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**RESOLUTION NO. 05-6409**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING THE PLANNING COMMISSION DECISION TO APPROVE A CONDITIONAL USE PERMIT AMENDMENT TO ALLOW THE ALTERATION OF AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL AND LIVE ENTERTAINMENT (TO CONVERT DINING AREA TO A DANCE FLOOR AND OTHER SEATING PLAN CHANGES) AT 53 PIER AVENUE, LOCATED IN THE SECOND FLOOR OF THE LORETO PLAZA COMMERCIAL BUILDING, LEGALLY DESCRIBED AS LOTS 22, 23, AND 24, BLOCK 13 HERMOSA BEACH TRACT

**SECTION 1.** An application was filed by Gary Vincent, owner of the business "Fat Face Fenner's Fishack", seeking approval of interior alterations to an existing restaurant with on-sale alcohol to convert dining area to a dance floor, and other seating plan changes.

**SECTION 2.** The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on June 21, 2005, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission. Based on the evidence considered at the hearing, the Planning Commission approved the request subject to conditions as set forth in P.C. Resolution 05-39.

**SECTION 3.** On June 28, 2005, the City Council, pursuant to Section 2.52.040, initiated review and reconsideration of the decision of the Planning Commission.

**SECTION 4.** The City Council conducted a duly notice public hearing to review and reconsider the decision of the Planning Commission on July 26, 2005, at which the record of the decision of the Planning Commission and testimony and evidence, both written and oral, was presented to and considered by the City Council.

**SECTION 5.** Based on evidence received at the public hearing, and the record of the decision of the Planning Commission the City Council makes the following factual findings:

1           1.       The business is located on the second floor of Loreto Plaza, which is comprised of  
2 two buildings connected by two pedestrian bridges spanning a pedestrian right-of-way owned by  
3 the City. The use of bridges is subject to a lease agreement between the City and property owner.

4           2.       The subject restaurant is split into two customer areas separated by the kitchen and  
5 preparation areas and occupies the northerly bridge for indoor seating and the southerly bridge for  
6 outdoor seating. The proposed location for the dance floor is in the northerly section of the  
7 restaurant. No prior approved plans identified a dance floor anywhere within the premises, and the  
8 subject area was identified as seating for dining purposes with a small area for a "portable stage".

9           3.       In 1999 the City Council granted a Conditional Use Permit Amendment and Parking  
10 Plan to approve the 1150 square foot expansion of the restaurant into the southerly section of the  
11 building (CUP 99-4 and Parking Plan 99-2, Resolution 99-6015). Live entertainment is limited to  
12 the northerly portion of the restaurant. A separate parking plan was granted in 1999 for the  
13 outdoor seating on the southerly bridge.

14           4.       On January 13, 1998, The Planning Commission granted a Conditional Use Permit  
15 for on-sale alcohol, live entertainment, and extended hours in conjunction with an existing  
16 restaurant use (now the northerly portion of the restaurant and previously "Casablanca" restaurant).

17           SECTION 6. Based on the foregoing factual findings, and the findings contained in  
18 Planning Commission Resolution 05-39, the City Council makes the following findings pertaining  
19 to the application for the Parking Plan:

20           1.       The site is zoned C-2, and is suitable for the proposed use with the proposed  
21 amendment;

22           2.       The existing use with the proposed alteration is compatible with surrounding  
23 commercial and residential uses.

24           3.       The imposition of conditions as required by this resolution will mitigate any  
25 negative impacts on nearby residential or commercial properties.

1           4.     This project is Categorically Exempt pursuant to Section 15303c of the California  
2 Environmental Quality Act.

3           SECTION 7. Based on the foregoing, the City Council sustains the decision of the  
4 Planning Commission and hereby approves the Conditional Use Permit Amendment subject to the  
5 following Conditions of Approval, which supersede the conditions number 5 through 17 in  
6 Resolution 99-6015 pertaining to the operation of restaurant and live entertainment and noise:

7           1.     Interior and exterior building alterations and the continued use and operation of the  
8 restaurant shall be substantially consistent with the plans submitted and reviewed by the Planning  
9 Commission on May 20, 2003.

10          2.     Approval of the floor plan change to add the dance floor area is subject to review  
11 and approval of a final seating, occupancy, and exit discharge plan clearly delineating the area for  
12 the dance floor and assembly occupancy, and shall clearly indicate the current exiting  
13 configuration. Any upgrades to the exiting system found to be required as a result of the review of  
14 these plans must be implemented in the building prior to any change in the posted occupancy.

15          3.     The hours of operation for the restaurant shall be between 7:00 A.M. and 2:00 A.M.  
16 daily. The hours for live entertainment shall be limited to the hours between 9:00 P.M. to 1:15  
17 A.M. Monday through Friday, and from 2:00 P.M. to 1:15 A.M. on Saturday, Sundays, and Federal  
18 and State Holidays, Cinco De Mayo, and St. Patrick's day. Live entertainment shall not be  
19 permitted in the restaurant area at the southern end of the building.

20          4.     The establishment shall not adversely affect the welfare of the residents, and/or  
21 commercial establishments nearby.

