



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL AGENDA

Mayor Jason Burnett
Mayor Pro Tem Ken Talmage
Council Members Victoria Beach, Steve Dallas,
and Carrie Theis

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

Contact: 831.620.2000 www.ci.carmel.ca.us/carmel

REGULAR MEETING

Tuesday, November 3, 2015

4:30 P.M.

CALL TO ORDER, ROLL CALL, & PLEDGE OF ALLEGIANCE

EXTRAORDINARY BUSINESS

1. National Anthem sung by Carmel River School Sing! Sing! Sing! After-School class led by Stacy Meheen.

EMPLOYEE RECOGNITION

2. Introduction of new employees: Yvette Oblander, Administrative Services Coordinator and Christina Newton, PSO
3. Promotion: Sergeant Chris Johnson

ANNOUNCEMENTS

Announcements will be made by the Mayor and Council Members, City Administrator, and/or City Attorney.

PUBLIC APPEARANCES

Anyone wishing to address the City Council on matters within the jurisdiction of the City and are not on the agenda may do so now. Matters not appearing on the City Council's agenda will not receive action at this meeting but may be referred to staff for a future meeting. Presentations will be limited to three (3) minutes, or as otherwise established by the City Council. Persons are not required to give their names, but it is helpful for speakers to state their names in order that the City Clerk may identify them in the minutes of the meeting. Always speak into the microphone, as the meeting is recorded.

ORDERS

Orders of Council are agenda items that require City Council discussion, debate and/or direction.

4. [AB 1050 Beach Fires Pilot Program Options. \(p. 3\)](#)

PUBLIC HEARINGS

Public Hearings consist of Zoning amendments, General Plan amendments, appeals of Commission decisions and other State-mandated items. If the Public Hearing is an appeal, appellants are allowed a total of 10 minutes to speak on their own behalf after the staff report and at the close of public comment in order to have an opportunity to rebut public comments. Other speakers will be allowed three minutes.

5. [AB 1051 First reading of an ordinance of the City Council of the City of Carmel-by-the-Sea declaring beach fires a public nuisance. \(p. 19\)](#)
6. [AB 1052 First reading of an ordinance of the City Council of the City of Carmel-by-the-Sea adding a section to Title 8 - Health and Safety of the Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts, public lands, and rights-of-way within said districts. \(p. 23\)](#)
7. [AB 1053 Consideration of an appeal of the Planning Commission's decision to deny a Use Permit \(UP 15-261\) application for the establishment of a specialty food store \(Carmel Chocolate Factory\) at a property located in the Central Commercial \(CC\) Zoning District. \(p.35\)](#)
8. [AB 1054 Consideration of an appeal of the Planning Commission's decision to deny the reissuance of Design Review, Use Permit, and Coastal Development Permit applications for the redevelopment of the Carmel Sands hotel located in the Service Commercial \(SC\) Zoning District \(New planning application case numbers: DR 14-36 and UP 14-20\). \(p. 71\)](#)
9. [AB 1055 Adoption of an Ordinance Amending Section 2.52.385, Appeals Hearing Process, of the Personnel Ordinance. \(p.102\)](#)

FUTURE AGENDA ITEMS

ADJOURNMENT

SPECIAL NOTICES TO PUBLIC

The City Council of Carmel-by-the-Sea meets in Regular Session on the First Tuesday of each month at 4:30 p.m., unless otherwise noticed. The City Council may also meet on the First Monday of each month in a Special Meeting and/or a Workstudy Session at 4:30 p.m., unless otherwise noticed. City Council agenda packets are available for public review on the City website at www.ci.carmel.ca.us and in the Clerk's Office on the Friday prior to the scheduled meeting. Any writings or documents provided to a majority of the City Council regarding any item on the agenda will be made available for public inspection. Interested members of the public may subscribe to the Council Agenda by submitting a request to the City Clerk. Meetings are open to the public and the City Council welcomes your participation. Any member of the public may comment on any item on the agenda. Testimony is limited to three (3) minutes per speaker, or as otherwise established by the City Council. Meetings are streamed live on-line and archived for easy access anytime day or night. Visit the City's website at www.ci.carmel.ca.us to view the meetings or watch a television rebroadcast on the first Sunday after the City Council meeting at 8:00 a.m. on MCAET Channel 26. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2007 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1050
November 3, 2015
Orders

TO: Honorable Mayor and Members of the City Council
FROM: Douglas J. Schmitz, City Administrator
SUBJECT: Beach Fires Pilot Program Options

AMOUNT OF EXPENDITURE	\$ 0
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUIRED	\$ 0

RECOMMENDATION

1) Review the options below. 2) Provide City staff direction on working with the staff of the California Coastal Commission on any amendments to the adopted Beach Fire Management Pilot Program that is scheduled for consideration by the Coastal Commission in December. 3) Authorize staff to work with a local artist(s) on the design and pricing of a customized “Carmel” propane device and to explore “off the shelf” options which might be used on an interim or permanent basis, and return to Council with both “off the shelf” and custom designed options and pricing.

SUMMARY

The Council adopted a Beach Fire Management Pilot Program in February 2015. That plan was subsequently appealed to the California Coastal Commission. The primary thrust of the pilot program was to limit beach wood-fueled fires to twenty-six (26) fire rings, thus limiting the number of fires. After the adoption of the pilot program by Council, the Monterey Bay Unified Air Pollution Control District (MBUAPCD) commenced taking air samples on Scenic Drive. The results of those samples combined with information from MBUAPCD staff on the health hazards of air pollutants from wood-fueled beach fires led the Council to adopt an urgency ordinance banning fires Friday-Sunday and on national and state holidays.

The urgency ordinance also amended the distance that fires needed to be built from the base of the coastal bluff from 25 feet to 100 feet to provide for more of a buffer for users of the Scenic Road pathway and other sensitive receptors, such as residential uses. Propane fires were also prohibited in the urgency ordinance, in large part because of challenges with enforcement. Despite earlier indications from the Coastal Commission staff that the City was following the proper permit procedures for the Emergency Permit for the urgency ordinance, as well as the associated follow-up Coastal Development Permit, the enactment of the urgency ordinance resulted in the City receiving an enforcement letter from the Coastal Commission in early October. The rationale for the enforcement

letter was primarily related to the Coastal Commission staff's contention that the City erred in determining that emergency action was necessary to curtail beach fires.

The Mayor, Richard Stedman, of the MBUAPCD, and City staff members met with staff of the Coastal Commission in Santa Cruz on 9 October. At that meeting, there was agreement that staff representatives of the two agencies should work together in an effort to develop a revised pilot beach fire management program, subject to Council approval, that would be presented to the Commission at its meeting in Monterey in December. City representatives indicated that the revised pilot program would most likely be limited to propane-fueled beach fire devices only, and that wood-fueled and charcoal fires would be prohibited. Commission staff did not endorse or outright reject such a concept but stated its willingness to discuss this concept in more detail.

OPTIONS

The Council has multiple options for providing staff with direction regarding its meeting(s) with the Coastal Commission staff. Those are:

- 1) Affirm the February Beach Fire Management Pilot Program as adopted
- 2) Amend the Pilot Program, reducing the number of proposed wood-fueled beach fire devices from twenty-six (26) to some lower number
- 3) Amend the Pilot Program, based upon the air quality reports, to be consistent with the restrictions in the urgency ordinance, i.e., no fires Friday-Sunday- and on holidays; 100 feet from coastal bluff; no propane OR, allowing propane fires. If wood and charcoal fires are allowed on Monday-Thursday, determine if those should be confined, or not, to fire rings
- 4) Amend the Municipal Code and Local Coastal Program to prohibit wood and charcoal fires at all times but allow propane
- 5) Amend the Municipal Code and Local Coastal Program to prohibit all fires at all times.

If propane fires are allowed on Carmel Beach, Coastal Commission staff have emphasized the need for the City to implement a mechanism or program component to make a certain number of propane beach fire devices available to visitors on a first come, first served basis but not through a reservation system. Staff is seeking authorization to explore with a local artist(s) a "Carmel" design for a propane device. After the community's negative response to the "off the shelf" parking kiosks, and the effort earlier this year to have a fire device design more aesthetically acceptable than ones that can be purchased at hardware stores, the exploration of a custom device for propane fires would be consistent with the community's ethos. Also, authorize staff to explore "off the shelf" propane devices that could be utilized on an interim basis if propane fires were to be allowed.

PRIOR CITY COUNCIL ACTION

Council approved the beach fire pilot program in February 2015.

ATTACHMENTS

1. Beach Fires Management Pilot Plan
2. MBUAPCD data

APPROVED:



Douglas J. Schmitz, City Administrator

Date:

29 Oct '15



Beach Fire Management Pilot Program

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Executive Summary

The City of Carmel-by-the-Sea seeks to continue the recreational opportunity of beach fires while exploring options to minimize the impacts of beach fires on the community and the sensitive environmental resources of the beach. As such, a one-year pilot program has been designed that consists of the placement of twenty-six (26) fire containment devices along the Carmel Beach in designated areas where beach fires are currently allowed. These devices will be used for wood- or charcoal-burning fires in an effort to prevent charcoal from directly contacting the sand as well as to manage the number of wood-burning fires occurring on Carmel Beach. The devices will be located in areas near the beach access staircases from Tenth Avenue to Santa Lucia. There will be no cost to the public to use the fire containment devices; the devices will be available on a “first come, first serve” basis. The City will ensure the fire devices are regularly monitored and cleaned frequently. The pilot also includes enhanced educational and enforcement efforts, including the use of private security, City police officers and volunteers to educate the public about the pilot program and its associated rules.

Objectives

The principles of the beach fire management pilot program are twofold: (1) limit the number of fires and (2) not allow fires to be built directly on the sand. The objectives are to: (1) eliminate direct contact of charcoal and burning logs with the sand and (2) to reduce the amount of smoke from wood-burning fires.

The containment of a wood- or charcoal-burning fire within a device minimizes the degradation of the sand in accordance with the Coastal Access and Recreation Element of the City’s Local Coastal Plan (LCP):

“Allow beach users the opportunity to enjoy a fire for warmth or cooking, while protecting the sand from degradation (Objective 4-10)”

Recreational fires constitute a low- to no-cost recreational experience for many beachgoers. However, the local community has raised concerns regarding air quality and the curtailed enjoyment of other recreational activities at or near the beach due to excessive smoke from unmanaged beach fires.

The pilot program attempts to balance these objectives and develop options in accordance with the goals and objectives contained within the LCP:

“Manage the City’s beach, park and open space resources in a manner to encourage use and enjoyment by residents and visitors (Objective 4-9)”

“Provide adequate facilities that will serve the needs of the public, mitigate damage to the environment and respect the neighborhood (Goal 4-3)”

“Provide for a wide variety of passive and active recreational experiences for all beach users while protecting the resource values of beach environs (Goal 4-4)”

Keys to Success: Measurement, Reporting and Evaluation

Pictured below is a close up of sand grains on Carmel Beach



Measurement:

Objective- Eliminate charcoal and burned logs from direct contact with the sand: As part of routine cleaning of the fire containment devices, the City will measure the amount of charcoal contained within the devices during cleaning as well as note type of materials found within the device. Pictures will also be regularly taken to demonstrate the amount of charcoal and other debris within the devices and in the immediate vicinity of the device (i.e. if the sand around the device is also free of charcoal). The City recently obtained an aerial video of the beach that documents the pre-program amount of charcoal located throughout the beach. The City will obtain another aerial video filmed toward the conclusion of the pilot program to document the program's effect on cleanliness of the beach. Photos taken from the bluff top at the same set locations at regular intervals will also occur to assess cleanliness and appearance.

Objective- Reduce the amount of wood smoke to community and beach users affected by the fires:

The City will establish monitoring site(s) to determine baseline concentrations and smoke impacts associated with wood-burning beach fires. At a minimum, sampling will occur during peak times of the year, such as holiday weekends.

Reporting:

During the pilot program, City staff will provide monthly updates to the City's Forest and Beach Commission at scheduled public meetings on the status of the pilot program and receive public comment on the components of the program. Three months before the end of the pilot program, a report will be presented before to the City's Forest and Beach Commission, City Planning Commission, and City Council as well as Coastal Commission staff for review and to assist in determining if the pilot program should continue.

Fire Devices

Dimensions



Pictured above is an example of one of the fire device options showing style, materials and dimensions

The initial devices to be tested and used will be made from steel with approximate dimensions between 22-24 inches high and 30-40 inches wide.

These devices weigh between 100-200 pounds and will be partially buried and secured in place. These devices are designed to remain fixed and not be moved to other locations by the public or special event organizers.

Usage

The fire devices are intended for wood or charcoal fires only. Only dry, clean and untreated firewood may be burned. No driftwood, treated wood, pallets or other materials (such as Christmas trees, furniture, and trash) will be allowed in the device.

No trash, glass or other materials will be allowed to be left in the device. Trash and recycle containers are conveniently located at each beach staircase access point (above the stair entrance on the Scenic Pathway/ Scenic Road).

Charcoal may also be used within the device, and "lump" charcoal is preferred. No flammable liquids, such as fire starter, will be allowed to be used in the devices.

Hours of Use

The fire devices will be available from 7 a.m. to 10 p.m. seven days a week.

Availability

The fire devices will be available on a "first come first serve" basis and cannot be reserved or held in advance for use except in limited circumstances associated with a properly-issued special event permit. One fire device will be available for use with the issuance of a special event permit from the City and in accordance with the City's special event policies. As the City generally limits special event permits to no more than one per day, this means that the majority of the 26 fire devices will be available for the general public.

Exceptions

During the holiday weekends of July 4th and Labor Day, to meet peak beach fire demand, up to 25 portable devices will be available for public use. This is in addition to the 26 semi-permanent fire devices. User-supplied (i.e. "pack in and pack out") propane portable devices are also encouraged and allowed year-round south of Tenth Avenue and 25 feet from the base of the bluffs.

Cleaning

Prior to the pilot start date, and in tandem with sand redistribution efforts if possible, the beach will be cleaned using sifting devices and small equipment (above the kelp line and in the corridor where the devices will be located). Once the devices are installed, the devices will be hand cleaned using an all-terrain vehicle, shovels and other small hand and power tools. The use of a vacuum equipment may be necessary during peak usage periods. The devices will be cleaned up to five days/week, as needed, including Monday, Wednesday, Friday, Saturday and Sunday. In addition, starting July 1, a Carmel Village/Beach Superintendent employed by the waste hauler will be located at the beach five days a week.

Seasonal Use

The program includes seasonal use stipulations and trigger points for the timely removal of fire devices prior to the devices being threatened by wave action. The intent of this program component is to make fire devices seasonally available as long as possible, while still being protective of sensitive environmental resources and avoiding public safety hazards.

Beach width and the upper reach of the wash of the waves vary throughout the year and from season to season. In general, the beach is widest in the summer months and narrows considerably in the winter storm season, when storm-induced waves erode the berm and lower the beach profile. The extent and timing of winter beach scour varies from season to season. In some winters, the beach is nearly completely scoured out, such that the wash of the waves is all the way up to the base of the bluff. In milder winters, there are areas of the beach that are never scoured out, particularly in the more landward and protected areas of the beach, such as the Tenth Avenue. In the typical winter, however, most if not all, of the fire devices would be threatened by scour.

Initially, the target period for use of all 26 devices will be from April 1 to November 1. A smaller set of beach fire devices, likely the 4-8 devices closest to the bluff at Tenth Avenue may have a longer initial seasonal use: from March 1 to January 1. At the beginning of the winter storm season (on or about November 1), City staff will monitor the condition of the beach at least weekly, and ensure that the seasonal beach fire devices are removed prior to being threatened by wave-induced beach scour. These dates will be monitored for their effectiveness in preventing fire devices from wave wash and scour, and the dates will be adjusted as appropriate. If set dates do not account well for the variation in severity of seasonal beach scour, a performance-based approach will be used as an alternative.

In either alternative, the City intends to avoid having the devices be threatened by wave wash or beach scour and certainly does not want the devices to be dislodged. An initial threshold or trigger point for removal of a device will be if the upper wash of the waves is within 10 feet of the device. If this distance, in practice, does not provide sufficient time for City staff to remove the device, a larger distance may be established.

If, there is an unusually early or heavy winter storm season, such that wave-induced scour threatens to undermine the fire devices, City staff will remove any threatened devices earlier in the year. Similarly, if a heavy winter storm season delays the post-winter recovery of the beach, the City may delay the springtime installation of some of the devices.

In addition, if there is an extraordinary storm or high-wave event forecasted outside of the target use period, the devices will be removed and returned as soon as it is practical. On the other hand, for exceptionally mild winter storm seasons, the devices may be kept in place for a longer duration. Both the trigger points for removal and the determination of whether a seasonal approach or performance approach is more effective will be components that the pilot program will help identify.

Locations

The devices will be installed approximately at the following locations: up to two devices each located near the staircases at 10th, 11th, 12th, 13th and Santa Lucia (ten total) and up to four each in the coves between 10th and 11th, 11th and 12th, 12th and 13th and 13th and Santa Lucia (sixteen total), provided that all locations are at least 25 feet from the base of the bluff and are at least 50 feet apart from one another. Utilizing adaptive management, the devices may be adjusted as needed due to topography of the beach, wave and tidal activity or to make adjustments as a result of the collected air quality data. At no time during the program will devices be installed north of the 10th Avenue staircase. A map of access points and approximate locations for the devices are contained in Figure 1.

Public Education and Enforcement

Public education and outreach will be a key component of the pilot program. The City will develop and disseminate public education materials to try to reach the public regarding the pilot program and the new beach fire rules before they arrive at Carmel Beach. In addition, the City will be using a combination of private security staff and a dedicated police officer to educate the public about the rules, gather data and assist in monitoring the effectiveness of the pilot program. The use of docents and other volunteers to help explain the rules to the public may also be added as part of the communication strategy.

Online Information: Both the City's website and other associated websites, such as the Carmel Chamber of Commerce and the Monterey Visitors and Convention Bureau, will be updated to reflect the use of the fire devices and other beach rules. The City will also reach out to other website providers that are geared toward activities at California beaches and travel-related sites to explain the new rules and request assistance in providing updated information to the public.

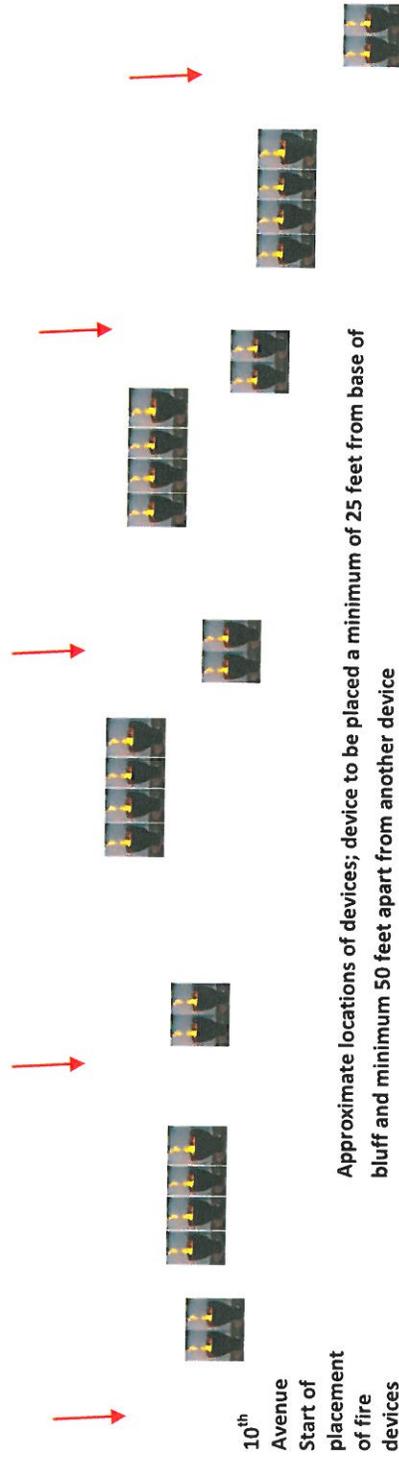
Other Sources of Information: Press releases to local newspapers and television stations will also occur regarding the beach rules and the use of the fire devices for wood-burning fires as well as outreach to schools, colleges and community groups. The hotel industry will also be contacted and given informational cards that can be provided to guests about the beach fire rules. Local grocery stores will also be provided information to disseminate to customers, including information that can be attached to wood sold at the stores.

Signage: Once the public arrives at the beach, signage will provide information regarding the

locations of where fires are allowed and the use of the fire devices. Informational signage regarding the purpose of the pilot program, as well as, the rules will be placed in at a minimal number of key locations, such as the Del Mar Parking lot, at the beginning of the Scenic Pathway at 8th Avenue and Scenic and starting at 10th Avenue, as beach fires are allowed south of 10th Avenue. The 10th Avenue staircase in particular will have a marker identifying the location to help delineate and differentiate where fires are allowed and not allowed. Signage indicating the use of fire devices, with a simple message, such as “fires in rings only” will be placed near the staircases and other beach access points, and installed in locations that minimize obstructions of coastal views, on railings, near the side of the staircases or on landings half-way down the beach staircase. Signage materials will be simple and rustic and made of wood, in keeping with Carmel’s existing aesthetic.

Messaging: As part of the public education materials and signage, the City intends to explain the purpose of the pilot program, which is to encourage the beach to be used responsibly and sustainably by allowing beach fires to continue while limiting the amount of smoke from wood-burning fires and limiting the amount of, and impacts from, charcoal and burned logs on the sand.

