



City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Ethan Edwards, AICP, Associate Planner *EE*
DATE: April 13, 2010
SUBJECT: **SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 06-020 / ENTITLEMENT PLAN AMENDMENT NO. 06-008 (BLACK BULL CHOPHOUSE)**

APPLICANT: Michael C. Adams, P.O. Box 382, Huntington Beach, CA 92648

BUSINESS

OWNER: Cesar Pena, 300 Pacific Coast Highway, Ste. 112, Huntington Beach, CA 92648

PROPERTY

OWNER: Joe Diachendt, 300 Pacific Coast Highway, Ste. 119, Huntington Beach, CA 92648

LOCATION: 300 Pacific Coast Highway, # 112, 92648 (south side of Walnut Avenue, between Main St. and Third St.)

STATEMENT OF ISSUE:

This item represents a six-month review of Conditional Use Permit No. 2006-020 / Entitlement Plan Amendment No. 06-08 (CUP/EPA), originally approved September 12, 2006 and last modified by the Planning Commission on February 24, 2009. When CUP/EPA was approved, the Planning Commission required a review of the use within six months of final inspection to verify compliance with the Huntington Beach Noise Ordinance (Attachment No. 1 - Condition of Approval No. 8).

RECOMMENDATION:

Motion to:

“Receive and file as adequate and complete the six-month review of Conditional Use Permit No. 06-020 / Entitlement Plan Amendment No. 06-008.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Modify Conditional Use Permit No. 06-020 / Entitlement Plan Amendment No. 06-008 with revised findings for approval and revised suggested conditions of approval pursuant to Condition No. 8.”
- B. “Direct staff to schedule a revocation hearing of Conditional Use Permit No. 06-020 / Entitlement Plan Amendment No. 06-008.”
- C. “Continue the six-month review of Conditional Use Permit No. 06-020 / Entitlement Plan Amendment No. 06-008 and direct staff accordingly.”

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on April 1, 2010 and notices were sent to tenants and property owners of record within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Department's Notification Matrix), applicant, and interested parties. As of April 6, 2010, no communication supporting or opposing the request has been received.

ANALYSIS:

Conditional Use Permit No. 2006-020 / Entitlement Plan Amendment No. 2006-008 were approved on September 12, 2006 by the Planning Commission. The permit authorized the establishment of a 5,000 sq. ft. restaurant. The request included: on-site sale and consumption of alcohol, live entertainment consisting of live music, a disc jockey (DJ), and a mechanical bull, dancing, up to four billiard tables with shuffleboard, and a 1,000 sq. ft. outdoor dining area with alcohol.

On February 24, 2009, the Planning Commission held a revocation hearing resulting in the modification of several conditions of approval to assist with noise mitigation. As part of the revocation hearing, the project was conditioned to install sound proofing material along the interior of the easterly business storefront. In addition, outside storage and any food preparation within the outdoor dining area located along the easterly side of the restaurant was prohibited. The restaurant was also conditioned to clearly mark and delineate the dance floor within the restaurant and prohibited from clearing furniture to expand the dance floor to limit overcrowding. Inspection records indicate that the applicant has complied with the necessary improvements satisfying conditions of approval that address noise issues.

The Planning Department, Police Department, Code Enforcement Division, and City Attorney's Office have reviewed the project's conditions of approval. Condition of Approval No. 8 requires review of the use within six-months of final inspection to ensure compliance with the Huntington Beach Noise Ordinance. This condition reinforces compliance with other conditions of approval related to public safety and mitigation of noise including soundproofing and review of an acoustical analysis.

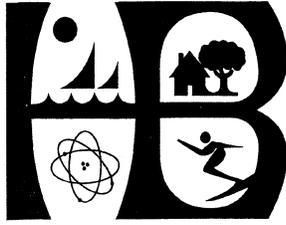
In a memorandum to the Planning Department dated March 2, 2010, the Police Department listed violations that have occurred since the City of Huntington Beach and Black Bull Chop House entered into a stipulated settlement agreement (Attachment No. 3) which allowed entertainment activities along with increased penalties for future violations of their Conditional Entertainment Permit (Attachment No. 4) and conditions of approval. This memo also recommended that CUP/EPA be modified to address continued violations (including non-noise related violations). The Police Department's recommendation was to restrict hours of entertainment, require signage within the outdoor patio area indicating that it is closed, require additional lighting to assist employees with checking identification, and prohibit dancing. In a subsequent memorandum to the Planning Department dated April 2, 2010, the Police Department explained that there is not sufficient evidence to modify the Entertainment Permit and therefore rescinds the recommendation to modify CUP/EPA accordingly (Attachment No. 5). As a result of this determination, the Police Department issued a new Entertainment Permit on April 1, 2010 (Attachment No. 6) that includes the same hours of entertainment including dancing. The Police Department has also prepared a memorandum in response to discussion at the Planning Commission Study Session meeting on March 23, 2010 regarding the relationship between alcohol related arrests and Black Bull Chop House (Attachment No. 7).

