# City of Huntington Beach Planning Department
# STAFF REPORT

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| **TO:** | Planning Commission |
| **FROM:** | Scott Hess, AICP, Director of Planning |
| **BY:** | Rami Talleh, Senior Planner |
| **DATE:** | November 12, 2008 |
| **SUBJECT:** | **SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 06-020/ ENTITLEMENT PLAN AMENDMENT NO. 06-008 (BLACK BULL CHOP HOUSE)** |
| **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 (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 (CUP) No. 06-020 and Entitlement Plan Amendment (EPA) No. 06-008, which permitted 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.

## RECOMMENDATION:

Motion to:

"Receive and file as adequate and direct staff accordingly"

## ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

A. "Direct staff to schedule a revocation hearing of Conditional Use Permit No. 03-35."

B. "Receive and file as adequate the six-month review of Conditional Use Permit No. 03-35/ Entitlement Plan Amendment No. 06-008 and schedule another six-month review."

C. "Continue the six-month review of Conditional Use Permit No. 03-35/ Entitlement Plan Amendment No. 06-008 and direct staff accordingly."

## BACKGROUND:

CUP No. 06-020 to establish a 5,000 sq. ft. restaurant was approved on September 12, 2006 by the Planning Commission with a six month review. The Planning Commission's approval was appealed by Council Member Debbie Cook on September 18, 2006. In the appeal letter Council Member Cook raised concerns with the restaurants compatibility with the adjacent residential uses.

The City Council approved Conditional Use Permit No. 06-020 on November 6, 2006, with findings and modified conditions of approval, upholding the Planning Commission's approval of the project. The modified conditions of approval included relocating a mechanical bull within the restaurant to an area that is not visible to the outside of the restaurant. Subsequently, the applicant filed EPA No. 06-008 to modify the approved plans to address the conditions of approval and comments made by the City Council. The City Council approved EPA No. 06-008 on February 20, 2007.

On October 21, 2008, the Police Department revoked the Black Bull Chophouse's entertainment permit due to numerous violations and complaints from surrounding residents (Attachment No. 6). The business owner appealed the Police Department's action to the City Council on October 27, 2008 (Attachment No. 9). A hearing before the City Council is yet to be scheduled. However, the business may continue to operate under their entertainment permit until action is taken on the appeal by the City Council.

## ANALYSIS:

The purpose of the review is to verify compliance with the conditions of approval and assess any potential impacts to adjacent properties resulting from operation of the restaurant with live entertainment, alcohol sales, dancing, and outdoor dining. The review considered on-site inspections and monitoring by the Police Department, Fire Department, and Code Enforcement Division.

In a memorandum to the Planning Department Dated November 3, 2008, the Police Department indicated that the Black Bull Chophouse's "overall business activity negatively affects the quality of life for residents near the location, places patrons at risk of injury when operating at or above authorized capacity, and required the use of significant public safety resources to handle incidents specific to the location (Attachment No. 5)." Since operation of the Black Bull Chophouse began in May, 2008, the Police Department responded to 79 incidents related to the business activity including "intoxicated patrons, noise disturbances, and assaults." 11 violations of the restaurant's entertainment permit were observed by the Police Department. The Police Department letters to Black Bull Chophouse are provided in Attachment No. 6.

In a memorandum to the Planning Department dated November 3, 2008, the Fire Department raised concerns with the lack of ability, or willingness, of the Black Bull Chophouse management to maintain an appropriate occupant load during busy weekends (Attachment No. 7). The Fire Department fined the Black Bull Chophouse on two separate occasions for exceeding the maximum occupant load. The Black Bull Chophouse security and management staff drafted a policy to address the issue of occupant load management. The incident reports, Fire Department letters to the Black Bull Chophouse management, and Black Bull Chophouse security guidelines and procedures are provided in Attachment No. 8.

In addition to the noise compliant filed with the Police Department, one noise compliant was filed with the Code Enforcement Division (Attachment No. 10). The complainant also reported the incident to the Police Department.

The operation of the restaurant with entertainment, dancing, alcohol sales, and outdoor dining has not been in compliance with Condition No 2(a) of Conditional Use Permit No. 06-020 which states in part: "The use shall comply with the following: All conditions of the Entertainment Permit issued by the Police Department shall be observed." Of the 79 incidents reported by the Police Department, 11 resulted in violations of the Entertainment Permit:

- Seven violations related to security staff not wearing uniforms that clearly identify them as security guards;
- Two violations for overcrowding;
- One violation for having the rear door open; and
- One violation for loud music audible beyond 50 feet from the exterior of the restaurant.

The Entertainment Permit was revoked by the Police Department and is pending an appeal to the City Council.

Pursuant to Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO), the Planning Commission, may revoke a conditional use permit upon making one or more of the following findings (Attachment No. 11):

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
2. That the terms or conditions of approval of the permit have been violated or that other laws or provisions have been violated;
3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for twelve consecutive months.

If the Planning Commission determines that a revocation hearing of CUP No. 06-020 and EPA No. 06-008 is warranted, based on the six-month review, a public hearing must be scheduled. This will require that notices be sent to all property owners and tenants within a 500 ft. radius of the property. In order to prepare all the legal noticing requirements, mail the required notices ten days prior to the scheduled hearing and prepare all the supporting documents and staff reports, staff is recommending a hearing in approximately four to six weeks. Based on the upcoming schedule and holiday season, the next available public hearing date is January 13, 2009.

**ATTACHMENTS:**

1. City Council Notice of Action dated November 6, 2006 and February 20, 2008 – CUP No. 06-020 and EPA No. 06-008
2. Black Bull Chophouse Entertainment Permit
3. September 12, 2006 Planning Commission Minutes
4. November 6, 2006 and February 20, 2007 City Council Minutes
5. Police Department Memorandum dated November 3, 2008, and October 31, 2008
6. Police Department letters to Cesar Pena dated October 21, October 8, and October 7, 2008
7. Fire Department Memorandum dated November 3, 2008
8. Fire department letters to Cesar Pena dated October 7, 2008 and July 29, 2008
9. Entertainment Permit appeal letter dated October 27, 2008
10. Code Enforcement Division Email dated November 4, 2008
11. Chapter 246 of the HBZSO, Enforcement

# CITY OF HUNTINGTON BEACH

2000 MAIN STREET CALIFORNIA 92648

**OFFICE OF THE CITY CLERK**
**JOAN L. FLYNN**
**CITY CLERK**

November 8, 2006

Michael C. Adams Associates
21190 Beach Blvd.
Huntington Beach, CA 92648

**Re: NOTICE OF ACTION - CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE)**

Dear Mr. Adams:

At a regular meeting held on Monday, November 6, 2006, the City of Huntington Beach City Council took action on the following public hearing: **Public Hearing to Consider an Appeal by Councilmember Debbie Cook of the Planning Commission's Approval of Conditional Use Permit (CUP) No. 06-20 for the Ponderosa Restaurant at Pierside Pavilion With Alcohol Sales, Live Entertainment, Dancing, Billiard Tables, and Outdoor Dining.** The request was conditionally approved with findings and conditions of approval (attached).

This is a final decision. You are hereby notified that pursuant to provisions of Section 1094.6 of the Code of Civil Procedure of the State of California you have ninety days from the date of mailing of this notice to apply to the court for judicial review.

If you have any questions regarding this matter, please contact my office at (714) 536-5227.

Sincerely,

Joan L. Flynn
City Clerk

City of Huntington Beach
NOV 13 2006

Attachments:
Findings and Conditions of Approval
11/06/06 Action Agenda, Pages 5 and 6

c: Property Owner (Pierside Pavilion, LLC c/o Joe Daichendt, 300 PCH 92648)
Jennifer McGrath, City Attorney
Scott Hess, Acting Planning Director
Rami Talleh, Associate Planner

(Telephone: 714-536-5227)

ATTACHMENT NO. 1.1

## FINDINGS AND CONDITIONS OF APPROVAL
## CONDITIONAL USE PERMIT NO. 06-20

### 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.

### FINDINGS FOR APPROVAL:

1. Conditional Use Permit No. 06-20 for the establishment of a 5,000 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 (Phase One: 400 sq. ft., and Phase Two: 600 sq. ft.) 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 proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation.

2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, 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 use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. 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*



ATTACHMENT NO. 1.2

*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 proposed restaurant 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 proposed restaurant will increases 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.

**CONDITIONS OF APPROVAL:**

1. The site plan, floor plans, and elevations received and dated May 31, 2006, shall be the conceptually approved design with the following modification:

   a. A 42-inch high barrier in compliance with the Department of Alcoholic Beverage Control (ABC) and consistent with City standard designs shall be provided along the perimeter of the outdoor dining area.

   b. The outdoor dining area shall be entirely within the covered column area and shall not extend into the corridor area.

   c. The mechanical bull shall be relocated to an area within the main dining room furthest away from the windows facing residential uses to the southeast.

2. The use shall comply with the following:

   a. All conditions of the Entertainment Permit issued by the Police Department shall be observed.

   b. All ingress/egress to and from the outdoor dining area shall be provided from inside the restaurant to allow for food delivery only. Doors shall remain closed at

all other times. Exiting from the outdoor dining area to the adjacent paseo shall be 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.

3. 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.

4. 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.

5. A review of the use shall be conducted by the Planning Commission within six (6) months of the issuance of Certificate of Occupancy or final building permit approval 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.

**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

2000 MAIN STREET CALIFORNIA 92648

**OFFICE OF THE CITY CLERK**
**JOAN L. FLYNN**
**CITY CLERK**
**NOTICE OF ACTION**

February 28, 2007

Michael C. Adams Associates
21190 Beach Blvd.
Huntington Beach, CA 92648

SUBJECT: Modify the approved plans for the Ponderosa Chop House – CUP 06-20

APPLICANT: Michael C. Adams Associates

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

DATE OF ACTION: February 20, 2007

On Tuesday, February 20, 2007 the City Council of the City of Huntington Beach took action on your application and **approved as amended** the Staff Recommendation for Entitlement Plan Amendment No. 06-08 with Findings and Conditions of Approval (attached).

This is a final decision. You are hereby notified that pursuant to provisions of Section 1094.6 of the Code of Civil Procedure of the State of California you have ninety days from the date of mailing of this notice to apply to the court for judicial review.

If you have any questions, please contact Scott Hess, Acting Director of Planning at (714) 536-5271.

Sincerely,

Joan L. Flynn

Joan L. Flynn
City Clerk

Enclosure: Findings and Conditions of Approval: EPA 06-08

c: Acting Director of Planning
Rami Talleh, Project Planner

## FINDINGS AND CONDITIONS OF APPROVAL

## ENTITLEMENT PLAN AMENDMENT NO. 06-08

### 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.

### FINDINGS FOR APPROVAL:

1. Entitlement Plan Amendment No. 06-08 for the expansion of a previously approved 5,000 square foot restaurant with on-site alcohol sales, live entertainment and dancing, and outdoor dining area with alcohol into an adjacent 1,290 square foot vacant suite 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 proposed expansion will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation. Furthermore, the proposed expansions will allow for greater flexibility in the layout of the floor plan to reduce any potential impacts to the adjacent residential uses and comply with conditions of approval of Conditional Use Permit No. 06-20.

2. The proposed expansion of a previously approved restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, 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 use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. 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 entitlement plan amendment 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 proposed expansion of a previously approved restaurant 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 proposed expansion of a previously approved restaurant will increases 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.

**CONDITIONS OF APPROVAL:**

1. The floor plan received and dated December 28, 2006, shall be the conceptually approved design.

2. The existing interior wall constructed along the southeasterly windows adjacent to the mechanical bull shall remain in place.

3. The conditions of approval of Conditional Use Permit No. 06-20 shall remain in effect.

**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

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police


## ENTERTAINMENT PERMIT

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: **Black Bull Chop House**
**300 Pacific Coast Highway #112**
**Huntington Beach, CA 92648**

APR 0 4 2008

**Effective Dates: April 1, 2008 through April 1, 2009**

**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. Calls for Police service at your establishment deemed excessive as described in 5.44.050 HBMC, as well as any violations of your A.B.C. License or Conditional Use Permit, can result in the suspension or revocation of your Entertainment Permit.
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: April 1, 2008

Kenneth W. Small
Chief of Police

DRUG USE IS LIFE ABUSE

ATTACHMENT NO. 2

A sign(s) prohibiting truck idling, identifying the permitted hours for loading and delivery, and providing a store contact shall be placed in a conspicuous location adjacent to the loading dock. The sign shall be sized appropriately in order that it can be clearly viewed by truck drivers entering the loading dock area. The sign(s), the text, and location shall be submitted to the Planning Department for review and approval prior to installation. **(AMENDED 4/25/06)**

b. A sign shall be installed at the southeasterly portion of the building that indicates "No thru traffic" and "No deliveries permitted". The sign shall be placed in a conspicuous location with the text and location subject to the review of the Planning Department prior to installation. **(AMENDED 4/25/06)**

7. The Planning Director ensures that all conditions of approval herein are complied with. The Planning Director shall be notified in writing if any changes to the site plan, elevations and floor plans are proposed as a result of the plan check process. Building permits shall not be issued until the Planning Director has reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the Huntington Beach Zoning and Subdivision Ordinance.

8. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

**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.

**B-2. CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE)**
**Applicant:** Michael C. Adams Associates **Request:** To permit the establishment of a 5,000 sq. ft. restaurant with alcohol sales, live entertainment and dancing, up to four billiard tables and 1,000 sq. ft. outdoor dining area. **Location:** 300 Pacific Coast Highway, #112 (south side of Walnut Avenue, between Main St. and Third St.) **Project Planner: Rami Talleh**

**STAFF RECOMMENDATION:** Motion to: "Approve Conditional Use Permit No. 06-20 with suggested findings and conditions of approval."



ATTACHMENT NO. 3.1

The Commission made the following disclosures:

- Commissioner Burnett visited the site.
- Commissioner Livengood visited the site and spoke with staff.
- Commissioner Scandura visited the site and met with Mike Adams and the Applicant.
- Chair Dingwall visited the site and spoke with Mike Adams and the Applicant.
- Commissioner Ray visited the site and spoke with staff.
- Commissioner Horgan visited the site.
- Commissioner Dwyer visited the site.

Rami Talleh, Associate Planner, gave a Powerpoint presentation covering the proposed project and identified the location of the proposed restaurant, dance floor, billiard area and outdoor dining area.

Burnett referenced the late communication received regarding public notification and asked staff if appropriate public notification had been given. Talleh advised that public notice was given in accordance with state law.

Ray voiced concern over adequate access to the outdoor patio area alley and hours of operation. Talleh advised these issues could be addressed in the conditions of approval.

**THE PUBLIC HEARING WAS OPENED**

Mike Adams, Applicant, spoke in favor of the proposed project and stated that Pierside Pavilion was designed as an entertainment complex. He explained that the Ponderosa Restaurant would be a family style restaurant with entertainment. He assured the Commissioners there would not be any live entertainment outdoors and suggested a six-month review be placed in the conditions of approval.

Horgan voiced concern for the theatre patrons if the noise levels from the proposed restaurant become too loud.

Adams stated that the theatre is not renewing its lease and will more than likely become office units.

Richard Theil, President of the Huntington Beach Pier Colony Homeowners Association, voiced concerns over potential noise and air quality issues.

James Melton, resident, advised that there is already too much noise from the established bars in the area and is concerned that the proposed project will negatively impact the area.

R. C. Alley, resident, stated that he did not receive a public hearing notice regarding the proposed project and does not want to have a mechanical bull in the area. He said that more outdoor dining would make the noise levels intolerable to residents.

Spyro Cacontis, resident, spoke in opposition of the proposed project due to the excessive noise in the area. He feels that the proposed project will negatively affect property values.

**WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.**

(06pcm0912)

Ray applauded the applicant for wanting to open the business, but suggested trying to mitigate some of the negative impacts to residents.

Dwyer asked if the dance floor would increase the occupancy load. Engberg stated that it would and the Building Department would calculate the adjusted occupancy load.

Scandura questioned if outdoor dining had been at this location in the past.

Scott Hess, Acting Director of Planning, stated that Johnny Rockets and a Vietnamese restaurant had some outdoor dining and the Golden Bear used the outdoor area for patrons lining up for concerts.

Commissioner Dwyer stated that this proposed project should not be penalized because of negative issues caused by other bars in the area.

Discussion ensued regarding the mechanical bull placement, noise issues and the placement of a sound wall surrounding the outdoor dining area.

**A STRAW VOTE MOTION WAS MADE BY RAY, SECONDED BY SCANDURA REGARDING THE MANDATORY PLACEMENT OF A SOUND WALL AROUND THE OUTDOOR DINING LOCATION, THE VOTE AS FOLLOWS:**

**THE COMMISSION DID NOT VOTE ON THE RECOMMENDED ACTION**

Discussion ensued regarding denial of the second phase of outdoor dining.

**A MOTION WAS MADE BY RAY, SECONDED BY SCANDURA TO APPROVE CONDITIONAL USE PERMIT NO. 06-20 WITH MODIFIED FINDINGS AND SUGGESTED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:**

| | |
|---|---|
| **AYES:** | **Livengood, Scandura, Dingwall, Ray, Dwyer** |
| **NOES:** | **Burnett, Horgan** |
| **ABSENT:** | **None** |
| **ABSTAIN:** | **None** |

**MOTION APPROVED**

## FINDINGS AND CONDITIONS OF APPROVAL

### CONDITIONAL USE PERMIT NO. 06-20
**(September 12, 2006)**

**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.



ATTACHMENT NO. 3.3

**FINDINGS FOR APPROVAL:**

1. Conditional Use Permit No. 06-20 for the establishment of a 5,000 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 (Phase One: 400 sq. ft., and Phase Two: 600 sq. ft.) 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 proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation.

2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, 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 use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. 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.



ATTACHMENT NO. 3.4

The proposed restaurant 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 proposed restaurant will increases 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.

**CONDITIONS OF APPROVAL:**

1. The site plan, floor plans, and elevations received and dated May 31, 2006, shall be the conceptually approved design with the following modification:

    a. A 42-inch high barrier in compliance with the Department of Alcoholic Beverage Control (ABC) and consistent with City standard designs shall be provided along the perimeter of the outdoor dining area.

2. The use shall comply with the following:

    a. All conditions of the Entertainment Permit issued by the Police Department shall be observed.

    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 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.

3. 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.

4. 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.

5. A review of the use shall be conducted by the Planning Commission within six (6) months of the issuance of Certificate of Occupancy or final building permit approval 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.



ATTACHMENT NO. 3.5

## 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.

**B-3.** **ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT)** **Applicant:** City of Huntington Beach. **Request:** To amend Huntington Beach Zoning and Subdivision Ordinance, Section 230.14 Affordable Housing Incentives/Density Bonus, to comply with state mandated changes pursuant to Senate Bills 1818 and 435. The existing ordinance allows for up to a 25% density bonus when housing projects restrict 10-20% of the units as affordable or 50% for seniors. The proposed ordinance reduces the number and affordability of the units that must be restricted to qualify for a density bonus. Consistent with the new law, the proposed ordinance includes other provisions regarding incentives, concessions, waiver of development standards and child care facilities. **Location:** Citywide Residential Districts/Mixed Use Zoning. **Project Planner:** Rosemary Medel

**STAFF RECOMMENDATION:** Motion to: "Approve Zoning Text Amendment No. 06-02 with findings for approval and forward Draft Ordinance including the legislative draft to the City Council for adoption."

**A MOTION WAS MADE BY SCANDURA, SECONDED BY BURNETT TO CONTINUE ZONING TEXT AMENDMENT NO. 06-02 TO THE NOVEMBER 14, 2006, MEETING, BY THE FOLLOWING VOTE:**

**AYES:** **Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer**
**NOES:** **None**
**ABSENT:** **None**
**ABSTAIN:** **None**

**MOTION APPROVED**

**C.** **CONSENT CALENDAR:**

**C-1.** **PLANNING COMMISSION MINUTES DATED JUNE 13, 2006**

**RECOMMENDED ACTION:** Motion to: "Approve the June 13, 2006, Planning Commission Minutes as submitted."



ATTACHMENT NO. 3.6

Mayor Sullivan responded to comments made earlier by Public Speaker Dr. Geisse. He refuted the size of the proposed senior center is too large by comparing the sizes of centers in other cities.

Councilmember Cook voiced her opposition to the mischaracterizations of the opinions of others.

**Recessed from 10:01 p.m. to 10:06 p.m.**

**(City Council) City Administrator Culbreth-Graft Introduced a New Feature on the City's Website Called "My HB"**

Information Service Director Jack Marshall assisted in describing the new program, which had been developed by Information Services staff using the City's Geographic Information Systems (GIS) and web development resources. Acting GIS Administrator Dan Richards assisted with the presentation.

**Reviewed and Accepted City Treasurer Shari L. Freidenrich's September 2006 Investment Summary Report Titled *City of Huntington Beach Summary of City Investment Portfolio, Bond Proceeds, and Deferred Compensation Activity for September 2006***

The City Council considered a communication from City Treasurer Shari Freidenrich transmitting the Monthly Investment Report for September 2006.

City Treasurer Freidenrich gave a PowerPoint presentation titled *Treasurer's Report*, which was included in the agenda packet.

A motion was made by Green, second Hardy to review and accept the Monthly Investment Report entitled *Summary of Investment Portfolio, Bond Proceeds, and Deferred Compensation Activity for September 2006*, pursuant to Section 17.0 of the Investment Policy of the City of Huntington Beach. The motion carried by the following roll call vote:

AYES: Bohr, Green, Coerper, Sullivan, Hardy, Hansen, and Cook
NOES: None

**(City Council) City Attorney Reported on Complaint Filed Against James Kurlinski**

City Attorney Jennifer McGrath reported that on October 5, 2006 a complaint was filed against James Kurlinski for destruction of a City Parkway tree at 16351 Golden Gate Lane.

**(City Council) Public Hearing Held – Considered an Appeal by Councilmember Debbie Cook of the Planning Commission's Approval – Approved Conditional Use Permit (CUP) No. 06-20 for the Ponderosa Restaurant at Pierside Pavilion with Alcohol Sales, Live Entertainment, Dancing, Billiard Tables, and Outdoor Dining**

Mayor Sullivan announced that this was the time noticed for a public hearing to consider the following: APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. 06-20 (Ponderosa Steakhouse)

ATTACHMENT NO. 4.1

Applicant: Michael C. Adams Associates, 21190 Beach Blvd., Huntington Beach, CA 92648

Appellant: City Councilmember Debbie Cook

Request: To establish a 5,000 sq. ft. restaurant with on-site sales and consumption of alcohol, live entertainment, dancing on a 200 sq. ft. dance floor, and up to four billiard tables with shuffleboard, and a 1,000 sq. ft. outdoor dining area

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

Project Planner: Rami Talleh

Legal notice as provided to the City Clerk's Office by staff had been published, mailed and posted.

Project Planner Rami Talleh presented a PowerPoint report titled *Appeal of Planning Commission's Approval of Conditional Use Permit No. 06-20 (300 Pacific Coast Highway, Suite #112)* was included in the agenda packet.

Councilmember Bohr asked for clarification on phase one and phase two of the project, hours of outdoor dining operation, and the 6-month trial period. Planner Talleh explained the trial period is designed to address any issues or complaints. He described the outdoor dining hours of operation limited to 10:00 p.m. on weekends.

Councilmember Green asked about noise reduction barriers between the residences and the business and the location of dancing and live entertainment. Planner Talleh stated noise barriers are possible; however studies would be necessary. He commented on the goals of the six-month review, stating the dancing and entertainment are located away from the residences.

Councilmember Hardy commented on the location of the mechanical bull and visibility from outside the restaurant. She asked about possible smoking restrictions in the outdoor dining area. Planner Talleh stated the location of the bull would be near the main dining area. City Attorney McGrath explained smoking restrictions are possible; however a study would be the necessary first step to determine how this project varies from other projects.

Mayor Sullivan commented on a Late Communication submitted by the theater owners and asked staff how to address the concerns presented in the letter. Planner Talleh confirmed the time to do so would be at this public hearing or at the six-month review.

Mayor Sullivan declared the public hearing open.

The City Clerk announced for the record the following Late Communication which pertains to this public hearing:

*Communication submitted by Gary Richardson, General Manager of Sanborn Theatres, Inc. (Pierside Surf City 6 Cinema) dated November 6, 2006 and titled CUP for Ponderosa Chophouse at Pierside.*

**Mike Adams,** representing the applicant, commented on the different phases of the project, stating they are affected by parking requirements. He explained that the applicant would agree to an additional six-month review for Phase Two, if requested by Council. He described the original plan for the site, which included outdoor dining and entertainment, and suggested screening could be considered. Mr. Adams emphasized that the applicant would prefer to try operating without screening at first, and asked that the hours of operation be limited to 2:00 a.m. rather than 1:30 a.m. (4:13:01)

Mayor Sullivan asked for clarification on ownership and the name of the proposed business. Mr. Adams clarified the business would be privately owned and would probably have a name different than on the original application. He also explained that window treatments would not obscure visibility into the restaurant.

Mayor Pro Tem Coerper asked Mr. Adams to comment on residents' concerns. Mr. Adams described hours of operation and lighting concerns addressed at Planning Commission meetings.

**Paul Strain**, resident of Pier Colony, urged Council not to approve the Conditional Use Permit (CUP) for the restaurant. He described the character of his residential complex, explaining that a lack of air conditioning in the units results in a need for windows to remain open regularly. Mr. Strain voiced concern that noise is magnified in the corridors of the complex and between the Pier Colony complex and the retail restaurant site, stating the project would be too disruptive. (4:21:13)

Councilmember Bohr asked resident Mr. Strain when he moved into his residence in Pier Colony. Mr. Strain replied thirteen years prior.