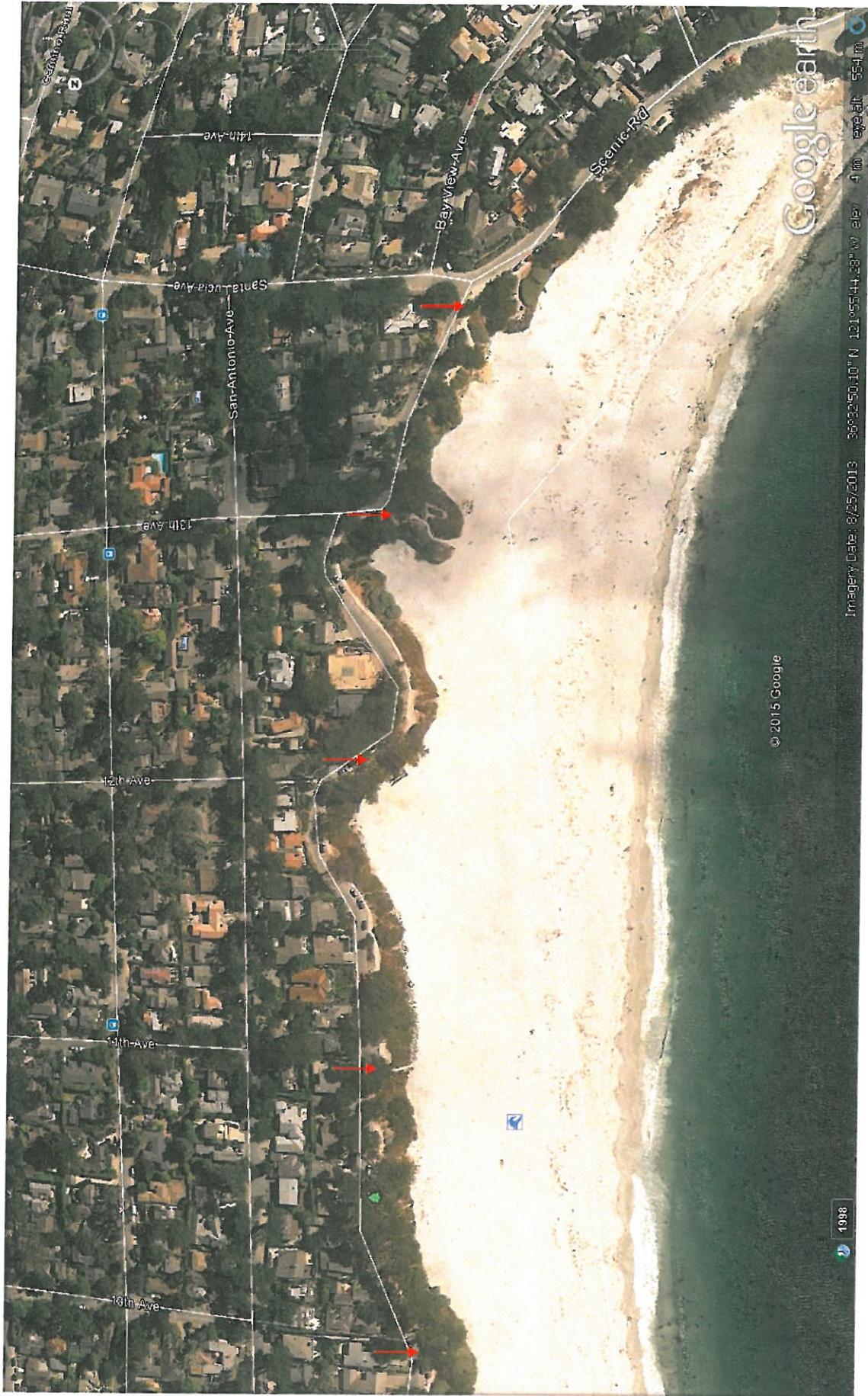
Personal outreach/contact: The City intends to use a combination of private security staff, police staff and volunteers to explain the rules to the public. This will help ensure coverage during the entire week, including peak weekends in particular. The private security officers are trained by the Carmel Police Department on customer service and the beach fire rules and will serve as a friendly and helpful educational resource to explain the rules to the public and help gather data regarding the number of fires occurring within and outside of the devices. In the event that additional support is needed, the security officers are able to contact the Carmel Police Department and have an officer dispatched to the beach as needed. In addition, the City anticipates that a police officer dedicated to patrolling the beach will be available for the peak summer season and be on hand to address issues regarding violations of beach fire rules. The City also plans to utilize local volunteers, some stationed at the beach staircases, and others walking the beach, to explain the rules, help notify the public about the availability of fire devices, track data regarding where beach users are from (in order to help target additional public education and outreach) and document compliance with the beach fire rules in general and other observations about the pilot program in general. The volunteers will be able to provide informational cards with the rules. The cards will have a comment suggestion and link to a comment form on the City’s website and email address so the public can provide feedback on the pilot program.



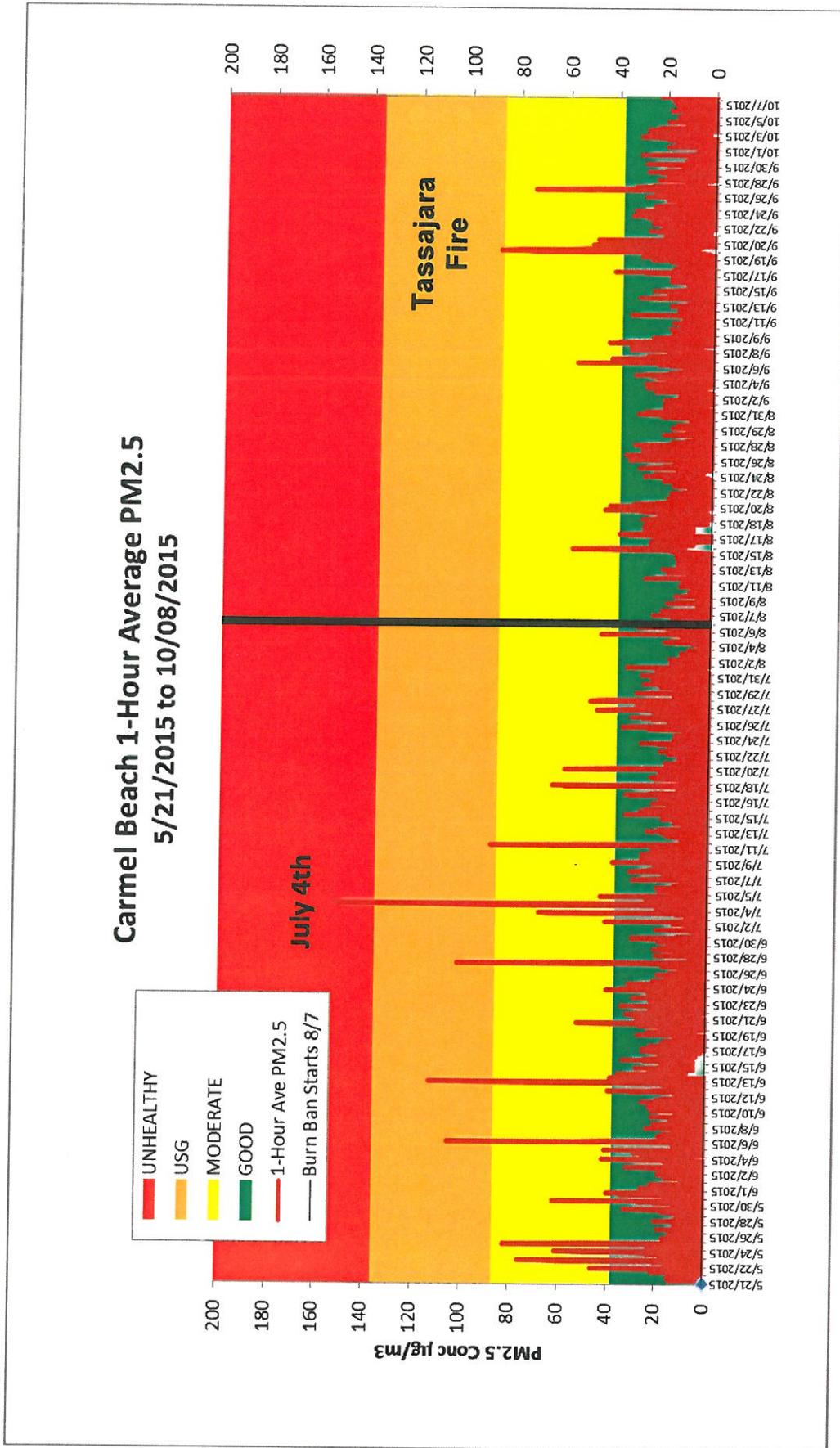
10th
Avenue
Start of
placement
of fire
devices

Approximate locations of devices; device to be placed a minimum of 25 feet from base of bluff and minimum 50 feet apart from another device

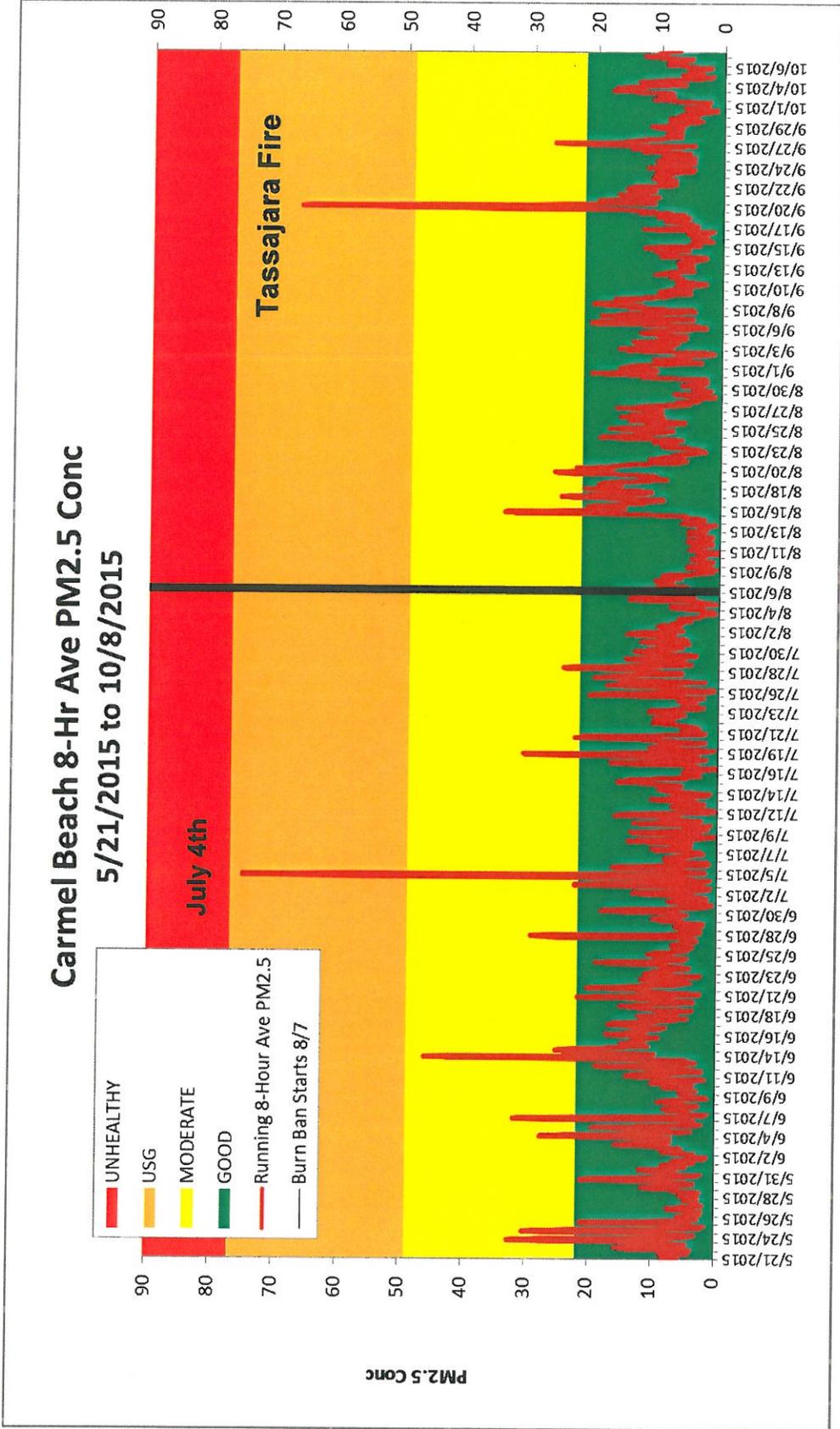
Figure 1: Map of Carmel Beach Access Points and Fire Device Locations



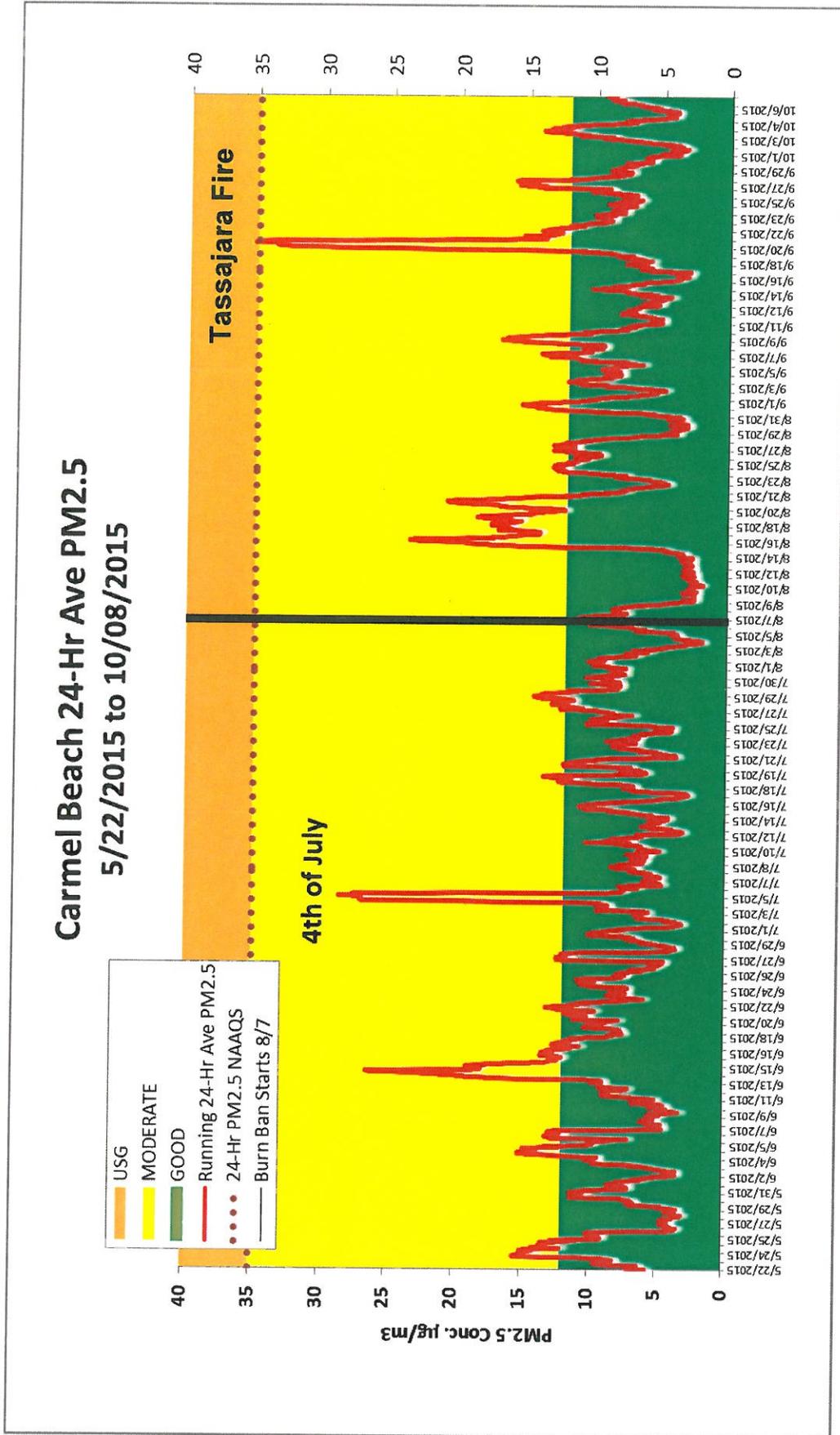
Attachment 1



Attachment 1



Attachment 1





CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1051
November 3, 2015
Public Hearing

TO: Honorable Mayor and Members of the City Council
Douglas J. Schmitz, City Administrator

FROM: Don Freeman, City Attorney

SUBJECT: First reading of an Ordinance of the City Council of Carmel-by-the-Sea declaring beach fires a public nuisance.

SUMMARY

If adopted, the ordinance would add a section to Title 8 of the Municipal Code---Health and Safety---declaring that all beach fires (except propane fires) would be a public nuisance.

PRIOR CITY COUNCIL ACTION

The Council adopted an urgency ordinance 6 August 2015 prohibiting fires on Carmel Beach on Friday-Sunday and on holidays.

ATTACHMENTS

1. Draft Ordinance

APPROVED:



Douglas J. Schmitz, City Administrator

Date: 29 Oct. 15

Amended on 11/3/15

CITY OF CARMEL-BY-THE-SEA

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
DECLARING BEACH FIRES A PUBLIC NUISANCE

FINDINGS

WHEREAS, pursuant to California Government Code Section 38771 by Ordinance a city legislative body may declare what constitutes a public nuisance; and

WHEREAS, pursuant to California Civil Code Section 3480 a public nuisance is 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; and

WHEREAS, pursuant to California Civil Code Section 3479 anything which is injurious to health so as to interfere with the comfortable enjoyment of life or property is a nuisance; and

WHEREAS, beach fires most frequently consist of wood-fueled fires built directly on the sand which generate large amounts of smoke and fine particulate matter, a known public health hazard, and as such, a public nuisance; and

WHEREAS, specialists with the Monterey Bay Unified Air Pollution Control District (MBUAPCD) have collected data on air quality at residential properties on Scenic Road in the City resulting in indications that there are high levels of fine particulate matter (PM 2.5) from beach fire smoke presenting substantial air quality impacts during peak fire use periods; and

WHEREAS, the excessive number of beach fires during peak fire use periods cause a rise in the PM 2.5 concentration in the air which at times exceeds air quality standards and creating an immediate potential public health hazard and, as such, a public nuisance; and

WHEREAS, the proposed action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. There is no possibility that the activity in question may have a significant effect on the environment.

SECTION 1. ORDINANCE

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CARMEL-BY-THE-SEA DO ORDAIN AS FOLLOWS:

The following Section ____ entitled "BEACH FIRES A PUBLIC NUISANCE" is hereby added to TITLE 8— HEALTH AND SAFETY of the Carmel-by-the-Sea Municipal Code:

A. No person shall discharge from any source whatsoever such quantities of air contaminants or other materials which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public; or which endanger the comfort, repose, health, or safety of any such persons or the public; or which cause, or have a natural tendency to cause, injury or damage to business or property. {HSC Section 41700}

B. The City of Carmel-by-the-Sea hereby declares beach fires, including the use of charcoal hibachis, charcoal grills or other like fire receptacles on Carmel Beach, to be a public nuisance.

1) Exceptions: Propane fires contained within an appropriate container.

C. A violation of any provision of this Ordinance shall be an infraction.

D. The remedies provided in this section are cumulative and in addition to any other remedies available at law or equity.

E. In addition to other remedies provided by this Ordinance, or by other law, any violation of this Ordinance may be remedied by civil action brought by the City including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal enforcement proceedings and suits for injunctive relief.

SECTION 2. SEVERABILITY.

A. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

B. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION 3. EFFECTIVE DATE.

This ordinance shall become effective thirty (30) days after its final passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Carmel-by-the-Sea this _____ day of _____, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

APPROVED

Jason Burnett, Mayor

ATTEST:

LEE PRICE, Interim City Clerk



CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1052
November 3, 2015
Public Hearing

TO: Honorable Mayor and Members of the City Council
Douglas J. Schmitz, City Administrator

FROM: Don Freeman, City Attorney

SUBJECT: First reading of an ordinance of the City Council of the City of Carmel-by-the-Sea adding a section to Title 8 - Health and Safety of the Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts, public lands, and rights-of-way within said districts.

AMOUNT OF EXPENDITURE	\$ Unknown at this time.
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUIRED	\$ Dependent upon decisions re: signage and canister design.

RECOMMENDATION

Waive reading in full and introduce on first reading an ordinance adding a section to Title 8 - Health and Safety of the Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts, public lands, and rights-of-way within said districts.

SUMMARY

At its 6 October 2015 Regular Meeting Council discussed and received community input on the potential addition of a section to Title 8 - Health and Safety of Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts and on public lands and rights-of-way within said districts. Council directed staff to bring back a substantially similar ordinance for first reading with the addition of whereas' relating data from the Center for Disease Control and Save Our Shores (Attachment 1). Council also requested that when the ordinance returned for first reading, additional information accompany the legislation which discusses enforcement, design of the canisters that will receive the remnants of the cigarettes, and signage (Attachments 2 and 3).

The purpose of this agenda item is to consider the first reading of an ordinance adding a section to Title 8 - Health and Safety of the Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts, public lands, and rights-of-way within said districts. The second reading and corresponding public noticing will occur at the next appropriate Council meeting. Amendments to Title 8 Health and Safety of the Carmel-by-the-Sea Municipal code will become effective 30 days after Council's adoption of the second reading of the proposed new ordinance.

PRIOR CITY COUNCIL ACTION

In 2005 City Council adopted Ordinance 2005-05, an addition to Title 8 that prohibits smoking on Carmel Beach and the Beach Bluff Pathway. In 2007 Council adopted Ordinance 2007-10, an addition to Title 8 that prohibits smoking in City Parks. At its 6 October 2015 Regular Meeting Council discussed and received community input an addition of a section to Title 8 - Health and Safety of Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts and on public lands and rights-of-way within said districts.

ATTACHMENTS

1. Ordinance 2015 - ____ adding a section to Title 8 - Health and Safety of the Carmel-by-the-Sea Municipal Code relating to smoking in the commercial and other zoning districts, public lands, and rights-of-way within said districts.
2. Ancillary document re: enforcement, design of canisters and signage.
3. "No Smoking" Signage examples

APPROVED:



Douglas J. Schmitz, City Administrator

Date: 29 Oct. 15

ORDINANCE 2015-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
ADDING A SECTION TO TITLE 8 — HEALTH AND SAFETY
OF THE CARMEL-BY-THE-SEA MUNICIPAL CODE
RELATING TO SMOKING IN THE COMMERCIAL AND OTHER ZONING DISTRICTS AND ON
PUBLIC LANDS AND RIGHTS-OF-WAY WITHIN SAID DISTRICTS**

FINDINGS

WHEREAS, the City Council finds that because the United States Environmental Protective Agency ("EPA") has designated environmental tobacco smoke ("ETS") a Class A carcinogen and has determined that ETS is a major source of indoor air pollution and a cause of lung cancer in nonsmokers, the City has a responsibility to protect the public health and welfare of its citizenry through the adoption of appropriate smoking prohibitions; and

WHEREAS, the U. S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smoker from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke; and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country; and

WHEREAS, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

WHEREAS, secondhand smoke is particularly hazardous to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

WHEREAS, the City Council further finds that exposure to secondhand smoke or vapors from non-tobacco products such as electronic cigarettes or any other weed or plant, may be injurious to the health and create a nuisance; and

WHEREAS, the California Air Resources Board (ARB) released a report that evaluated the first-ever monitoring of the level of outdoor exposure to secondhand smoke on the health of California residents, and as a result of the conclusions of the report ARB adopted a regulatory amendment that identified secondhand smoke as a toxic air contaminant, i.e. an outdoor air pollutant that may cause or contribute to an increase in deaths or in serious illness, and which may pose a present or potential hazard to human health; and

WHEREAS, Stanford University measured concentrations of tobacco smoke in common outdoor settings near smokers and found that it is possible for outdoor tobacco smoke to present a nuisance or hazard under certain conditions of wind and smoker proximity; and

WHEREAS, cigarette butt litter is a significant problem that adversely affects the health, safety and welfare safety of the local environment, which includes, but is not limited to, city parks and the Carmel beach; and

WHEREAS, dogs, cats and other animals experience higher rates of illness when exposed to secondhand tobacco smoke.

PURPOSE -

This chapter is enacted with the specific intent to:

A. Prohibit smoking in certain public places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;

B. Protect the public health, safety and general welfare of the City of Carmel citizens, children, employees and its visitors by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;

C. Ensure a cleaner and more hygienic environment for the City, its residents, visitors and its natural resources, including its parks and beach;

D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;

E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CARMEL-BY-THE-SEA DO ORDAIN AS FOLLOWS:

The following Section ____ entitled "SMOKING IN THE COMMERCIAL AND OTHER ZONING DISTRICTS AND ON PUBLIC LANDS AND RIGHTS-OF-WAY WITHIN SAID DISTRICTS" is hereby added to TITLE 8— HEALTH AND SAFETY of the Carmel-by-the-Sea Municipal Code:

Section _____ - DEFINITIONS

The following words and phrases, whenever used in this Chapter, shall be construed as herein defined.

A. Business. "Business" means any sole proprietorship, partnership, nonprofit corporation, for-profit corporation or other entity, including retail, professional, charitable and educational entities and establishments, where goods or services are sold or provided.

B. Multi-Unit Residential Complexes. "Multi-unit residential complexes" means a property or portion thereof that contains more than one residential unit, but not limited to, apartments, common interest development, senior citizen housing and nursing homes.

C. Multi-Unit Residential Complex Common areas. "Common areas" means every enclosed area or unenclosed area of a multi-unit residential complex that residents of more than one unit in such multi-unit residential complex are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms, parking garages and parking lots.

D. Electronic cigarettes. "Electronic cigarettes", also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor and/or other chemicals and materials. They turn chemicals, including highly addictive nicotine or other material into an aerosol that is inhaled by the user.

E. Enclosed. "Enclosed" means closed in by a roof and three or more walls with appropriate opening for ingress and egress.

F. Public place. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to the following:

1. All enclosed areas available to and customarily used by the general public in any and all businesses, including appurtenant enclosed areas commonly used by the general public such as elevators, stairways, hallways and restrooms;

2. All areas of the lobby in a hotel, motel or other transient lodging establishment. For purposes of this paragraph lobby" means the common public area of such an establishment in which registration and other similar or related transaction, or both, are conducted and in which the establishment's guests and members of the public typically congregate;

3. Meeting, conference and banquet rooms in special event centers, hotels, motels or other transient lodging establishments, fraternal or non-profit organizations meeting places to which the public is invited;

G. Smoke. "Smoke" means the gasses, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporizations, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts. Smoke includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.

H. Smoking. "Smoking" means engaging in an act that generates Smoke, such as, possessing a lighted pipe, a lighted hookah pipe, (defined as an oriental pipe used for smoking marijuana, tobacco, etc., consisting of one or more long flexible stems connected to a container of water or other liquid through which smoke is drawn and cooled), a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or cigarette of any kind or the lighting of a tobacco product, or any other weed or plant.

Without limiting the foregoing, this definition intentionally excludes the burning of incense, candles and other similar materials.

Section _____ - SMOKING PROHIBITIONS

A. No person shall engage in smoking in an enclosed public space, an enclosed space at a place of employment or in any other place regulated by this Ordinance. No employer shall knowingly or intentionally permit smoking in an enclosed space at a place of employment.

B. City Buildings and Facilities. Smoking shall be prohibited within an area measured thirty (30) feet from any exterior wall or facade surrounding all City buildings and facilities.

C. Downtown. Smoking shall be prohibited within the downtown area. For purpose of this chapter, "Downtown" is defined as those Commercial and other Zoning Districts, including sidewalks, walkways, roadways and adjacent parking areas, as follows:

Central Commercial District
Service Commercial District
Residential and Limited Commercial District
Community and Cultural District
Multifamily Residential District

D. Multi-Unit Residential Complexes. Smoking shall be prohibited in the following areas located within multi-unit residential complexes:

1. Common areas; and
2. Unenclosed, exclusive-use private balconies, porches, decks and patios.

E. Open Windows and Doors. It shall be the responsibility of any person smoking outside to ensure that smoke does not enter any buildings through open windows or doors.

F. Parks. Smoking shall be prohibited within the outer perimeter of all City parks, and on any adjacent walkways, roadways and parking areas.

G. Beach. Smoking shall be prohibited on Carmel Beach and adjacent walkways, roadways and parking areas.

H. Restaurants, Bar, Taverns, Outdoor Areas. Smoking shall be prohibited within any establishment serving food or beverages including, but not limited to restaurants, bars and taverns including outdoor areas of such establishments.

I. Other Outdoor and Enclosed Areas. Smoking shall be prohibited within _____

of Natural Parklands and Preserves District; Improved Parklands; Senior Citizen Facilities; Churches; both outdoor and enclosed theaters or areas where public performances may be held; including adjacent walkways and parking areas, as such areas are defined by reference to maps on file with the City Clerk.

J. Special Events. Smoking shall be prohibited at all activities or events held at City parks, buildings or grounds which are either City sponsored or for which a permit is required pursuant to Section _____ of this Code.

Section _____ - EXCEPTIONS.

Notwithstanding the prohibitions found in Section _____ smoking may be permitted as follows at the discretion of the employer, business owner or property owner:

A. Places of Employment Exceptions. The following exceptions to California Labor Code Section 6404-5 are expressly adopted or modified as specified:

1. Smoking may be permitted within up to forty-five percent (45%) of the guest room accommodations in a hotel, motel, or similar transient lodging establishment, such accommodated rooms to be designated as "Smoking Allowed" room.

Section _____ - POSTING OF SIGNS

A. Posting Requirements. "No Smoking" signs shall be posted in the discretion of the City Administrator, or designee, as needed to provide adequate notice to the public. The international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be used if determined adequate to provide notice of the scope of the prohibition.

Section _____ - ENFORCEMENT

A. Enforcement of this Chapter shall be implemented by the Chief of Police or his/her designee.

Section _____ - VIOLATIONS AND PENALTIES

A. A violation of any provision of this Ordinance shall be an infraction,

B. The owner, operator, or manager in control of the use of premises subject to restrictions of this Chapter shall not be responsible for violations of this Chapter within said premises by patrons or citizens, provided that patrons or citizens have been adequately informed that their actions may be in violation of the law. Any such owner, operator or manager of a business shall have adequately informed patrons or citizens if he or she has taken reasonable steps to orally inform such patron or citizen of the violation.

C. The remedies provided by this Section are cumulative and in addition to any other remedies available at law or equity.

D. In addition to other remedies provided by this ordinance or by other law, any violation of this ordinance may be remedied by a civil action brought by the City, including, but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal enforcement proceedings and suits for injunctive relief.

SECTION 3. SEVERABILITY.

A. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

B. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION 4. EFFECTIVE DATE.

This ordinance shall become effective thirty (30) days after its final passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Carmel-by-the-Sea this 3rd day of November, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

APPROVED

Jason Burnett, Mayor

ATTEST:

LEE PRICE, Interim City Clerk

At the October Council meeting, when discussing the smoking ordinance, Council requested that when the ordinance returned for first reading, additional information be provided with the legislation which discusses enforcement, design of the canisters that will receive the remnants of the cigarettes, and signage, as follows:

ENFORCEMENT

Violation of the ordinance would be an infraction. The City's first effort would be education. If an officer observes someone with a lit cigarette, cigar, e-cigarette, the officer will inform the person of the ordinance. A record of the interaction would be made. If there are subsequent violations by the same individual, additional enforcement action can be taken which may include a written warning or citation.

DESIGN

The Mayor has asked Council Member Beach to develop a design(s) for the canisters. The City has a policy that the Planning Commission will review all objects placed in the public right-of-way. Thus, once a design(s) has been selected, the matter would be sent to the Commission and ultimately to the Council.

SIGNAGE

The Planning staff has already begun to collect photos of signage from other cities/counties where there are smoking restrictions. Copies are attached. As with the canister design, the final sign design(s) would be sent to the Planning Commission and then to the Council.

NOTE

In addition staff has initiated discussions with GreenWaste Management for the cleaning of cannisters.

“No-Smoking” Signage in Other Jurisdictions

Examples of signage in San Luis Obispo, CA



Examples of signage in Boulder, CO



Examples of signage in Burbank, CA



Examples of Signage in various other jurisdictions







CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1053
November 3, 2015
Public Hearing

TO: Honorable Mayor and Members of the City Council
Douglas J. Schmitz

FROM: Marc Wiener, Acting Community Planning and Building Director

SUBJECT: Consideration of an appeal of the Planning Commission's decision to deny a Use Permit (UP 15-261) application for the establishment of a specialty food store (Carmel Chocolate Factory) at a property located in the Central Commercial (CC) Zoning District.

AMOUNT OF EXPENDITURE	\$ N/A
AMOUNT BUDGETED	\$ N/A
APPROPRIATION REQUIRED	\$ N/A

RECOMMENDATION

Approve the Use Permit application subject to the attached findings and conditions.

SUMMARY

The subject commercial space is 1,773 square feet in size and is located on Dolores Street, 4 parcels southeast of Ocean Ave. The applicant, Hariom & Sons Inc., has applied for a Use Permit to establish a new business named "Carmel Chocolate Factory" in a historic stone building. The proposed shop will specialize in the sale of pre-packaged chocolates and candy. The Municipal Code classifies candy stores as a Specialty Food Store, and pursuant to Municipal Code Section 17.14.030, Specialty Food stores require the issuance of a conditional use permit.

This application was initially considered by the Planning Commission on August 12, 2015. The Commission continued the application with a request for more information on the interior layout (colors, materials, etc.) and recommended that the applicant revise the interior display to be more consistent with the character of the building and other businesses in the commercial district. In particular, the Planning Commission had concerns with the applicant's proposal to display candy in barrels at the front of the store. In addition to the floor layout issues, a few members of the public provided testimony that there could be potential environmental impacts associated with a dry cleaning business that occupied the space from 1927 to 1991.

The applicant revised the design and provided additional information as requested by the Planning Commission. The Use Permit application was reheard at a second meeting on September 23, 2015. The revised submittal included information on the interior display indicating that the display would consist of wood counters and shelves, granite countertops, glass display cases, and vinyl wood flooring. The upper portion of all interior walls were proposed to be painted in "White Chocolate"

(KM4675) paint, and the lower portion in "Mexican Chocolate" (KM4560-5) paint. Photographs of the proposed finish materials and interior elevations are included as Attachment 8. A sample board will be available for the Council to review at the meeting. In addition to providing information on the interior display, the applicant also removed the storage barrels from the front of the space.

Staff notes that the applicant also owns a candy store in Monterey at Fisherman's Wharf. In between meetings, some of the commissioners expressed concerns to staff whether the Carmel store would have a similar appearance to the Monterey store. At the second meeting, photographs of the interior of the Fisherman's Wharf store were provided to the Planning Commission for review and comparison to the proposal for the Carmel Chocolate Factory. Staff noted that the color scheme and interior layout of the Carmel store would be significantly different than the Monterey store. Photographs of the Fisherman's Wharf store are included as Attachment 10.

To address the environmental concerns that were raised, the applicant provided a Phase II Environmental Site Assessment that was completed by Andersen Environmental on May 14, 2015. The report concluded that no Volatile Organic Compounds were detected in any soil, soil vapors, or air samples, and therefore occupancy of the unit does not pose a potential risk to human health or the environment.

The Planning Commission voted 2-2-1 on the revised application at the meeting on September 23, 2015, resulting in a denial. Staff notes that 4 affirmative votes are required for a use permit approval. One commissioner owns property within 500 feet and was recused. The two commissioners in support of the project indicated that the proposal complied with the General Use Permit Findings and that that applicant had adequately responded to the recommendations made by the Planning Commission. The two commissioners that voted against the project expressed concerns with the quality of the merchandise and associated packaging, and with the quality of the display. The opposing Commissioners noted that they were unable to make the following Standard Use Permit Findings:

Finding 4 - Allowing the proposed use will not conflict with the City's goal of achieving and maintaining a balanced mix of uses that serve the needs of both local and non-local populations.

Finding 6 - The proposed use is consistent with the City's General Plan and Municipal Code.

Finding 8 - Granting the use permit will not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City, or in conflict with the General Plan.

BASIS FOR APPEAL

On October 7, 2015, an Appeal of the Planning Commission decision was filed by the applicant, Hariom & Sons, Inc. The appeal application with supporting documentation is included as Attachment 1. As part of the appeal, the appellant has included a transcript of the September 23, 2015 Planning Commission meeting. The following is a summary of the concerns raised by the appellant, followed by a staff response:

1. The Planning Commission's basis for denial, which was based on the quality of merchandise and method of display inside the store, is discriminatory.

Staff Response: The establishment of Specialty Food Stores (candy stores) in the City requires the approval of a conditional use permit by the Planning Commission. Most retail businesses in the City are classified as a permitted use and are permitted by right; however, food stores and restaurants are subject to strict regulations and require a conditional use permit in order for the City to ensure that

certain quality and operational standards are met. Unlike decisions on a permitted use, the decision on a conditional use permit is discretionary and requires the adoption of certain findings. For this Use Permit application it was within the Planning Commission's purview to evaluate and make a discretionary decision on the merchandise and interior display. One reason for the denial was that two commissioners were unable to adopt General Use Permit Findings 4, 6, and 8, which was based on the submittals and presentation provided by the applicant.

2. The Planning Commission's basis for denial that the business will wholly attract tourists is not supported by any evidence in the record and constitutes an abuse of discretion.

Staff Response: One of the commissioners that voted against the project noted that that the proposed candy store would be almost exclusively tourist-oriented and would be inconsistent with General Use Permit Finding 4: "Allowing the proposed use will not conflict with the City's goal of achieving and maintaining a balanced mix of uses that serve the needs of both local and non-local populations."

On this particular issue, staff concurs with the appellant that there is not substantial evidence in the record that the candy store would be a predominantly tourist-oriented business. In staff's opinion, the store would be patronized by both local customers and tourists. The two commissioners that voted in favor of the project expressed concern with making a determination that the business would be exclusively tourist oriented. Staff notes that General Plan Policy P1-11 states an objective to "encourage unique, quality commercial uses that serve the intellectual, social, material, and day-to-day needs of both the local community and visitors." This policy encourages businesses that serve both locals and visitors.

3. The Planning Commission did not adequately support its determination that the proposed use would be incompatible with surrounding land uses.

Staff Response: The Planning Commissioners that voted against the project had concerns that the use would not be appropriate for the subject historic building and that it would be incompatible with the surrounding land uses in the area of Dolores Street between Ocean and Seventh Avenues. Staff notes that there are several restaurants, wine tasting shops, and a delicatessen shop in the adjacent area. In staff's opinion, the proposed use would be compatible with the surrounding food-oriented businesses in this area.

ALTERNATIVES

Staff has prepared draft findings and conditions of approval for Council consideration based on the information submitted by the applicant. As an alternative, the Council could continue the application with a request for specific changes, or could deny the appeal and direct staff to prepare findings for denial based on deliberation at the November 3, 2015 public hearing.

ENVIRONMENTAL REVIEW

The application qualifies for a Class 3 Categorical Exemption from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines. Class 3 exemptions include projects involving limited new construction projects and conversion of small structures. The proposed project does not present any unusual circumstances that would result in a potential significant environmental impact.

PRIOR CITY COUNCIL ACTION

N/A

ATTACHMENTS

1. Appeal Application
2. Findings
3. Conditions
4. 9/23/2015 Planning Commission Final Staff Report
5. Site Photographs
6. Applicant's Project Description
7. Material Board and Interior Elevations
8. Project Plans
9. Photographs of Fisherman's Wharf Store
10. Letters to Council and Staff

APPROVED:



Douglas J. Schmitz, City Administrator

Date:

29 Oct. 15

APP 15-371
(Carmel Chocolate Factory)
Rec'd: 10.7.15
Receipt: 3079

CITY OF CARMEL-BY-THE-SEA
APPEAL OF PLANNING COMMISSION DECISION

(FILING FEE: \$304.82*)

Appellant: Hariom & Sons Inc. dba Carmel Chocolate Factory

Property Owner: Carmel Properties, LLC

Mailing Address: 1801 Century Park East, #2100, Los Angeles, CA 90067

Phones: Day: (310) 203-8991 x 200 Evening: () _____

Fax: (310) 272-7615 Email: Joseph@shabanipartners.com

Date Board heard the matter: Wednesday, September 23, 2015
Appeals to the City Council must be made in writing in the office of the City Clerk within 10 working days following the date of action by the Planning Commission and paying the required filing fee as established by City Council resolution.

Physical location of property that is the subject of appeal:

Dolores 4 SE of Ocean Avenue

Lot(s): 12 Block: 76 APN: 010-146-011

COMMISSION ACTION BEING APPEALED: Use permit for the establishment of a specialty food store (Carmel Chocolate Factory) at a property located in the Central Commercial (cc) Zoning District

If you were NOT the original applicant or the applicant's representative, please state the evidence that you are an aggrieved party: _____

(CONTINUED ON REVERSE SIDE)

RECEIVED
OCT 07 2015
City of Carmel by the Sea
Planning & Building Dept

GROUND FOR APPEAL: (State the specific basis for your appeal, such as errors or omissions you believe were committed by the Commission in reaching its decision, etc.)

See attachment

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT:

DATED AT: Carmel, THIS 7 DAY OF October, 2015.

Dem Joh
Signature of appellant

hllm by
\$304.82 fee* received: (Staff Initial)

03079
Receipt #:

ATTEST:

Cashla Wright
City Clerk

*Article 9, Section 7, of the Constitution of the State of California authorizes a city to impose fees. Also see California government Code, Section 54344.

IMPORTANT: If the appellant wishes to submit materials for duplication and inclusion in the City of Carmel-by-the-Sea's Council agenda packet, the materials must be submitted to the City Clerk by _____ working days after the decision of the Commission. This matter is tentatively scheduled to be heard on _____.

October 7, 2015	*****	Receipt #.: 03079
Wednesday 1:55 pm	* City of Carmel-by-the-Sea *	Register #.: 002
By:	*****	Terminal ID: T91
	P.O. BOX CC CARMEL, CA. 93921	

I.D. Number	Amount Paid
APEAL APPEAL FEES	304.82
Cmt: PLANNING COMMISSION APPEAL	01 36276 0010

Check #	Check Amount	Cash	Amt Tendered	Total Paid	Change
	.00	304.82	304.82	304.82	.00
				=====	=====
Paid By.: HARIOM & SONS INC. DBA CARMEL CHOCOLATE FACTORY					

GROUNDS FOR APPEAL

Carmel Chocolate Factory

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Brief Summary

The Applicant's proposed use of the property as a specialty food store is consistent with the City's zoning requirements, General Plan policies and Commercial Design Guidelines. The Applicant does not propose any change to the exterior of the building and has extensively re-designed the interior of the business, despite the lack of legal authority by the Planning Commission to do so. The proposed use as a specialty food store is consistent with the uses in the commercial district of Carmel. The proposed use will not require any additional water credits and can operate consistent with the Monterey Peninsula Water Management District rules. Accordingly, the Planning Commission has put forth no legal, substantive grounds for denying this Use Permit application, and the Use Permit must be approved.

Planning Commission Hearing

The Planning Commission held two hearings, with the first hearing directing the Applicant to redesign the interior layout and change the interior design, including materials and color, of the business. The Applicant, desiring to work with the Planning Commission, expended significant amount of time and money to have his architect redraft the layout and interior design for the business to be consistent with the Commission's direction. However, the Planning Commission has no such authority under the zoning ordinance, General Plan policies, and Commercial Design Guidelines to review the interior design of the business, other than for lightning, interior signs and window displays. It is clear that the Planning Commission exceeded their legal authority by demanding interior design changes to the business.

Despite the Applicant satisfying the Commission's concerns by re-designing the interior, the Commission elected to develop legally-invalid basis to deny the Applicant's use permit application. Specifically, the denial by two of the Commissioners, as discussed during the deliberation, is based on the following:

- 1) The quality of the merchandise and the method of display inside the store do not meet City of Carmel's high standard and is better suited at Fisherman's Wharf in Monterey or Santa Cruz Boardwalk;
- 2) The business will wholly attract tourists and not locals; and
- 3) The proposed use is not compatible with surrounding land uses and will be detrimental to the City.

The first basis for denial, i.e., the quality of the merchandise and method of display inside the store, is discriminatory and arbitrary (e.g., *Arnel Dev. Co. v City of Costa Mesa* (1981) 126 CA3d 330) and violates Applicant's equal protection and substantive due process rights because the Planning Commission denied the Application based on their personal taste. Specifically, one Commissioner discussed what he perceived as higher quality specialty chocolate business, Lulus, that belongs in Carmel and the "carnival"-like business of the Applicant that belongs in Fisherman's Wharf and Santa Cruz Boardwalk. "Class of one" equal protection is intentional and disparate treatment compared to others similarly situated and that there is no rational basis

GROUNDNS FOR APPEAL

Carmel Chocolate Factory

Page | 2

for the difference in treatment. The Supreme Court explains that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. (*Squaw Valley Dev. Co. v. Goldberg* (2004) 375 F.3d 936, 945, *overruled on other grounds as recognized by Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1025 (9th Cir. 2007); *Willowbrook v. Olech* (2000) 528 U.S. 562, 563.) The Commission's perceived quality of the merchandise based on an unwritten, arbitrary standard to deny this application is a violation of the Applicant's equal protection and substantive due process rights. The Commission cannot deny an application purely based on their personal taste.

The second basis for denial, i.e., the business will wholly attract tourist, is not supported by any evidence in the record; accordingly, the decision constitutes an abuse of discretion. (CCP §1094.5(b).) A similar business in Fisherman's Wharf serves 30% residents and 70% tourists. Similarly, this business is expected to serve both residents and tourists. Because the Commission lacked any evidence in the record to support this determination, the Commission abused its discretion and the abuse is prejudicial to the Applicant's rights.

Finally, for the third basis, i.e., the proposed use is not compatible with surrounding land uses and will be detrimental to the City, the Commission failed to identify specific legal authority and evidence to support this determination. Applicant is occupying a space in an existing building within the commercial district and is proposing a use, i.e., specialty food store, which is allowed in the district with a use permit. No change to the exterior of the building is proposed. How is the business of selling chocolates detrimental to the City and would the City then deny all future businesses from selling chocolates within the City limits? If the City desires to stop businesses from selling chocolates, then an ordinance must be enacted by the City Council. Until then, the Commission cannot distinguish between similar businesses based on the quality of merchandise to establish what and what is not detrimental to the City. The Commission failed to support this determination with specific code provision, general plan policies or Commercial Design Guidelines and did not support their determination with evidence in the record. Accordingly, the Commission abused its discretion and the abuse is prejudicial to the Applicant's rights.

The transcript of the Planning Commission's deliberation as part of its decision for denial is included as Exhibit A.

Based on the foregoing and consistent with the Planning staff's recommendation before the Planning Commission, the Use Permit should be approved because there is no substantive, legal basis for denying the Use Permit application.

EXHIBIT "A"

Commissioners:

I think the applicant listened to our suggestions from the last meeting and revised the project and they brought it into accord with those suggestions we made. They've significantly upgraded the quality of the interior furnishings and design and I'm glad to hear that the majority of the product is gonna be chocolate, which is a reflection of the name of the establishment. So I don't have any objections to it. I think they've done a good job of bringing this application back to us.

I think I have a problem with this one. This is an antique space. It's a difficult place from what I can remember of it inside and I somehow don't see this fitting into that space. I agree they've made significant improvements to the original one, but I'm still not happy that this is a store that we would want within Carmel.

Mr. Martin: Question for staff? Is it _____ to talk about the name? Sort of pop quiz you.

Staff: The code does address the name and pretty much says it should be differentiated from other businesses in town, other business names, but the code does not provide guidelines in naming a business so I think in sticking with what the code provides us, it's not within the planning commission's prevue.

Well I will comment. I agree that the applicants have responded to our comments and I commend the staff for getting the place toned down. I have problems. I'm sorry that it was continued. I was happy to hear maybe that we were going to have a specialty chocolate store in Carmel, another like Lulu's for example, and then I visited their shop and I hear them say they were gonna modify it here. Let me refer to the General Plan. It talks about Carmel-by-the Sea. It's internationally recognized as a unique small coastal community. New developments shall protect this coastal community and its unique characteristics. The mix of commercial uses for Carmel should be carefully considered and efforts should be made to encourage a mix that is beneficial to the City. This effort should also promote and encourage more residents serving commercial uses, and in general high quality businesses.

The staff has done a good job laying things out. They have findings that have to made and I'm going to single three out:

Allowing the proposed use will not set the city's goal of achieving and maintaining a balance mix of uses that serve the needs of both local and nonlocal populations. The proposed use is compatible with other surrounding land uses and will not conflict with the purposes of staff for the district language and be located in granting the use permit will not set a precedent for approval of similar uses with instrumental effect will be detrimental to the City. I am afraid that I have to say that I cannot make those findings in this case. I think the business and I am concerned it couldn't be changed sufficiently that it isn't almost totally tourist-oriented. Very little, I think it would have a minuscule amount of local people patronizing it. I think the general composition packaging etc. is not consistent with the quality of the shops on the street, which is one of our most important streets with very high quality shops and restaurants. I think there is kind of a carnival atmosphere to this thing and I know it is very popular on Fisherman's Wharf and I think it belongs on Fisherman's Wharf or Santa Cruz Boardwalk, some place like that. I don't think I could keep face with the General Plan and approve this. Any comments?

Well, not to be argumentative, but I'm wondering if you're confusing their Fisherman's Wharf store with what they are proposing here. I mean they've made significant changes to upgrade the materials. They're proposing wood, granite. I don't see any ...I don't understand the carnival reference. I don't see there is a carnival-like atmosphere in this project. I also think we are getting into some dangerous territory when we start trying to define every business in terms of if a local or nonlocal would shop there. I mean nonlocals...locals certainly eat chocolate, so I don't think those distinctions are clear enough in this particular store that we can make that distinction. I'm having difficulty with the local, nonlocal distinction and also the carnival-like, which I think your implication or your argument is that it's not of the quality of the rest of the stores on this street and I think the applicant has brought the level of finish up. It's a much different project than they originally proposed. It's not that I'm not in agreement with everything you are saying. I want to see those types of qualities brought to this community and those were my original objections to this project, but I think the way it is presented now, that it is in conformance with the building and also the level of quality of what's on the street and I think there may be some businesses where the merchandise is just specifically for a tourist population, like a t-shirt shop, or something like that, but I think when it comes to a food item like this, I don't see how we can make that distinction strong enough so that we can define it as a nonlocal serving business.

I'm sorry I can't totally agree with that because there are a lot of fine specialty chocolate shops, two or three in Palo Alto and San Francisco has many. It's that kind of shop. I don't think we can turn this application into those kind of shops. It would be a credit. You mention it's not like a t-shirt shop or you mention that. I think that's very similar. I think I would be fighting another t-shirt shop, even though they've been allowed in this location. It is not consistent with adjoining land uses, but maybe they can appeal this at the council. Maybe the council will feel differently. I'm sorry I can't support it.

I think that my opinion is quite similar to the Commissioner LePage's in that I very much agree with the spirit of what you're saying, but it's hard to really articulate you that the difference between residence servicing and visitor servicing with this particular business, so while I would like to vote against it, I feel that I don't I have sufficient grounds to and it gives a lot to what Commissioner LePage was talking about.

Any further discussion? Do we have a motion?

I wanted to point out that a unanimous vote is required for the use permit approval, requires four permanent votes and for those that are opposed the commissioners that are opposed, you should specify the reasons, the findings why your voting against it and I think Chair Goodhue has done that.

We still need to make a motion. So I'll make a motion that we make a motion that we accept the application conditions as per staff's findings. Conditions for approval?

I'll second that.

Do you feel that we have presented clearly what the argument against this application is?

Yes. Chair Goodhue cited Findings numbers 4, 6 and 8, not being able to make those findings and some reasons why.

I just wanted to make sure that

Commissioner Martin - Yes

Commissioner Paterson - No

Vice Chair LePage - Yes

Chair Goodhue - No

Thank you.

So even though we split the vote it just sits....denied. They'll have to pursue it at another

CITY OF CARMEL-BY-THE-SEA

DEPARTMENT OF COMMUNITY PLANNING AND BUILDING

FINDINGS FOR APPROVAL

UP 15-261

Hariom & Sons Inc., Business Owner

Carmel Chocolate Company

Dolores St., 4 SE of Ocean Ave.

Block 76, Lots 12

APN: 010-146-011

CONSIDERATION:

Consideration of a Use Permit (UP 15-261) application for the establishment of a specialty food store (Carmel Chocolate Factory) at a property located in the Central Commercial (CC) Zoning District

FINDINGS OF FACT:

1. The project site is located on Dolores Street, 4 parcels southeast of Ocean Avenue.
2. The applicant submitted a Use Permit application on July 29, 2015 to establish a specialty food store (candy store) in the Central Commercial (CC) Zoning District.
3. The application was reviewed by the Planning Commission on August 12, 2015 and was continued with requests for revisions.
4. The business use is classified according the North American Industry Classification Systems as #445292, Candy Store (100%).
5. The application qualifies for a Class 5 Categorical Exemption from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305 of the State CEQA Guidelines. Class 5 exemptions include projects involving minor alterations in land use. The proposed project does not present any unusual circumstances that would result in a potential significant environmental impact.

GENERAL FINDINGS FOR ALL USE PERMITS:

1. The proposed use will not generate offensive odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the district.
2. The proposed use will not generate levels of noise that could adversely affect the health, safety, or welfare of neighboring properties or uses.
3. There will be one entry at the front of the store, providing adequate ingress and egress to and

from the proposed location.

4. Allowing the proposed use will not conflict with the City's goal of achieving and maintaining a balanced mix of uses that serve the needs of both local and non-local populations.
5. The proposed use is compatible with other surrounding land uses and will not conflict with the purpose established for the district within which it would be located.
6. The proposed use is consistent with the City's General Plan and Municipal Code.
7. The proposed use will not be injurious to public health, safety or welfare.
8. Granting the use permit will not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City, or in conflict with the General Plan.
9. The applicant is not required to provide additional off-street parking as no increase in commercial floor area is proposed.
10. The capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.
11. The proposed use will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.
12. The proposed use is not a formula food establishment as defined in CMC 17.70.

FINDINGS FOR DECISION:

1. The proposed use is not in conflict with the General Plan.
2. The proposed use, as conditioned, will comply with all zoning standards applicable to the use and zoning district.
3. As conditioned, the granting of the Use Permit will not set a precedent for the approval of similar uses whose incremental effect will be detrimental to the City, or will be in conflict with the General Plan.
4. As conditioned, the proposed use will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, street capacity and fire protection.
5. As conditioned, the proposed use will not be injurious to public health, safety or welfare and provides adequate ingress and egress.

6. The proposed use will be compatible with surrounding land uses and will not conflict with the purpose established for the district within which it will be located.
7. The proposed use will not generate adverse impacts affecting health, safety, or welfare of neighboring properties or uses.

CITY OF CARMEL-BY-THE-SEA

DEPARTMENT OF COMMUNITY PLANNING AND BUILDING

CONDITIONS OF APPROVAL

UP 15-261

Hariom & Sons Inc., Business Owner

Carmel Chocolate Company

Dolores St., 4 SE of Ocean Ave.

Block 76, Lots 12

APN: 010-146-011

AUTHORIZATION:

Consideration of a Use Permit (UP 15-261) application for the establishment of a specialty food store (Carmel Chocolate Factory) at a property located in the Central Commercial (CC) Zoning District

SPECIAL CONDITIONS:

1. This permit authorizes the establishment of a candy store (Specialty Food Store). The use shall be conducted in a manner consistent with the presentations and statements submitted in the application and at the public hearing, and any change in the use which would alter the findings or conditions adopted as part of this permit shall require approval of a new use permit by the Planning Commission.
2. The proposed use is permitted to operate between the hours of 9:00am to 8:00pm seven days per week.
3. The business is not permitted to have any tables or chairs.
4. All exterior alterations (including new signs) require prior approval from the Department of Community Planning and Building.
5. Approval of this application does not permit an increase in water use on the project site. Should the Monterey Peninsula Water Management District determine that the use would result in an increase in water use as compared to the previous use, this use permit will be scheduled for reconsideration and the appropriate findings will be prepared for review and adoption by the Planning Commission.
6. The use authorized by this use permit must be established within six months from the date of the Planning Commission approval. The Commission may authorize an extension of an additional six months without a new public hearing. Failure to establish the use shall render this permit null and void and without effect.

7. This use permit shall become void and no further force or effect upon termination or discontinuance of the use for any period of time exceeding six months.
8. Violations of the terms of this use permit or other ordinances of the City may constitute grounds for revocation of this use permit and the associated business license by the Planning Commission.
9. Upon termination or revocation of this use permit and/or business license for any reason, the use shall immediately cease and shall not be re-established without issuance of a new use permit.
10. The applicant agrees, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

Acknowledgement and acceptance of conditions of approval.

_____	_____	_____
Applicant Signature	Printed Name	Date
_____	_____	_____
Property Owner Signature	Printed Name	Date

Once signed, please return to the Community Planning and Building Department.

This application was considered by the Planning Commission on August 12, 2015. The Commission continued the application with a request for changes and additional information. Specifically, the Commission requested more information regarding the interior layout (colors, materials, etc.), required the removal of the interior barrels, and recommended that the interior layout be consistent with the character of the building and commercial district. The applicant has revised the design and provided additional information as requested by the Planning Commission. A revised floor plan and color/material board are included as Attachments G and H.

Staff analysis:

Use Permit: CMC 17.68 defines Specialty Food Stores as *“retail food markets, with no seating on the site, that provide a specialized and limited range of food items sold primarily for home preparation and consumptions...examples include candy, nut and confectionary stores.”*

Pursuant to Municipal Code Section 17.14.030, Specialty Food stores require the issuance of a conditional use permit. The applicant has applied for a Use Permit (UP 15-261) for the candy store. The primary and only use of the business is a candy store, selling both chocolates and candy. The applicant is not requesting any ancillary uses for this business.

No exterior changes are proposed with this application; however, the applicant is required to submit a Sign Permit application that will be reviewed for compliance with City standards. The proposed candy store is classified by the Monterey Peninsula Water Management District (MPWMD) as a Group 1 retail use. The proposed business will not require any additional water credits.

Interior Layout: The Planning Commission had concerns with the original interior layout and recommended that it be revised to be consistent with the building and character of the commercial district. The applicant has included a new interior floor plan and material/color board that complies with the recommendations made by the Planning Commission. The interior displays will consist of wood counters and shelves, granite countertops, and glass display cases. Additionally, the applicant is proposing to install new vinyl wood flooring. The upper portion of all interior walls is proposed to be painted in “White Chocolate” (KM4675) paint, and the lower portion in “Mexican Chocolate” (KM4560-5) paint. The proposed color scheme includes earth tone colors as depicted in the paint samples included in Attachment E. All interior barrels have been removed from the site plan. In staff’s opinion, the applicant has modified the interior layout and design to meet the requests of the Planning Commission. The

applicant has indicated to staff that the proposed color scheme and interior layout would be significantly different from the Fisherman's Wharf candy store.

Business Character: The photographs depicting the Fisherman's Wharf candy store are a general representation of the type of products that would be sold, which includes pre-packaged candy with custom made chocolates in climate controlled display cases. However, staff notes that the Carmel Chocolate Factory would have a different aesthetic and character than the Fisherman's Wharf candy store.

When approving a use permit the Planning Commission must adopt findings, which are included as Attachment A. Finding #6 requires that the use be consistent with the City's Municipal Code and General Plan. Staff has included the following pertinent General Plan policies for the Commission's consideration:

O1-4 Maintain a mix of commercial uses that are compatible with the character of Carmel as a residential village.

P1-11 Encourage unique, quality commercial uses that serve the intellectual, social, material, and day-to-day needs of both the local community and visitors.

P1-63 Protect the special and unique character of Ocean Avenue and the surrounding commercial area. Ensure, through the administration of land use and design regulations that the architecture, landscape, scale and ambience of this area is maintained.

In staff's opinion, the proposed food product, and interior layout and color scheme are consistent with the above General Plan policies that encourage protecting the character of the commercial district.

Environmental Site Assessment: At the August 13, 2015 Planning Commission meeting, members of the public expressed concerns with the environmental impacts from a dry cleaning tenant who occupied the space from 1927 to 1991. A Phase II Environmental Site Assessment was completed by Andersen Environmental on May 14, 2015 (Project No. 1504-636). The analysis concluded that no Volatile Organic Compounds were detected in any soil, soil vapors, or air samples, and therefore occupancy of the unit does not pose a potential rise to human health of the environment. The report (without attachments) is included as Attachment E.

Alternatives: The following alternative actions are presented for Commission consideration:

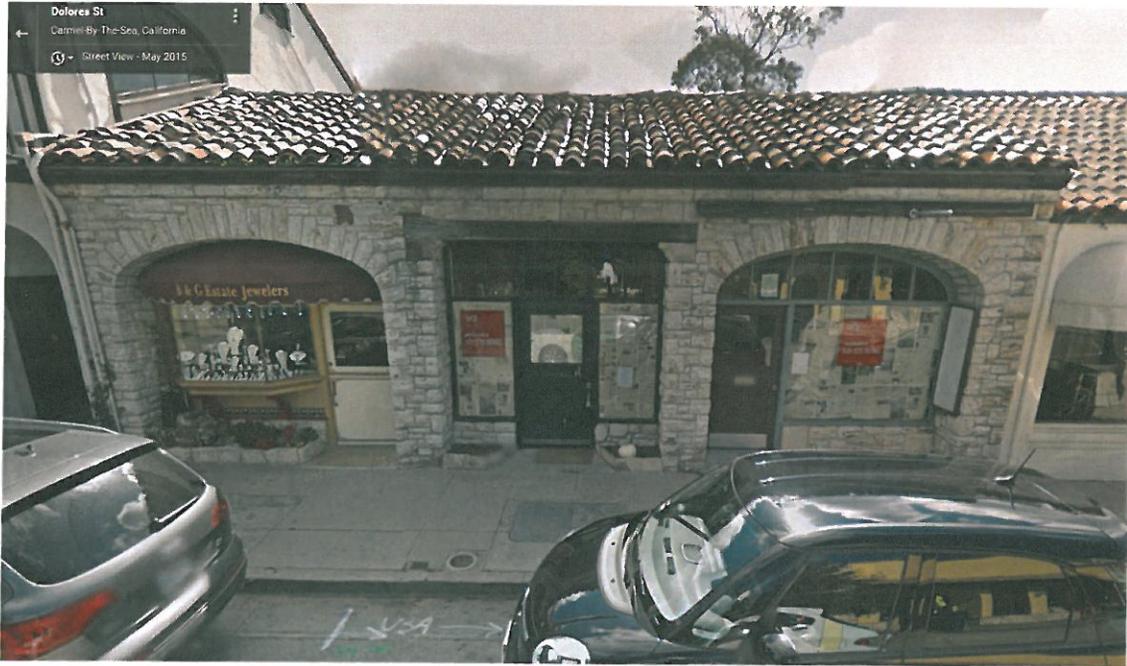
1. Approve the request as submitted
2. Approve the request with revisions. If the required revisions are substantial, the Commission may wish to continue this item to allow the applicant to respond to Commission direction
3. Deny the application

Environmental Review: The application qualifies for a Class 3 Categorical Exemption from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines. Class 3 exemptions include projects involving limited new construction projects and conversion of small structures. The proposed project does not present any unusual circumstances that would result in a potential significant environmental impact.

ATTACHMENTS:

- Attachment A – Findings for Approval
- Attachment B – Conditions of Approval
- Attachment C – Site Photos
- Attachment D – Monterey Wharf Chocolate Factory Photos
- Attachment E – Phase II Environmental Site Assessment Report, Page 1-10
- Attachment F – Applicant’s Project Description
- Attachment G – Material Board
- Attachment H – Project Plans

Attachment C – Site Photographs



Commercial Space – Facing east on Dolores Street

Date: 9-13-15

To ,
City of Carmel-by-the-sea
Carmel, CA 93921

To Whom It May Concern:

Dear planning Department,

I Dennis Joshi along with my wife Rashmi Joshi will be the owners of the proposed Carmel Chocolate Factory.

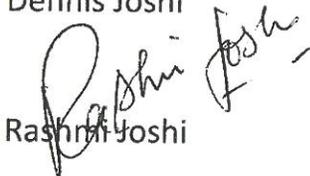
We have been involved in the hospitality business in the Monterey area since 2008 and specifically in chocolate business since 2009. We currently own a chocolate store on the Fisherman Wharf in Monterey where my wife Rashmi is the confectioner. All our chocolates are handcrafted of the highest quality of American Chocolate in our Monterey location and it is here where Rashmi creates different types of chocolate with unique flavors and designs. All our chocolate will be manufactured and packaged from our Monterey location and delivered to our Carmel store on a daily basis.

We are extremely excited and hopeful to become a part of the Carmel-by-the-sea community, one of the top ten cities in the world.

Sincerely,



Dennis Joshi



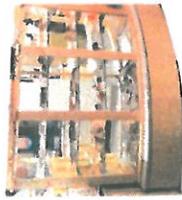
Rashmi Joshi

RECEIVED

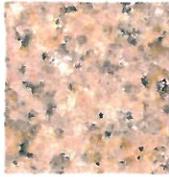
SEP 16 2015

City of Carmel-by-the-Sea
Planning & Building Dept.

MATERIAL - COLOR BOARD



1. Display Case



2. Granite Counter Tops



3. Display Case and Counter Facing



4. Vinyl Wood Flooring



5. Display Case



6. Island Display Case



7. Custom Wall Display

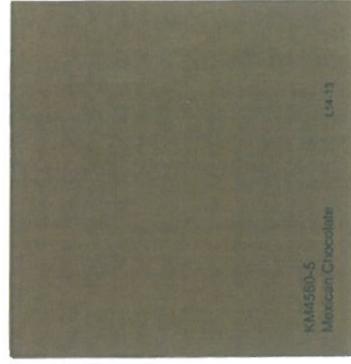


8. Wood Shelving

KM4675
White Chocolate

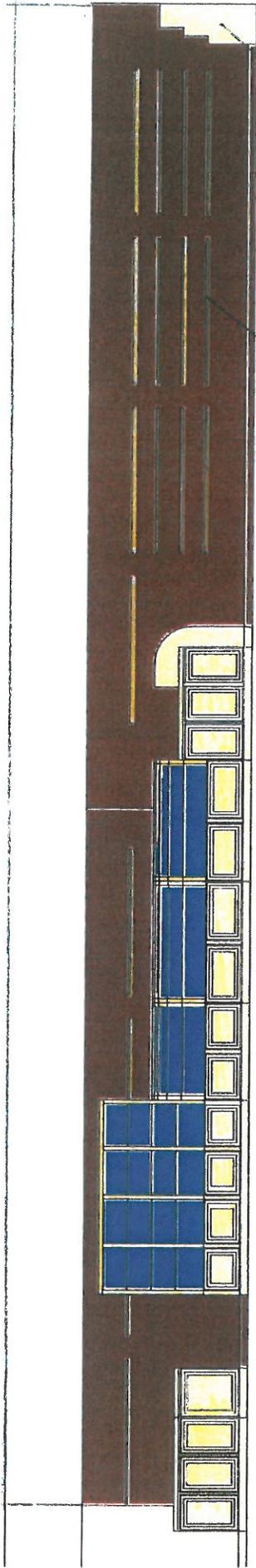
R10-2
15-4

9. Upper Wall Color



10. Lower Wall Color

RF
SEP 03 2015
The date of this approval is subject to change.



2. Granite Counter Tops
3. Counter Facing

1. Display Case
Counter Facing

5. Display Case
Counter Facing

2. Granite Counter Tops
3. Counter Facing

8. Wood Shelving

7. Custom Wall Display

1

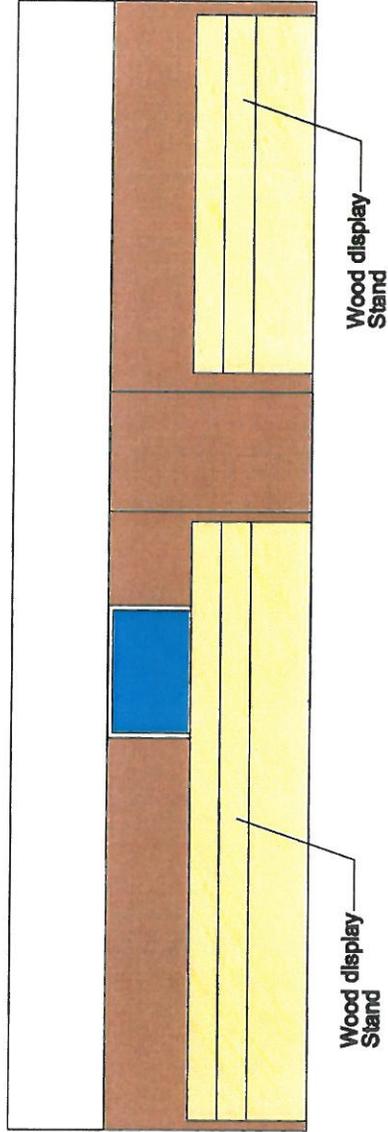
**NORTH WALL
INTERIOR ELEVATION**

1/4" = 1'-0"

RFA

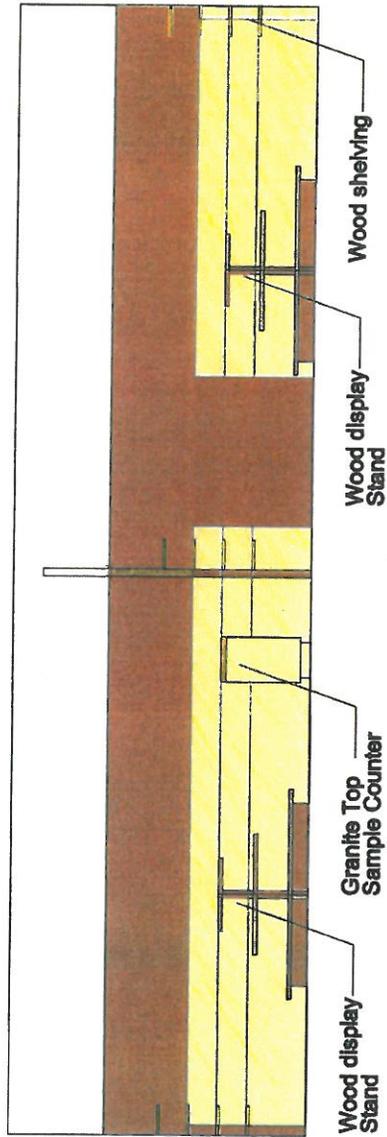
SEP 03 2015

Aluminum Building Dept



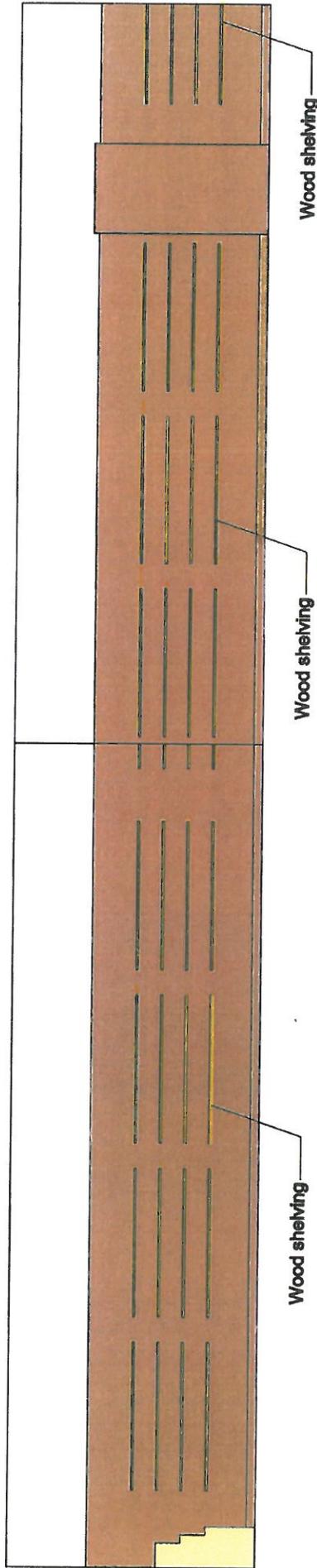
② EAST WALL INTERIOR ELEVATION

SEP 08 2005
 ARCHITECT: [illegible]



**3 EAST WALL
INTERIOR ELEVATION**

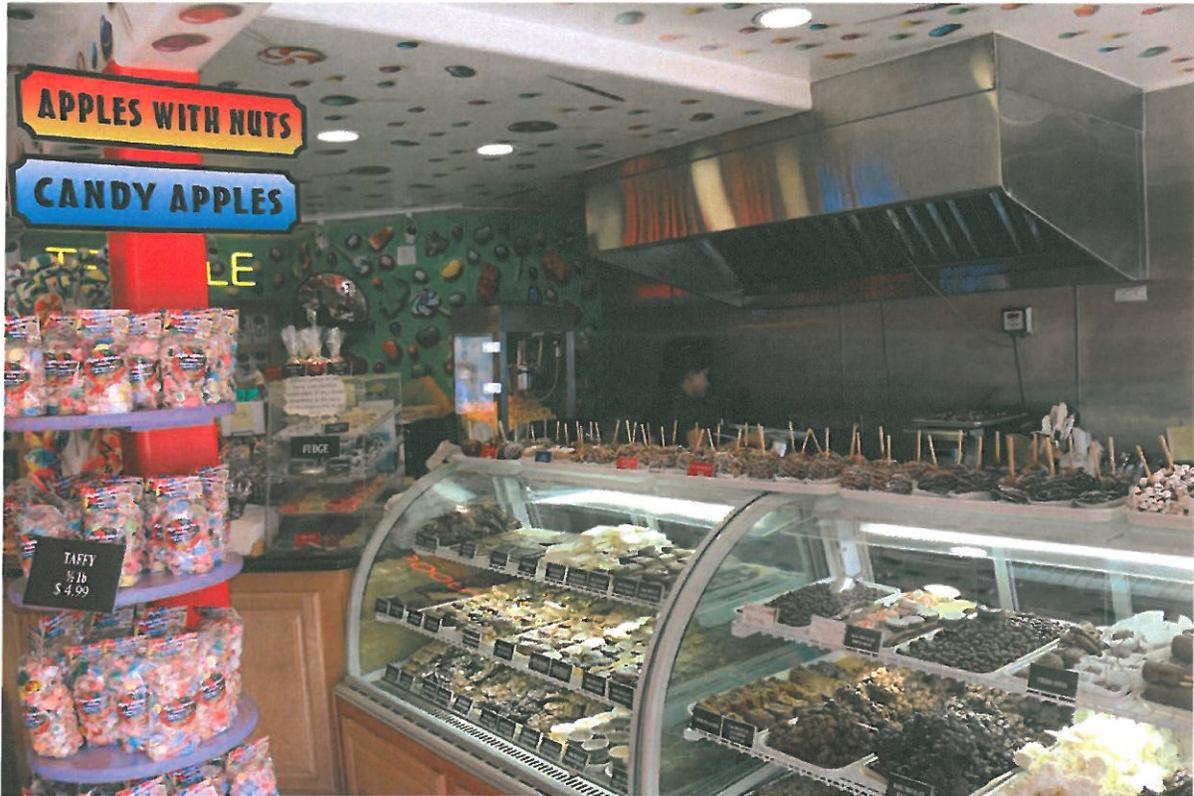
1/4" = 1'-0"



4 SOUTH WALL
INTERIOR ELEVATION

1/4" = 1'-0"

Photographs of Monterey Wharf Chocolate Factory





(www.yelp.com)

OCT 28 2015

Roderick L Dewar

Received

October 28, 2015

To the City Council
of Carmel by the Sea

Opposition to the Appeal by Chocolate Factory re Denial by Planning Commission of Use Permit for Specially Food Store; Dolores 4 SE of Ocean Avenue

Date of Hearing: November 3, 2015

The undersigned is a one-half owner of the El Paseo Building located at the NE corner of Dolores Street and Seventh Avenue. The project in question is within the same block , and only a short distance away.

The applicant, the Chocolate Factory, seeks to establish a candy shop on the block between Ocean Avenue and Dolores similar in style to one maintained by it on Fisherman's Wharf in Monterey.

The Monterey store clearly caters to tourists attracted by the display items intended to entice passers-by to walk in and take away products likely to be eaten on the wharf's boardwalk. Cotton candy, frozen bananas, taffy apples, caramel corn and hard candies are advertized, featured and on display at the storefront. No seating space is afforded and it is difficult to envision anything but almost immediate consumption of these items once the purchasers leave the store. (Who ever heard of taking cotton candy or candy apples home!)

The applicant refers to a candy store in Carmel, selling custom-made chocolates. That is only partially accurate. The same marketing technique and products will be promoted in Carmel and as in Monterey. The consequence is that there will be people(principally of tourists), making quick purchases and walking the streets eating and leaving wrappers and other debris behind. *Pedestrian congestion detracts from the shopping and walking experience and overall economic activity. ..[Offering] food for immediate consumption on the sidewalks and litter and food debris left, . . . detract from the pedestrian experience.* " **General Plan/Coastal Land Use Plan page 1-18.**

In recent years the visitor business on Ocean Avenue has been so prevalent (with shops offering T-shirts and other tourist related items) that small businesses with their more subdued products and more modest marketing techniques have sought refuge off of the beaten path. So it

is with the Dolores Street block. To allow the candy store of the type which the applicant plans, would only spread a carnival atmosphere beyond its present confines.

The appellant claims that a ground of denial of a use permit is that its merchandise is thought to be of a lesser quality. We don't think that was meant. Applicant's cotton candy, candied apples may be of the highest quality but promoting their sale on Dolores Street would lead to the diminishment of quality of a more restrained commercial neighborhood- one that Carmel needs to preserve.

The appellant further claims that the denial of a use permit is discriminatory; that is, there is no basis for treating its business from others on Dolores Street. But there are differences. The proposed store, contrary being one selling merely home-made chocolate, would differ in adverse ways from its neighbors. No business on the Dolores Street aggressively sells sticky stuff to be consumed in the street. No nearby business creates the aura of a retail stand on a seaside boardwalk.

All retail businesses are not the same. That is why, it is submitted, that there is a use permit process to examine the compatibility and impact of proposed businesses. Product and marketing do matter. Would a Victoria Secrets store be permitted on Ocean Avenue?

The store on the Monterey wharf is "living proof" of what would be expected if the applicant sets up its store on Dolores Street. For that reason it is urged that existing store in Monterey be inspected before an appellate decision and that the question then be addressed whether a Carmel shop of a similar type would be detrimental to the welfare of the City if allowed in its proposed location.

Sincerely,



Roderick L. Dewar

October 24, 2015

City of Carmel-by-the-Sea

OCT 26 2015

To the attention of:
CITY OF CARMEL-BY-THE-SEA
Mayor and City Council Members

Received by City Clerk

As a 30 year resident of Carmel-by-the-Sea I take great pride in living here. I also deeply appreciate the dedicated efforts of those who have served the residents since its inception by so carefully creating and cultivating the highest standards when selecting commercial ventures which will enhance and maintain the unique character of our city.

I am writing to protest approval of the following application:
UP15 261
Carmel Chocolate Factory
Hariom and Sons Inc.
Dolores 4 SE of Ocean Ave.

I have personally visited the Wharf Chocolate Factory and I have reviewed the August 12, 2015 and September 23, 2015 video portions of the Planning Commission Meetings related to this application and I fully agree with the reasoning for the Commissioners' denial. I commend Commissioners Goodhue and Patterson for making a conscientious and fair decision and recognizing that the Carmel Chocolate Factory is not an appropriate business for this unique and historically valued location.

Carmel must hold it's merchants to the highest standards of quality and presentation in order to maintain the City's present notable standards and to protect the sense of refined ambiance revered by locals and our guests. Recently there have been very strict quality and presentation standards applied to both wineries and to vendors attending our Farmer's Market. The consideration of this candy store deserves the same critical scrutiny.

After viewing the video of the first meeting I personally questioned the planning staff and the commissioner's about the name "Carmel Chocolate Factory." I stated the following in my letter dated August 23, 2013.

"The name Carmel Chocolate Factory implies by the definition of the word "FACTORY" that the chocolate products are manufactured here. I understand that all chocolate, candy and nut items must be received at this location pre-packaged, not for immediate consumption and not made on the premises. Since the name of the business or logo would appear on product packaging it would generally appear to the consumer that food goods are manufactured here in Carmel. Since that is not true it would be false and misleading to the consumer to label product with this logo. I would urge the commission to disallow the use of this name."

I understood in my discussion with staff before the meeting that the only time the commission would have jurisdiction over the name was if there was a conflict with an existing business name.. However during the meeting when the applicant was asked about the name his response seemed to simply indicate a desire for the business to have an association with the "Wonka Chocolate Factory." While I can certainly understand that desire this response did not address my concern about the Carmel Factory designation. Many residents and visitors who come to Carmel want to purchase souvenirs and

gifts that are made here. A candy product bearing a Carmel Chocolate Factory label implies that it is a locally sourced item, made in Carmel.

While viewing the complete video of the initial business presentation I found it very confusing that while the applicant asserted that the Carmel Chocolate Factory would be very different from the Wharf Chocolate Factory he has obviously chosen to maintain a connection to what was referred to during the meeting as a “sister store” by morphing the two names.

The business names are identical except for the location designation. In general, stores that carry a similar name and carry the same products are expected by the general public to be related. In addition, although the applicant and staff declare that it is not intended to be a “formula food establishment” because there is no common uniform code etc.. The name itself does create an issue which I believe should be re-addressed.

Please consider the following:

Excerpt from UP 15-261 Findings September 23, 2015

“CITY OF CARMEL-BY-THE-SEA Planning Commission Report September 23, 2015 To: Chair Goodhue and Planning Commissioners From: Marc Wiener, Acting Community Planning and Building Director Submitted by: Ashley Hobson, Contract Planner Subject: Consideration of a Use Permit (UP 15-261) application for the establishment of a specialty food store (**Carmel Chocolate Factory**) at a property located in the Central Commercial (CC) Zoning District

12. The proposed use is not a formula food establishment as defined in CMC 17.70.”

My note:

Staff notes for UP15-261 Findings do not include the complete definition of Formula Food Establishment – I have included it for your reference.

CMC 17.70

Formula Food Establishment. A business that (1) is required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, employee uniforms, interior décor, signage, or exterior design; or (2) adopts a name, appearance or food presentation format that causes it to be substantially identical to another restaurant regardless of ownership or location.

There does not appear to be a separate list of products intended for the Carmel Chocolate Factory which would differentiate product offerings between the two stores. The applicant has provided photos of product at the Wharf Chocolate Factory which are according to staff notes “a general representation of the type of products that would be sold (in Carmel), which includes pre-packaged candy with custom made chocolates in climate controlled display cases.”

*It would be natural to assume that the chocolate product being manufactured at the Wharf location and the pre-packaged candy offered in both stores will be the same, or “standardized”. Additionally, I would consider the name “Carmel Chocolate Factory” to be “substantially identical” to the presently named “Wharf Chocolate Factory”.
(see Business Character below)*

Reference from Staff notes:

“Business Character: The photographs depicting the Fisherman’s Wharf candy store are a general representation of the type of products that would be sold, which includes pre-packaged candy

with custom made chocolates in climate controlled display cases. However, staff notes that the Carmel Chocolate Factory would have a different aesthetic and character than the Fisherman's Wharf candy store."

While the two stores may have a different architectural interior and exterior design which create a different aesthetic the "character" of the business which is created by the products, seems to remain the same.

Photos presented by the applicant show examples of and indications of the following product:

Store Front Windows:

Taffy, Cotton Candy, Candy Apples, Frozen bananas, Caramel Apples, Lollipops, Caramel Corn, Salt Water Taffy

Interior photos:

Apples with Nuts, Candied Apples - displayed without any packaging on top of the Turbo Air cases which contain a large variety of chocolates

Blue prints also indicate shelving to hold product from JellyBelly and Candy Concepts, Inc. At the Wharf location many current candy products are presented wrapped and unwrapped in self serve containers.

Re: Specialty Food Stores -

Staff analysis: Use Permit: CMC 17.68 defines Specialty Food Stores as "retail food markets, with no seating on the site, that provide a specialized and limited range of food items sold primarily for home preparation and consumptions...examples include candy, nut and confectionery stores."

If high quality candy and confectionery product are to be sold "primarily for home preparation and consumption", the products will generally be packaged with labels showing the product identity, manufacturer and location, ingredients and sell by date and if nuts are used/contained in the factory. The product is also generally sealed in packaging to retain freshness for future use.

The Wharf Chocolate Factory's current display of unwrapped caramel apples invites consumption on the way out the door. Pre-wrapped taffy contained in paper bag packaging contain only store logo information and lack other important information such as ingredients, sell by date and whether or not nuts are contained and used in the factory. Other candies both wrapped and unwrapped are presented in self serve containers without important product labels. I do not find this type of product presentation to be appropriate for a high quality candy store.

I urge the Mayor and all member's of the City Council to support and uphold the Planning Commission's extremely important decision and to deny any further consideration of licensing the proposed Carmel Chocolate Factory.

Thank You for your anticipated consideration of my concerns.

Valerie Lane
Carmel-by-the-Sea





CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1054
November 3, 2015
Public Hearing

TO: Honorable Mayor and Members of the City Council
Douglas J. Schmitz, City Administrator

FROM: Marc Wiener, Acting Community Planning and Building Director

SUBJECT: Consideration of an appeal of the Planning Commission’s decision to deny the reissuance of Design Review, Use Permit, and Coastal Development Permit applications for the redevelopment of the Carmel Sands hotel located in the Service Commercial (SC) Zoning District (New planning application case numbers: DR 14-36 and UP 14-20).

AMOUNT OF EXPENDITURE	\$ N/A
AMOUNT BUDGETED	\$ N/A
APPROPRIATION REQUIRED	\$ N/A

RECOMMENDATION

Planning Commission: Voted 3-2 to deny the reissuance of the permits.
Staff Recommendation: Approve the Design Review, Use Permit, and Coastal Development permit applications subject to the attached findings and conditions.

SUMMARY

The Carmel Sands Lodge is an existing hotel located at the northeast corner of San Carlos Street and Fifth Avenue. The lodge consists of three buildings and includes 42 hotel rooms and a 120-seat restaurant. The site also includes a surface parking lot and a swimming pool.

On July 14, 2010, the Planning Commission approved a hotel redevelopment project at this site and adopted a Mitigate Negative Declaration. The project included the following elements:

- 42 hotel rooms in four buildings
- Intra-block walkway and interior courtyard
- Two retail spaces
- Limited use restaurant
- 64-space underground garage
- Day spa facility

The project approval was appealed to the City Council by a Carmel citizen. The City Council upheld the Planning Commission’s decision and unanimously denied the appeal on November 2, 2010. The City Council adopted revised project findings at a subsequent meeting on December 7, 2010. The City Council’s approval included the original project conditions, with a minor amendment to special condition

#45. Special condition #45 requires that the entire building consist of stucco siding with either a single color, or slight variations of a single color, and that the revisions be reviewed by the Planning Commission. The Council's amendment to this condition simply noted that any other modifications, in addition to color, shall be reviewed by the Planning Commission. Staff notes that the applicant had originally proposed a combination of finish materials including stucco, stone, and wood siding. However, the Commission preferred a more simplified and uniform treatment of the building rather than a mix of finish materials. Staff notes that the project plans have not yet been revised, and the plans included as Attachment 4 are the most current version.

Special Condition #46 was added by the City Council, which requires a 5-foot setback for any structure within 40 feet of the northwest corner of the site. Staff notes that north 40 feet of the Carmel Sands property is located in the Residential and Limited (RC) Commercial Zoning District, which has a 5-foot setback requirement. The remaining south portion of the property is located in the Service Commercial (SC) Zoning District, which has a zero lot line setback. The Council added this condition to make the project compliant with the Municipal Code setback requirements.

PLANNING COMMISSION REVIEW

On November 14, 2012, the Planning Commission approved a two-year time extension for the Carmel Sands project. A time extension is an administrative action in which the primary basis for review is whether the conditions surrounding the original approval have changed, or whether the General Plan, Municipal Code, or Local Coastal Plan Program have been amended in any manner that would cause the approvals to be inconsistent with these plans or codes (CMC 17.52.170.C). The Planning Commission may extend a permit through a time extension once. If more time is needed beyond the time extension, the applicant must seek a re-issuance of the Planning permits. Since the time extension has expired, the applicant, Mr. Mark Stilwell, applied for a re-issuance of the project permits. Staff notes that that applicant originally applied for the reissuance in November 2014, prior to the expiration of the time extension, but the meeting date was postponed.

On October 20, 2015, the Planning Commission considered the reissuance of the permits and denied the application by a 3-2 vote (3 denial, 2 approval). The Commission's primary concerns related to the proposed architectural style and finish materials. One commissioner commented that the architectural style mimicked historic buildings in the City and recommended that the applicant propose a more modern architectural style. Other commissioners had concerns with the mass of the building associated with the over-use of stucco and recommended that the applicant incorporate additional finish materials. The applicant provided testimony indicating that the original proposal included additional finish materials such as wood and stone, but that the previous Planning Commission required that the building be entirely stucco to provide a more simplified and uniform appearance. Rather than have the Planning Commission continue the application so that the project could be re-designed, the applicant requested an up or down vote.

STAFF ANALYSIS

Staff notes that because this would be a reissuance of the permits, as opposed to a time extension, the City Council is not bound by previous decisions on this project. The Carmel Sands project was extensively reviewed over a period of two years and was approved by both the Planning Commission and City Council by a net vote of 9-1. Several concessions were made by the original project applicant, which at one point included an entire re-design of the project. Staff recommends that the City Council rely on the previous analysis and decisions for this project.

Staff supports the request to re-issue the Design Review, Use Permit, and associated Coastal Development Permit, as the conditions surrounding the original approval have not changed. The project findings and conditions have been re-formatted and are included as attachments to this staff report. Special condition #45 has been amended to have the City Council rather than the Planning Commission review the color renderings and /or other modifications.

ALTERNATIVES

Staff has prepared draft findings and conditions of approval for Council consideration. As an alternative, the Council could continue the application with a request for specific changes, or could deny the application and direct staff to prepare findings for denial based on deliberation at the November 3, 2015 public hearing.

ENVIRONMENTAL REVIEW

The City Council adopted a Mitigated Negative Declaration for the project approval on November 2, 2010. That document evaluated the environmental impacts of the project and is still valid. There are no new circumstances or project revisions that require supplemental CEQA analysis.

PRIOR CITY COUNCIL ACTION

The City Council upheld the Planning Commission's decision and denied an appeal of the Carmel Sands project on November 2, 2010. The City Council adopted revised project findings at a subsequent meeting on December 7, 2010.

ATTACHMENTS

1. Appeal Application
2. Findings
3. Conditions
4. Project Plans
5. Correspondence re: Carmel Sands

APPROVED:



Douglas J. Schmitz, City Administrator

Date: 31 Oct. 15

OCT 26 2015

Received

CITY OF CARMEL-BY-THE-SEA

APPEAL OF PLANNING COMMISSION DECISION

(FILING FEE: \$304.82*)

Appellant: Mark and Susan Stilwell

Property Owner: Mark and Susan Stilwell

Mailing Address: P.O. Box 4235, Carmel CA 93921

Phones: Day (831) 277-7703 Evening: (831) 597-8566

Fax: (831) 624-8525 Email: ss.tilwell@comcast.net

Date Board heard the matter: October 20, 2015

Appeals to the City Council must be made in writing in the office of the City Clerk within 10 working days following the date of action by the Planning Commission and pay the required filing fee as established by the City Council resolution.

Physical location of property that is the subject of appeal:

Corner of San Carlos & 5th (Carmel Sands dbq Carmel Lodge)

Lot(s): 13-20 Block: 50 APN: 010-131-025; 010-131-026
So 1/2 of 12

COMMISSION ACTION BEING APPEALED: Denial of re-issuance of permits issued by City Council on unanimous approval on 12/16/2010; as extended DR-14-36/UP 14-20 + associated CDP

If you were NOT the original applicant or the applicant's representative, please state the evidence that you are an aggrieved party: N/A

(CONTINUED ON REVERSE SIDE)

GROUND FOR APPEAL: (State the specific basis for your appeal, such as errors or omissions you believe were committed by the Commission in reaching its decision, etc.)

The original project permits were fully considered and approved by a unanimous City Council and by the Planning Commission by a 4-1 vote. No facts or circumstances have changed to justify any changes in the permits as issued. The prior approval process was extensive, thorough, and fair and should be honored.

I CERTIFY UNDER PENALTY THAT THE FOREGOING IS TRUE AND CORRECT:

DATED AT: 2:30 a.m. (p.m.) THIS 26th DAY OF October, 2015.

Mark Stulwell
Signature of appellant

[Signature]
\$304.82 fee* received: Staff signature

63697
Receipt #:

ATTEST:

[Signature]
City Clerk

*Article 9, Section 7, of the Constitution of the State of California authorizes a city to impose fees. Also see California Government Code, Section 54344.

IMPORTANT: If the appellant wishes to submit materials for duplication and inclusion in the City of Carmel-by-the-Sea's Council agenda packet, the materials must be submitted to the City Clerk by _____ working days after the decision of the Commission. This matter is tentatively scheduled to be heard on _____.

Attachment 2

CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

FINDINGS FOR DECISION

Originally Adopted by City Council on 12/7/10

DR 14-36/UP 14-20
Mark and Susan Stilwell
Carmel Sands
NE Cor. San Carlos & 5th
Block 50, Lots 13-20 & south ½ of 12
APN: 010-131-025 and 010-131-026

PROJECT DESCRIPTION:

Consideration for the Reissuance of Design Review, Use Permit, and Coastal Development Permit applications for the redevelopment of the Carmel Sands hotel located in the Service Commercial (SC) Zoning District (New planning application case numbers: DR 14-36 and UP 14-20).

FINDINGS OF FACT:

1. This site is 32,997 square feet in size and is comprised of ½ of lot 12 and all of lots 13-20 of Block 50 in the Service Commercial (SC) District of Carmel-by-the-Sea.

Evidence

- City of Carmel-by-the Sea property file and Monterey County Assessor's records.
- Official Zoning Map of Carmel-by-the-Sea.

2. This site is developed with a 42-unit inn known as the Carmel Sands Lodge and includes a 120-seat full service restaurant.

Evidence

- City of Carmel-by-the Sea property file and business license records.

3. The existing buildings on the site are not considered historically significant. The City issued a Determination of Ineligibility for listing on the City's Historic Inventory on 1 September 2006.

Evidence

- Determination of Ineligibility dated 1 September 2006.
- Letter dated 17 August 2010 from Preservation Consultant Kent Seavey.

4. The property owner submitted an application for the demolition of the existing inn and the construction of a new 57-unit inn on 21 March 2008.

Evidence

- Application Materials on file at City Hall.
5. The City circulated an Initial Study(IS)/Mitigated Negative Declaration(MND) for the project in accordance with the California Environmental Quality Act (CEQA) from 13 November 2008 through 3 December 2008.

Evidence

- Draft IS/MND dated 10 November 2008.
 - Notice of Intent filed with Monterey County Clerk on 11/12/2008.
 - Carmel Pine Cone Public Notice.
6. The Planning Commission reviewed the IS/MND on 10 December 2008 and continued the project to a future meeting.

Evidence

- Planning Commission Minutes for 12/10/2008.
7. The applicant subsequently revised the project to reduce the number of rooms to 42, which necessitated the preparation of a new IS.

Evidence

- Application materials on file at City Hall
8. The City prepared a revised IS/MND based on the new project description and circulated it from 4 November 2009 through 24 November 2009. The IS/MND identified 20 Mitigation Measures to address potentially significant impacts.

Evidence

- IS/MND dated 11/2/2009.
 - Notice of Intent filed with Monterey County Clerk on 11/5/2009.
 - Carmel Pine Cone Notice.
9. Ten comments were submitted during the public comment period. Staff issued a "Response to Comments" on 9 December 2009 responding to questions and concerns raised in comment letters.

Evidence

- Comment letters on file at City Hall.
- Planning Commission Packet dated 12/9/09.

10. On 9 December 2009 and again on 10 February 2010 the Planning Commission determined that the IS/MND was adequate for the project and that no substantial evidence existed that the project might have a significant effect on the environment.

Evidence

- Planning Commission Minutes for 12/9/2009 and 2/10/2010.

11. On 10 March 2010 the Planning Commission accepted the Design Concept for the project and determined that the proposed scale, massing and site design were appropriate for the project. The Commission also determined that the proposed mass and scale of the project was consistent with other inns in the City and with existing structures in the vicinity.

Evidence

- Planning Commission Minutes for 3/10/2010.
- Planning Commission Staff Report and Attachments dated 3/10/2010.

12. On 10 March 2010 the Planning Commission determined that the requested height exceptions for the tower elements that exceed 30-feet in height were appropriate for the project and consistent with the Municipal Code.

Evidence

- Planning Commission Minutes for 3/10/2010.
- CMC Section 17.14.150.B.

13. On 14 July 2010 the Planning Commission approved all project permits and adopted a MND.

Evidence

- Planning Commission Staff Report and Attachments dated 7/14/2010.
- Planning Commission Minutes for 7/14/2010.

14. An appeal of the Planning Commission's decision to adopt an MND and approve the project was filed by Barbara Livingston on 27 July 2010. The appellant requested that

the Council overturn the Planning Commission's decision and require an Environmental Impact Report for the Project. The appellant further argued that the project had drawbacks that should lead to its denial.

Evidence

- Appeal Application dated 7/27/10.
- Appeal Letter and Attachments dated 9/7/10.

15. On 2 November 2010 the City Council received both oral and written testimony on the appeal and voted to deny the appeal and uphold the Planning Commission's decision with a 5-0 vote.

Evidence

- City Council Staff Report and Attachments dated 11/2/10.
- City Council Minutes for 11/2/10.

16. The California Environmental Quality Act (CEQA) allows a lead agency to adopt a MND only if it finds on the basis of the whole record before it that there is no substantial evidence that the project will have a significant effect on the environment, and that the MND reflects the lead agency's independent judgment and analysis.

Evidence

- CEQA Guidelines Section 15074.b.

17. As defined by CEQA, a "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna ambient noise, and objects of historic or aesthetic significance.

Evidence

- CEQA Guidelines Section 15382.

FINDINGS FOR DECISION:

1. The Planning Commission adopted 40 Findings related to project approval on 14 July 2010. The City Council's decision to deny the appeal and uphold the Planning Commission's decision reaffirms these findings.

Evidence

- Planning Commission Staff Report and Attachments dated 7/14/10.
- City Council Staff Report and Attachments dated 11/2/10.
- City Council Minutes for 11/2/10.

2. Based on a review of the whole record, including public testimony given orally and in writing on 2 November 2010, the City Council determined that a fair argument, based on substantial evidence, can not be made that the project will have a “significant adverse effect” on the environment.

Evidence

- City Council Staff Report and Attachments dated 11/2/10.
 - City Council Minutes for 11/2/10.
 - Definition of “Substantial Evidence” in CEQA Guidelines Section 15384.
3. The existing surface parking lot includes 42 parking spaces for the 42-room inn and the 120 seat restaurant. The site is currently nonconforming by approximately six parking spaces. The proposed project exceeds the on-site parking requirement by seven spaces, a 13-space improvement based on the City’s required parking standards. The project also creates new on-street parking spaces by eliminating existing access points on Fifth Avenue and on Mission Street. The Porte de Cochere will also allow vehicles to pull off the street while checking in or out of the inn, thus limiting congestion. A fair argument, based on substantial evidence, has not been made that the project will result in a “significant adverse effect” on traffic and parking.

Evidence

- City Council Staff Report and Attachments dated 11/2/10.
 - City Council Minutes for 11/2/10.
 - Adopted IS/MND and Mitigation and Monitoring Plan.
4. Noise impacts are adequately addressed in the IS/MND. A fair argument, based on substantial evidence, has not been made that the project will result in “significant adverse effects” related to noise.

Evidence

- MND Mitigation Measures 11-1 through 11-3.
 - Planning Commission Special Conditions of Approval #'s 31 and 42.
 - City Council Minutes for 11/2/10.
5. The “canyon effect” referred to by the appellant is actually a desirable attribute in the commercial district. The General Plan, Zoning Ordinance and Commercial Design Guidelines all encourage properties in the SC District to be built at, or close to the street to create a pedestrian wall. The proposed project is consistent with these policies, standards and guidelines.

Evidence

- City Council Staff Report dated 11/2/10.
- General Plan Objective 01-11.
- General Plan Policies P1-64 and P1-68.
- CMC Section 17.14.130.
- Commercial Design Guidelines pg. 8.
- City Council Minutes for 11/2/10.

6. The IS/MND adequately addresses public and private views. A fair argument, based on substantial evidence, has not been made that the project will result in “significant adverse effects” to public and/or private views.

Evidence

- Adopted IS/MND section I (aesthetics).
- City Council Minutes for 11/2/10.

7. The IS/MND adequately addresses air quality and global warming issues. Greenhouse gas emissions associated with the project are negligible and all potential impacts are appropriately addressed through the adopted mitigation measures. A fair argument, based on substantial evidence, has not been made that the project will result in “significant adverse effects” on air quality and/or global warming.

Evidence

- Adopted IS/MND section III (Air Quality).
- Mitigation Measures 3-1 through 3-3.
- City Council Minutes for 11/2/10.

8. The total proposed floor area ratio for the project is 118% and the total building coverage is 76%. The floor area is 17% below the base allowed floor area for the site (135%) and 27% percent below the maximum allowed floor area with bonuses (145%). The building coverage is 19% below the maximum allowed coverage (95%). The project is significantly less massive than could be allowed under the zoning standards for the SC District. The variations in setbacks, building heights, and the separation of buildings reduce the overall mass of the project. A fair argument, based on substantial evidence, has not been made that the project will result in “significant adverse effects” on community character due to mass and bulk.

Evidence

- City Council Staff Report dated 11/2/10.

- Approved Project Plans.
- CMC Sections 17.14.130 and 17.14.140.
- City Council Minutes for 11/2/10.

9. The argument that additional rooms could be added to the site creating additional impacts is premature as it is not part of the current project proposal. If a proposal to add additional inn units on this site were submitted, it would constitute a new project under CEQA and require the appropriate review.

Evidence

- City Council Staff Report dated 11/2/10.
- City Council minutes for 11/2/10.
- CEQA Guidelines.

10. Short term impacts related to project construction are adequately addressed in the IS/MND and the Planning Commission Special Conditions of Approval. A fair argument, based on substantial evidence, has not been made that the project will result in “significant adverse effects” due to short term construction activities.

Evidence

- Adopted IS/MND.
- Mitigation Measures 3-1, 3-2, 8-1, and 11-1 through 11-3.
- Planning Commission Special Conditions of Approval #'s 32, 33 and 42.

11. As conditioned by the City Council, the project shall include a five foot setback for the first 40 feet along San Carlos Street beginning at the northwest corner of the site. This ensures that the project complies with the intent and requirements of the General Plan, Zoning Ordinance and Commercial Design Guidelines.

Evidence

- CMC Section 17.14.160.
- Commercial Design Guidelines.
- City Council minutes for 11/2/10.

Attachment 3

CITY OF CARMEL-BY-THE-SEA

DEPARTMENT OF COMMUNITY PLANNING AND BUILDING

CONDITIONS OF APPROVAL

DR 14-36/UP 14-20
Mark and Susan Stilwell
Carmel Sands Lodge
NE Cor. San Carlos & 5th
Block 50, Lots south ½ of 12 & 13-20
APN: 010-131-025 and 010-131-026

PROJECT DESCRIPTION:

Consideration for the Reissuance of Design Review (DR 14-36), Use Permit (UP 14-20), and Coastal Development Permit applications for the redevelopment of the Carmel Sands hotel located in the Service Commercial (SC) Zoning District.

AUTHORIZATION:

1. Entitlements. This approval authorizes the issuance of Demolition, Design Review, Use and Coastal Development permits. These establish an entitlement to:
 - Demolition all existing site improvements.
 - Construct a 64-space underground garage.
 - Construct a 42-unit hotel that includes a restaurant, two commercial spaces and a day spa facility.

All approvals are based on the design plans approved on 14 July 2010 and all findings, mitigations (see Mitigation & Monitoring Plan), amendments and conditions presented at the meeting. If any part of this entitlement is implemented, all parts, designs and conditions also shall be implemented. The approvals shall be valid for two years from the date of final action unless a valid building permit has been issued and maintained for the purposes of construction.

PROJECT CONDITIONS:

(Hotel)

2. All 42 hotel units shall be offered on a transient basis (less than 30 days). None of the units shall contain kitchen facilities.
3. The project shall include one manager's unit, which may contain kitchen facilities.

4. No timeshare project, program, occupancy, use or ownership as defined in CMC Section 17.70 shall be permitted.

(Parking)

5. The use of the underground garage shall be limited to the parking and storing of vehicles and/or other non-commercial activities associated with the hotel.
6. The driveway slope shall be completely contained on private property and shall not exceed 10% in the first and last five feet, or 25% in the intervening distance.
7. As the total required parking includes employees and guests, employees shall not be prohibited from parking in the parking garage.

(Restaurant)

8. The restaurant shall be considered a "full line" restaurant for zoning purposes and shall be limited to 26 interior seats. Additional seating is authorized in the adjacent outdoor courtyard facing Fifth Avenue and the interior courtyard per the approved site plan. Restaurant hours shall be limited to 7:00 a.m. to 11:00 p.m. seven days a week. Room service shall be permitted without a restriction on hours.
9. The restaurant shall not operate as a "Drive-in, Formula Food or Fast Food" establishment as defined in CMC Section 17.70.
10. Except as provided in CMC Sections 8.68.070 and 8.68.080 no restaurant shall provide prepared food to its customers in CFC-processed food packaging or polystyrene foam food packaging, nor shall any restaurant purchase, obtain, keep, sell, distribute, provide to customers or otherwise use in its business any CFC-processed food packaging or polystyrene foam food packaging. The restaurant shall comply with all other requirements in CMC Section 8.68.
11. Substantially all foods from the standard menu shall be available for purchase during the hours that alcoholic beverages are being served except for the first hour and the last hour of each business day.
12. The business shall primarily be a restaurant with no more than 25 percent of the total number of seats located at a bar or in a separate bar room.
13. Customers shall be provided with individual menus while seated at a table or counter.
14. Food sold for consumption off the premises shall be incidental to the primary use. Such food shall be placed in covered containers or wrappings, and all housebrand

labeled food store goods such as vinegars, oils and salad dressings shall be prepackaged and sealed.

15. Adequate facilities shall be provided on the site for the closed storage of trash and garbage generated by the use. The on-site storage shall be designed so that the area can be cleaned and the refuse removed without creating a public nuisance and without being placed on the sidewalks or other public ways. If the method of cooking used will generate hot ashes, a storage facility and disposal method shall first be approved by the Fire Department.
16. At least one restroom shall be available for use by both sexes within, or conveniently adjacent to, the specific business premises and on the same property on which the use is located. This restroom shall comply with all provisions of the State Uniform Building and Plumbing Codes as to the required size, location and accessibility standards, and shall be available for use by both the employees and patrons of the business.
17. Maximum seating capacity shall not exceed the standards in the State Uniform Building and Fire Codes, the number of seats approved by the Planning Commission through public review, or the number of seats in the previous business, whichever is less. The seating capacity shall be posted on the premises.
18. The restaurant shall include the installation of a grease trap to be reviewed and approved by the Carmel Area Waste Water District (CAWD).

(Commercial Spaces)

19. The conference facilities shall be used by guests of the hotel only so as to limit additional traffic generating uses on-site.
20. All commercial spaces shall be established with permitted uses in the Service Commercial (SC) District as identified in CMC Section 17.14. Any proposed use that requires a conditional use permit shall require separate review and approval by the Planning Commission.

(Design)

21. The applicant shall submit in writing any proposed changes to the project plans as approved on 14 July 2010 and approved by the Planning Commission, prior to incorporating changes on the site. If the applicant changes the project without first obtaining approval, the applicant will be required to either: a) Submit the change in writing and cease all work on the project until either the Planning Commission or staff has approved the change; or b) Eliminate the change and submit the proposed change

in writing for review. The project will be reviewed for its compliance to the approved plans prior to final inspection approval.

22. The Carmel stone facade shall be installed in a broken course/random or similar masonry pattern. Setting the stones vertically on their face in a cobweb pattern shall not be permitted.
23. The floor of all recessed public entrances shall be differentiated from the adjoining sidewalk through contrasting stone, brick, tile or other pavers that do not extend beyond the property line.
24. All exterior paint shall be applied as a solid color, without texture or mottling. No faux finishes are permitted.
25. An exterior lighting plan shall be submitted as part of the building permit application that complies with the exterior lighting requirements of CMC Section 15.36.070.

(Construction)

26. All foundations within 15 feet of significant trees shall be excavated by hand. If any tree roots larger than two inches (2") are encountered during construction, the City Forester shall be contacted before cutting the roots. The City Forester may require the roots to be bridged or may authorize the roots to be cut. If roots larger than two inches (2") in diameter are cut without prior City Forester approval or any significant tree is endangered as a result of construction activity, the building permit will be suspended and all work stopped until an investigation by the City Forester has been completed. Twelve inches (12") of mulch shall be evenly spread inside the dripline of all trees prior to the issuance of a building permit.
27. The applicant shall apply for an encroachment permit for all encroachments into the public right-of-way.
28. The applicant shall install semipermeable or fully permeable pavers in the public rights-of-way along San Carlos Street, Fifth Avenue and Mission Street abutting the property. The applicant shall coordinate with the Department of Community Planning and Building regarding the proposed paving materials prior to installation.
29. Final construction documents shall include a plan for locating required utility meters, vaults and connections that do not use the public sidewalk. Location within the garage or driveway is preferred. All utilities serving the property shall be installed underground.

30. Final construction documents shall include a plan showing all rooftop equipment such as heating, cooling and ventilation systems. All equipment shall be designed so as not to be visibly prominent from the public right-of-way and adjoining structures.
 31. Final construction documents shall include a plan for garage ventilation that minimizes the conveyance of noise to adjacent properties and to the public right-of-way.
 32. Final construction documents shall include a drainage plan that addresses runoff during construction and post construction. All site and roof runoff shall be maintained on private property to the extent possible. The contractor(s) shall use Best Management Practices for protecting the environment during project construction. No oils, paints, solvents or other foreign liquids produced by or resulting from the use of construction vehicles, painting equipment, adhesives or any other source shall be allowed to enter the street, storm drain system, or soils. No runoff containing cement, plaster, plastic or other construction materials shall be allowed to contaminate soils or to enter the public right-of-ways.
 33. Prior to issuance of a building permit for demolition and excavation the owner or contractor shall meet with the Building Official, Public Safety Director and the Superintendent of Public Works to review the Truck Haul Route and all protocols (staging areas, vehicle size, time limits, clean-up, communication, etc.) for the project. Damage to any portion of the City roadway/street area including but not limited to the flow-line, curbs, sidewalks, gutters, storm drains, etc. shall be repaired by the contractor/owner of the project at the owner's expense. Repairs shall be coordinated with the Public Works Superintendent and subject to the specifications set forth for street repairs.
- (Landscaping)
34. All new landscaping shall be shown on a landscape plan and shall be submitted to the Department of Community Planning and Building and to the City Forester prior to the issuance of a building permit. The landscape plan will be reviewed for compliance with the landscaping standards contained in the Zoning Code, including the following requirements: 1) all new landscaping shall be 75% drought-tolerant; 2) landscaped areas shall be irrigated by a drip/sprinkler system set on a timer; and 3) the project shall meet the City's recommended tree density standards, unless otherwise approved by the City based on site conditions. The landscaping plan shall show where new trees will be planted and/or relocated.
 35. Wherever cuts are made in the ground near the roots of trees in the public right-of-way or on adjacent properties, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots

36. Trimming cuts shall conform to arboricultural standards and shall be made along the branch bark ridge under supervision of the City Forester or his designee.
37. Damage to any public tree during tree removal, demolition, excavation or construction shall be reported immediately by the person causing the damage, the responsible contractor or the property owner to the Director of Forest, Parks and Beach. The contractor and/or owner shall treat the tree for damage in the manner specified by the Director of Forest, Parks and Beach.
38. Wires, signs and other similar items shall not be attached to trees.

(Misc)

39. The project shall not exceed the existing documented water credits for the site. No debit from the City's water allocation is authorized.
40. The applicant shall pay the TAMC regional impact fee prior to issuance of a building permit.
41. The applicant shall record a Notice of Determination within five days of the final City action on the project with the Monterey County Clerk and pay all applicable fees.
42. Neighborhood courtesy. All construction activities shall be limited to construction hours specified by the City. The contractor shall establish a person to contact to receive neighborhood complains about noise or other construction activities. This contact person shall be responsible for determining the cause of the complaint, requiring reasonable measures to avoid recurrence and reporting all contacts and follow-up actions to the Building Official. Construction of the building and other improvements shall employ "good neighbor practices" including the provision of at least three days notice to property owners and building tenants within 200 feet for:
 - a) The date construction will start.
 - b) Periods when unusually loud noises will need to be generated such as when jack-hammers and other equipment are used.
 - c) The dates when any sidewalk closures will be needed and the provision of workable detours for pedestrians, as approved by the Building Official.
43. The applicant agrees, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any

project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

44. No landscape uplighting shall be permitted.
- *45. All buildings shall consist of a stucco exterior and the main walls of the project shall consist of a single color, or slight variations of a single color. The applicant shall present color renderings and/or other modifications to the City Council for final approval prior to the issuance of a building permit.
- *46. A five foot front setback is required for any structure within 40 feet of the northwest corner of the site.

*As modified by the City Council on 11/2/10.

REVISION	No.
PLAN/1/22	A
12/1/20	A
PLANNING REVIEW	A

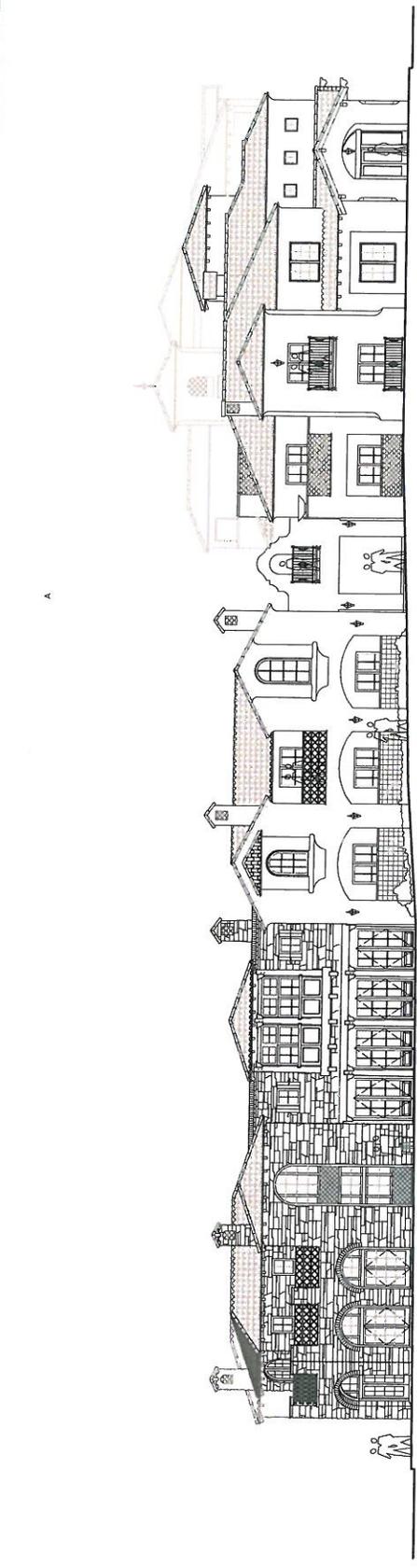
CONSULTANT:
ERIC MILLER ARCHITECTS, INC.

ERIC MILLER ARCHITECTS, INC.
157 GRAND PACIFIC GROVE, CA 93950
PH: (831) 327-0410 FAX: (831) 372-7840 WEB: www.ericmillerarchitects.com

COVER SHEET / TITLE SHEET
CARMEL SANDS LODGE
San Carlos St. & 9th Ave.
Carmel, CA 93921

DATE: 10/24/20
SCALE: NTS
DRAWN: GSS
JOB NUMBER: 09.12

A1
SHEET OF



CARMEL SANDS LODGE

PRELIMINARY PERMIT SUBMITTAL

INDEX OF DRAWINGS

OWNER:	Fornice Investment Company 604 Lighthouse Avenue Suite 200 Ft. Lauderdale, FL 33304
ARCHITECT:	Eric Miller Architect, Inc. 157 Grand Ave., Suite 106 Pacific Grove, CA 93950
PROPERTY ADDRESS:	San Carlos St. & 9th Avenue Carmel-by-the-Sea, CA 93921
APN:	010-31-025 & 026
PARCEL SIZE:	Lots 10 & 12 through 20, Block 50 32,897 Square Feet 1.78 Acres
ZONING:	Service Commercial - SC
ALLOWABLE FAR:	13.9% 44.44 GSF
ALLOWABLE FAR W/ INTRA-BLOCK WALKWAY:	14.5% 47.846 GSF
PROJECT FAR:	118% 39,077 GSF
ALLOWED BUILDING COVERAGE:	95% 31,147 GSF
PROJECT BUILDING COVERAGE:	76% 25,022 GSF

GENERAL NOTES

1. Hotel Building and Garage Building required to be fully sprinklered. CBC 703.2.7, Hotel, CBC 903.2.7, Garage.
2. Building construction types and analyses based on CBC 109.2 "Special Provisions".
3. Four ADA rooms, one of each type, within hotel are provided per CBC 11B-3, ADAAG 9.1.2.
4. All ADA showers in guestrooms and Spa are provided with 60" clear interior stalls.
5. All openings through the 2-hr slab are required to be 2-hr rated 715.4, per CBC 509.2. The exception, under CBC 509.2(D), Table 715.4, permits the enclosure below the slab to be 3-hr, and above the slab to be 1-hr with 1-hr openings, protected.
6. Exterior wall opening protection and maximum area of openings in exterior wall based on proximity to property line to be at discretion of the Architect in accordance with CBC Table 602.7B, Table 704.4.
7. All Life Safety compliance to be governed by 2007 California Building Code and by the Americans with Disabilities Act Guidelines, 2008.
8. Loading zone accessible parking is provided, in compliance with CBC 113B-2, ADAAG 5.6.6, at garage level disabled van parking. Accessible van parking with 7' x 7' zero side-slip and 2' disabled entry, with 2' x 2' zero side-slip and 2' disabled entry to the main hotel lobby elevator. Clear height is 8'-2" min.

BUILDING SIZE CALCULATION

BASEMENT GARAGE	16,888 SF
COURT SERVICE LEVEL	3,091 SF
BLOG 6	6,546 SF
SERVICE LEVEL SUBTOTAL	6,546 SF
1ST FLOOR	
BLOG 1	3,563 SF
BLOG 2	4,844 SF
BLOG 3	2,458 SF
BLOG 4	3,775 SF
BLOG 5	2,228 SF
BLOG 6	2,228 SF
BLOG 7	2,228 SF
1ST FLOOR SUBTOTAL	18,487 SF
2ND FLOOR	
BLOG 1	4,453 SF
BLOG 2	4,258 SF
BLOG 3	2,373 SF
BLOG 4	2,131 SF
BLOG 5	2,228 SF
BLOG 6	2,228 SF
2ND FLOOR SUBTOTAL	18,473 SF
ALL FLOORS	
BLOG 1	7,240 SF
BLOG 2	9,451 SF
BLOG 3	4,809 SF
BLOG 4	5,906 SF
BLOG 5	9,134 SF
BLOG 6	7,228 SF
BLOG 7	2,228 SF
ALL FLOOR SUBTOTAL	49,989 SF
BASEMENT GARAGE	16,888 SF
PROJECT TOTAL	66,877 SF

42-ROOM BOUTIQUE HOTEL

Unit Count & Mix Summary	QTY
COURT SERVICE LEVEL	2
LEVEL 1:	
ROOMS 101-111	11
LEVEL 2:	
ROOMS 201-229	29
TOTAL PROJECT ROOMS:	42
PARKING PROVIDED PER SEGMENT	
STANDARD STALLS:	40
COMPACT STALLS:	21
DISABLED STALLS (standard):	2
STANDARD VALET STALLS (6):	0
COMPACT VALET STALLS:	0
TOTAL PROVIDED PARKING:	64
CITY PARKING STANDARDS:	
STANDARD SPACES:	9' X 19' W/ 24' BACKUP
COMPACT SPACES:	5' X 11' W/ 15' BACKUP
COMPACT RATIO:	50%
RATIO OF COMPACT TO STANDARD:	49% TO 51%
REQUIRED PARKING @ 42 ROOMS:	42
GUEST ROOMS @ 1 STALL/ROOM:	3
TAPAS LOUNGE: 1279 GSF @ 600 GSF/OCC:	3
EMPLOYEES LOUNGE: 232 GSF @ 600 GSF/OCC:	1
MELTING ROOMS: 124 GSF @ 600 GSF/OCC:	1
METAL SHOPS: 322 GSF @ 600 GSF/OCC:	1
TOTAL REQUIRED PARKING:	57

INDEX OF DRAWINGS

ARCHITECTURAL DRAWINGS
A1 COVER/DATA SHEET
A2 SITE PLAN
A7 EXTERIOR ELEVATIONS
A8 EXTERIOR ELEVATIONS
A9 COURTYARD ELEVATIONS
A10 DOOR SCHEDULE
A11 WINDOW SCHEDULE
LANDSCAPE DRAWINGS
L-1 MATERIAL'S PLAN
L-2 MATERIAL'S IMAGES
L-3 LIGHTING PLAN
L-4 SITE PLAN
ELECTRICAL DRAWINGS
EE-1 SYMBOLS AND ABBREVIATIONS
EE-2 COURTSIDE LEVEL LIGHTING PLAN
EE-3 FIRST FLOOR LIGHTING PLAN
EE-4 SECOND FLOOR LIGHTING PLAN

DATE: 10/24/08
 SCALE: 3/32"=1'-0"
 DRAWN: 5655
 JOB NUMBER: 08112

166 NAME: CARMEL SANDS LODGE
 500 CARLOS ST. & MISSION ST. 4.5TH AVE.
 Carmel-by-the-Sea, CA 93923

ARCHITECT: ERIC MILLER ARCHITECTS, INC.
 157 GRAND 541015 PACIFIC GROVE, CA 93950
 PHONE (831) 772-0410 • FAX (831) 772-7840 • WEB: www.ericmillerarch.com

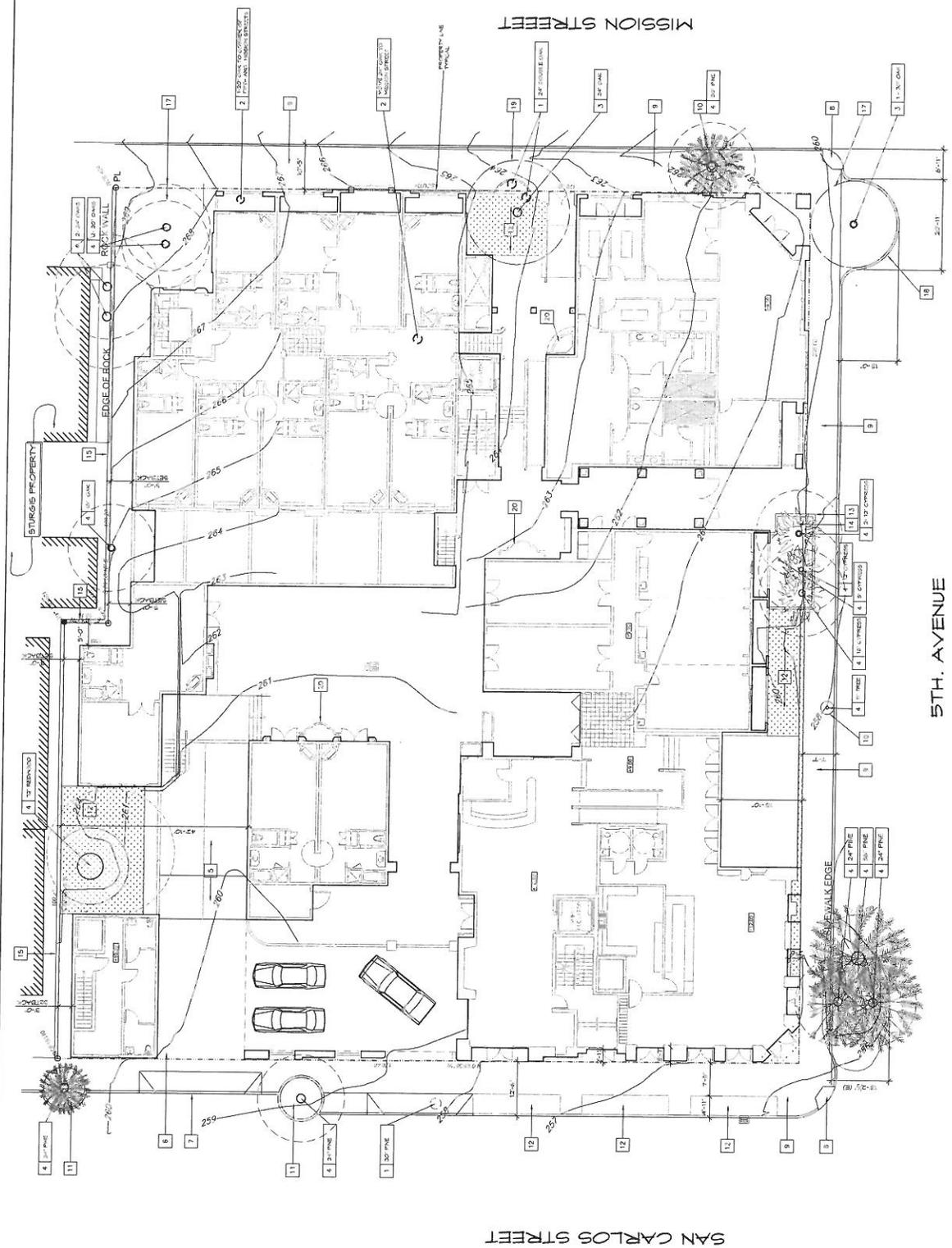
CONSULTANT:

- SHEET NOTES:**
1. ALL ITEMS ARE NEW UNLESS NOTED OTHERWISE.
 2. SEE LANDSCAPE CONTRACTORS FOR ALL MATERIAL INFORMATION NOT NOTED.

REVISED NOTES:

1. REMOVE TREE
2. TRANSPLANT 12" DB HEMLOCK
3. TRANSPLANT TREE IN NEW LOCATION
4. EXISTING TREE TO REMAIN
5. CONCRETE DECK DRAIN & RAMP WITH 2" SLOPE TO STREET
6. CONCRETE TRANSITION FOR CITY STANDARDS
7. CONCRETE JARD COUT PER CITY STANDARDS
8. HAND-CAP CONCRETE RAMP
9. PERFORATED CONCRETE PAVEMENT
10. 4" DIA. TREE WELLS PER CITY STANDARDS
11. 4" DIA. TREE WELLS PER CITY STANDARDS
12. LANDSCAPE AREA
13. 12" HEM AND PINE SPACED PLANTER
14. 12" HEM AND PINE SPACED PLANTER
15. STONE WALL 8" HIGH MAX. ON TERRACE. SEE SHEET A1 FOR NORTH ELEVATION
16. PLANTER
17. 30" ROOT CIRCLE
18. 8" HEM LOGS, GRASS AND PLANTER
19. 24" ROOT CIRCLE
20. FOUNDATIONSE LANDSCAPE PLANS FOR ADDITIONAL TERRACE

TREE SUMMARY:
 TO BE REMOVED:
 1 - 24" DB HEMLOCK
 1 - 30" DB PINE
 TO REMAIN:
 1 - 12" DB HEMLOCK
 1 - 30" DB PINE
 2 TOTAL



5TH AVENUE

N
 SITE PLAN
 SCALE: 3/32"=1'-0"

ALL USE OF THESE DRAWINGS AND SPECIFICATIONS IS SUBJECT TO THE TERMS AND CONDITIONS OF THE CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CARMEL-BY-THE-SEA. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CARMEL-BY-THE-SEA. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF CARMEL-BY-THE-SEA.

1. ALL ITEMS ARE OPTION.

- KEYED NOTES:**
- 1 FIBER REINFORCED CONCRETE
 - 2 1/2" PEACE SPANISH TILE ROOFING
 - 3 SPANISH ARCADE GALLERY WITH GLASS
 - 4 SPANISH TILES
 - 5 STEEL COILS, WINDOWS AND STURDENTS
 - 6 FIBER CONCRETE AND WINDOWS
 - 7 FIBER TRUSS OF ARCH COILS
 - 8 ENGRAVED FIBER TRUSS ENDS
 - 9 WOOD PANEL BEAMS AND COLUMNS

- 10 FIBER BUTTERS
- 11 FIBER WINDOW
- 12 FIBER DOOR
- 13 METAL SHITE
- 14 SPANISH WOOD
- 15 SPANISH WOOD
- 16 SPANISH WOOD
- 17 SPANISH WOOD
- 18 SPANISH WOOD

- 19 STUCCO
- 20 FIBER PORTICO
- 21 ORNAMENTAL LANTERN
- 22 FIBER FIBRE
- 23 FIBER FIBRE
- 24 FIBER FIBRE
- 25 FIBER FIBRE
- 26 FIBER FIBRE
- 27 FIBER FIBRE

- 28 FIBER FIBRE
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- 33 FIBER FIBRE
- 34 FIBER FIBRE
- 35 FIBER FIBRE

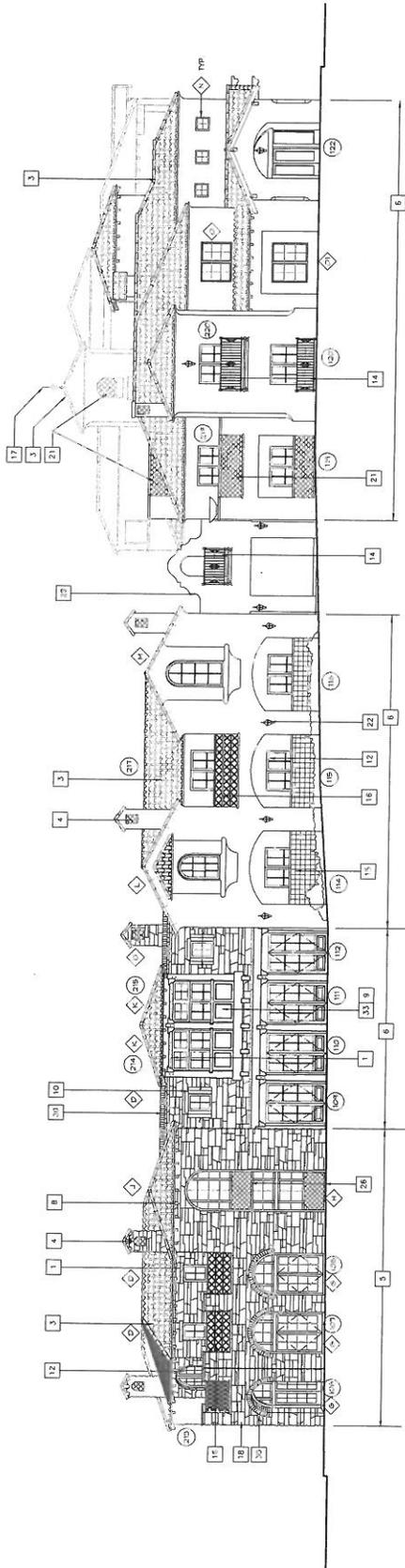
- 36 STUCCO LEAFH & WIDE
- 37 FIBER FIBRE
- 38 FIBER FIBRE
- 39 FIBER FIBRE
- 40 FIBER FIBRE

REVISION	No.
APPROVED FOR CONSTRUCTION	1
ISSUE FOR PERMIT	2
ISSUE FOR PERMIT	3
ISSUE FOR PERMIT	4
ISSUE FOR PERMIT	5
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ISSUE FOR PERMIT	8
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ISSUE FOR PERMIT	40

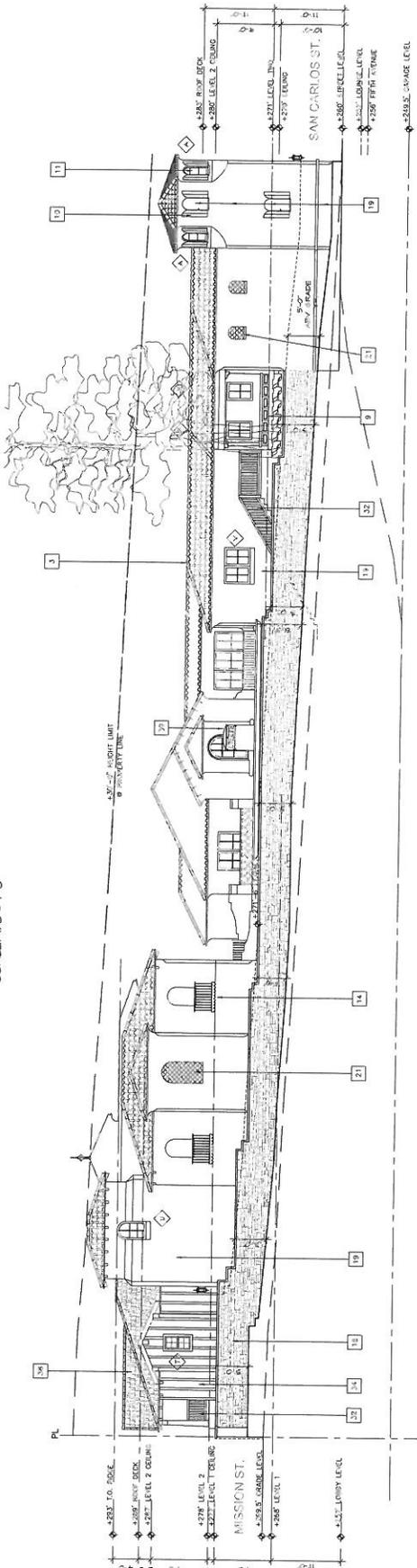
CONSULTANTS:

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EXTERIOR ELEVATIONS
CARMEL SANDS LODGE
 280 MISSION ST. PACIFIC GROVE, CA 93950
 DATE: 10/24/03
 SCALE: 1/8" = 1'-0"
 DRAWN: PLS
 JOB NUMBER: 03112
A7
 SHEET OF

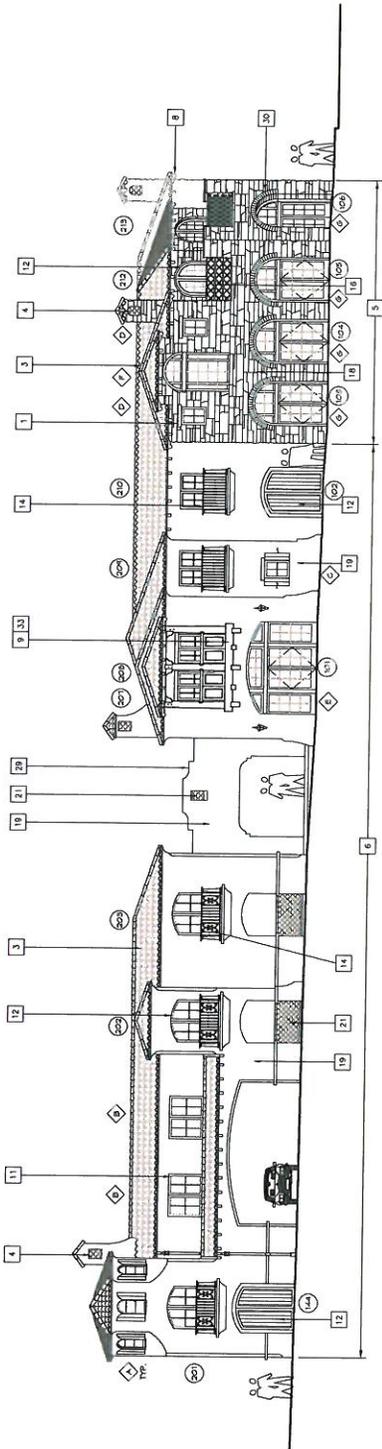


SOUTH ELEVATION (FIFTH AVENUE)
 SCALE: 1/8" = 1'-0"

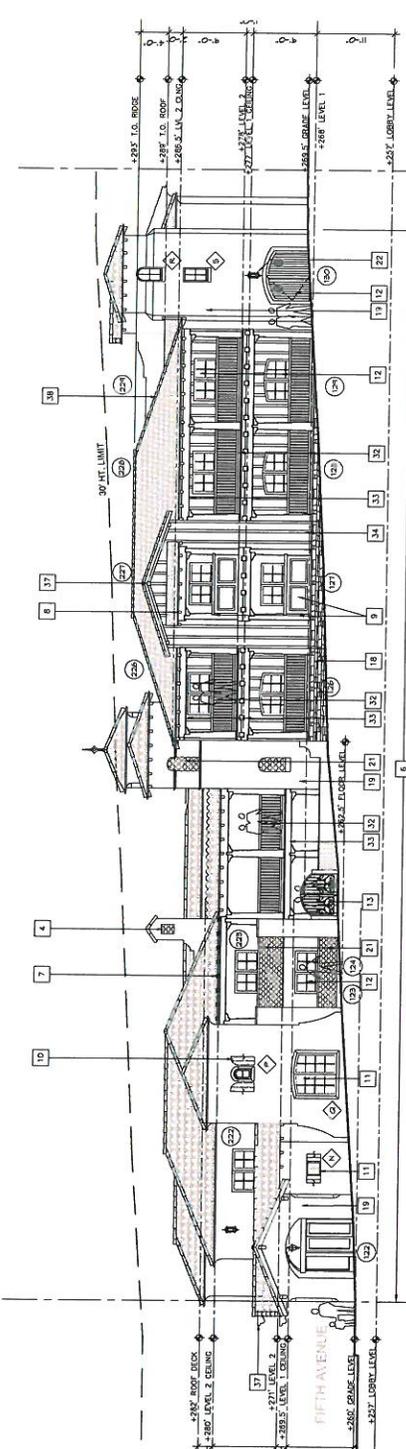


NORTH ELEVATION
 SCALE: 1/8" = 1'-0"

WEST ELEVATION (SAN CARLOS ST.)
SCALE: 1/8" = 1'-0"



EAST ELEVATION (MISSION ST.)
SCALE: 1/8" = 1'-0"



REVISION	No.
PLAN 1/21/08	A
12/29/08	A
PLANNING REVIEW	A
PLANNING REVIEW	A
JULY 2010	A
PLANNING REVIEW	A

CONSULTANT:

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EXTERIOR ELEVATIONS
CARMEL SANDS LODGE
 JOB NAME
 DATE: 10/24/08
 SCALE: 1/8" = 1'-0"
 DRAWN: PLS
 JOB NUMBER: 08112

A8
SHEET OF

- KEYED NOTES:**
- WOOD HEADER
 - NOT USED
 - 3 PIECE SPANISH TILE ROOFING
 - SPANISH ARABESQUE GALLEY FRONT-GIT
 - SPANISH TILES
 - STAIRCASES
 - STEEL DOORS AND WINDOWS
 - WOOD DOORS AND WINDOWS
 - WOOD TRUSSES OF ROOF COLLARS
 - EXPOSED WOOD BUTTER DICES
 - WOOD PANEL BEAMS AND COLLARS

- STUCCO
- WOOD POST/COLUMN
- SPANISH CLAY TILE INFILL
- ORNAMENTAL LANTERN
- WATER FEATURE
- PROGRIOT IRON VENT
- ORNAMENTAL IRON DOOR IV GLASS
- CERAMIC TILE
- MINNIS WYRIS/ROUGHT IRON SUPPORT BRACKETS

- WOOD RAILINGS
- TOP OF STUCCO PARAPET
- ANTIQUE BRASS ARCH
- FOUNTAIN
- WOOD RAILINGS
- HEAVY-THICKER WOOD BALCONY
- BOARD AND BATT GIBBS/STITCHES SENS
- EXISTING GRACE

- STUCCO LEADER & FACE
- WOOD OUTLETS
- SUITE ROOFING
- BRONZE SPARK ARRESTOR

1. ALL ITEMS ARE 150% LVL

Janet Reimers

City of Carmel-by-the-Sea

OCT 28 2015

Received

October 26, 2015

Subject: DR 14-38/UP 14-20

Dear Mayor Burnett and Council members:

You will be discussing the Sands Hotel project at one of your November meetings. Unfortunately, I will be unable to attend. For that reason, I am writing to you about that project.

Please understand that, although I am a member of the Carmel by the Sea Planning Commission, the opinions I share are my own and do not represent any other members of the commission.

Along with opinion, I will be referencing the Carmel by the Sea General Plan.

When the Sands project first came to the Planning Commission several suggestions and changes of building design took place. Then, one of my primary concerns was the design of the part of the building that faces San Carlos Street. As an important entrance to Carmel, I felt that there was not enough setback or air space. There were several meetings discussing the project, but, after the first couple of meetings the only changes that were made by the applicant related to the facade. Reducing elevation or increasing setbacks on San Carlos were not carried out.

It was not until the plan was before the City Council, on appeal, that it was determined that, in fact, the part of the building at the Northwest edge was required to have a significant setback. Fortunately, that is now one of the conditions for the project. However, it has not been redrawn.

The fact that there is a required setback reflects the intent of the General Plan. The zone where the new hotel will be built is not in the core commercial zone, but is in the area surrounding the core commercial and intended, according to the General Plan, to be a 'buffer' zone. In that zone the General Plan, page 1-11 states, **"Surrounding the core area of the commercial district is a less intensively developed buffer area dominated by motels and apartments. This area forms a transition from the busy central core to the relative quiet of the surrounding residential neighborhoods.**

Since this buffer area is not retail-oriented and most sites are developed to provide a setting for permanent and transient residential uses, the buildings tend to have greater setbacks, more open space, more landscaping and more parking. These characteristics are appropriate for the land uses present in a buffer district. Design regulations for the core and buffer areas should support these differences. (LUP)”

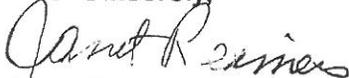
It is extremely important that great care is taken in deciding the appropriateness of the project as it now stands. The Sands design will be the first of what might become a trend in remodeling the older Hotels/Inns in Carmel by the Sea. We must ask if we want the 'buffer' areas of Carmel to be built to the edge of the sidewalk in a way that is counter to the intent of the General Plan?

Not at all do I want to suggest that the owners of this property do anything that will have a significant down side to their development. Slight changes in the elevation or setback on San Carlos will go a long way to improving this project without any loss of business or longterm loss to the owners. Alternately, careful evaluation and redesign might significantly improve it and make it an even more inviting inn.

We might use the La Playa Hotel as a visual image as we consider building in the 'buffer' areas. The setbacks and gardens there are much greater than could be expected in the Sands project. However, some small measure of that look as it faces Camino Real speaks more to the Carmel by the Sea that we know and love....

I urge careful consideration to this plan with the recognition that it might set the standard for any additional redevelopment in the 'buffer' areas of Carmel by the Sea.

Most Sincerely,



Janet Reimers

Cc: Doug Schmitz
Marc Wiener
Don Goodhue

Carmel by the Sea, CA 93921

Good morning, Ian,

Regarding your comments re- Mediterranean-style architecture, etc.:

1) Isn't it true that the older Mediterranean-style buildings you mentioned, such as Las Ramblas, are also interpretations/replication of an already established style? One could argue that the Mission is Mediterranean style, right? And Las Ramblas is a much younger building than that.

2) Is it possible to design buildings in the progressive manner you described Wednesday? If no design can be reflective of an historical style, whether craftsman or mediterranean or even mid-century modern, then what sort of design would be acceptable? Are there any current designs that are, in fact, unique? Or new? It seems to me that almost every design is reflective in one way or another of an established style, especially these days.

I understand your desire for new designs not to "cheapen" the more historical buildings in town, but if the city denies every design that's based on an existing style, nothing will ever be approved.

I'm just trying to get to the logical application of the philosophy you espoused Wednesday.

Thanks for the help,
Mary

Hi Mary,

Thank you for your coverage of the Carmel Sands consideration, sorry I haven't replied to your questions until now!

I'll start with your second question first... As you point out, architectural expression often borrows from the styles that have gone before. The question is how much borrowing can occur before it stops being an influence on a design, and starts to be a copy of it. When this happens, it risks making the original buildings in that style feel routine in our town, and less special. As the "Conservation of Design" section of [Carmel-by-the-Sea's Commercial Design Guidelines](#) states: "New buildings should not imitate styles of the past but strive to achieve compatibility with the old." (III.A.2. Page 3.)

Throughout the years, inspired property owners have commissioned gifted architects and skilled builders to make the special buildings that enrich our village's architectural heritage. Here are a few of the more recent ones listed below. In my opinion, these are examples that may be influenced in some degree by past styles, but aren't copies of them.

- Eric Miller, the architect for Carmel Sands, recently created an exciting design for a new home on Scenic Road. The Jarve Residence, being built now by D.L. Jones Construction, tips its hat to some of the architectural traditions of our town. But, taken as a whole, it is a unique expression.
- ["Carmel Passive House"](#) designed by Justin Pauly and built by Carmel Building and Design, won Fine Homebuilding Magazine's "Best New Home of the Year" accolade. This is a house that has taken traditional forms as a leaping-off point, but applied and finished them in a way that makes this a singular home in town.
- ["Canopy House"](#) on Ridgewood Road, designed by J Bohn Associates and built by Groza Construction, feels like a contemporary twist on Carmel-by-the-Sea's cherished Comstock Fairy Tale cottages, but the result is an original expression.
- Kathy Bang's house on Scenic Road, designed by Dirk Denison and built by Thomas H. George Construction, was featured in [Architectural Digest](#); it too is special in town.
- [John Thodos'](#) work is unique anywhere. We're lucky he lived and designed houses here, including his own on Torres.

Now, to answer your first question: Yes. The California Missions and the Spanish-style buildings built in Carmel-by-the-Sea in the 1920s and 1930s have common aesthetic roots, and therefore have some similarities. But, interestingly, for a town fortunate enough to have one of the finest of the California Missions, Carmel-by-the-Sea has no high-profile Mission Revival buildings. The special beauty of the Carmel Mission is more pronounced for that absence.

The inspiration for downtown Carmel-by-the-Sea's original Spanish-style buildings is not necessarily from the Carmel Mission. Buildings of this type were constructed all over the Monterey Peninsula, California as a whole, the Southwest and Florida during the time they were built here. This explosion in Spanish-influenced architecture is often traced in part to the Panama-California Exposition in San Diego 1915; it introduced the possibilities of this aesthetic to many, and moved architects to look directly to Spain for inspiration. Most of downtown Carmel-by-the-Sea's Spanish-style buildings were constructed in the ensuing 20 years, mainly in the 1920s.

But to address the copying-versus-influencing issue, I don't know how closely these Spanish-style buildings mimicked designs in Spain. But they were original to our town when they were made, and represent a specific period of time in Carmel-by-the-Sea's past. They represent a unique layer in our town's history which should not be watered-down with 21st century buildings that imitate their style.

Thank you again Mary. Please let me know if you have any follow-up questions? I look forward to continuing the discussion with you.

--lan



CITY OF CARMEL-BY-THE-SEA

AGENDA BILL

AB 1055
November 3, 2015
Public Hearing

TO: Honorable Mayor and Members of the City Council
FROM: Douglas J. Schmitz, City Administrator
SUBJECT: First reading of an Ordinance amending Section 2.52.385, Appeals Hearing Process, of the Personnel Ordinance

AMOUNT OF EXPENDITURE	\$ 0
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUIRED	\$ 0

RECOMMENDATION

Waive reading in full and introduce on first reading an Ordinance amending Section 2.52.385, Appeals Hearing Process, of the Personnel Ordinance.

SUMMARY

The City's Personnel Ordinance was adopted in 1987, making it nearly thirty (30) years old. Since its adoption, best personnel practices, case law and legislation have made parts of the ordinance out of date. The development of an entirely new ordinance will be one of the top assignments given to the new Human Resource Manager once that individual is hired and commences work with the City.

There is one section of the existing ordinance which needs more immediate attention. The directives in this section were questioned in a June 2014 personnel hearing and was the subject of numerous discussions during the recent labor negotiations with LIUNA.

Section 2.52.385 assigns the responsibility of holding an appeals hearing to the City Administrator. In Section 2.52.350, Notice of Intent to Discipline---Defined, the commencement of disciplinary action is a written notice which shall be prepared "...at the direction of the City Administrator in consultation with the employee's department manager."

The proposed ordinance inserts an independent third party, selected from a list developed by the state Public Employee Relations Board, as the Hearings Officer. This individual would conduct the hearing and then render a recommendation to the City Administrator. The recommended procedure is consistent with current law and widespread practice in public agencies.

PRIOR CITY COUNCIL ACTION

Council adopted the City's Personnel ordinance in 1987.

ATTACHMENTS

1. Draft Ordinance Amending Section 2.52.385, Appeals Hearing Process, of the Personnel Ordinance
2. Current Ordinance Section 2.52.385

APPROVED:



Douglas J. Schmitz, City Administrator

Date:

29 Oct. 15

ORDINANCE NO. __

AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 2.52.385 APPEALS HEARING PROCESS OF CHAPTER 2.52 OF TITLE 2 ENTITLED PERSONNEL SYSTEM OF THE CARMEL-BY-THE-SEA MUNICIPAL CODE, INSERTING AN INDEPENDENT HEARING OFFICER INTO THE APPEALS HEARING PROCESS.

Recitals/Findings

WHEREAS, on January 6, 1987, the City Council adopted an ordinance repealing Chapter 2.52 of Title 2 of the Carmel-by-the-Sea Municipal Code entitled Personnel System, and adopted a new Chapter 2.52 for Title 2 of the Carmel-by-the-Sea Municipal Code, entitled Personnel System; and

WHEREAS, developments in best personnel practices, case law, and legislation have made parts of the ordinance out of date; and

WHEREAS, the directive in section 2.52.385 Appeals Hearing Process has been under discussion during labor negotiations with LIUNA; and

WHEREAS, the City Council wishes to amend Municipal Code section 2.52.385 Appeals Hearing Process of Chapter 2.52 of Title 2 entitled Personnel System to insert an independent hearing officer into the appeals hearing process.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CARMEL-BY-THE-SEA DO ORDAIN AS FOLLOWS:

Section One. Carmel-by-the-Sea Municipal Code Section 2.52.385 is hereby amended to read as follows:

2.52.385 Appeals Hearing Process

The appeal shall be heard by an independent hearing officer – selected from a “strike list” requested by the employee and/or Union and the City from the Public Employee Relations Board. The independent hearing officer will hear all evidence, review all documents and receive oral testimony. The decision of the independent hearing officer shall be advisory to the City Administrator.

Section 2. The People of Carmel-by-the-Sea find that all Recitals/Findings are true and correct and are incorporated herein by reference.

Section 3. Severability

A. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

B. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 4. Publication The City Clerk is directed to publish this Ordinance in the manner and in the time required by law.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 3rd day of November, 2015, by the following roll call vote:

AYES:

NOES:

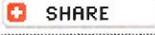
ABSENT:

ATTEST:

APPROVED:

ASHLEE WRIGHT, City Clerk

JASON BURNETT, Mayor

2.52.385 Appeals Hearing Process. 

The City Administrator will hear all evidence, review all documents and receive oral testimony. If the City Administrator upholds the employee's appeal, the charges shall be dropped, the employee reinstated, and a record of the City Administrator's decision placed in the employee's personnel file. If the City Administrator denies the employee's appeal, the order of disciplinary action will be signed and served. The decision of the City Administrator is final and not subject to appeal. (Ord. 87-1 § 2, 1987).