



Staff Report

File #: REPORT 18-0643, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of October 23, 2018

**TA 18-2 - TEXT AMENDMENTS TO THE HERMOSA BEACH
MUNICIPAL CODE TITLE 17 REGARDING DEFINITIONS AND
STANDARDS FOR LIVE ENTERTAINMENT AND LIMITED LIVE
ENTERTAINMENT FOR THE PURPOSE OF ADDING A LOW IMPACT
ENTERTAINMENT OPTION AS AN ACCESSORY USE TO BUSINESS
IN COMMERCIAL ZONES, AND DETERMINATION THAT THE
PROJECT IS CATEGORICALLY EXEMPT FROM THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
(Community Development Director Ken Robertson)**

Recommended Action:

The Planning Commission recommends that the City Council:

1. Introduce the attached ordinance regarding definitions and standards for Live Entertainment and Limited Live Entertainment for the purpose of adding a low impact entertainment option as an accessory use to business in commercial zones, and determine the project is exempt from the California Environmental Quality Act; and
2. Consider and provide direction regarding permit application fees for Limited Live Entertainment.

Background:

At its meetings of June 25, August 21, and September 18, 2018, the Planning Commission considered the proposed amendment and voted 4-1 to recommend City Council approval of the proposed text amendments, with some minor modifications.

The initial request for a Short-Term Entertainment Permit (STEP) was proposed by the local community and business advocacy group, THRIVE Hermosa. The stated goals were for a simple, inexpensive permit to allow low impact, family-friendly entertainment in order to increase business during off-peak hours in all commercial districts. The proposed Zone Text Amendment allowing a Limited Live Entertainment Permit would offer a simpler, cost-effective alternative to a new or amended Conditional Use Permit (CUP).

The proposed Limited Live Entertainment Permit addresses current demand for this type of activity which, since currently not permitted, has occasionally become an issue curtailed by Code Enforcement.

Planning Commission Review

At the June 25, 2018 Planning Commission meeting, staff presented a report that summarized a proposal prepared by THRIVE Hermosa that would allow local commercial businesses to offer low impact entertainment options such as games, acoustic music and open mic during “off-peak hours” without requiring the business operators to have to go through a time-consuming and expensive approval process such as the existing Conditional Use Permit (CUP) process. Representatives of THRIVE Hermosa addressed the Commission and answered several questions by the Planning Commission.

A brief analysis of the current code requirements for the offering of “Live Entertainment” as amended and clarified in the Zoning Code in 2013 was provided. Additionally, staff suggested a possible revision to the current definition and the addition of a new definition for “Entertainment, Limited Live” that would incorporate into the City’s code the types of uses proposed.

Several ideas and issues were raised by the Planning Commission during the discussion, including that “Entertainment, Limited Live” be clearly defined; address noise and other possible negative impacts on surrounding properties; the application process to include descriptions of the proposed types of activity, days and hours and other information; the permit should be inexpensive and processed at staff level; permit should include conditions to address potential impacts of proposed activities; and businesses should be able to advertise permitted entertainment activities.

At the conclusion of the meeting, the Planning Commission directed staff to present a conceptual overview to allow a short term, low impact entertainment option for businesses through an easy, cost effective permit process.

At the August 21, 2018 Planning Commission meeting, staff presented possible amendments to the Zoning Code that would allow Limited Live Entertainment Permits for local businesses seeking to add low impact entertainment.

The Planning Commission conceptually agreed with a proposed new definition of “Entertainment, Limited Live” as an accessory use to be a simple, low cost permit with standards and conditions limiting number of performers, defined hours and noise minimizing criteria, through a one-year permit approval and annual renewal process.

At the conclusion of the meeting, the Planning Commission directed staff to set a Public Hearing to consider a proposed Zone Text Amendment for a new Limited Live Entertainment Permit for consideration of approval and recommendation to the City Council.

At the September 18, 2018 Planning Commission meeting, staff presented a draft ordinance based on previous feedback. Staff also recommended, rather than a permit which must be renewed annually, that a one-time issuance permit system be implemented as a more business-friendly and simpler process. Staff noted that annual permit renewal requirements are time-consuming and may result in expired permits continuing operation, thereby requiring Code Enforcement activity. Following discussion, the Commission approved with a 4-1 vote (Commissioner Saemann dissenting) to recommend the Council adopt the text amendments as presented by staff, with a modification that any permit will expire after two years from the effective date of the new ordinance, and further directed staff that this ordinance be reviewed by the Planning Commission 18 months after

implementation so that the Commission may make a recommendation on whether to continue, make changes, or terminate the program, which may include extension of the permit expiration timeframe noted above.

