that I know of and finally we are getting a preview in our Sept. meeting.
3. Have staff create a brochure for an applicant that is handed out at the time the application is made. This would be to inform the applicant of the "punch list" of items necessary for a successful application. It would also be a way to inform them of the process and how we are ready to expedite their requests if they conform their information to our needs.

4. Have staff create a brochure for an applicant that informs them of their responsibilities once their business is open so that they do not run afoul of code enforcement. This would be an area to clearly inform applicants of the allowed signage, etc. over and above that allowed by either Staff approval or Architectural Commission approval.
5. If Staff does make an over the counter approval it MUST be verified within 30 days of completion as to conforming to what was approved. Whether by an Architectural Commission subcommittee or code enforcement it makes no difference. A significant percentage of over the counter and Architectural Commission approvals are not completed as approved and this causes more work due to having to go through code enforcement.
6. If staff receives a request from a member of the Architectural Commission regarding potential violations it should be noted in the agenda of the next formal meeting. This way the commission can better verify the flow of information through the process and identify potential problems faster.
7. When creating sub committees at least one "seasoned" commissioner would always be with one new commissioner, etc. so that the inexperienced commissioner can be brought up to speed faster. It might even be more helpful if the subcommittee members were appointed on a monthly or even quarterly basis so that the commissioners could help predict their schedules.
8. I also think that depending on the issues at hand the commission has been very successful in the past in having the sub committee meetings via telephone and using PDF materials – thus not necessitating a physical meeting. Which might create a better "conversation" or dialog about a project as it works its way to the commission or in the review process after a meeting by allowing multiple "conversations" as the project heads to completion.
9. It should be made clear that the Architectural Commission's input should be sought early and often in all the processes where it will ultimately have comment.
10. A concierge style response to all large or special projects. ie.: Staff, Architectural Commission, Planning Commission, Traffic, etc. representatives should all be reviewing projects at the earliest stages so as to minimize problems as the applicant winds through the process. This will help alleviate problems by keeping communications at a high level between commissions and staff. I also think that the Architectural Commission should always be previewing projects before they get to the Planning Commission so as to alleviate any design concerns at the get go. The best example where this format could have created a big win for the city was Priscilla of Boston.
11. Implement a strong gate-keeper scenario where an applicant is greeted with a staff member who is well versed in what is expected by the Architectural Commission for a successful application. If the applicant does not (cannot) perform as instructed the "gatekeeper" has the right to inform the applicant that they have a choice. Either go back and re-submit their application or face possible rejection by the Architectural Commission. Also, in forwarding an application to the Architectural Commission it should be clearly notated in the packet that the application either conforms or does not conform to our information request. The commission can then make a quick and necessary decision to hear, reject or move forward for further study. This can substantially reduce a large percentage of cases that hold up the meeting process.

Signage – But I digress...

It is related because, unless I am mistaken, it is not clear what the rules of the road are to a new applicant or even an existing business owner. None of us signed up to be the "sign police" but it is under the purview of the Architectural Commission. Since staff is not pro-active it is up to citizen complaint, Architectural Commission member intervention, etc. to bring an item up for review by code enforcement. I have taken enough images and presented them to staff over the last year to show that the image of Beverly Hills in our minds is vastly different from the reality on the street.

I think a determination needs to either let the code violations go on without intervention or the offenders be made to bring all signs into conformance and in a way that is neither offensive nor punitive (think "Friendly City"). I think that tent signs and other free-standing signs should be made to conform and to be uniform in size, style and allowed placement. I also think they should go through a licensing process as well.

I also think a careful review of the sign code should be made to determine if we do want neon in the windows and if LCD/LED screens in the windows should be allowed. These are issues of the 21st century and we have a code that is a patchwork of rules on 20th century technology that needs to be updated.

The Need for Speed

RICHARD DUBINS
9/8/11 DC MTG

Speed is an imperative in auto racing for winning, but should not be the main criteria in creating the rules of governance.

In auto racing you meet that goal successfully through good engineering, a trained driver and a careful study of the track. In essence, not much different than the approach we should be taking in creating new codes and the procedures to implement them.

At this time, while our sub-committee and Commission have only reviewed the Staff's initial proposals we have not yet even reviewed or commented on their final proposals made here today. I do not feel that the proper and necessary full discussions have taken place to implement the code changes being requested. While Staff's report states a criterion for the applicant's material submittals will be presented at our next meeting there is much more than that necessary to make this a successful program.

Presently, there are established procedures for oversight that have been stopped because of "budgetary restraints". Yet we are asking Staff to take on even more responsibilities that should require Architectural Commission oversight. It is not clear to me how Staff can expect to keep their usual high standards on these new rules when they aren't able to keep their high standards on previously existing rules.

It is also difficult to understand why so much attention and so many resources are being paid to an item with such a limited effect upon the whole process of review. Restaurant reviews of the kind being discussed, according to staff, only occur once per month – maybe.

This all may actually be the starting point for a complete revision of the approval process. If so, I believe it deserves more thoughtful attention and consideration than it is presently being given. With continued citizen oversight using solid procedural recommendations and very clear implementations the Architectural Commission is always found to be a willing and able partner with Staff in making the necessary changes to speed up the approval process.

The Architectural Commission has shown its desire to do its part to help speed up the process as requested. Through letting Staff approve, on its own volition, certain selected items with no overt oversight, and, in the Architectural Commission's desire to meet as often as is necessary to accommodate the process of shortening the time an applicant spends with the Commission.

Not enough is being done to clearly insure that there will be a constant, respectful and speedy process of Resident oversight. I come to this conclusion because too much of how these rules are to be implemented has been left out and not enough has been done to maintain and insure the Architectural Commission's (Resident's) oversight.

I also think that it would be more valuable to the process and the Community to allow an additional 45 days to further discuss this Code revision request and fully vet Staff's latest proposals and discuss its implementation. After all, the Architectural Commission had maybe, one hour to discuss the initial Staff proposal at the end of our August 17th meeting. While I think most of Staff's suggestions are well considered I do believe a full reading to the Architectural Commission should, at the very least, be had to allow our Commission an opportunity to give its full input to the latest proposed changes.

If an extension is given I also would highly encourage a joint special meeting of the Architectural Commission, Planning Commission, Staff and Council liaisons. This would allow us to all be on the same page and craft a unified process which can be control tested over the next 6 -8 months, after implementation. After that period, we could then do a review of the process and consider letting it logically grow in scope to cover other possible expedited approval scenarios.

The Architectural Commission was formed to be the "citizen's visual oversight" of the community's development. You should not readily begin to hand over this trust to Staff without very careful consideration of its implications. While some developers may find us an impediment to their desires it is only because we are doing right by the community and not simply acceding to the applicant's wishes.

More often than not you will find that our Commission has not delayed a project's approval without just cause. More often the applicant compliments us for our input and the serious consideration of their designs. Often times we are even being told we have actually improved the project through our input.

This is not because of the need for speed, but rather because of the need for quality on all projects – whether large or small, and, our continued dedication to achieving it.