Staff has determined that the scope of the six-month review is limited to compliance with the City's Noise Ordinance. The Police Department has documented one noise violation since the CUP/EPA was last modified by the Planning Commission on February 24, 2009. Based on only one noise related violation and the limited scope of this review, staff cannot substantiate a nexus that would provide basis for findings to modify CUP/EPA. As a result, staff recommends the Planning Commission determine substantial compliance with conditions of approval of Conditional Use Permit No. 06-020 / Entitlement Plan Amendment No. 06-008 and accept the six-month review as adequate and complete.

ATTACHMENTS:

1. Notice of Action – Revocation of CUP 06-020 / EPA 06-008 dated February 25, 2009
2. Police Department Memorandum dated March 2, 2010
3. Settlement Agreement signed on February 13, 2009
4. Conditional Entertainment Permit dated approved February 13, 2009
5. Police Department Memorandum dated April 2, 2010
6. Entertainment Permit issued April 1, 2010
7. Police Department Memorandum dated March, 31, 2010

SH:HF:EE:lw



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

February 25, 2009

Michael C. Adams
21190 Beach Boulevard
Huntington Beach, CA 92648

SUBJECT: **REVOCAION OF CONDITIONAL USE PERMIT NO. 06-020/ENTITLEMENT PLAN AMENDMENT NO. 06-008 (BLACK BULL CHOPHOUSE – CONTINUED FROM THE NOVEMBER 12, 2008 MEETING)**

APPLICANT: Michael C. Adams, Adams Associates

BUSINESS OWNER: Cesar Pena, 300 Pacific Coast Highway, Ste. 112, Huntington Beach, CA 92648

PROPERTY OWNER: Joe Diachendt, 300 Pacific Coast Highway, Ste. 119, Huntington Beach, CA 92648

REQUEST: To consider the revocation of Conditional Use Permit (CUP) No. 06-020 and Entitlement Plan Amendment (EPA) No. 06-008, which permitted the establishment of a 6,290 sq. ft. restaurant with alcohol sales, live entertainment and dancing, up to four billiard tables and 1,000 sq. ft. outdoor dining area. The Planning Commission may revoke the CUP or amend the conditions of approval pursuant to Condition No. 5 of Conditional Use Permit No. 06-020 approved on November 6, 2006.

LOCATION: 300 Pacific Coast Highway, # 112 (south side of Walnut Avenue, between Main St. and Third St. – Pierside Pavilion, Downtown)

DATE OF ACTION: February 24, 2009

On Tuesday, February 24, 2009, the Huntington Beach Planning Commission took action on your application, and your application was **approved with revised findings and revised conditions of approval**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Three Hundred Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is March 6, 2009 at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Rami Talleh, the project planner, at rtalleh@surfcity-hb.org or (714) 374-1682 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:RT:lw

Attachment: Findings and Conditions of Approval – CUP No. 06-020 and EPA No. 06-008

- c: Honorable Mayor and City Council
Chair and Planning Commission
Fred Wilson, City Administrator
Scott Hess, Director of Planning
Bill Reardon, Division Chief/Fire Marshal
Ken Small, Chief of Police
Chuck Thomas, Police Captain
Cesar Pena, Business owner – Black Bull Chop House
Stuart Miller (Attorney at Law, Black Bull Counsel)
Leonie Mulvihill, Senior Deputy City Attorney
Steve Bogart, Senior Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Property Owner
Project File

ATTACHMENT NO. 1

REVISED FINDINGS OF APPROVAL

CONDITIONAL USE PERMIT NO. 06-020
ENTITLEMENT PLAN AMENDMENT NO. 06-008

REVISED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

REVISED FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 06-020
ENTITLEMENT PLAN AMENDMENT NO. 06-008:

1. Conditional Use Permit No. 06-20 for the establishment of a 6,290 sq. ft. restaurant with on-site alcohol sales, live entertainment and dancing, up to four billiard tables with shuffleboard, and a 1,000 sq. ft. two-phased outdoor dining area with alcohol, as conditioned, will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The adjacent residential uses to the east will be buffered from noise emanating from the restaurant by a 60 ft. wide pedestrian corridor. Furthermore, to reduce the potential noise impacts, the project is conditioned to install sound proofing material along the easterly business storefront. In addition, outside storage and any food preparation within the outdoor dining area located along the easterly side of the restaurant are prohibited. The restaurant will also be required to clearly mark and delineate the dance floor within the restaurant and be prohibited from clearing furniture to expand the dance floor in order to limit potential overcrowding. The proposed uses with the revised conditions of approval will not create adverse noise or parking impacts to the surrounding businesses and residents.
2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The uses will be required to comply with strict conditions of approval to assure that any potential impacts to the surrounding properties are minimized. In addition, the proposed uses are consistent with the mixed-use character of commercial developments in the downtown. The uses are subject to revised use restrictions within the outdoor dining area, noise regulations such as requiring that all doors and windows remain closed during live entertainment, noise attenuating improvements, and regulation on the hours of operation to ensure compatibility with surrounding businesses and residents.
3. The proposed restaurant will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed uses will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. Furthermore, with the revised conditions of approval, the proposed improvements address potential noise impacts and will be in compliance with all the applicable Downtown

Specific Plan and Huntington Beach Zoning and Subdivision Ordinance requirements. In addition, prior to construction of Phase Two of the outdoor dining area, the applicant will be required to submit a parking analysis demonstrating compliance with the Downtown Parking Master Plan. There is no physical expansion proposed as part of the request and the use will comply with all building occupancy/exiting requirements.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use on the subject property including the following policies and objectives identified in the General Plan:

A. Land Use Element

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

The restaurant with the revised conditions of approval will provide a new visitor-commercial venue within the Downtown that is consistent with the Land Use Density Schedules for the Downtown and is compatible with surrounding mixed-use development.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The restaurant with the revised conditions of approval will increase the commercial viability of Pierside Pavilion, allowing for its continued success within the Downtown. The proposed establishment will expand the available visitor-serving commercial uses within the Coastal Zone available to its patrons.

**REVISED CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 06-020
ENTITLEMENT PLAN AMENDMENT NO. 06-008:**

1. The site plan, and floor plan received and dated February 17, 2009, shall be the conceptually approved design with the following modification:
 - a. The restaurant's east elevation shall be sound proofed to demonstrate compliance with Section 8.40 of the Huntington Beach Municipal Code, *Noise Control*.
(Amended)

- b. The location of the 200 sq. ft. dance floor, any sound equipment, and DJ booth shall be depicted on the plans and shall not impede any required exit path. **(Amended)**
2. Within two weeks from approval, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
 - a. Revised floor plans shall be submitted to the Planning Department indicating the location of the 200 sq. ft. dance floor, any sound equipment, and DJ booth.
 - b. The 200 sq. ft. dance floor shall be clearly marked and delineated within the restaurant.
3. Within 30 days from approval, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
 - a. An acoustical analysis report shall accompany the construction drawings demonstrating that the improvements will effectively reduce noise emanating from the restaurant in compliance with Section 8.40 of the Huntington Beach Municipal Code, *Noise Control*.
 - b. Construction plans for sound proofing the restaurant's east elevation shall be submitted to the Building and Safety Department.
4. Within 30 days of issuance of Building Permits, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
 - a. Construction of the soundproofing on the east elevation shall be completed and finalized by the Building and Safety Department.
5. The use shall comply with the following:
 - a. All conditions of the Entertainment Permit issued by the Police Department shall be complied with.
 - b. All ingress/egress to and from the outdoor dining area shall be provided from inside the restaurant. Exiting from the outdoor dining area to the adjacent paseo shall be prohibited except for emergency purposes only.
 - c. Lighting in the outdoor dining area shall be regulated and directed to prevent "spillage" onto adjacent properties.
 - d. The rear door providing access to the alley shall be closed at all times and used for emergency purposes only.
 - e. The preparation of any food shall be prohibited within the outdoor dining area. **(Amended)**
 - f. Interior restaurant furniture shall not be removed from any area to increase, or create additional dance floor space. **(Amended)**

- g. The outdoor dining area shall not be used for outside storage except for the storage of outdoor dining furniture. The storage of outdoor dining furniture shall not obstruct any required exit path. **(Amended)**
 - h. The 200 sq. ft. dance floor shall be clearly marked and delineated within the restaurant. **(Amended)**
 - i. Signs shall be posted on the exterior of the building “encouraging patrons to please refrain from smoking, if possible, and to please be courteous and keep the noise levels to a minimum”. **(Amended)**
6. The hours of operation for the business shall be limited to between 7:00 am and 1:30 am daily and the hours of operation for outdoor dining shall be limited to between 11:00 am and 9:00 pm Mon.-Thur. and between 11:00 am and 10:00 pm Fri.-Sun. The restaurant door to the outdoor dining area shall be posted with a sign that states “Emergency Exit Only When Outdoor Dining Patio Is Closed.”
7. Prior to construction of Phase Two of the outdoor dining area, adequate parking for the entire outdoor dining area shall be demonstrated or provided consistent with applicable code requirements.
8. A review of the use shall be conducted by the Planning Commission within six (6) months of the final inspection to verify compliance with the Huntington Beach Noise Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval to address noise issues. The business owner is encouraged to submit a noise study if noise complaints are received.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney’s fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



CITY OF HUNTINGTON BEACH INTER-DEPARTMENT COMMUNICATION

TO: Ethan Edwards Planner, Planning Department

FROM: Det. Alan Caouette #1021 *1021*
Police Department Vice Unit

DATE: March 2, 2010

SUBJECT: Black Bull Chop House Update

On Friday February 12, 2009, the Chief of Police, City of Huntington Beach, and Black Bull Chop House entered into a stipulated settlement agreement which allowed entertainment activities, regulated by §5.44 of the Huntington Beach Municipal Code, to occur within Black Bull Chop House. The stipulated agreement also contained increased penalties for future violations of their conditional Entertainment Permit.

On Wednesday February 24, 2009, the City of Huntington Beach Planning Commission modified Conditional Use Permit 06-20. Since that time, the Huntington Beach Police Department has observed the following violations of state law or municipal code:

On Thursday March 18, 2009 at approximately 2:07 AM, officers observed Black Bull Chop House employees consuming alcoholic beverages inside the closed business. Section 25632 of the California Business and Professions Code prohibits the consumption of alcohol within an Alcoholic Beverage Control licensed establishment between the hours of 2:00 AM and 6:00 AM.

On Thursday April 1, 2009, in response to this violation of state law, the Chief of Police sent Mr. Cesar Pena, owner of Black Bull Chop House, a written warning advising him of the violation, and further advising him that any future violation of any law, at any time, would be considered a violation of the Entertainment Permit.

On Sunday July 4, 2009 at 11:45 PM, a police officer in the area of Main Street and Walnut Avenue could hear music emitting from the interior of Black Bull Chop House for at least a fifteen minute period in excess of 50 feet from the establishment.

Condition number 5 of the Conditional Entertainment Permit states "entertainment will not be audible beyond 50 feet of the building in any direction."

§5.44.015(a) of the Huntington Beach Municipal Code requires that a permittee shall "ensure entertainment provided is not audible beyond 50 feet from the exterior walls of the business in any direction."

§8.40.112(b) of the Huntington Beach Municipal Code makes it unlawful for any person to "make or allow to be made any noise which continues for more than a five minute period between the hours of 10 PM and 7 AM if such noise is audible for fifty feet or more from the source of the noise."

ATTACHMENT NO. 2.0

The location was issued a \$1000.00 Civil Citation for the violation.

On Thursday July 22, 2009 at 10:09 PM, a citizen residing in the Pier Colony condominium complex, located at 200 Pacific Coast Highway, called the Huntington Beach Police Department to complain about patrons on the east patio of Black Bull Chop House. When the officer arrived he observed several patrons loitering on the closed patio.

Conditional Use Permit condition of approval six restricts use of the outdoor patio area to Monday through Thursday between the hours of 11:00 AM to 9:00 PM. The location was issued a \$1000.00 civil citation for the violation.

On Tuesday August 24, 2009, Mr. Pena appealed both administrative civil citations he was issued for the violations occurring on July 4, 2009 and July 22, 2009.

On Friday October 8, 2009, an administrative appeals hearing was heard and both citations were upheld. Mr. Pena appealed the Hearing Officer's judgment to Orange County Superior Court.

On October 18, 2009, the Black Bull Chop House's Entertainment Permit was suspended for a period of 15 days in accordance with the stipulated agreement signed by Mr. Pena on February 12, 2009.

On Thursday December 17, 2009, an appeals hearing was heard at Orange County Superior Court West Justice Center. The judge's written decision upheld the loud noise violation from July 4, 2009, but the after hours patio use (CUP) violation on July 22, 2009 was overturned.

On Friday December 18, 2009 at 12:35 AM, police officers on foot patrol located two unaccompanied 19 year old minors inside Black Bull Chop House while entertainment was occurring. One minor was found to be in possession of an obviously fictitious driver license where the image and description were in no way similar to the minor female whom possessed it. The second female was in possession of her older sister's identification card. One of the minors claimed to have been served and consumed multiple alcoholic beverages while inside Black Bull Chop House.

§5.44.019 of the Huntington Beach Municipal Code states "No person conducting, maintaining or carrying on a business, or having charge or control thereof, which has entertainment on its premises shall permit to be admitted on such business premises any minor under the age of twenty-one years, if any alcoholic beverages are consumed, dispensed or sold on the premises, unless the minor is accompanied and under the care at all times of his parent or parents or legal guardian."

The Black Bull Chop House was issued a \$1000.00 civil citation for the violation.

On January 22, 2010, Mr. Pena phoned me and told me he would not appeal the citation and would pay the fine. Mr. Pena was advised that the Black Bull Chop House's Entertainment Permit was suspended for a period of 15 days in accordance with the stipulated agreement signed by Mr. Pena on February 12, 2009. However, do to having

a 15 day suspension credit from the overturned violation, the suspension has been stayed.

On Sunday January 31, 2010 at about 02:21 AM, Huntington Beach Police Department officer's conducted an inspection to ensure compliance with applicable laws and regulations. During the inspection the officers obtained evidence and statements indicating the owner and numerous other employees had been consuming alcoholic beverages after 02:00 AM. This is a violation of Business and Professions Code (B&P) §25632. Per HBMC 5.44.015(c) they are required to comply with the conditions of the businesses city issued entertainment permit, therefore this is a violation of condition # 14.

B&P 25632 states, "Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee's licensed premises during any hours in which it is unlawful to sell, give, or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor."

HBMC §5.44.015(C) states "the permittee shall follow all other conditions as set forth in the entertainment permit."

Condition # 14 of the Entertainment Permit states "Must obey all state, local, and municipal laws, including, but not limited to, the "No Smoking" statue under labor code 6404.5."

The Black Bull Chop House was issued a \$1000.00 civil citation and a 30 day suspension (pending appeal) for the violation.

Based upon the continued violations and close proximity to the Pier Colony condominium complex, the Huntington Beach Police Department is requesting the following modifications to the Conditional Use Permit to reduce the potential for future public safety incidents and violations:

1. The hours of entertainment limited to between the hours of noon and 11:00 PM Sunday through Thursday, and between the hours of 10:00 AM and midnight on Friday and Saturday.
2. When the outdoor patio is closed, a legible sandwich board style sign shall be placed on the patio clearly stating "This patio is closed. No person may occupy this space when closed per the City of Huntington Beach." The sign shall be placed in a position clearly visible from the interior without obstructing the emergency exits.
3. Additional temporary or permanent lighting, consisting of more than a handheld flashlight or torch, shall be placed at the entrance where identification cards are checked, to aide employees in the proper identification of patrons.
4. No dancing allowed.

On all future Entertainment Permits for the Black Bull Chop House the Huntington Beach Police Department Police will modify the following conditions:

1. Dancing will not be allowed.
2. The hours of entertainment will be limited to between the hours of noon and 11:00 PM Sunday through Thursday, and between the hours of 10:00 AM and midnight on Friday and Saturday.

The Police Department will continue to inspect the business and make any modification to the Entertainment Permit conditions deemed necessary and appropriate.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between **Ponderosa Chop House, Inc. dba Black Bull Chop House** referred to herein as ("**Black Bull Chop House**"), and the **City of Huntington Beach, California** (the "**City**"). This Agreement is entered into with reference to the following facts:

RECITALS

A. **Ponderosa Chop House, Inc.** is a corporation duly organized and existing pursuant to the laws of the State of California and operates the **Black Bull Chop House**, which is located 300 Pacific Coast Highway #112, Huntington Beach, CA 92648.

B. The **City of Huntington Beach** is a chartered California city, and a governmental entity. The Huntington Beach City Hall is located at 2000 Main Street, Huntington Beach, California 92648.

C. **Black Bull Chop House** operates as a restaurant under and pursuant to the licensing requirements of the City of Huntington Beach. On October 21, 2008, the **City** issued a letter revoking the Entertainment Permit for **Black Bull Chop House**.

D. On October 27, 2008, **Black Bull Chop House** appealed the denial of the Entertainment Permit to the City Council.

E. **Black Bull Chop House** and the **City**, having had the opportunity to thoroughly investigate the alleged violations, wish to settle all differences, claims, allegations, causes of action and/or contentions that may exist between them as a result of the events outlined above.

F. In order for the parties in this Agreement to settle all differences between them, and in consideration of the mutual covenants, agreements, and promises set forth in this Agreement, and other good and valuable consideration, each of the parties to this Agreement agree as follows:

The foregoing shall be part of this Agreement.

AGREEMENT

1. The **City** agrees to rescind the letter dated October 21, 2008, advising **Black Bull Chop House** of its decision to revoke **Black Bull Chop House's** Entertainment Permit.

2. The **City** will issue a *Conditional* Entertainment Permit to **Black Bull Chop House**. A copy of said Permit is attached hereto and incorporated by this reference.

3. **Black Bull Chop House** hereby acknowledges that the Entertainment Permit issued pursuant to this Agreement is probationary in nature; the **City** has the right

and authority to revoke **Black Bull Chop House's** Entertainment Permit due to numerous violations of the HBMC occurring at the restaurant and but for this Agreement, the City would not issue an Entertainment Permit to **Black Bull Chop House**. The City agrees not to utilize the current violations in any future proceeding.

4. **Black Bull Chop House** hereby accepts all conditions imposed on the Entertainment Permit and agrees that these are conditions requested by **Black Bull Chop House** in order to persuade the City to issue an Entertainment Permit to it, including but not limited to the condition that four violations of the HBMC or State law or the conditions contained in the Entertainment Permit, committed by **Black Bull Chop House** or its employees or agents in the establishment will constitute adequate grounds for revocation.

5. **Black Bull Chop House** agrees to waive any and all due process rights as such rights pertain to contesting the allegations identified above that a violations justifying revocation occurred. **Black Bull Chop House** will not pursue any further appeals or remedies through the judicial system. **Black Bull Chop House** has paid or will pay all citation amounts due and payable as of the execution of this Agreement concurrent with the execution of this Agreement except for Citation Numbers 1000014. Citation Numbers 1013751 are hereby dismissed.

6. **Black Bull Chop House** agrees not to contest revocation of the permit based upon the Hearing Officer's conclusion that the Code or Permit conditions were violated.

7. Nothing in this agreement should be construed as the City's attempt to preclude any legal person from defending him, her or itself against any criminal charge which may be brought against him, her or it in a court of law. However, should such criminal charge form the basis for Permit revocation hereunder, the dismissal of such charge, the conviction or the acquittal of the charged person, will not be considered in the decision to revoke **Black Bull Chop House's** permit based on that violation; **Black Bull Chop House** understands and accepts this.

8. Each party executing this Agreement and/or other documents related to this settlement between the parties, represents and warrants that he or she has been duly authorized to execute this Agreement, and/or any other so related documents.

9. Each of the parties acknowledges that he or she has carefully read this Agreement and knows and understands the contents and effect of this Agreement, and each of the parties further acknowledges that he or she is signing this Agreement based on his or her own free act. This Agreement binds all successors in those positions as the current signors/representatives of this Agreement.

10. Each of the parties acknowledge that this Agreement represents the entire agreement between the parties, and no other agreements, whether oral or written, are a part of this Agreement, except to the extent that **Black Bull Chop House** agrees to abide by all conditions of the City's Entertainment Permit issued to it.

11. Each of the parties acknowledges that he, she, or it has been advised to seek legal counsel in connection with this matter and the provisions and execution of this Agreement, and each of the parties acknowledges that he, she, or it either has consulted

with his, her or its own legal counsel or has had a full opportunity to consult with his, her, or its own legal counsel in connection with the terms of this Agreement.

12. This Agreement has been entered into in the State of California, and all of the terms, conditions, and provisions of this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.

13. If any term, condition or provision of this Agreement is held to be invalid, void, or unenforceable, the remaining terms, conditions, and provisions of this Agreement nevertheless shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

14. Should any action or litigation (including arbitration or mediation), become necessary regarding the enforcement or interpretation of this Agreement, each party agrees to assume and be responsible to pay his or her own attorney fees and costs in such action or litigation.

15. This Agreement shall become effective immediately following execution by each of the parties.

16. This Agreement may be executed in counterparts, and when so completed by each party hereto, shall become effective as if all parties signed said Agreement as a single document.

17. There is a Huntington Beach Planning Commission hearing scheduled for February 2009 with regard to Black Bull's conditional use permit. In the event that the decision of the Planning Commission is in any respect adverse to Black Bull, Black Bull shall have the right to rescind this agreement in full by written notice to the City Attorney within ten days of the decision of the Planning Commission.

CITY OF HUNTINGTON BEACH

Dated: _____

By: 
Chief of Police

PONDEROSA CHOP HOUSE, INC

Dated: 2-12-09

By: 
Cesar Pena
print name

ITS: (circle one) Chairman/President/Vice President

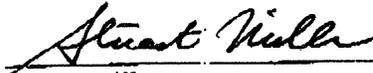
AND

Dated: _____

By: _____

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer


Stuart Miller
Attorney for Ponderosa Chop House, Inc.

CITY OF HUNTINGTON BEACH

Dated: _____

By: _____
Chief of Police

PONDEROSA CHOP HOUSE, INC

Dated: _____

By: _____

print name

ITS: (circle one) Chairman/President/Vice President

AND

Dated: 2/12/09

By: Ami Peña

Sonia Peña

print name

ITS: (circle one) Secretary Chief Financial Officer/Asst.
Secretary - Treasurer

Stuart Miller
Attorney for Ponderosa Chop House, Inc.



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

CONDITIONAL ENTERTAINMENT PERMIT

Issued pursuant to the settlement agreement between the City of Huntington Beach and Ponderosa Chophouse Enterprises Inc. doing business as Black Bull Chophouse.

THIS PERMIT ALLOWS ONLY THE ACTIVITY SHOWN BELOW BY THE PERSON OR PERSONS TO WHOM THE PERMIT IS ISSUED. THIS PERMIT IS NOT TRANSFERABLE.

ISSUED TO: **Ponderosa Chop House, Inc.**
300 Pacific Coast Highway #112
Huntington Beach, CA 92648

Effective Dates: February 13, 2009 through February 12, 2010

CONDITIONS:

1. Hours of Entertainment: 11:00 AM to 1:30 AM Daily
2. Types of Entertainment: Entertainment, amplified, and non-amplified, not otherwise prohibited or regulated by City Ordinance or City Permit Process, or any conditions set forth by the A.B.C., is approved.
3. Per the conditions of your ABC permit (47-440492) dated March 04, 2008, no pool or billiard tables will be authorized in the premises.
4. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks. Alcoholic drinks shall not be included in the price of admission.
5. Entertainment will not be audible beyond 50 feet of the building in any direction. (HBMC 8.40.112, ABC License)
6. All exterior doors and windows shall be closed during times of entertainment. All entertainment must remain inside the establishment at all times.
7. There shall be no entertainment permitted in the patio area at any time.
8. Security Guards: At least (1) when the mechanical bull is operating. At least (2) when other forms of entertainment are present. The guards must be clearly identifiable as security guards and must possess a valid Guard Card from the State of California.
9. No alcoholic beverages will be allowed inside the barrier surrounding the mechanical bull.
10. This permit is valid only when used in conjunction with a valid Conditional Use Permit allowing entertainment at the premises.
11. This permit must be posted in a conspicuous place on the premises described above.
12. Per section 5.44.090 HBMC, the Chief of Police may suspend or revoke your permit if your business permits activities detrimental to public welfare, creates unreasonable noise, causes a public nuisance, or if your business has had three or more violations of the same provision listed in section 5.44 HBMC or any six violations of section 5.44 HBMC within a 12 month period.
13. Per section 5.44.018 HBMC, no person conducting, maintaining or carrying on a business, or having charge or control thereof, which permits entertainment to be allowed on its premises, shall permit to be admitted on such business premises any minor under the age of twenty-one years, if any alcoholic beverages are consumed, dispensed or sold on the premises, unless the minor is accompanied and under the care at all times of his parent or parents or legal guardian.
14. Must obey all state, local, and municipal laws, including, but not limited to, the "No Smoking" statue under Labor Code 6404.5.

You have the right to appeal the conditions on this permit to the City Council in the manner provided by Section 248.02A of the Huntington Beach Zoning and Subdivision Ordinance; except that the written appeal must be filed with the City Clerk within five (5) days of service of this written notice.

ISSUE DATE: February 13, 2009


Kenneth W. Small
Chief of Police

**DRUG USE
IS
LIFE ABUSE**

ATTACHMENT NO. 4.1

ENTERTAINMENT PERMIT CONTINUED

ISSUED TO: Ponderosa Chop House, Inc.
300 Pacific Coast Highway #112
Huntington Beach, CA 92648

EFFECTIVE DATE: February 13, 2009 to February 12, 2010

IN REGARDS TO STIPULATIONS OF CONDITIONS #3 & #4, AS LISTED ON THE ASSOCIATED SETTLEMENT AGREEMENT:

5 Days: Upon receipt of a first Civil Citation issued for a violation of §5.44 *et al*, which has been adjudicated, the suspension shall commence twenty-four hours after the receipt of written notice by the permittee and its attorney of record regardless of whether or not permittee files an appeal to the Superior Court. However, if the Administrative Officer's findings are reversed by the Court the violation will not be counted for the purposes of cumulative violations pursuant to HBMC 5.44.050(1).

15 Days: Upon receipt of a second Civil Citation issued for a violation of §5.44 *et al*, which has been adjudicated, the suspension shall commence twenty-four hours after the receipt of written notice by the permittee and its attorney of record regardless of whether or not permittee files an appeal to the Superior Court. However, if the Administrative Officer's findings are reversed by the Court the violation will not be counted for the purposes of cumulative violations pursuant to HBMC 5.44.050(1).

30 Days: Upon receipt of a third Civil Citation issued for a violation of §5.44 *et al*, which has been adjudicated, the suspension shall commence twenty-four hours after the receipt of written notice by the permittee and its attorney of record regardless of whether or not permittee files an appeal to the Superior Court. However, if the Administrative Officer's findings are reversed by the Court the violation will not be counted for the purposes of cumulative violations pursuant to HBMC 5.44.050(1).

Suspension Violation: Any violation of an Entertainment Permit suspension as set forth above shall be considered a separate and distinct violation.

Revocation: Upon receipt of a forth Civil Citation which has been adjudicated, revocation shall commence twenty-four hours after the receipt of written notice by the permittee and its attorney of record regardless of whether or not permittee files an appeal to the Superior Court. However, if the Court reverses the



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

TO: Scott Hess, Director of Planning

FROM: Kenneth W. Small, Chief of Police *Kenneth W. Small*

DATE: April 2, 2010

SUBJECT: Black Bull Chop House
300 Pacific Coast Highway Suite 112, Huntington Beach

On March 2, 2010, the Huntington Beach Police Department sent a memorandum to the Planning Department recommending the Black Bull Chop House's Conditional Use Permit (CUP) be modified. Specifically, the request was to restrict the business's hours of entertainment, require signage on the outdoor patio, additional lighting at the entrance and to eliminate dancing. In the memorandum, I stated that I also planned to modify the hours of entertainment and eliminate dancing when the Black Bull Chop House's Entertainment Permit was renewed.

Based on a further review of Section 5.44 of the Huntington Beach Municipal Code (HBMC) and incidents that have occurred at the Black Bull Chop House during the last twelve months, I do not believe that there is a sufficient basis to modify the hours of entertainment or to eliminate dancing on the Entertainment Permit at this time. Section 5.44 HBMC requires that the Chief of Police "shall approve and issue an entertainment permit" unless very specific criteria exists for not doing so. Based on my review, I do not believe that the criteria established in the municipal code have been met. I have discussed this matter with representatives in the City Attorney's Office and they concur with my determination.

Because I modified my decision regarding the Black Bull Chop House's Entertainment Permit, it is also appropriate to modify my recommendation to the Planning Commission regarding the CUP. It is my understanding that the review of the Black Bull Chop House's CUP is limited to issues related to noise violations. During the last twelve months, there was only one documented noise violation at the location. That violation occurred on July 4, 2009. Based on that one violation, I do not recommend any modification of the CUP at this time. However, if the applicant is present at the meeting, I think it would be appropriate for him to voluntarily comply with the recommendations in the previous memorandum regarding signage on the outdoor patio and increased lighting at the front door. Compliance with these two conditions would decrease the likelihood of future violations similar to violations that have occurred in the past.

Cc Fred Wilson, City Administrator
Honorable Mayor and City Council Members



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

ENTERTAINMENT PERMIT

THE PERMITTED LOCATION SHALL OPERATE IN COMPLIANCE WITH THE BELOW LISTED CONDITIONS AND SECTION 5.44 OF THE HUNTINGTON BEACH MUNICIPAL CODE AT ALL TIMES.
THIS PERMIT IS NON-TRANSFERABLE.

**Issued to: Black Bull Chophouse
300 Pacific Coast Highway #112
Huntington Beach, CA 92648**

Effective Dates: April 1, 2010 through March 31, 2011

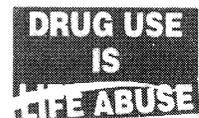
CONDITIONS (12 total):

1. Hours of Entertainment: 11:00 AM to 1:30 AM Daily
2. All entertainment must cease no less than 30 minutes prior to the posted or scheduled closing time, and no later than the time authorized by this permit.
3. Types of Entertainment: Amplified and non-amplified music, entertainment is limited to a disc jockey, live bands, recorded music and karaoke.
4. Patron dancing will be allowed only in pre-designated zones authorized by the Police Department.
5. No games or contest requiring or involving the consumption of alcoholic beverages shall be permitted.
6. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
7. All exterior doors and windows shall be closed during times of entertainment.
8. All live entertainment must remain inside the establishment at all times.
9. No alcoholic beverages will be allowed inside the barrier surrounding the mechanical bull
10. Security Guards: At least one (1) when the mechanical bull is operating. At least two (2) when other forms of entertainment are present.
11. All security guards must be clearly identifiable as security guards and possess a valid California Guard Card.
12. All owners, employees, representatives, and agents must obey all state, local, and municipal laws, and conditions of the Conditional Use Permit, Alcoholic Beverage Control License, or any other regulations, provisions, or restrictions prescribed by a regulatory authority with jurisdiction over the premise; at all times. Violations of any law or conditions of the Conditional Use Permit will be considered a violation of this permit under § 5.44.015(c) of the Huntington Beach Municipal Code.

Per section 5.44.090 HBMC, the Chief of Police may, revoke or suspend the permit upon receiving satisfactory evidence that the licensee or permittee has received four administrative citations which have been upheld at an administrative hearing, or been convicted of, or has entered a plea of guilty to four violations of the provisions of this chapter, or of any other law or ordinance of the City or state relating to such business.

Issued: April 1, 2010


Kenneth W. Small
Chief of Police





CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

TO: Ethan Edwards, Associate Planner
Planning Department

FROM: C. Thomas, Captain 
Investigation Division Commander

DATE: March 31, 2010

SUBJECT: Black Bull Chop House

When a Huntington Beach Police Officer arrests a suspect for drunk driving or drunk in public, the officer asks the suspect where they had been drinking. The Police Department has tracked the responses from the suspects since 2008.

Listed below is the arrest information for these two offenses from the Black Bull Chop House.

<u>Year</u>	<u>DUI arrests before midnight</u>	<u>DUI arrests after midnight</u>
2010*	0	0
2009	1	14
2008	4	20
Total	5	34

<u>Year</u>	<u>Drunk in public before midnight</u>	<u>Drunk in public after midnight</u>
2010*	1	0
2009	1	4
2008	4	21
Total	6	25

For 2009 DUI's after midnight, this includes three suspects who said they had drunk at multiple locations not just the Black Bull Chop House.

For 2008 DUI's before midnight, this includes one suspect who said they had drunk at multiple locations not just the Black Bull Chop House.

For 2008 drunk in public after midnight, this includes one suspect who said they had drunk at multiple locations not just the Black Bull Chop House.

* Denotes up to March 24, 2010