The Commission also discussed the cost of permit application fees, noting that based on the amount of staff time anticipated to process the application, a fee of \$513 would be needed in order to cover the City's processing costs. Though the Commission did not make a formal recommendation due to it being outside the Commission's purview, the consensus view was that a lower, subsidized fee should be considered.

Analysis:

A new permit known as a Limited Live Entertainment Permit is proposed through the Administrative Permit process under Chapter 17.42 General Provisions, Conditions and Exceptional Use; similar to a Temporary Minor Special Event approval. The new Limited Live Entertainment Permit would necessitate Zoning Code text amendments under Chapter 17.04 Definitions, Chapter 17.26.030 Land Use Regulations Matrix and Chapter 17.42 General Provisions, Conditions and Exceptional Uses.

The Limited Live Entertainment Permit is proposed in the C-1, C-2 and C-3 commercial zones; it would not apply to non-commercial zones, including the M-1 Light Manufacturing zone.

Limited live entertainment is proposed as an accessory use to the main business use as defined in Chapter 17.04 of the Zoning Code as the following:

"Accessory" means a building, part of a building or structure or use which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot.

An application for a Limited Live Entertainment Permit will be required as an Administrative Permit described in Chapter 17.55.030 of the Zoning Code, including the requirement for a floor plan and other plans to demonstrate compliance with the approved standards.

It is anticipated that the staff time needed to process an application for a Limited Live Entertainment Permit would be approximately the same as that of a Temporary Minor Special Event Permit. Based on the amount of staff time anticipated to process the application, a fee of \$513 would be needed in order to cover the City's processing costs. The City Council would need to adopt a resolution establishing the fee for the Limited Live Entertainment Permit, and at that time the Council may opt to approve a lower subsidized fee, as was done with the A-Frame sign permit fee. Staff requests Council direction on the permit fees, and once that is provided, staff will report back with the associated fee resolution for Council adoption.

Rather than a permit which must be renewed annually, the current proposal is for a permit which will expire no later than two years following the effective date of this ordinance. The Planning Commission has directed that staff bring this issue back for review to the Commission 18 months after the program is implemented, at which time the Commission would make a recommendation whether to continue, modify, or terminate the program. It should be noted that, according to Code described below, the permit will expire if it is not exercised in any 12-month period or if the permitted business ceases to exist. In such case, a new permit application would be required. The revocation procedures proposed are described in Chapter 17.55.070 of the Zoning Code relating to

Administrative Permits as the following:

Any administrative permit may be revoked by the Director or the decision-making body for any of the following causes:

A. That any term or condition has not been complied with;

B. That the property for which the administrative permit has been granted is used or maintained in violation of any statute, law, regulation or condition of approval;

C. That the use for which the administrative permit was granted has not been exercised for at least twelve (12) consecutive months, or has ceased to exist, or has been abandoned; or

D. That the use for which the administrative permit was granted has been so exercised as to be detrimental to the public health or safety or so as to constitute a nuisance.

Appeals for permit denial or revocation are described in Chapter 17.55.050 of the Zoning Code relating to Administrative Permits as the following:

A. Decisions of the Community Development Director may be appealed to the Planning Commission by filing an appeal within fifteen (15) days of the Director's decision, provided that upon affixing the signature of the applicant to an issued permit, the permit shall become effective and the right to appeal shall be waived. Appeals shall be filed in writing with the Community Development Department accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing, unless the applicant agrees to waive the requirement so that the matter may be heard at an earlier time. The Commission's review shall be limited to a determination of whether the application complies with the requirements of the governing section. The filing of an appeal within such time shall stay the effective date of the decision until the Commission has acted on the appeal. The Commission's decision shall be final and conclusive, unless the governing section specifically provides for a direct or subsequent appeal to the City Council.