**Mark Miller**, Pier Colony resident, stated he is an original owner of property in Pier Colony and has always had problems with the noise. He opined that the proposed project is not a restaurant, but is a bar/entertainment center. Mr. Miller described his noise concerns and refuted the wisdom of reducing the size of the corridor for through traffic. (4:25:45)

**James Melton**, Second Street resident, spoke in opposition to the Conditional Use Permit due to noise concerns. He commented on the theater, stating misinformation has been given regarding its operational status. Mr. Melton suggested the outdoor seating be eliminated or moved to Walnut Street with a tall sound barrier. He also suggested eliminating the mechanical bull and shortening the hours of operation. (4:28:40)

**RC Alley**, Pier Colony resident, spoke in opposition to the project. He voiced his concern with the mechanical bull and with reducing the size of the corridor. He suggested either the bull be eliminated or moved to the back room; outdoor dining be removed or moved to Walnut Street, live entertainment be eliminated or located in the back room, dancing be eliminated, the patio be closed at 9:00 p.m. weekdays and 10:00 pm weekends, that a condition be added regarding noise, and that exterior doors remain closed during operation. Mr. Alley urged Council to vote "No" on the CUP. (4:32:19)

**Ted Frankiewicz**, seven-year Pier Colony resident, voiced concerns pertaining to the project including noise and the effect on property values in Pier Colony. He asked Council to deny the petition or to require noise mitigation, added security, and flexibility for the City to shut the business down if conditions are not adhered to. (4:36:20)

**Joe Shaw**, Third Street resident, commented on noise levels in the downtown area every night of the week and stated the atmosphere is not always family-oriented. He suggested that the downtown area has a sufficient amount of restaurants and bars. (4:38:54)

**Robert Dingwall**, Planning Commission Chairman, commented on land uses in the downtown area and stated that Pier Colony and the Pierside Pavilion were built for their currently-designated uses. He clarified that the only project use that requires special permitting is the outdoor dining, and that the required passageway would be large enough for public egress. Commissioner Dingwall urged Council approval of the project. (4:40:51)

There being no persons present to speak further on the matter and there being no further protests filed, either written or oral, the Mayor declared the public hearing closed.

Councilmember Hansen inquired about the City noise ordinance and asked the applicant's representative to comment on suggestions made by speakers. Project Planner Talleh described City noise ordinances, not to exceed fifty decibels near residences in the evening and not to exceed fifty feet from the entertainment source. Mr. Adams stated a compromise with hours of operation, locating the mechanical bull near the restrooms, locating live entertainment in the back room, eliminating speakers on the outdoor patio, and all exterior doors to remain closed when not in use were all acceptable.

Councilmember Cook commented on access to the area and the history of noise complaints with prior businesses on the site. She voiced her opinion that the building should be demolished and rebuilt, and concerns with the doors to the outdoor patio constantly being opened due to entry and exit of servers. She inquired if glass walls could be installed floor to ceiling. Mr. Adams reiterated the applicant's preference not to enclose the area, requesting further discussion be held, if necessary, at the six-month review.

Councilmember Hardy asked the Police Chief for clarification on outdoor dining hours restrictions and underage patrons. Chief Small stated the restrictions depend on the type of ABC license, and that minors may be present as long as food is served at a restaurant location. Councilmember Hardy stated her opinion that the mechanical bull would create noise problems and suggested window screening to block outside view of the bull. She asked the Planning Commission to research the effects of smoking in outdoor dining areas on local residents. She suggested banning smoking with this project, designating live entertainment be located in the back room, requiring additional sound barriers for the theater, and limiting outdoor dining operation hours to 9:00 p.m. on weekdays and 10:00 p.m. on weekends.

Mayor Pro Tem Coerper asked the applicant to comment on security issues. Mr. Pena described security operations at his current business, the Huntington Beach Beer Company, and his expectations at the new business. Mr. Pena stated that to his recollection his business only called for police assistance once in the past year.

Councilmember Cook suggested smoking be eliminated on the outdoor patio and voiced her opposition to approval of the CUP due to noise concerns. City Attorney McGrath commented that research would be necessary to establish findings for restricting smoking.

A motion was made by Hansen, second Coerper to approve Conditional Use Permit No. 06-20 with findings and revised conditions of approval for a modified outdoor dining area **as amended** to close outdoor patio dining at 9:00 p.m. weeknights and 10:00 p.m. weekends, to locate the live entertainment in the back area, to comply with all City noise ordinances, exterior doors remain closed during hours of operation, and to locate the mechanical bull at the greatest distance from the doors. The motion carried by the following roll call vote:

AYES: Bohr, Green, Coerper, and Hansen
NOES: Sullivan, Hardy, and Cook

FINDINGS AND CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. 06-20

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.

FINDINGS FOR APPROVAL:

1. Conditional Use Permit No. 06-20 for the establishment of a 5,000 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 (Phase One: 400 sq. ft., and Phase Two: 600 sq. ft.) 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 proposed uses will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation.

2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, 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 use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. 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 proposed restaurant 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 proposed restaurant will increases 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.

CONDITIONS OF APPROVAL:

1. The site plan, floor plans, and elevations received and dated May 31, 2006, shall be the conceptually approved design with the following modification:

a. A 42-inch high barrier in compliance with the Department of Alcoholic Beverage Control (ABC) and consistent with City standard designs shall be provided along the perimeter of the outdoor dining area.

b. The outdoor dining area shall be entirely within the covered column area and shall not extend into the corridor area.

c. The mechanical bull shall be relocated to an area within the main dining room furthest away from the windows facing residential uses to the southeast.

2. The use shall comply with the following:

a. All conditions of the Entertainment Permit issued by the Police Department shall be observed.

b. All ingress/egress to and from the outdoor dining area shall be provided from inside the restaurant to allow for food delivery only. Doors shall remain closed at all other times. Exiting from the outdoor dining area to the adjacent paseo shall be 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.

3. 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.

4. 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.

5. A review of the use shall be conducted by the Planning Commission within six (6) months of the issuance of Certificate of Occupancy or final building permit approval 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.

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.

**Consent Calendar – Items Approved**

A motion was made by Coerper, second Hardy to approve the following Consent Calendar items, as recommended. The motion carried by the following roll call vote:

AYES: Bohr, Green, Coerper, Sullivan, Hardy, Hansen, and Cook
NOES: None

ATTACHMENT NO. 4.7

[redacted] announced his attendance at the Orange County Engineering Council meeting.

City Attorney Jennifer McGrath announced her attendance at the Orange County City Attorneys' luncheon.

**(City Council) Public Hearing Held – Approved as Amended Entitlement Plan Amendment (EPA) No. 06-08 Modifying the Approved Plans Under Conditional Use Permit (CUP) No. 06-20 for the Ponderosa Chop House Restaurant Located at Pierside Pavilion, 300 Pacific Coast Highway, by Allowing the Restaurant to Expand into an Adjacent 1,290 Square Foot Vacant Suite**

Mayor Coerper announced that this was the time noticed for a public hearing to consider the following: ENTITLEMENT PLAN AMENDMENT NO. 06-08 (PONDEROSA CHOP HOUSE EXPANSION - AMENDMENT TO CONDITIONAL USE PERMIT NO. 06-20)

Applicant: Michael C. Adams Associates, 21190 Beach Blvd., Huntington Beach, CA 92648.

Request: To amend Conditional Use Permit No. 06-20 and modify plans previously approved by the City Council on November 6, 2006, by expanding a 5,000 sq. ft. restaurant with on-site sales and consumption of alcohol, live entertainment, and dancing into an adjacent 1,290 square foot vacant suite. The project also includes changes to the location of a mechanical bull and bar within the suite and relocating the outdoor dining.

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

Project Planner: Rami Talleh

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Acting Director of Planning Scott Hess gave an overview and introduced Project Planner Rami Talleh. Planner Talleh presented a PowerPoint report titled *Entitlement Plan Amendment No. 06-08 (Ponderosa Chop House Expansion - Amendment to Conditional Use Permit No. 06-20) 300 Pacific Coast Highway, Suite #112,* which was included in the agenda packet.

Discussion ensued amongst Council and staff regarding the proposed location of outdoor dining, mitigation of noise, and window treatments.

Mayor Coerper declared the public hearing open.

The Assistant City Clerk restated for the record the following Late Communications pertaining to this public hearing:

Communication submitted by Robin Braithwaite dated February 19, 2007 regarding the Ponderosa Chop House Restaurant to be located at Pierside Pavilion.
Communication submitted by Judy Pinchuk dated February 20, 2007 and titled *Ponderosa Chop House.*

Councilmember Carchio voiced his concern regarding outside security for the restaurant and asked the applicant to pro-actively address the issue so as not to over burden the Police Department.

**Mike Adams**, Applicant, described what he referred to as improvements to the project plan if the Entitlement Plan Amendment (EPA) is approved. He clarified that the glass in the windows is currently transparent; however an interior wall exists blocking the view of the mechanical bull from the outside. (40:57)

**R.C. Alley** submitted a communication consisting of site plan drawings that illustrate the changes from the original proposal to the modified proposal for the project. He stated he is a resident of Pier Colony Condominiums and represents the Homeowners' Association. Mr. Alley voiced his concern, stating that the modified proposal expands the restaurant into a bar. He asked Council to deny the EPA. (42:49)

**Ted Frankiewicz**, 8-year resident of Pier Colony, voiced his opposition to the proposed plan. He opined that the location is not suitable for a restaurant. Mr. Frankiewicz asked Council to delay or postpone approval of the plan in order to evaluate the possibility of renting the space for office use. (46:34)

**Jeff Smith**, Pier Colony condominium owner, stated his support for outdoor dining in the downtown. He questioned permitted use of the proposed outdoor dining area for activity other than eating dinner, and voiced concern with noise that would carry over to the Pier Colony residences. (48:27)

There being no other persons present to speak on the matter and there being no additional protests filed, either written or oral, the Mayor declared the public hearing closed.

Councilmember Bohr asked the public speakers if they would comment on their preference for the existing approved plan or the proposed plan. Mr. Alley stated he has no opposition to a restaurant and that he prefers the existing approved plan. Mr. Frankiewicz voiced his preference for the existing approved plan.

In response to Council inquiries, Mr. Adams confirmed the hours of operation for the outdoor dining area are until 9 p.m. weekdays and 10 p.m. on weekends, stating that the area can be used for smoking and drinking. He clarified that the modified plan has more indoor dining seats, and described dining booths in the bar area.

A motion was made by Hansen, second Carchio to approve Entitlement Plan Amendment No. 06-08 with Suggested Findings and Conditions of Approval **as amended to require that the existing interior wall blocking the view of the mechanical bull from the windows remain in place.**

Councilmember Bohr asked for comments on extending the outdoor dining hours and restricting to dining only. Mr. Frankiewicz and Mr. Alley voiced their opposition to such a change. Mr. Adams explained that no activity will be allowed in the outdoor dining area after the permitted hours. Councilmember Bohr withdrew his suggested amendment.

Council then voted on the amended motion. The motion carried by the following roll call vote:

| | |
|---|---|
| AYES: | Bohr, Carchio, Coerper, Green, and Hansen |
| NOES: | Cook, and Hardy |

## FINDINGS AND CONDITIONS OF APPROVAL

## ENTITLEMENT PLAN AMENDMENT NO. 06-08

### 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.

### FINDINGS FOR APPROVAL:

1. Entitlement Plan Amendment No. 06-08 for the expansion of a previously approved 5,000 square foot restaurant with on-site alcohol sales, live entertainment and dancing, and outdoor dining area with alcohol into an adjacent 1,290 square foot vacant suite 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 proposed expansion will not create adverse noise or parking impacts to the surrounding businesses and residents based on the availability of parking within the existing parking structure and limitations on hours of operation. Furthermore, the proposed expansions will allow for greater flexibility in the layout of the floor plan to reduce any potential impacts to the adjacent residential uses and comply with conditions of approval of Conditional Use Permit No. 06-20.

2. The proposed expansion of a previously approved restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The use will be required to comply with strict conditions of approval to assure that any potential impacts to the impacts to surrounding properties are minimized. In addition, the proposed use is consistent with the mixed-use character of commercial developments in the downtown. The use is subject to noise regulations such as requiring that all doors and windows remain closed during live entertainment, 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 use will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. 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 entitlement plan amendment 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 proposed expansion of a previously approved restaurant 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 proposed expansion of a previously approved restaurant will increases 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.

**CONDITIONS OF APPROVAL:**

1. The floor plan received and dated December 28, 2006, shall be the conceptually approved design.

2. The existing interior wall constructed along the southeasterly windows adjacent to the mechanical bull shall remain in place.

3. The conditions of approval of Conditional Use Permit No. 06-20 shall remain in effect.

**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 attorneys' 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:** Rami Talleh, Senior Planner, Planning Department

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

**DATE:** November 3, 2008

**SUBJECT:** Black Bull Chop House Conditional Use Permit # 06-20

---

On Tuesday September 12, 2006, the Huntington Beach Planning Commission conditionally approved the Conditional Use Permit #06-20 for the Black Bull Chop House. Condition of approval number five required that "a review of the use shall be conducted by the Planning Commission within six (6) months of the issuance of Certificate of Occupancy or final building permit to verify compliance with the Huntington Beach Noise Ordinance. At that time, the Planning Commission may consider modification to the conditions of approval to address noise issues."

After reviewing police related activities at the location, as well as citizen complaints regarding activities at the Black Bull Chop House, I believe the location's overall business activity negatively affects the quality of life for residents near the location, places patrons at risk of injury when operating at or above authorized capacity, and requires the use of significant public safety resources to handle incidents specific to the location. Due to these reasons, and based on many documented violations of the location's entertainment permit; I initiated action to revoke the Black Bull Chop House Entertainment Permit. The owner appealed the revocation, and the location can continue to operate during the appeal.

During the upcoming six (6) month review of Conditional Use Permit # 06-20, I request the Planning Commission consider the information provided in my revocation letter to the Black Bull Chop House dated October 21, 2008 when determining if the Conditional Use Permit should be modified.

