



## AGENDA REPORT

**Meeting Date:** November 15, 2011  
**Item Number:** G-4  
**To:** Honorable Mayor & Members of the City Council  
**From:** City Attorney  
**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

---

### RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

### INTRODUCTION

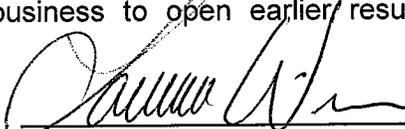
This ordinance streamlines the City's permit process for restaurants.

### DISCUSSION

At the meeting of November 3, 2011 the City Council conducted a first reading of this ordinance.

### FISCAL IMPACT

It is anticipated that the amendments contained in this ordinance 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 business to open earlier resulting in enhanced tax revenues to the City.

  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney

# **Attachment 1**

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 Architectural Commission shall review the application or 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 unless the applicant requests an extension of this deadline. 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 or the time period as extended upon request of the applicant, 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 will result in a total number of in-lieu parking spaces of 10 or fewer, 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