B. Appeals to the City Council shall be filed with the City Clerk accompanied by a fee set by resolution of the City Council. The filing of an appeal within ten (10) days shall stay the effective date of the decision until the Council has acted on the appeal as hereinafter set forth in this title. Upon receipt of a written appeal, the Planning Commission shall transmit to the Council the Planning Commission's complete record of the case. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing, unless the applicant agrees to waive the requirement so that the matter may be heard at an earlier time. The Council shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed unless requested by the applicant. The Council's review shall be limited to a determination of whether the application complies with the requirements of the governing section. The Council shall announce its findings within forty (40) calendar days of the hearing, unless good cause is found for an extension, and the decision shall be mailed to the applicant. The Council's decision shall be final and conclusive.

Prize limitations are proposed to be as established under Chapter 5.12.100 of the Business Licenses and Regulations of the City's Municipal Code related to Bingo, as follows:

The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars (\$250.00) in cash or kind, or both, for any separate game which is held, and the total value of all prizes in cash or kind or both for any one day shall not exceed one thousand two hundred fifty dollars (\$1,250.00).

STANDARDS AND LIMITATIONS

Based on feedback from the Planning Commission and recommendations from the business community, the following standards and limitations are proposed for this new use in the commercial zones through a Limited Live Entertainment Permit. Requests for entertainment beyond those permitted under new definition of "Entertainment Live, Limited" may be considered under the category of "Entertainment Live" and would continue to be allowed by Conditional Use Permit only.

Proposed operational standards are as follows:

- Hours: During normal business hours but no earlier than 8:00 A.M or later than 9:00 P.M. daily.
- Noise: Cannot be audible on the exterior of the business premises and not permitted on outside patios, entries or sidewalks. All exterior doors and windows shall be closed during entertainment.
- Uses: May include one or two performers/hosts using amplification, playing games, open mic, musical performances, poetry readings or other similar use that is not more objectionable than the listed uses. The Community Development Director is authorized to compare a proposed use and measure it against those listed for determining similarity.
- Operations/Seating: The activity must be confined to completely enclosed premises and does not result in the need for additional seating or change in an approved floor plan to accommodate the limited live entertainment and/or accommodate a stage for the entertainment, dancing or hosting of an activity or event.
- Limited live entertainment is an accessory use to the main business.
- There shall be a maximum of two performers or hosts using amplification.
- Prizes: Any prizes awarded during an activity permitted by a Limited Live Entertainment administrative permit shall be limited to the prize limits stated in Section 5.12.100.
- Must comply with all other applicable laws and agencies, including but not limited to California Department of Alcoholic Beverage Control and California Bureau of Gambling Control.
- No organized alcohol drinking games are permitted.
- Established maximum occupant load of the premises shall apply.
- Permit may be revoked according to Chapter 17.55.70 of the Municipal Code pertaining to Administrative Permits.
- Upon permit issuance, advertising of approved entertainment is permitted.

Text Amendment:

The proposed amendments to the Zoning Code allow for the creation of a new permit known as the Limited Live Entertainment Permit. With addition of the new definition for *Limited Live Entertainment*, minor amendments of the existing definition for *Live Entertainment* are included for clarification of both definitions.

Section 1. Section 17.04.050 of Chapter 17.04 of Title 17 of the Hermosa Beach Municipal Code is amended by adding the following definition:

*Entertainment, Limited Live. “**Limited live entertainment**” means the provision of live entertainment as defined herein, but only as accessory to an established onsite use during normal business hours for limited periods of time outside of late night hours, provided by a maximum of two performers using amplification at any time, that does not typically generate offsite impacts or contribute to impacts within the commercial district or adjacent residential districts in accordance with operational standards in the commercial zoning districts.*

Section 2. Section 17.04.050 of Chapter 17.04 of Title 17 of the Hermosa Beach Municipal Code is amended by revising the existing definition as follows:

*Entertainment, Live. “**Live entertainment**” means the provision of live performances including without limitation all forms of music, theatrical or comedic performance, song, dance, or ~~vocal~~ ~~entertainment by use of a disc jockey to select, play and/or announce music or announcer,~~ participated in by one or more employees, guests, customers, or any other person or persons. Acoustic, unamplified, non-percussive background music provided accessory to an established onsite use during normal business hours by a maximum of two persons without advertisement and without charge is excluded.*

Section 3. Chapter 17.42 General Provisions, Conditions and Exceptional Uses of Title 17 of the Hermosa Beach Municipal Code is amended by adding the following Section 17.42.190.