Since the Black Bull Chop House opened in April 2008, officers have responded to at least 79 incidents related to the business activity including overly intoxicated patrons, noise disturbances, and assaults. This was a significant dedication of public safety resources to handle incidents related to the businesses activities. Many other incidents related to overly intoxicated patrons from the Black Bull Chop House have occurred elsewhere in the downtown area. At times, it was necessary to reassign officers from elsewhere in the city to respond to incidents at the Black Bull Chop House and incidents related to Black Bull patron.

During the planning and approval process, the owner of the Black Bull Chop House stated the location would be a family style restaurant and there would be no adverse impacts related to the operation of the business. Unfortunately, that has not been the reality. During nighttime hours, the location purposefully takes on a night club style

ATTACHMENT NO. 5.1

atmosphere emphasized by loud music, dancing, dim lighting conditions, and large crowds consuming alcoholic beverages with minimal food service. Tables from inside the location are moved onto the patio to make more room for standing which is inconsistent with the operation of a restaurant. On two occasions, the location was found to be overcrowded. Overcrowding in a night club setting creates a dangerous situation that could potentially injure patrons and staff if a fire or other significant incident occurred in the location.

The Huntington Beach Police Department has received numerous complaints from nearby residents. Most of the complaints relate to loud music and noise. Additional complaints have been received regarding cigarette smoke blowing into the nearby condominiums from the Black Bull Chop House's smoking area, as well as loud talking and yelling from patrons standing outside the Black Bull Chop House.

It is my belief that if the Black Bull Chop House continues to operate as a night club rather than a traditional restaurant, it will continue to negatively affect the quality of life for nearby residents. Additionally, it will continue to require a significant dedication of public safety resources to respond to incidents at the Black Bull Chop House and incidents related to overly intoxicated patrons from the Black Bull Chop House elsewhere in downtown Huntington Beach.

# CITY OF HUNTINGTON BEACH

## INTER-DEPARTMENT COMMUNICATION

City of Huntington Beach

NOV - 3 2008

**TO:** Rami Talleh
Associate Planner

**FROM:** Detective Brian J. Smith #1168
Police Department Special Investigations Bureau Vice Unit

**DATE:** 10/31/08

**SUBJECT:** Black Bull Chop House Entertainment Permit Revocation Letter

---

In a letter dated October 21, 2008 from the Chief of Police to Mr. Cesar Pena, the owner of Black Bull Chop House, the Chief revoked the location's Entertainment Permit. One specific item of information used in this memorandum was based upon inaccurate information I provided to the Chief of Police.

In the letter the smoking area is described as being adjacent to 2nd Street, however it is actually located adjacent to Walnut Avenue, west of 3rd Street. To be exact, the smoking area is located directly to the front of the Black Bull Chop House, along the southern sidewalk of Walnut Avenue, between the west side of the Black Bull Chop House main (north facing) entrance and the locations western interior wall.

If you have any questions, please contact Detective Brian Smith at (714) 536-5994, or via email at BJSmith@HBPD.Org.

ATTACHMENT NO. 6a.1

# 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


October 21, 2008

Mr. Cesar Pena
Black Bull Chop House
300 Pacific Coast Highway Suite 112
Huntington Beach, CA, 92648

Mr. Pena:

The Huntington Beach Police Department has been conducting an investigation into the numerous police related incidents at your establishment, specifically those involving intoxicated patrons, general disturbances, and violations of your Entertainment Permit.

Since April 2008, when you opened the Black Bull Chop House, the Huntington Beach Police Department has documented the following incidents:

| | |
|---|---|
| General Noise Complaints / Disturbances | 21 |
| Overly Intoxicated Patrons | 19 |
| Assaults | 12 |
| Entertainment Permit Violations | 11 |
| Overcrowding | 2 |
| Littering | 16 |
| Other Incidents | 7 |

Below is the breakdown of these calls for service:

| Date of Incident | Incident Number | Incident Description |
|---|---|---|
| | | **APRIL 2008** |
| April 17, 2008 | DR 2008 – 006542 | Entertainment Permit – Security |
| April 18, 2008 | DR 2008 – 006542 | Entertainment Permit – Security |
| April 24, 2008 | DR 2008 – 006972 | Rape |
| April 25, 2008 | HB752137 | Illegally Parked Vehicle – Registered to Mr. Pena |
| | | **MAY 2008** |
| May 02, 2008 | CN 08047828 | General Noise Complaint |
| May 10, 2008 | CN 08051550 | General Noise Complaint |
| May 10, 2008 | DR 2008 – 007787 | Littering Cigarettes |
| May 10, 2008 | DR 2008 – 007788 | Littering Cigarettes |
| May 11, 2008 | DR 2008 – 007846 | Entertainment Permit – Security / Assault |
| May 23, 2008 | CN 08057216 | General Noise Complaint |
| May 26, 2008 | CN 08058151 | Theft |

DRUG USE IS LIFE ABUSE

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**JUNE 2008**

| | | |
|---|---|---|
| June 08, 2008 | DR 2008 – 009515 | Overly Intoxicated Patron |
| June 15, 2008 | DR 2008 – 009930 | Littering Cigarettes |
| June 16, 2008 | CN 08065814 | Assault |
| June 20, 2008 | DR 2008 – 010282 | Littering Cigarettes |
| June 20, 2008 | DR 2008 – 010284 | Littering Cigarettes |
| June 20, 2008 | DR 2008 – 010286 | Overly Intoxicated Patron |
| June 21, 2008 | DR 2008 – 013076 | Overly Intoxicated Patron |
| June 21, 2008 | CN 08068921 | Overly Intoxicated Patron |
| June 21, 2008 | DR 2008-010443 | Entertainment Permit – Security / Assault |

**JULY 2008**

| | | |
|---|---|---|
| July 04, 2008 | DR 2008 – 011367 | Entertainment Permit – Security |
| July 04, 2008 | DR 2008 – 011771 | Business and Professions Code Violation – Security |
| July 05, 2008 | DR 2008 – 011503 | Overly Intoxicated Patron |
| July 05, 2008 | DR 2008 – 011507 | Littering Cigarettes |
| July 13, 2008 | DR 2008 – 012092 | Littering Cigarettes |
| July 18, 2008 | DR 2008 – 012417 | Overly Intoxicated Patron |
| July 19, 2008 | DR 2008 – 012496 | Entertainment Permit – Security / Assault |
| July 19, 2008 | DR 2008 – 012498 | Overly Intoxicated Patron |
| July 19, 2008 | DR 2008 – 012499 | Littering Cigarettes |
| July 19, 2008 | DR 2008 – 012500 | Littering Cigarettes |
| July 19, 2008 | DR 2008 – 012501 | Littering Cigarettes |
| July 19, 2008 | DR 2008 – 012502 | Littering Cigarettes |
| July 19, 2008 | DR 2008 – 012503 | Littering Cigarettes |
| July 19, 2008 | CN 08083442 | General Noise Complaint |
| July 20, 2008 | DR 2008 – 012566 | Assault / Overly Intoxicated Patron |
| July 22, 2008 | Citizen Complaint | General Noise Complaint |
| July 23, 2008 | DR 2008 – 012798 | Assault |
| July 25, 2008 | DR 2008 – 012892 | Allow Patron To Leave Location With Alcohol |
| July 25, 2008 | DR 2008 – 012893 | Littering Cigarettes |
| July 25, 2008 | DR 2008 – 012965 | Littering Cigarettes |
| July 26, 2008 | DR 2008 – 012982 | Overly Intoxicated Patron |
| July 26, 2008 | CN 08086777 | Assault |
| July 26, 2008 | DR 2008 – 13074 | Entertainment Permit – Overcrowding |
| July 28, 2008 | CN 08087382 | General Disturbance |
| July 29, 2008 | DR 2008 – 13271 | Assault |

**AUGUST 2008**

| | | |
|---|---|---|
| August 03, 2008 | DR 2008 – 013590 | Assault With A Deadly Weapon |
| August 06, 2008 | DR 2008 – 013773 | Entertainment Permit Violation – Security |
| August 09, 2008 | DR 2008 – 013953 | Littering Cigarettes |
| August 12, 2008 | DR 2008 – 014197 | Entertainment Permit – Loud Music |
| August 16, 2008 | DR 2008 – 014371 | Littering Cigarettes |
| August 16, 2008 | DR 2008 – 014379 | Overly Intoxicated Patron |
| August 19, 2008 | Citizen Complaint | General Noise Complaint |
| August 22, 2008 | Citizen Complaint | General Noise Complaint |
| August 23, 2008 | DR 2008 – 014816 | Littering Cigarettes |
| August 23, 2008 | CN 08098804 | General Disturbance |
| August 30, 2008 | CN 08102361 | General Noise Complaint |

**SEPTEMBER 2008**

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| | | |
|---|---|---|
| September 02, 2008 | Citizen Complaint | General Noise Complaint |
| September 06. 2008 | CN 08105504 | General Noise Complaint |
| September 06, 2008 | DR 2008 – 015696 | Entertainment Permit - Overcrowding |
| September 07, 2008 | CN 08105558 | General Disturbance |
| September 10, 2008 | Citizen Complaint | General Noise Complaint |
| September 12, 2008 | CN 08108050 | General Noise Complaint |
| September 13, 2008 | DR 2008 – 16115 | Overly Intoxicated Patron |
| September 14, 2008 | CN 08108610 | General Noise Complaint |
| September 18, 2008 | DR 2008 – 016487 | Overly Intoxicated Patron |
| September 19, 2008 | DR 2008 – 16550 | Robbery (force) to front of location |
| September 21, 2008 | CN 08111674 | General Noise Disturbance |
| September 24, 2008 | CN 08112801 | Overly Intoxicated Patron Disturbing The Peace |
| September 26, 2008 | CN 08114042 | General Noise Complaint |
| September 26, 2008 | CN 08113616 | Illegally Parked Vehicle – Registered to Cesar Pena |
| September 27, 2008 | CN 08114064 | General Noise Complaint |

**OCTOBER 2008**

| | | |
|---|---|---|
| October 04, 2008 | DR 2008 – 017423 | Battery on a Peace Officer / Intoxicated Patron |
| October 05, 2008 | DR 2008 – 017483 | Battery on a Peace Officer / Intoxicated Patron |
| October 10, 2008 | DR 2008 – 017749 | Overly Intoxicated Patron |
| October 10, 2008 | DR 2008 – 017831 | Overly Intoxicated Patron |
| October 10, 2008 | CN 08119879 | General Disturbance / Overly Intoxicated Patron |
| October 11, 2008 | DR 2008 – 17889 | Entertainment Permit Violation - Open Doors |
| October 12, 2008 | CN 08120380 | Overly Intoxicated Patron |
| October 16, 2008 | CN 08122333 | General Noise Complaint |

In handling these 79 incidents, the Huntington Beach Police Department has expended approximately 30 hours of patrol time, utilizing over 170 officers. These statistics do not include support personnel such as records clerks and detectives. The Black Bull Chop House has had 27 police related calls for service between April 01, 2008 and October 12, 2008. The others incidents listed in this letter were violations observed by uniformed and undercover officers without having been contacted by a citizen.

Huntington Beach Municipal Code, 5.44.090, subsection (d), states that three (3) or more violations of the same provision, or six (6) or more violations of any of the provisions of this section, within any 12 month period, can subject your Entertainment Permit to revocation by the Chief of Police. Since April 17, 2008, the Huntington Beach Police Department has documented 11 violations of the conditions listed on your entertainment permit.

These violations include seven related to your security staff not wearing uniforms that would clearly identify them as security guards, as required in condition eight of your entertainment permit. During one inspection it was also discovered that a member of your security staff had not obtained a State of California Guard Card as required by California state law and your Entertainment Permit.

Additionally, we have documented two violations for overcrowding, one violation for loud music audible beyond 50 feet from the exterior of the Black Bull Chop House, and one violation for having your rear door open, all while entertainment was permitted.

Huntington Beach Municipal Code Section 5.44.090, subsection (a), states that the Chief of Police may revoke or suspend an entertainment permit upon

satisfactory evidence that the licensee or permittee has "received an administrative citation which has been upheld at an administrative hearing, or been convicted of, or has entered a plea of guilty to any violation of the provisions of this chapter, or of any other law or ordinance of the City or State relating to such business." The Huntington Beach City Treasurer's office advised the Police Department that you have paid the fine for the following civil citation, which was uncontested:

Citation number HB1000007, DR 2008-011367, a $250.00 fine paid on September 05, 2008 for not having any staff members clearly identifiable as security guards, as required by condition eight of your Entertainment Permit.

In addition to this citation, on October 09, 2008 you were issued four separate citations for the following violations:

Citation number HB1000010, DR 2008-013074, a $500.00 fine for exceeding the maximum occupancy while entertainment was permitted on July 26, 2008.

Citation number HB1000011, DR 2008-013773, a $1000.00 fine for not having clearly identifiable security guards while entertainment was permitted on August 06, 2008.

Citation number HB1000013, DR 2008-014197, a $250.00 fine for having entertainment that was audible beyond 50 feet from the exterior of the Black Bull Chop House on August 12, 2008.

Citation number HB1000012, DR 2008-015696, a $1000.00 fine for exceeding the maximum occupancy while entertainment was permitted on September 06, 2008.

Huntington Beach Municipal Code Section 5.44.090, subsection (e) allows the Chief of Police to suspend or revoke a permit if "the permit holder has had a entertainment permit or other similar permit or license denied or revoked for cause by this city or any other jurisdiction located in or out of this state prior to the date of application."

On October 26, 2007, your Entertainment Permit for the Huntington Beach Beer Company was revoked for multiple violations of local and state statutes. Even after having that permit revoked and then subsequently reinstated, you have operated the Black Bull Chop House in a manner that is affecting the quality of life for residents and businesses in Huntington Beach.

Huntington Beach Municipal Code Section 5.44.090, subsection (b) allows the Chief of Police to suspend or revoke a permit if the "permittee, or his employees, are engaged in conduct or behavior which creates unreasonable noise or constitutes a nuisance."

The Huntington Beach Police Department has been called by citizens to respond to at least 19 incidents related to disturbances at the Black Bull Chop House. Additionally, Detective Smith has been directly contacted by multiple

residents filing complaints about disturbances originating from the Black Bull Chop House.

On July 26, 2008 the Black Bull Chop House negligently exceeded the occupancy limit of 348 people by allowing 649 people inside the location. This created a hazardous condition for both employees and patrons.

On August 12, 2008, the Huntington Beach Police Department was contacted regarding loud music coming from the Black Bull Chop House. The investigating officer determined the music was audible from the complainant's residence, which is located over 50 feet from the exterior of the Black Bull Chop House.

Again on September 06, 2008, after having the occupancy limit increased to 414 people, you allowed 443 people inside the Black Bull Chop House, grossly exceeding the limit established by the City of Huntington Beach. The outdoor smoking area contained another 48 people.

At the Black Bull Chop House's "smoking area" adjacent to 2nd Street, patrons discard cigarette butts onto the sidewalk and gutters that flow directly to the ocean. This litter will ultimately pollute the beaches and waterways. Even if the smoking area was located along the east side of the complex, between the Pier Colony Condominium Complex and the Black Bull Chop House, this would create additional noise and smoke that would disturb the peace of nearby residents.

Downtown foot beat officers regularly find the queuing lines obstructing the sidewalk to the front of the Black Bull Chop House. On October 11, 2008, Det. Smith videotaped the queuing lines and activity to the front of the Black Bull Chop House. In this video, patrons and employees are seen obstructing the public sidewalk.

Huntington Beach Municipal Code 5.44.090 subsection (c) allows the Chief of Police to suspend or revoke a permit when "the application is discovered to contain incorrect, false, or misleading information."

After reviewing your California Department of Alcoholic Beverage Control license application, as well as your Entertainment Permit application, it appears that you submitted a misleading floor plan. The submitted floor plan shows eight tables in the back dining area; however inspections reveal that these tables are removed to create a large dance floor during evening hours.

Based on the above-mentioned examples, I believe the Black Bull Chop House does create a nuisance.

During many of the incidents mentioned in this letter, either you or your managers were present and contacted when the violations occurred. Due to the compilation of these entertainment permit violations, police related calls for service at the Black Bull Chop House, citizen's complaints, and violations of the Huntington Beach Uniform Fire Code; the Huntington Beach Police Department is revoking your Entertainment Permit under

the authority of the above-mentioned municipal codes. **Your Entertainment Permit privileges will be revoked in five (5) calendar days from receipt of this letter**. All forms of entertainment must cease at that time. All violations of these sections will result in additional fines and possible administrative action against your ABC License and Business License with the City of Huntington Beach.

You, the permittee, may appeal this decision made by the Chief of Police to the City Council in the manner set forth below. Please note that an appeal of this decision **MUST** be filed with the City Clerk **within five (5) days of service of this notice**.

Notice of Appeal. The notice of appeal must be made in writing and filed with the City Clerk within five (5) days of service of this notice of decision. The notice of appeal must contain the name and address of the person appealing the action, the decision appealed from and the grounds for the appeal. The Chief of Police or the City Clerk may provide the form of the notice of appeal. A defect in the form of the notice does not affect the validity of the right to an appeal.

Action on Appeal. Within sixty (60) days after the notice of appeal is filed, the City Clerk shall set the matter for a public hearing before the City Council and shall give notice of the hearing on the appeal as required by law. The form of the notice shall contain the date, time, and place of the hearing, a general explanation of the matter to be considered, including a general description of the area affected, and other information which is required by statute or which the Chief of Police considers necessary or desirable.

De Novo Hearing. The City Council shall hear the appeal as a new matter. The permittee has the burden of proof. The City Council may act upon the appeal, either by upholding it, denying it, or conditionally upholding or denying it, irrespective of the precise grounds or scope of the appeal. In addition to considering the testimony and evidence presented at the hearing on the appeal, the City Council shall consider all pertinent information, including information from the file as a result of the previous hearings from which the appeal is taken.

Decision on Appeal. The City Council may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination that is being appealed.

To reiterate, if you plan on appealing this decision, **you must file your written notice of appeal within five (5) days of service of this notice**. You may contact the City Clerk's office by calling (714) 536-5227.

If you have any questions, please feel free to contact Detective Smith at (714) 536-5994.

Sincerely,

Kenneth W. Small
Chief of Police

ATTACHMENT NO. 6.7

# 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


October 8, 2008

Mr. Cesar Pena
Black Bull Chop House
300 Pacific Coast Hwy. #112
Huntington Beach, CA 92648

Mr. Pena:

Huntington Beach Police Department personnel have received numerous complaints regarding the Black Bull Chop House from your neighboring residents. These complaints are typically regarding loud music, loud patrons in the queuing line, as well as loud patrons in the smoking area located west of the front door adjacent to Walnut Avenue and the outdoor dining area located to the east side of your establishment.

The police department has documented multiple incidents involving overly intoxicated patrons, fights, and disturbances that are negatively affecting the neighborhood surrounding the Black Bull Chop House. I believe nearly all of these incidents could have been prevented by you or your staff.

After reviewing these reports, the Vice Unit conducted an audit of calls for service and incidents related to the Black Bull Chop House since opening in April 2008. The incidents can be categorized as follows:

| TYPE OF INCIDENT | NUMBER OF INCIDENTS |
|---|---|
| **Entertainment Permit Violations** | 10 |
| **Assaults / Fights** | 9 |
| **Noise Complaints** | 8 |
| **Business and Professions Code (B&P) violations** | 2 |
| **Littering** | 16 |
| **Overcrowding** | 2 |
| **Overly Intoxicated Patron** | 11 |
| **Other incidents** | 2 |
| **TOTAL** | 60 |

DRUG USE IS LIFE ABUSE

ATTACHMENT NO. 6.8

Only those incidents requiring police response are listed in the above-mentioned statistics. Incidents where police officers did not respond are not counted in these totals. Some incidents may be classified in multiple categories, such as overcrowding while entertainment is permitted. This incident would fall within the category of overcrowding as well as an Entertainment Permit violation.

The following incidents have been identified as being directly related to the Black Bull Chop House:

On April 17, 2008, Sgt. Schoales notified Black Bull Chop House employee Frank Ricci that your business was operating in violation of condition eight of your Entertainment Permit since the security staff members were not clearly identifiable as security. (Entertainment Permit Violation – Security)

On April 18, 2008, Sgt. Schoales personally contacted you and advised you were operating in violation of condition eight of your Entertainment Permit. (Entertainment Permit Violation – Security)

The two above-mentioned separate incidents were documented under a single report, report number 2008-6542.

On the evening of April 24, 2008, a female patron alleged she was raped after being drugged inside your establishment. This incident was documented under report number 2008-6972. (Rape)

On May 2, 2008 at 10:32 PM, a resident of 200 Pacific Coast Highway contacted the Huntington Beach Police Department complaining about loud music originating from the Black Bull Chop House. This incident was documented under call number 08047828. (General Noise Ordinance)

On May 10, 2008 at 12:51 AM, a resident of 200 Pacific Coast Highway contacted the Huntington Beach Police Department complaining about loud music originating from the Black Bull Chop House. This incident was documented under call number 08051550. (General Noise Ordinance)

On May 10, 2008 at 1:24 AM officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-7787. (Littering)

On May 11, 2008 at 12:05 AM officers investigated a fight that had occurred between Black Bull's security staff and a patron. None of the security staff involved were clearly identifiable as security officers. This incident was documented under report number 2008-007846. (Entertainment Permit Violation – Security / Fight)

On May 23, 2008 at 10:39 PM, a resident of 200 Pacific Coast Highway contacted the Huntington Beach Police Department complaining about loud music originating from the Black Bull Chop House. This incident was documented under call number 08057216. (General Noise Ordinance)

On June 8, 2008 at 2:05 AM, officers observed an obviously intoxicated male being asked to leave the establishment. The male was contacted and subsequently arrested for public intoxication. This incident was documented under report number 2008-9515. (Over intoxicated patron)

On June 15, 2008 at 12:03 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-9930. (Littering)

On June 16, 2008 at 1:43 AM, a male contacted the Huntington Beach Police Department and advised them that he was assaulted inside the location. The subject did not want to file a crime report. This incident was documented under call number 08065814. (Assault)

On June 20, 2008 at 1:10 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-10282. (Littering)

On June 20, 2008 at 1:30 AM, officers cited a person standing in the "smoking area" for littering. This incident was documented under report number 2008-10284. (Littering)

On June 20, 2008 at 1:40 AM, officers arrested a patron, who had just been escorted out of the Black Bull Chop House, for public intoxication. This incident was documented under report number 2008-10286. (Over intoxicated patron)

On June 21, 2008 at 1:26 AM, officers arrested a patron for public intoxication and resisting arrest. The obviously intoxicated patron was being escorted out of the location by Black Bull security staff. This incident was documented under report number 2008-10376. (Overly intoxicated patron)

On June 21, 2008 at 12:39 AM, Huntington Beach Fire Department personnel requested assistance from the police department after an intoxicated male was located unconscious inside of the Black Bull Chop House. The subject was transported to Huntington Beach Hospital by Huntington Beach Fire Department personnel. This incident was documented under call number 08068921. (Over intoxicated patron)

On June 21, 2008 at 11:14 PM, officers responded to a fight inside the Black Bull Chop House between a security guard and a patron. The security guard was not wearing any clothing that clearly identified him as security. This incident was documented under report number 2008-10443. (Assault / Entertainment Permit Violation – Security)

On July 04, 2008 at approximately 4:05 PM, Police Department Vice Detectives inspected the Black Bull Chop House and observed the business operating without any identifiable security guards while entertainment was occurring. The on-duty manager was advised of the violations. You were issued a $250.00 civil citation for violating the conditions of your entertainment permit. This incident was documented under report number 2008-11367. (Entertainment Permit Violation – Security)

During the above-mentioned inspection, it was discovered the two members of your security staff who were on duty at the time of the inspection had not obtained their Guard Cards as required by the State of California. This incident was documented under report

report number 2008-11771. (Business and Professions Code violation)

On July 05, 2008 at 12:45 AM, Black Bull Chop House staff contacted the Huntington Beach Police Department, and requested assistance with an obviously intoxicated patron. The patron was subsequently arrested for public intoxication. This incident was documented under report number 2008-11503. (Over intoxicated patron)

On July 5, 2008 at 1:08 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under 2008-11507. (Littering)

On July 13, 2008 at 1:10 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-12092. (Littering)

On July 18, 2008 AT 1:26 AM, Black Bull Chop House staff flagged down officers regarding an overly intoxicated patron who had activated the fire alarm inside your establishment. The male was observed by an officer urinating on the exterior of the building. The patron was arrested for urinating in public and public intoxication. This incident was documented under report number 2008-12417. (Over intoxicated patron)

On July 19, 2008 at 12:47 AM, officers responded to your establishment regarding a fight in progress. When officers arrived they discovered the fight was between a patron and a Black Bull Chop House security guard. The security guard involved in this altercation was not clearly identifiable as a security guard as required by your Entertainment Permit. This incident was documented under report number 2008-12496. (Assault / Entertainment Permit Violation – Security)

On July 19, 2008 at 1:10 AM, officers observed Black Bull employees telling an overly intoxicated patron to leave the premises. Black Bull Chop House staff told the officers the patron was "extremely intoxicated". The patron was subsequently arrested for public intoxication. This incident was documented under report number 2008-12498. (Over intoxicated patron)

On July 19, 2008 at 1:20 AM, officers cited two patrons standing in the "smoking area" for littering. These incidents were documented under report numbers 2008-12499 and 2008-12500. (2 – Littering)

On July 19, 2008 at 1:41 AM, officers cited two patrons standing in the "smoking area" for littering. These incidents were documented under report numbers 2008-12501 and 2008-12502. (2 – Littering)

On July 19, 2008 at 1:51 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-12503. (Littering)

On July 19, 2008 at 11:12 PM, a resident of 200 Pacific Coast Highway contacted the Huntington Beach Police Department complaining about loud music originating from the Black Bull Chop House. This incident was documented under call number 08083442. (General noise ordinance)

On July 20, 2008 at 12:14 AM, officers conducting an inspection the Black Bull Chop House were flagged down by several patrons regarding a fight between a security guard and two patrons. The fight originated when the patrons were being escorted out of the bar by your staff for being overly intoxicated. One female patron was arrested for public intoxication. This incident was documented under report number 2008-12566. (Assault / Over intoxicated patron)

On July 22, 2008, Detective Smith received a citizen complaint regarding loud music originating from inside the Black Bull Chop House. The citizen, who resides in the Pier Colony condominium complex, indicated the loud music and deep bass regularly disturbs her peace.

On July 23, 2008 at 10:15 PM, officers responded to the Black Bull Chop House regarding a battery that had just occurred between two patrons. The victim alleged she contacted a Black Bull employee and requested a security guard because she felt she was going to be assaulted. Shortly thereafter, the victim was assaulted inside the business. (Assault)

The victim told Detective Smith that a Black Bull employee did initially assist her; however, she was quickly told to leave the location and no employees offered to contact the police for her. The victim stated she did not observe any individuals who were clearly identifiable as security, even though she recalls observing activities that would constitute entertainment. This incident was documented under report number 2008-12798.

On July 25, 2008 at 1:51 AM, officers observed a patron exit the front doors of your establishment carrying an open 12-ounce bottle of Bud light beer. Officers observed the subject walk past Black Bull employees as he exited. Condition one of your Alcoholic Beverage Control (ABC) license states "the sale of alcoholic beverages for consumption off the premises is strictly prohibited." This incident was documented under report number 2008-12892 and on a licensee incident notification card. (ABC permit violation)

On July 25, 2008 at 2:00 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-12893. (Littering)

On July 25, 2008 at 11:50 PM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-12965. (Littering)

On July 26, 2008 at 1:58 AM, officers arrested a patron for public intoxication inside the Black Bull Chop House. Approximately two hours prior to arresting the patron, officers had contacted the male on Main Street and noticed he was obviously intoxicated. There were three other people with him whom the officers believed would look out for his safety. Based on this information, it appears Black Bull Chop House staff allowed an obviously intoxicated male inside the establishment. This incident was documented under report number 2008-12982. (Overly intoxicated patron)

On July 26, 2008 at 11:04 PM, a patron contacted the Huntington Beach Police Department alleging he was assaulted by Black Bull Chop House employees. The victim was uncooperative with officers. This incident was documented under call number 08086777. (Assault)

On July 26, 2008 at 11:20 PM, officers from the Huntington Beach Police Department, along with a Huntington Beach Fire Department Deputy Fire Marshal conducted an occupancy check of your establishment. The inspection revealed there were 649 people inside the Black Bull Chop House, grossly exceeding the maximum occupancy of 348 people. This incident was documented under Huntington Beach Police Department report number 2008-13074 and Huntington Beach Fire Department incident number H0808614. (Overcrowding / entertainment permit violation)

On July 28, 2008 at 12:37 AM, officers were flagged down reference a disturbance inside of the Black Bull Chop House. The source of the disturbance was a verbal argument. This incident was documented under call number 08087382. (General Disturbance)

On July 29, 2008, a male came to the Huntington Beach Police Department front desk and filed a police report alleging that on July 27, 2008 at about midnight, he was assaulted by a Black Bull Chop House security guard after asking a bartender to wipe down the bar. The victim suffered injuries to his throat, which he alleged was a result of being choked by the employee. This incident was documented under report number 2008-13271. (Assault)

On August 3, 2008, a patron was assaulted with a beer bottle inside of the Black Bull Chop House. None of your employees contacted the Huntington Beach Police Department regarding this serious assault with a deadly weapon. This incident was documented under report number 2008-13590. (Assault)

On August 6, 2008 at 12:05 AM, officers conducted an inspection of the Black Bull Chop House. During the inspection, officers observed various forms of entertainment including dancing and patrons riding the mechanical bull. The officers were unable to locate any identifiable security guards on duty, a violation of your Entertainment Permit. This incident was documented under report number 2008-13773. (Entertainment Permit Violation – Security)

On August 9, 2008 at 1:08 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-13953. (Littering)

On August 12, 2008 at 11:00 PM, a resident from 200 Pacific Coast Highway called the Huntington Beach Police Department and complained about loud music coming from the Black Bull Chop House, which was disturbing their peace. At 11:30 PM, Officers conducted an investigation and determined that the loud music emitting from the Black Bull Chop House could be heard in excess of 50 feet from the exterior walls of your business. This incident was documented under report number 2008-14197. (Entertainment Permit Violation – Loud Music / General Noise Ordinance)

On August 16, 2008 at 2:07 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-14371. (Littering)

On August 16, 2008 at 2:26 AM, officers were flagged down reference an unconscious male lying near the Black Bull Chop House. Officers contacted the male and determined he was extremely intoxicated. The male claimed he consumed all of his alcoholic

beverages inside the Black Bull Chop House. The male was arrested for public intoxication. This incident was documented under report number 2008-14379. (Overly Intoxicated Patron)

On August 19, 2008, Detective Smith was contacted by another resident of 200 Pacific Coast Highway, who stated the loud noise from Black Bull Chop House regularly disturbs his peace. Additionally, this individual believes that the location has reduced the overall value of his condominium.

On August 22, 2008, Detective Smith spoke to a resident that lives on 2nd Street, north of Walnut Avenue. The resident complained about loud music, deep bass, and loud talking, originating from the Black Bull Chop House. The resident claimed the loud noises tend to increase after midnight as more patrons gather in the queuing lines and smoking area in front of the Black Bull Chop House.

On August 23, 2008 at 12:52 AM, officers cited a patron standing in the "smoking area" for littering. This incident was documented under report number 2008-14816. (Littering)

On August 23, 2008 at 1:47 AM, officers were flagged down reference a physical fight in the Black Bull Chop House. When officers arrived they were unable to locate a fight. This incident was documented under call number 08098804. (Assault)

On August 30, 2008 at 10:23 PM, a resident of the Pier Colony condominium complex contacted the Huntington Beach Police Department to complain about loud music originating from the Black Bull Chop House when patrons open the side door. This incident was documented under call number 08102361. (Loud Music)

On September 2, 2008, Detective Smith spoke to a resident who lives in the Pier Colony condominium complex. The resident complained about loud music on Friday and Saturday nights; however, her primary complaint is the noise associated with patrons standing in the queuing line to the front of the business, patrons making noise in the smoking area, as well as individuals opening the door which leads to the eastern patio. The resident said when the side door is open the noise "overtakes" her residence. The noise and cigarette smoke creates an "uncomfortable" environment for the resident.

On September 6, 2008 at 12:30 AM, officials from the Huntington Beach Police and Fire Departments conducted an occupancy check of the Black Bull Chop House. During the inspection, it was determined there were 491 people inside of the location, exceeding the recently revised maximum occupancy of 414 people. This incident was documented under Huntington Beach Police Department report number 08-15696 and Huntington Beach Fire Department incident number H0801452. (Overcrowding / Entertainment Permit)

On September 10, 2008, Detective Smith was contacted by a resident of the Pier Colony condominium complex complaining about the noise originating from the Black Bull Chop House. The noise included loud music, as well as noise created by patrons in the smoking area and queuing lines. The resident complained he has to sleep with his windows closed and must wear ear plugs to sleep.

On September 12, 2008 at 11:06 PM, a resident of the Pier Colony condominium complex contacted the Huntington Beach Police Department regarding loud music coming from the Black Bull Chop House and loud patrons standing in the queuing line to the front of the business. This incident was documented under call number 08108050. (Loud Noise)

On September 13, 2008 at 2:02 AM, officers arrested a Black Bull Chop House patron for public intoxication after he activated the fire alarm inside of the location. This incident was documented under report number 2008-16115. (Public Intoxication)

On September 14, 2008 at 12:54 AM, a resident of the Pier Colony condominium complex contacted the Huntington Beach Police Department to complain about loud noises originating from Black Bull Chop House patrons loitering outside the business. This incident was documented under call number 08108610. (Loud Noise)

Over the past years, you have had numerous personal contacts with me and members of the Huntington Beach Police Department. During these contacts, the Police Department has acted reasonably and attempted to create an amicable professional working relationship in an attempt to limit the disturbances created at both the Huntington Beach Beer Company and Black Bull Chop House. Incidents such as the ones mentioned in this letter show blatant disregard for the safety of your patrons, employees, local ordinances and a lack of respect for the residents of Huntington Beach.

§5.44.090 allows the Chief of Police to suspend or revoke an Entertainment Permit if the owner "permits entertainment that is detrimental to the public welfare or that permittee, or his employees, are engaged in conduct or behavior which creates unreasonable noise or constitutes a nuisance, including but not limited to complaints registered with any City Department, the State Alcoholic Beverage Control Board or the County Health Department" or "the business has been in violation of three (3) or more violations of the same provision, or six (6) or more violations of any of the provisions, of this Chapter occur (regardless of whether notice of each individual violation is given to the owner or applicant) within any twelve (12) month period".

California Civil Code §3479 defines a nuisance as "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

California Civil Code §3450 defines a public nuisance as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

I believe that the loud music originating from the interior of your establishment unreasonably interferes with the quality of life for the residents of the Pierside Colony condominium complex located at 200 Pacific Coast Highway. The number of patrons

cited for littering also shows an oversight on the part of your staff when monitoring these activities. The street drains surrounding your business flow directly to the ocean.

I am very concerned about the negligent overcrowding of your establishment on July 26 and September 6 of this year which placed all of the patrons at an increased risk for injury had a fire or major disturbance erupted inside of your business.

The above-mentioned incidents also document a pattern of behavior that indicates a lack of restraint when serving patrons alcoholic beverages and monitoring their levels of intoxication.

Based on these incidents, unless significant changes are made to your business operations that will ensure your business does not reasonably interfere with the free use and enjoyment of the area around your business, I will initiate the process to revoke your Entertainment Permit.

I strongly urge you to review your business operations in order to ensure you are acting in compliance with all applicable laws and regulations, as I believe the Black Bull Chop House meets the definition of a nuisance.

A copy of this letter has been forward to the California Department of Alcoholic Beverage Control. All of the above-mentioned information will also be provided to the Huntington Beach Planning Commission during the upcoming six-month review of your conditional use permit.

If you have any questions, please contact Detective Smith at (714) 536-5994.

Sincerely,

Kenneth W. Small
Chief of Police

# 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


October 7, 2008

Mr. Cesar Pena
Black Bull Chop House
300 Pacific Coast Hwy. #112
Huntington Beach, CA 92648

Mr. Pena:

Enclosed you will find four (4) civil citations totaling **$2750.00** for the following violations of the Huntington Beach Municipal Code (HBMC).

On July 26, 2008, members of the Huntington Beach Police Department, along with a Deputy Fire Marshal conducted an occupancy check of the Black Bull Chop House. Prior to the occupancy check, officers observed patrons dancing in the establishment, which is activity that constitutes entertainment.

After the occupancy check was completed, it was determined that your establishment had 649 people inside. This grossly exceeds the authorized occupancy limit of 348 people, a violation of § 2502.16.3 of the Huntington Beach Uniform Fire Code (HBUFC).

The incident was documented under Huntington Beach Police Department report number 2008-013074 and Huntington Beach Fire Department Incident Number H0808614.

For the above-mentioned incident, you are being fined **$500.00** for your second violation of §5.44.015(c) HBMC, which requires that every permittee shall "follow all other conditions as set forth in the entertainment permit and in the license as issued by the State of California Alcoholic Beverage Control." You were previously issued a $250.00 civil citation for violating §5.44.015(c) HBMC on July 4, 2008.

Condition number 14 of your current Entertainment Permit (valid April 1, 2008 through April 1, 2009) requires that you "Must obey all state, local, and municipal laws..." Violating the Huntington Beach Uniform Fire Code is a violation this condition.

DRUG USE IS LIFE ABUSE

ATTACHMENT NO. 6.17

On August 6, 2008, officers inspecting the Black Bull Chop House noticed several patrons dancing, activity which constitutes entertainment. During the inspection the officers were unable to locate any employees that were identifiable as security personnel.

Condition number eight of your Entertainment Permit requires at least one security guard be present when the mechanical bull is operating and at least two 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.

Based upon this condition, you would have been required to have two clearly identifiable security guards on duty and in possession of their valid State of California Guard Cards.

This incident was documented under Huntington Beach Police Department report number 2008-013773.

For the above-mentioned incident, you are being fined **$1000.00** for your third violation of §5.44.015(c) HBMC, which requires that every permittee shall "follow all other conditions as set forth in the entertainment permit and in the license as issued by the State of California Alcoholic Beverage Control."

On August 12, 2008, at 11:00 PM, a resident from 200 Pacific Coast Highway called the Huntington Beach Police Department and complained about loud music coming from your establishment, which was disturbing their peace. At 11:30 PM, Officers conducted an investigation and determined that the loud music emitting from your establishment could be heard in excess of 50 feet from the exterior walls of your business.

Condition number five of your Entertainment Permit states, "Entertainment will not be audible **beyond 50 feet of the building in any direction."**

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

Additionally, Huntington Beach Municipal Code §8.40.112(b) 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 10PM and 7AM if such noise is audible for ***fifty feet or more from the source of the noise***."

This incident was documented under HBPD report number 2008-014197.

For the above-mentioned incident, you are being fined **$250.00** for you first violation of §5.44.015(a) HBMC – loud entertainment.

On September 6, 2008, members of the Huntington Beach Police Department, along with a Huntington Beach Deputy Fire Marshal conducted an occupancy check of the Black Bull Chop House. Prior to the occupancy check, officers observed patrons dancing inside the location, activity that constitutes entertainment.

After the check was completed, it was determined that your establishment had 491 people inside, negligently exceeding the newly authorized occupancy limit of 414 people, a violation of § 2502.16.3 HBUFC.

This incident was documented under Huntington Beach Police Department report number 2008-015696 and Huntington Beach Fire Department Incident Number H0801452.

For the above-mentioned incident, you are being fined **$1000.00** for your fourth violation of §5.44.015(c) HBMC, which requires that every permittee shall "follow all other conditions as set forth in the entertainment permit and in the license as issued by the State of California Alcoholic Beverage Control".

Condition number 14 of your current Entertainment Permit, requires that you "Must obey all state, local, and municipal laws..." Violating the HBUFC is a violation of condition 14.

Please take the necessary steps to correct this problem. The Huntington Beach Police Department has taken numerous steps to seek your compliance. Future incidents will result in increased civil penalties or criminal prosecution. As you are aware, continued violations may result in the suspension or revocation of your entertainment permit.

Instructions for paying the fine or appealing the citations are listed on the backside of the citations.

If you have any questions, please contact Detective Smith at (714) 536-5994.

Sincerely,

Kenneth W. Small
Chief of Police

ATTACHMENT NO. 6A

# CITY OF HUNTINGTON BEACH
## INTER-DEPARTMENT COMMUNICATION

To: Rami Talleh, Senior Planner

From: Jeff Lopez, Deputy Fire Marshal / Programs

Date: November 3, 2008

**SUBJECT: COMMENTS REGARDING THE BLACK BULL CHOPHOUSE CUP REVIEW**

The Fire Department offers for your consideration the following comments regarding the Black Bull Chophouse's compliance with the Huntington Beach Fire Code (HBFC) and associated Fire Department requirements:

Due to recent overcrowding violations, the Fire Department is concerned about the demonstrated lack of ability, or willingness, of the Black Bull Chophouse management to maintain an appropriate occupant load during busy weekends. On July 26, 2008, the Black Bull Chophouse was found to be in violation of the HBFC due to significant overcrowding. On that date, the Fire Department performed a door count and found 649 occupants inside. At the time of this violation the approved maximum occupant load was 348. Following a $1,000 citation for the first offense, the Black Bull Chophouse was again found to be overcrowded on September 6, 2008. The door count at the second violation was 443. At the time of this violation the approved maximum occupant load was 414. Following the second offense another $1,000 citation was issued and the Places of Assembly Permit was suspended pending the satisfaction of 3 conditions placed upon the owner, Cesar Pena. Mr. Pena satisfied our conditions by producing a Black Bull Chophouse policy, signed by all security and management staff, that addresses occupant load management, as well as a producing proper counting device for use by his security staff.

In spite of the recent violations, I am hopeful that his newly established policy and procedures will curb the problem. I do not have any recommendations for specific alterations of any conditions placed upon the Black Bull Chophouse at this time.

c: Occupancy file
William Reardon, Fire Marshal/Division Chief

ATTACHMENT NO. 7

# CITY OF HUNTINGTON BEACH

2000 MAIN STREET

FIRE DEPARTMENT

CALIFORNIA 92648


October 7, 2008

Cesar Peña
Black Bull Chophouse
300 Pacific Coast Highway, #112
Huntington Beach, CA 92648

**RE: HUNTINGTON BEACH FIRE CODE VIOLATION – OVERCROWDING**

Dear Mr. Peña:

All occupancies within Huntington Beach must meet the requirements of the Huntington Beach Fire Code. On September 6, 2008 at approximately 12:00 a.m., the Huntington Beach Police Department (HBPD) conducted a head count at your restaurant, the Black Bull Chophouse. HBPD determined that the restaurant was overcrowded according to the current Certificate of Occupancy. Immediately following the head count, your staff was requested to empty the restaurant through the front door so that a door count could be conducted to determine the official occupant load. Two HBPD Officers assisted in this process with mechanical counting devices at the front door. A member of your staff also counted and observed our process. It was determined that there were 443 persons inside the Black Bull Chophouse, which has a maximum occupant load of 414. This overcrowding, by 29 occupants, did not include the patrons that were in the "smoking patio."

The September 6, 2008 overcrowding occurred after a 66 person increase to the maximum occupant load, per your request, as approved by the Building and Safety Department on August 19, 2008. You were previously cited for overcrowding, by 301 occupants, on July 26, 2008. In light of these facts, the Huntington Beach Fire Department (HBFD) has great concern with your ability to maintain the appropriate occupant load in the Black Bull Chophouse.

At a meeting on May 15, 2008 which included HBPD, HBFD, California Alcoholic Beverage Control, and the downtown restaurant owners, you were advised to acquire a counting device that would be able to add and subtract occupants in order to best equip your staff to regulate the occupant load. Following the July 26, 2008 overcrowding, this request was repeated again. In our discussion immediately following the September 6, 2008 overcrowding, you were requested, for a third time, to acquire this device. While the HBFD recommends such a device in order to maintain an accurate account of your occupant load, you may research other methods or technology that would accomplish the same goal.

ATTACHMENT NO. 8.1

As a permitted place of assembly, you are required to ensure that you do not exceed the maximum occupant load authorized by the Fire Department permit at any time. In order to protect the occupants of your restaurant and to facilitate your compliance with the Huntington Beach Fire Code, **the Huntington Beach Fire Department hereby suspends your Places of Assembly Permit effective October 7, 2008 until you take the following action:**

1. Present the requested counting device, or equivalent, to the Deputy Fire Marshal/Programs at the Fire Administration office located at 2000 Main Street, 5th floor, for inspection and approval.
2. Develop and submit a Black Bull Chophouse policy, signed by the owner, regarding maintenance of an appropriate occupant load. The policy should indicate the following:
    a. The occupant load, as listed on the current Certificate of Occupancy and Fire Department Permit, shall not be exceeded, without exception.
    b. The staffing arrangement and what steps shall be taken in order for staff to ensure that this requirement is not violated.
    c. Employees are counted as occupants and are included in the occupant load.
    d. Exit doors, aisles, and corridors must be kept clear and usable at all times. They shall not be blocked by crowds, sound equipment, tables, or any other objects.
3. Submit a written statement signed by you and ALL your security and management staff acknowledging that the above referenced policy was read and understood. Your signature on this document shall confirm the authenticity of the signatures of your employees. You must also be sure to familiarize all new security and management staff with this policy.

**The Black Bull Chophouse shall be limited to a maximum occupant load of 49 persons until the permit is re-instated.** Additionally, you will be issued a $1,000 citation for this violation. Any further overcrowding violation may result in further suspension or revocation of your Places of Assembly Permit and an additional citation.

Listed below are the relevant sections of the Huntington Beach Fire Code, as adopted into the Huntington Beach Municipal Code Chapter 17.56:

**Huntington Beach Fire Code Appendix Chapter 1, Section 107.6- Overcrowding.** Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

**Huntington Beach Fire Code Appendix Chapter 1, Section 105.6.34- Places of Assembly.** An operational permit is required to operate a place of assembly.

**Huntington Beach Fire Code Appendix Chapter 1, Section 105.5- Revocation.** The fire code official is authorized to revoke a permit issued under the provisions of this code when it is found by inspection or otherwise that there has been a false statement or misrepresentation as to the material facts in the application or construction documents on which the permit or approval was based including, but not limited to, any one of the following:

- The permit is used for a condition or activity other than that listed in the permit.
- Conditions and limitations set forth in the permit have been violated.
- The permitee failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this code within the time provided therein.

If you have any questions regarding this matter, please contact me at (714) 536-5564.

Sincerely,

Bill Reardon
Division Chief/Fire Marshal

BR:sm
S:\Prevention\11-LOPEZ\Violation Notices\Black Bull Chophouse Overcrowding 10.07.08.doc

c: Jeff Lopez, Deputy Fire Marshal/Programs
Mike Reynolds, Police Department Lieutenant
Dan Ohl, Deputy City Attorney II
Bill Grove, Building and Safety Inspection Manager
Occupancy File

Cesar Pena

# Black Bull Chop House
## Security Guidelines & Procedures

**In order to alleviate and problems and to give the best possible service to our patrons, all security guards are required to follow these guidelines and procedures whenever we have Entertainment.**

- All Security Guards are required to have a certified security guard card
- All Security Guards must wear the appropriate attire, i.e. Security shirt,
- All Security Guards are required to know and follow all the Entertainment permit conditions set forth by the Huntington Beach Police Department
- All Security Guards must inform the on-duty manager(s) of any potential problems or issues during their shift
- All Security Guards are to be polite, respectful, and hospitable to all patrons.
- Maintain occupant load to not exceed maximum of 414 persons, per certificate of occupancy at all times.

**Nightly Timeline**

- 9 pm - Two guards open; one guard starts checking ID's at the door, one double checks ID's of patrons inside, after checking inside guests he sets up stanchions for outside crowd control
- 9:30 pm – Two more guards arrive; both of the guards walk around the room with counters to establish and accurate guest count. Once an accurate guest count is determined the door guy is given the count and proceeds to count entering and exiting guests
- 9:45 pm – After an established guest count is determined two guards clear away any potential chairs or tables in order to keep isles clear throughout the night
- 10 pm – Four more guards arrive; they are posted at designated areas. Each exit is assigned a guard, one is at the bull, and one is roving throughout the club keeping isle ways clear
- 10pm – 1:30pm. Once our capacity is reach a guard will walk through the club every half in hour to make sure that we are at the correct occupancy level. The Fire Dept. considers one person over the max. to be overcrowded.

**Procedures**

**Door Security**

- Keep patrons moving into a designated line; make sure the sidewalk and doorway are kept clear and all patrons are in a line.
- Keep smoking patrons in the designated area and count them out and back in, maintaining appropriate occupant load.
- Inform patrons in line of the possible wait times to enter the establishment
- Check ID's thoroughly looking for height, weight, hair color, and appropriate age. All of this must be matched to patron and ID
- Keep an accurate count of occupancy with electronic counters, once occupancy is hit only one guest can be let in as one guest leaves. Employees count as part of the occupant load.
- Once occupancy is hit every half our a security guard will walk through the establishment to make sure our count is correct

**Inside Security**

- Keep all walkways clear at all times
- Clear any glassware or beer bottles from tables
- Inform staff of any broken glassware or harmful items
- Look for intoxicated individuals if found make sure they are safe and escort them out of the establishment, once out of the establishment make sure the patron is safe and has an appropriate ride home. If they do not have a sufficient ride find them a taxi
- Assist staff with any problems with patrons

**Treat all guests with respect and courtesy at all times**

Please sign and date this below for acknowledgement

10-7-08

ATTACHMENT NO. 8.4

INCIDENT REPORT

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Hazmat Rel: None
Critical Inc:
Special Studies:

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COMMENTS

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***** HP2 *****

HP2, with the assistance of the HBPD Special Enforcement Team (SET), performed a door count at the Black Bull Chophouse to obtain an official occupant load due to an observation of overcrowding by the HBPD. The current Certificate of Occupancy allows a maximum occupant load of 414 persons inside the restaurant, including employees. Prior to the door count, officers of the HBPD performed an initial head count of the occupancy. They counted a total of 546 occupants. During the initial head count HBPD further noted that 27 patrons exited the building. Due to this initial confirmation of the overcrowding, I initiated a door count by requesting that the staff empty the occupancy via the front entrance. HBPD controlled all exits and the door count began with myself, two HBPD officers, and a Black Bull staff member counting. I counted a total of 443 occupants, including employees. HBPD officers counted 446 occupants, including employees. The Black Bull staff member counted 437 occupants, including employees. This count did not account for those patrons witnessed leaving during the initial head count and it also did not account for the 18 patrons in the "smoking patio" outside the restaurant. The most conservative interpretation of these results is an occupant load of 437 at the time of the violation. This count is 23 persons over the maximum allowable occupant load. I then met with the owner, Cesar Pena, and HBPD Sgt., Michael Metoyer, in the office to discuss the situation. At that time I advised the owner that he could resume business, maintaining an appropriate occupant load. Mr. Pena stated that they felt they were "doing everything they can" to maintain the appropriate occupant load. Having recently issued Mr. Pena a violation notice and citation for an overcrowding offense at the same restaurant, I reiterated my advice to obtain a better counting device and to revise his procedures as necessary in order to maintain an appropriate occupant load at all times. During the converstation we discussed the issue of the number of employees on duty. A manager advised me that they had 31 employees on duty at the time of the violation. The certificate of Occupancy only lists 11 employees. I advised Mr. Pena that I would discuss the issue of determining the maximum employee count with the building department. I also advised Mr. Pena that I wanted to set up a meeting at City Hall on Monday or Tuesday to further discuss the situation. I then cleared the scene with HBPD and advised HB5 of the situation. For additional information see HBPD DR# 08-15696. Report by Deputy Fire Marshal Jeff Lopez.

ATTACHMENT NO. 8.5

# CITY OF HUNTINGTON BEACH

2000 MAIN STREET

FIRE DEPARTMENT

CALIFORNIA 92648


July 29, 2008

COPY

Cesar Peña
Black Bull Chophouse
300 Pacific Coast Highway #112
Huntington Beach, CA 92648

**RE: HUNTINGTON BEACH FIRE CODE VIOLATION, OVERCROWDING**

Mr. Peña:

All occupancies within Huntington Beach must meet the requirements of the Huntington Beach Fire Code. On Saturday, July 26 the Huntington Beach Police Department conducted a head count at your restaurant, the Black Bull Chophouse, determining that there were significantly more persons inside than what is permitted under your current Certificate of Occupancy and Fire Department Permit. Immediately following this head count by HBPD, I requested that your staff empty the restaurant through the front door in order for me to conduct an official count-out to determine the true occupant load. I had the assistance of two Huntington Beach Police Department officers counting independently at the front door with mechanical counting devices. We determined that there were 649 persons inside of your restaurant.

With a maximum occupant load of 348 persons, according to your current Certificate of Occupancy, your restaurant was grossly non-compliant with the maximum occupant load requirement. In light of the severity of non-compliance, I issued a $1,000 citation and closed the restaurant for the night.

