



# Planning Commission Report

**Meeting Date:** August 12, 2013

**Subject:** **Rooftop Lunchrooms**  
Planning Commission discussion of Municipal Code §10-3-3107 regarding the regulation of rooftop lunchrooms.

**Recommendation:** Receive this report and provide direction to staff as appropriate.

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## REPORT SUMMARY

On July 25, 2013 Joe Tilem submitted a letter to the Planning Commission requesting that the Commission discuss the City's development standards for rooftop lunchrooms. Upon receiving Mr. Tilem's letter, the Planning Commission directed that a discussion item be added to the Commission's August 12, 2013 agenda to discuss rooftop lunchrooms. This report provides a brief overview of Municipal Code development standards for rooftop lunchrooms, and seeks Planning Commission direction as to whether modifications to existing code provisions should be pursued.

## BACKGROUND

Section 10-3-3107 of the City's Municipal Code contains specific provisions that allow for the construction of "rooftop lunchrooms" that exceed otherwise permissible building heights and floor area. Furthermore, this particular code section exempts "rooftop lunchrooms" from otherwise applicable parking requirements. Beverly Hills Municipal Code Section 10-3-3107: Rooftop Uses, reads as follows:

*Notwithstanding any provisions to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development in the C-3, C-R, C-3A, and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit the establishment of rooftop (i) gymnasiums, (ii) lunchrooms and structures or uses ancillary to such lunchrooms, and (iii) unenclosed architectural features that are not otherwise excluded from the definition of "height of building" in section 10-3-100 of this chapter, provided that as to any such rooftop structures or uses:*

1. *The planning commission makes the findings set forth in section 10-3-3104 of this chapter regarding the rooftop use (see Attachment B for findings).*

**Attachment(s):**

- A. Communication from Joe Tilem
- B. BHMC §10-3-3104 Findings

**Report Author and Contact Information:**

Ryan Gohlich  
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[rgohlich@beverlyhills.org](mailto:rgohlich@beverlyhills.org)

2. *The additional height above the maximum height limit otherwise applicable to the development will not exceed fifteen feet (15'). Furthermore, in no event shall the distance between the floor and ceiling of the gymnasium or lunchroom and structures or uses ancillary to such lunchroom exceed fifteen feet (15').*
3. *The total floor area of the development shall not exceed the maximum allowable floor area otherwise applicable to the development by more than three thousand five hundred (3,500) square feet or fifty percent (50%) of the total area of the story immediately below the rooftop use, whichever is less.*
4. *No food service, other than vending machines, shall be provided in connection with the rooftop use.*
5. *The subject structure provides not less than the minimum number of parking spaces required by this section as of the date when building permits for the structure were issued. In addition, two (2) parking spaces shall be provided for any rooftop gymnasium.*
6. *Unless authorized by the Planning Commission as part of the Development Plan Review, only persons who work in the building or are registered hotel guests will be permitted to use the rooftop facilities.*
7. *No admittance or use fees shall be charged for the use of the rooftop facilities.*
8. *The additional structure permitted pursuant to this article shall be set back from the property line or from the required setback line immediately adjacent thereto, whichever is the more restrictive, so that a forty five degree (45°) angle to such line is not intersected.*
9. *Notwithstanding the provisions of subsection A8 of this section, unenclosed architectural features approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall if the Planning Commission finds that such features are architecturally compatible with the building and will not adversely impact the building's scale and massing. In addition, any other additional structure approved pursuant to this section may intersect a forty five degree (45°) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the additional structure permitted is constructed in the same plane as the exterior wall of the floor below and the additional structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty five inches (45").*
10. *Notwithstanding the provisions in the definition of "height of building" in section 10-3-100 of this chapter permitting certain elements to be located above maximum height limits, only those elements required by law to project above the roof deck shall be permitted to exceed the fifteen foot (15') height limit of the structure enclosing the rooftop use permitted hereby.*

Staff's interpretation of the above Municipal Code provisions is that the parking exemption set forth in provision No. 5 only applies when a lunchroom can be classified as a "rooftop lunchroom" that exceeds the applicable height or floor area restrictions, as lunchrooms are not exempted from parking requirements anywhere else in the Municipal Code. If a lunchroom cannot be classified as a "rooftop lunchroom" that exceeds the applicable height or floor area restrictions, it is simply considered to be

part of the building's floor area, which counts toward parking requirements. The subject Code section dealing with rooftop lunchrooms has been interpreted this way since it was adopted in 1990; however, Mr. Tilem has a client that would like to add a lunchroom above an existing one-story building (which neither exceeds the allowable height or floor area for the subject property) without providing any parking for the lunchroom. Mr. Tilem asserts that the intent of the Code should be to exempt all lunchrooms from parking requirements, regardless of whether they exceed the applicable height or floor area (see Attachment A). Staff has informed Mr. Tilem that Section 10-3-3107 of the Municipal Code cannot be used to exempt parking for a lunchroom that does qualify as a "rooftop lunchroom," and that an amendment to the Municipal Code would be required to exempt all lunchrooms from parking requirements.

#### **PLANNING COMMISSION DIRECTION**

Staff seeks direction from the Planning Commission as to whether there is interest in further studying parking exemptions for all lunchrooms. In the event that the Planning Commission is interested in pursuing a City-initiated amendment, the Planning Commission would need to direct staff to prepare a memo to the City Council requesting that such a study be added to the Planning Division's work plan. Furthermore, any City-initiated study should be weighed against existing work plan priorities. In the event that the Planning Commission is not interested in pursuing a City-initiated amendment, Mr. Tilem would be still be welcome to file an application for an applicant-initiated amendment.