17.42.190 Entertainment, Limited Live

A. Definition

1. Entertainment, Limited Live as defined in Chapter 17.04.

B. Administrative Permit required.

1. Limited Live Entertainment allowed pursuant to this section may be permitted with an administrative permit pursuant to Chapter 17.55 in the C-1, C-2 and C-3 zones. No permit term shall extend past two (2) years from the effective date of this ordinance.
2. The appeal procedures found in Section 17.55.050 and the revocation procedures found in Section 17.55.70 shall apply to any administrative permit issued for Limited Live Entertainment.

C. Standards and Limitations.

1. Hours: During normal business hours but no earlier than 8:00 A.M or later than 9:00 P.M. daily.
2. Noise: Cannot be audible on the exterior of the business premises and not permitted on outside patios, entries or sidewalks. All exterior doors and windows shall be closed during entertainment.
3. Uses: Limited Live Entertainment may include one or two performers/hosts using amplification, playing games, open mic, musical performances, poetry readings or other similar use that is not more objectionable than the listed uses. The Community Development Director is authorized to compare a proposed use and measure it against those listed for determining similarity.
4. Operations/Seating: The activity must be confined to completely enclosed premises and does not result in the need for additional seating or change in an approved floor plan to accommodate the limited live entertainment and/or accommodate a stage for the entertainment, dancing or hosting of an activity or event.
5. Limited live entertainment is an accessory use to the main business.
6. There shall be a maximum of two (2) performers or hosts using amplification.
7. Prizes: Any prizes awarded during an activity permitted by a Limited Live Entertainment administrative permit shall be limited to the prize limits stated in Section 5.12.100.
8. Must comply with all other applicable laws and agencies, including, but not limited to, California Department of Alcoholic Beverage Control and California Bureau of Gambling Control.
9. No organized alcohol drinking games are permitted.
10. Established maximum occupant load of the premises shall apply.
11. Upon permit issuance, advertising of approved entertainment is permitted.

Section 4. Chapter 17.26.030 of Title 17 of the Hermosa Beach Municipal Code is amended by adding Entertainment, Limited Live to the matrix of C-1, C-2 and C-3 land use regulations.

USE	C1	C2	C3	See Section
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Entertainment, limited live	P	P	P	17.42.190
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General Plan Consistency Analysis:

PLAN Hermosa (the City's combined General Plan and Local Coastal Program) was adopted in August 2017. The Text Amendment is consistent with the PLAN Hermosa vision to support our vibrant local economy and the Land Use policies:

- LU 1.4 Diverse Commercial Areas. Promote the development of diversified and unique commercial districts with locally owned businesses and job- or revenue-generating uses.
- LU 1.7 Compatibility of Uses. Ensure the placement of new uses does not create or exacerbate nuisances between different types of land uses.
- LU 2.9 Neighborhood-serving retail. Support the retention of existing neighborhood-serving retail and services in key locations throughout the city.
- LU 3.3 Diverse retail and office centers. Provide incentives to transform existing single-use commercial properties that are accessible into retail destinations by adding a diversity of uses, providing new pedestrian connections to adjacent residential areas, reducing the visual prominence of parking lots, making the centers more pedestrian-friendly and enhancing the definition and character of street frontage and associated streetscapes.

Environmental Analysis

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to California Public Resources Code Section 21080(b)(1), because CEQA does not apply to ministerial projects proposed to be carried out or approved by public agencies. The project is statutorily exempt from CEQA in that it allows for approval of limited live entertainment within approved businesses only. Additionally, the zone text changes are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. No possibility exists that the proposed zone text amendments will have a significant effect on the environment because the zone text amendments will create a standard for limited live entertainment permits.

Fiscal Impact:

None.

Attachments:

1. Planning Commission Resolution and draft Ordinance
2. Proposed Ordinance for City Council Introduction
3. Link to the 9-18-18 Planning Commission Meeting
4. Link to the 8-21-18 Planning Commission Meeting
5. Link to the 6-25-18 Planning Commission Meeting

Respectfully Submitted by: Kim Chafin, Planning Manager

Concur: Ken Robertson, Community Development Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager