



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.

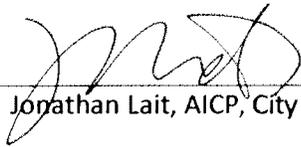
Public Comment

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:

Approved as to content:

David M. Snow
Assistant City Attorney

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

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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.

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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.

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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:

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“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.”

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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:

BYRON POPE
City Clerk

(SEAL)

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 ~~sixten (610)~~ sixteen (610) spaces to be located off site within ~~five seven hundred and fifty feet (500750')~~ 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 ~~sixten (610)~~ sixteen (610) spaces within ~~five seven hundred and fifty feet (500750')~~ 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.

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
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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.

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(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.

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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 fort 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-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. 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.

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

A. Open air dining shall not be permitted to be established within one hundred seventy feet (170') of an R-1, ~~1~~or R-4, ~~or RMCP~~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-1, ~~1~~or R-4, ~~or RMCP~~R-4 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

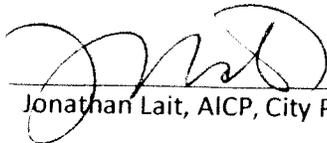
Public Comment

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.