As a permitted place of assembly, you are required to ensure that you do not exceed the maximum occupant load authorized by the fire department permit at any time. Any violation of the Huntington Beach Fire Code could result in further citations. **If the Black Bull Chophouse is found to be in excess of the authorized maximum occupant load within 365 days of your first violation, July 26, 2008, your permit will be taken under review for possible revocation.** If the assembly permit is revoked, your business will be limited to a maximum occupant load of 49 persons until re-instated at the discretion of the fire code official.

Listed below are the relevant sections of the Huntington Beach Fire Code, as adopted into the Huntington Beach Municipal Code Chapter 17.56:

**Huntington Beach Fire Code Appendix Chapter 1, Section 107.6- Overcrowding.** Overcrowding or admittance beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

**Huntington Beach Fire Code Appendix Chapter 1, Section 105.6.34- Places of Assembly.** An operational permit is required to operate a place of assembly.

**Huntington Beach Fire Code Appendix Chapter 1, Section 105.5- Revocation.** The fire code official is authorized to revoke a permit issued under the provisions of this code when it is found by inspection or otherwise that there has been a false statement or misrepresentation as to the material facts in the application or construction documents on which the permit or approval was based including, but not limited to, any one of the following:

- The permit is used for a condition or activity other than that listed in the permit.
- Conditions and limitations set forth in the permit have been violated.

If you have any questions regarding this matter, please contact me at 714-536-5565.

Sincerely,

Jeff Lopez
Deputy Fire Marshal / Programs

Enclosure (1) Fire Department Permit, Places of Assembly- Black Bull Chophouse

cc: William Reardon, Division Chief/ Fire Marshal
Occupancy File

INCIDENT REPORT

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Hazmat Rel: None
Critical Inc:
Special Studies:

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COMMENTS

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***** HP2 *****

HP2, following a HBPD Special Enforcement Team head count of greater than 420 persons, made contact with the management staff at the Black Bull Chophouse at 300 PCH #112. Since they were at least 10% over their maximum occupant load of 348 persons, not including a patio that was out of service, I advised them to raise the lights, turn off the music and begin to empty the bar. Along with two HBPD officers, I performed an official count-out at the front door using a counter. We maintained control of the other exits and accounted for each person as they crossed the threshold, one by one. Management staff was also present with us during the count. We advised them as we hit various amounts of significance. Ultimately we counted 649 persons in the bar. The bar had exceeded their maximum occupant load by over 86%. I therefore advised the staff and owner that they would remain closed for the night and I issued a $1,000 civil citation to Mr. Cesar Pena, owner. I further advised Mr. Pena that another similar occurance would lead to the revocation of his Fire Department Assembly Permit, which would limit him to an occupant load of 49 persons until re-instated. I e-mailed the Fire marshal and the Duty BC to inform them of the incident. For further information see the HBPD report for DR# 08-13074. Report by Deputy Fire Marshal Jeff Lopez.

ATTACHMENT NO. 8.8

Notice of Appeal

10-27-08

To: The City Clerk

Regarding: Entertainment Permit Privileges Letter from HBPD.

I Cesar Pena, am filing an appeal on the falling Grounds.

1. There is no substance or credible evidence to support the charges.
2. The alleged littering violations involved are in an area closed off as ~~and~~ Private smoking area and is not public space.
3. The noise violations involve conduct ... - by other near by establishments.
4. I have never been allowed access to any reports written in support of the alleged incidents.
5. Entertainment permit conditions require 1 or 2 identifyable guards. The business employs up to 8 guards, Generally all wear the proper clothing but some are undercover; (1 or 2).

RECEIVED
2008 OCT 27 PM 4:31
CITY CLERK
CITY OF
HUNTINGTON BEACH

Sincerely,

Cesar Pena

Cesar Pena
President

300 Pacific Coast Hwy. Suite #112
Huntington Beach CA, 92648
562-618-6848 Cell

ATTACHMENT NO. 9

## Talleh, Rami

**From:** Fuentes, Mike

**Sent:** Tuesday, November 04, 2008 4:06 PM

**To:** Talleh, Rami

**Subject:** Black Bull Chop House Complaint

Rami,

On May 5, 2008 I received a telephone call from a Ms. Kaitlyn Pickard. Ms. Pickard lives in Pier Colony and her unit faces the plaza and the Black Bull Chop House.
Her primary complaint was the noise (music and loud voices) emanating from the Black Bull Chop House. She had already contacted PD and was satisfied with their response. I inquired if she would like to file a complaint with Code Enforcement, but she felt that PD would address the situation adequately. I never received another call or contact from Ms. Pickard complaining about the business.

Michael Fuentes
Senior Code Enforcement Officer
714) 536-5261
mfuentes@surfcity-hb.org



ATTACHMENT NO. 10

# Chapter 249 Enforcement

**Sections:**


| | |
|---|---|
| 249.02 | Permits, Licenses, Certificates, and Approvals |
| 249.04 | Enforcement Responsibilities |
| 249.06 | Revocation of Discretionary Permits |
| 249.08 | Enforcement Penalties |
| 249.10 | Abatement Procedure |
| 249.12 | Lien Procedure |


## 249.02 Permits, Licenses, Certificates, and Approvals

Any permit, license, certificate, or approval granted in conflict with any provision of this code shall be void. All uses for which permits are issued or approvals granted shall remain in compliance with the ordinance code and evidence of failure to remain in compliance shall be deemed grounds for permit revocation. The cost of issuing permits and of enforcing compliance with the requirements and conditions of zoning permits, conditional use permits, and other discretionary approvals may be recovered through charges or fees in connection with issuance of such permits, as established by resolution of the City Council.

## 249.04 Enforcement Responsibilities

The Director shall enforce all provisions of this ordinance code and shall have responsibility for revocation of discretionary permits, as provided in Section 249.06.

## 249.06 Revocation of Discretionary Permits

A. Duties of Director. Upon determination by the Director that there are reasonable grounds for revocation of conditional use permits, variance, development plan approval, or other discretionary approval authorized by this code, a revocation hearing shall be set before the original hearing body.

B. Notice and Public Hearing. Notice shall be given in the same manner required for a public hearing to consider approval. If no notice is required for the permit, none shall be required for the revocation hearing.

C. Hearing. The Planning Commission or Zoning Administrator shall hear testimony of City staff and the owner of the use or structure for which the permit was granted, if present. At a public hearing, the testimony of any other interested person shall also be heard. A public hearing may be continued to a specific date, time, and place without additional public notice.



ATTACHMENT NO. 11.1

D. Required Findings. The Planning Commission or Zoning Administrator shall revoke the permit upon making one or more of the following findings:

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;

2. That the terms or conditions of approval of the permit have been violated or that other laws or provisions have been violated;

3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for twelve consecutive months.

E. Decision and Notice. Within ten days of the conclusion of the hearing, the Planning Commission or Zoning Administrator shall render a decision and the Director shall mail notice of the decision to the owner of the use or structure for which the permit was issued and to any other person who has filed a written request for such notice.

F. Effective Date; Appeals. A decision to revoke a discretionary permit shall become final ten days after the date of the decision, unless appealed.

G. Rights Cumulative. The City's right to revoke a discretionary permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

## 249.08 Enforcement Penalties

Each violation of the zoning and subdivision ordinances may be alternatively enforced as follows. Each method set forth herein is not intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations. Each and every twenty-four (24) hour period any such violations exist constitutes a separate offense.

A. Misdemeanor Infraction. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of Titles 20-25 of this code may be prosecuted for a misdemeanor or an infraction. Written citations for misdemeanors may be issued by police officers or code enforcement officers.

All citations issued under this chapter shall be delivered to the City Attorney who shall have the prosecutory discretion as to the filing of a misdemeanor complaint with the court as required by California Penal Code Section 853.6.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine not to exceed five hundred dollars ($500.00) or imprisonment for a term not to exceed six (6) months, or both fine and imprisonment. Any person convicted of an infraction shall be punished by a fine not to exceed five hundred dollars ($500.00).

B. Civil Action. The City Attorney at the request of the City Council may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of Titles 20-25 of this code, as provided by law.



ATTACHMENT NO. 11.2

C. Payment of any fine or penalty shall not relieve a person, firm, or corporation from the responsibility of correcting the condition consisting of the violation.

**249.10 Abatement Procedure**

A. Notification of Violations. Whenever the Director determines that any property within the City is being maintained contrary to the provisions of this ordinance code, the Director shall give written notice ("Notice to Abate") to the owner, sent by certified mail to his last known address, stating the section(s) or standards being violated. Such notice shall set forth a reasonable time limit, in no event less than seven days, for correcting the violation(s).

B. Administrative Hearing to Correct Violations. In the event said owner shall fail, neglect or refuse to comply with the "Notice to Abate," the Director shall require the Zoning Administrator to conduct an administrative hearing to ascertain whether abatement should be required.

C. Notice of Hearing. Notice of said hearing shall be mailed to the owner not less than ten days before the time fixed for hearing. Failure of any person to receive notice shall not affect the validity of the abatement proceedings hereunder.

D. Administrative Hearing. At the time stated in the notice, the Zoning Administrator shall hear and consider all relevant evidence, objections or protests and shall receive testimony relative to such alleged zoning violation and to the proposed eviction or relocation of an illegal use or the rehabilitation, repair, removal or demolition of an illegal structures. Said hearing may be continued from time to time. If the Zoning Administrator finds that a zoning violation does exist and there is sufficient cause to evict or relocate an illegal use or rehabilitate, demolish, remove or repair an illegal structure, the Zoning Administrator shall prepare findings and an order specifying the nature of the violation, the method(s) of abatement and the time within which the work shall be commenced and completed. The order shall include reference to the right of appeal set forth in subsection (F) below. A copy of the findings and order shall be mailed to the property owner by certified mail. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property.

E. Procedure, No Appeal. In the absence of any appeal, the illegal use shall be discontinued or property shall be rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the order of abatement. In the event the owner fails to abate the violation as ordered, the Zoning Administrator shall cause the same to be abated by city employees or private contract. The costs shall be billed to the owner. The Zoning Administrator is expressly authorized to enter upon said property for such procedure.

F. Appeal Procedure, Hearing by City Council. The owner may appeal the Zoning Administrator's findings and order to the City Council by filing an appeal with the City Clerk within seven days of the date of the Zoning Administrator's decision. The appeal shall contain:

1. A specific identification of the subject property:

2. The names and addresses of the appellants;



ATTACHMENT NO. 11.3

3. A statement of appellant's legal interest in the subject property;

4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;

5. The date and signature of all appellants; and

6. The verification of at least one appellant as to the truth of the matters stated in the appeal.

As soon as practicable after receiving the appeal, the City Clerk shall set a date for the Council to hear the appeal, which date shall be not less than seven days nor more than 30 days from the date the appeal was filed. The City Clerk shall mail each appellant written notice of the time and the place of the hearing at least five days prior to the date of the hearing. Continuances of the hearing may be granted by the Council on request of the owner for good cause shown, or on the Council's own motion.

G. Decision by Council. Upon the conclusion of the hearing, the Council shall determine whether any use or structure on the property or any part thereof, as maintained, constitutes a zoning violation. If the Council so finds, the Council shall adopt a resolution declaring such a violation, setting forth its findings and ordering the abatement of the same by having the illegal use evicted or relocated or the illegal structure rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the resolution. The resolution shall set forth the time within which such work shall be completed by the owner, in no event less than 30 days. The decision and order of the Council shall be final.

H. Notice of Order to Abate. A copy of the resolution of the Council ordering the abatement of such violation shall be sent by certified mail to the property owner(s). Upon abatement in full by the owner, the proceedings hereunder shall terminate.

I. Abatement by City. If such nuisance is not abated as ordered within the prescribed abatement period, the Director shall cause the same to be abated by City employees or private contract. The Director is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the violation shall be billed to the owner and shall become due and payable 30 days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect; costs incurred in documenting the violation; the actual expenses and costs of the City in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.

J. Limitation of Filing Judicial Action. Any action appealing the Council's decision and order shall be commenced within 30 days of the date of mailing the decision.

K. Demolition. No illegal structure shall be found to be a zoning violation and ordered demolished unless the order is based on competent sworn testimony



ATTACHMENT NO. 11.4

and it is found that in fairness and in justice there is no way other than demolition reasonable to correct such violation.

L. Recorded Notice of Intent to Demolish Required. A copy of any order or resolution requiring abatement by demolition shall be recorded with the County Recorder.

## 249.12 Lien Procedure

A. Record of Cost of Abatement. The Director shall keep an account of the cost, including incidental expenses, of abating zoning violation on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Council showing the cost of abatement, including the cost of eviction or relocation of illegal uses or rehabilitation, demolition, or repair of illegal structures, including any salvage value relating thereto; provided that before said report is submitted to the City Council, a copy of the same shall be posted for at least five days upon the lot or parcel where the violation occurs, together with a notice of the time when said report shall be heard by the City Council for confirmation. A copy of said report and notice shall be served upon the property owner(s) at least five days prior to submitting it to the City Council. Proof of posting and service shall be made by affidavit filed with the City Clerk.

B. Assessment Lien. The total cost for abating a zoning violation, as so confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the Office of the County Recorder of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the Council's decision shall be filed with the County Auditor-Controller on or before August 1 of each year, whereupon it shall be the duty of said Auditor-Controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amount shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

In the alternative, after recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.



ATTACHMENT NO. 115