#### **NEXT STEPS**

It is recommended that the Planning Commission receive the staff report and a presentation from the applicant, and provide direction as appropriate.

Report Reviewed By:

  
\_\_\_\_\_  
Ryan Gohlich, Senior Planner

**ATTACHMENT A**

**COMMUNICATION FROM JOE TILEM**

Law Offices  
**DAWSON TILEM & GOLE**

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Hard Copy to Follow  
Yes \_\_\_ No x

**FAX COVER SHEET**

TO: Jonathon Lait

FAX NO: 310 858-5966

OFFICE NO: 310 285-1000

DATE August 8, 2013

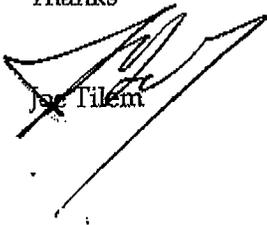
FROM: Joseph N. Tilem

PAGES, INCLUDING COVER SHEET: 3

RE: Rooftop ordinance/ Planning Commission discussion for 8-12-13

MESSAGE: Please include this letter in the packet for the Planning Commission meeting of 8/12/13

Thanks



Joe Tilem

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**IF YOU DO NOT RECEIVE ALL OF THE ABOVE-INDICATED PAGES, PLEASE CONTACT US AT  
310/273-3313. (OUR FAX NUMBER IS 310/285-0807)**

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August 9, 2013

Brian Rosenstein and Members of the Planning Commission  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA. 90210

Re: Rooftop uses

Dear Chairman Rosenstein and Planning Commissioners:

The question raised is the applicability of the Rooftop Ordinance to all commercial buildings in the C-3 zone: whether the ordinance should be interpreted to apply to all commercial buildings in the C-3 zone or should it be limited to commercial buildings that are already at the maximum height.

Statutory interpretation begins with looking at the primary purpose for which a law was adopted. In this case, it was adopted by the city council in 1990 for the purpose of allowing owners of commercial buildings to improve their buildings and make them more functional. It was also adopted to reduce traffic, especially lunchtime traffic, by encouraging occupants of the buildings to remain on the premises at lunchtime [and in the case of rooftop gyms, at the end of the day], instead of their having to get into their cars and drive to a restaurant or gym.

Another purpose of the code section was to enable property owners to make beneficial uses of rooftops in commercial buildings which, when they were originally built, did not provide convenient and comfortable facilities for employees to eat lunch or exercise. Rooftop lunchrooms and gyms encourage the preservation of existing smaller, older structures which, if they could not be modernized to satisfy the needs of users, would likely be demolished and the land developed into new, maximum height and density buildings.

We have had discussions with staff as to their interpretation of the code section. Their view is that the code section only applies to buildings that are already at maximum height. There is no reason for this restrictive interpretation. They would not accept my contention that such an interpretation is not warranted by the fundamental purpose of the law: they are focusing on the condition, (allowing lunchrooms and gyms to exceed the height limits) instead of on the purpose of the ordinance. There is no logic in applying the rooftop use ordinance to only tall buildings, buildings that are already at least 45 feet high; it should apply to all commercial buildings in the

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C-3 zone. They seem to be interpreting the subordinate condition as the major premise of the ordinance instead of focusing on the obvious purpose of the code section: to allow lunchrooms (and gyms) to be built on the roofs of commercial buildings. In effect, they would make the condition control the ordinance. Logic dictates that if rooftop lunchrooms and gyms are a worthy objective on tall buildings, they are also a worthy objective on smaller buildings. Besides, the ultimate decision on whether or not to allow a particular rooftop lunchroom or gym is left to the discretion of the Planning Commission by the terms of the ordinance.

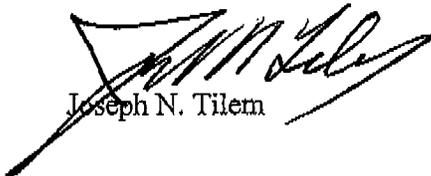
Had the city council intended to limit the applicability of the rooftop lunchroom ordinance to only taller buildings, they could have worded the ordinance this way:

"A. Notwithstanding any provision to the contrary contained in this title, the planning commission may permit, pursuant to the development plan review procedure contained in this article and subject to the restrictions set forth in this subsection, development of buildings already at the maximum allowable height in the C-3, C-R, C-3A and C-3B zones to exceed height, story and density limitations otherwise applicable to the development in order to permit the establishment of rooftop gymnasiums and/or lunchrooms provided that :.....".

But it is not so worded. The underlined words are not there.

I represent two property owners who bought smaller buildings and want to improve them with small rooftop lunchrooms for their employees. I request that the Planning Commission allow the applications to proceed. As noted, it will still be within the discretion of the Planning Commission to allow or reject the applications based on the merits of each project presented at the time the application comes before the Commission. But at least let them be submitted and decided on their respective merits.

Respectfully submitted,



Joseph N. Tilem

**ATTACHMENT B**  
**BHMC §10-3-3104 FINDINGS**

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

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

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

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

- C. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.
- D. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
- E. The proposed plan will not be detrimental to the public health, safety or general welfare.

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

With regard to development plans to be located in the C-5 zone and to be reviewed by the director of planning and community development, the review of the director shall be ministerial and limited to whether such building conforms to the requirements of the C-5 zone. (Ord. 11-O-2615, eff. 12-16-2011)