



DISTRICT #9

DOWNTOWN SPECIFIC PLAN



4.11 DISTRICT #9: COMMERCIAL/RECREATION

Purpose. The purpose of this District is to encourage large, coordinated development that is beach-oriented and open to the public for both commercial and recreational purposes.

Boundaries. District #9 is bounded by PCH on the south, Beach Boulevard on the east, Huntington Street on the west, and on the north by the proposed Walnut Avenue extension.

4.11.01 Permitted Uses.

(a) The following list of commercial recreation uses in District No. 9 may be allowed. Other visitor serving related uses as described in the Land Use Plan, and which have the same parking demand as the existing use not specified herein may be allowed subject to the approval of the Director. A change of use shall be subject to the approval of the Director. For example:

- ♦ Carts and Kiosks pursuant to Section 230.94 of the Huntington Beach Zoning and Subdivision Ordinance
- ♦ Retail sales
- ♦ Tourist related uses
- ♦ Outdoor dining pursuant to S.4.2.33

(b) The following list of uses, or change of such use in District No. 9 may be allowed subject to approval of a Conditional Use Permit. For example:

- ♦ Dancing and/or Live entertainment
- ♦ Recreational facilities
- ♦ Restaurants
- ♦ Hotels, motels
- ♦ Condominium-Hotel pursuant to section 4.11.13

4.11.02 Minimum Parcel Size. No minimum parcel size shall be required for this District. However, prior to approval of a Conditional Use Permit by the Planning Commission for any development, a master site plan for the entire District shall be approved by the Planning Commission. Development which is in conformance with the site plan may then be permitted.

4.11.03 Maximum Density/Intensity. The maximum intensity of development shall be calculated by floor area ratio (FAR) for this District. The floor area ratio shall apply to the entire project area. Floor area ratios shall be calculated on net acreage.

(a) The maximum floor area for developments in this District shall be calculated with a multiple of 3.0.

4.11.04 Maximum Building Height. No maximum building height shall be required.

4.11.05 Maximum Site Coverage. The maximum site coverage shall be thirty-five (35) percent of the net site area.

Note: A maximum of twenty-five (25) percent of the net site area can be used for parking and vehicular accessways.

- 4.11.06 Setback (Front Yard). The minimum front yard setback for all structures exceeding forty-two (42) inches in height shall be fifty (50) feet, from PCH and Beach Boulevard.
- 4.11.07 Setback (Side Yard). The minimum exterior side yard requirement shall be twenty (20) feet.
- Exception: The minimum exterior yard requirement from Beach Boulevard shall be fifty (50) feet.
- 4.11.08 Setback (Rear Yard). The minimum rear yard setback shall be twenty (20) feet.
- Note: An additional ROW dedication will be required to provide for the Walnut Avenue extension.
- 4.11.09 Setback (Upper Story). No upper story setback shall be required.
- 4.11.10 Open Space. Development projects within this District shall provide public open space. A minimum of thirty (30) percent of the net site area must be provided for such a purpose. This area shall be available for public or semi-public uses for recreational purposes. Open space must have minimum dimensions of twenty-five (25) feet in each direction. Paved areas devoted to streets, driveways and parking areas may not be counted toward this requirement. A maximum of fifteen (15) percent of the required thirty (30) percent may be enclosed recreation space such as gyms, handball courts, health clubs, interpretive centers or similar facilities. A fee may be imposed for the use of such facilities.
- 4.11.11 Pedestrian Overpass. A pedestrian overpass may be required to connect the development in this District to the City Beach, as a condition of approval for any new development on, or further subdivision of, parcels within the District. The City may waive this requirement if the City determines that overpasses are unnecessary or impractical considering the type and design of new developments.
- 4.11.12 Mobile home District. A portion of District #9 is zoned for mobile home use. Within this mobile home area, the provisions of the Mobile home District of the Huntington Beach Zoning and Subdivision Ordinance shall apply (see Section 4.16).
- 4.11.13 Condominium Hotel: May be permitted and shall be conditioned as follows:
- (a) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Condominium-Hotel.
 - (b) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, “back of house” and other non-guest unit facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.
 - (c) The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestroom/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.
 - (d) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.

- (e) The hotel operator shall manage all guestroom/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.
- (f) If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- (g) All guestroom/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- (h) Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.
- (i) All individually owned hotel units shall be rented at a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.
- (j) The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
- (k) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- (l) The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
- (m) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel.
- (n) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(ies) within District 9 upon which the traditional units/rooms (i.e., transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g., limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. The deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development

permit and approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with subsection a) and m) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- (o) The hotel owner/operator shall be required to submit, prior to the issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC&R's (Covenants, Conditions & Restrictions) either of which shall include:
 - 1. All the specific restrictions listed in a through m above;
 - 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 - 3. A statement that provisions of the CC&R's/Declaration of Restrictions that reflect the requirements of a through n above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – m) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the CC&Rs/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&Rs on amendments.

- (p) The CC&R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.

- (q) The provisions of the CC&R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.

- (r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

- (s) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify buyers of the following:
 - 1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
 - 2. The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public per the terms of the coastal development

permit and that the coast development permit contains additional restrictions on use and occupancy.

- (t) The hotel and owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&R's or Declaration of Restrictions.
- (u) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through n above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and the Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- (v) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner-operator and owners of individual hotel units during the prior one-year period. The hotel owner-operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, with six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

4.11.14 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

4.11.15 A coastal development permit application for a Condominium-Hotel shall include a plan specifying how the requirements outlined in 4.11.13 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/ operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator

adequate legal authority to implement the requirements of Section 4.11.13 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium-Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.11.13 and this section including deeds and CC&Rs/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.

4.11.16 Any hotel rooms for which a certificate of occupancy has been issued in the District at the effective date of adoption of this Section (4.11.13) shall not be permitted to be converted to Limited Use Overnight Visitor Accommodations.

4.11.17 In Lieu Fee Required

1. New development of overnight accommodations that are not “lower cost” shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times the total quantity of proposed limited use overnight visitor accommodation units.
2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.