22          5.     The business shall provide adequate staffing, management and supervisory  
23 techniques to prevent loitering, unruliness, and boisterous activities of the patrons outside the  
24 business and in nearby public areas.

25          6.     Noise emanating from the property shall be within the limitations prescribed by the  
26 City's noise ordinance and shall not create a nuisance to surrounding residential neighborhoods,  
27 and/or commercial establishments.

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1           7.     The Police Chief may determine that a continuing police problem exists, and may  
2 authorize the presence of a police approved doorman and/or security personnel to eliminate the  
3 problem, and then shall submit a report to the Planning Commission, which will automatically  
4 initiate a review of this conditional use permit by the Commission.

5           8.     The exterior of all the premises shall be maintained in a neat and clean manner, and  
6 maintained free of graffiti at all times.

7           9.     Any significant changes to the interior layout, which would alter the primary  
8 function of the business as a restaurant, shall be subject to review and approval by the Planning  
9 Commission.

10          10.    The project and operation of the business shall comply with all applicable  
11 requirements of the Municipal Code.

12   CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:

13          11.    An acoustical study shall be prepared by an acoustical engineer, including proposed  
14 sound dampening features to baffle and direct sound away from the entrance/exit and window  
15 areas to ensure compliance with the noise ordinance. Said study and sound dampening features  
16 shall be reviewed and approved by the Community Development Director prior to implementing  
17 the proposed changes in the floor plan to add a dance floor and prior to any changes in the posted  
18 occupant load.

19           A.     The acoustical study shall be based on the worst-case scenario, or on a sound level  
20 that will not be exceeded at any given time.

21           B.     Management shall be responsible for the music/entertainment volume levels.

22           C.     During the performance of any live entertainment, the exterior doors and windows  
23 shall remain closed.

24           D.     The air conditioning system shall be of an adequate capacity to air condition the  
25 entire restaurant.

26           E.     All exterior doors shall have self-closing hardware.

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1           12.    No live entertainment or amplified music, audio, television or speakers of any kind  
2 shall be permitted in the outside seating areas.

3           13.    Noise emanating from the property shall be within the limitations prescribed by the  
4 City's noise ordinance and shall not create a nuisance to surrounding residential neighborhoods,  
5 and/or commercial establishments. Noise emanating from the property shall be monitored to verify  
6 compliance with the noise ordinance in response to any complaints.

7           **SECTION 8.** This grant shall not be effective for any purposes until the permittee and the  
8 owners of the property involved have filed at the office of the Planning Division of the Community  
9 Development Department their affidavits stating that they are aware of, and agree to accept, all of  
10 the conditions of this grant.

11           The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall  
12 be submitted to the Community Development Department.

13           Each of the above conditions is separately enforced, and if one of the conditions of  
14 approval is found to be invalid by a court of law, all the other conditions shall remain valid and  
15 enforceable.

16           Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and  
17 employees from any claim, action, or proceeding against the City or its agents, officers, or  
18 employee to attack, set aside, void or annul this permit approval, which action is brought within the  
19 applicable time period of the State Government Code. The City shall promptly notify the permittee  
20 of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails  
21 to promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate  
22 fully in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold  
23 harmless the City.

24           The permittee shall reimburse the City for any court and attorney's fees which the City may  
25 be required to pay as a result of any claim or action brought against the City because of this grant.  
26 Although the permittee is the real party in interest in an action, the City may, at its sole discretion,  
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STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No. 05-6409 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on July 26, 2005.

The vote was as follows:

AYES: Edgerton, Keegan, Tucker, Yoon, Mayor Reviczky  
NOES: None  
ABSTAIN: None  
ABSENT: None

Dated: August 9, 2005

  
Elaine Doerfling, City Clerk

*n.b. may be incorrect!*  
*minutes of the 7-26-05 meeting reflect:*  
*Motion: Tucker*  
*2<sup>d</sup>: Yoon*  
*aye: Reviczky*  
*no: Keegan*  
*abs(arrived late): Edgerton*

FAT FACE  
FENNER'S

RESOLUTION NO. 99-6015

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING, IN PART, THE DECISION OF THE PLANNING COMMISSION TO APPROVE A CONDITIONAL USE PERMIT AMENDMENT AND PARKING PLAN TO ALLOW THE EXPANSION OF AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL (ALLOWING THE CHANGE OF USE OF 1150 SQUARE FEET OF OFFICE TO RESTAURANT USE) AND TO ALLOW THE PAYMENT OF FEES IN-LIEU OF PARKING AND SUSTAINING, IN PART, THE APPEAL RELATIVE TO THE ALLOCATION OF PARKING CREDITS FOR OUTDOOR DINING AT 53 PIER AVENUE, LOCATED IN THE SECOND FLOOR OF THE LORETO PLAZA COMMERCIAL BUILDING, LEGALLY DESCRIBED AS LOTS 22, 23, AND 24, BLOCK 13 HERMOSA BEACH TRACT

Section 1. An application was filed by Gary Vincent, owner of the business "Fat Face Fenner's Fishack", seeking approval to expand an existing restaurant with on-sale alcohol. The applicant is proposing to expand 1150 square feet by converting existing office space to restaurant use within the building, requiring an amendment to the existing Conditional Use Permit, and requiring a Parking Plan pursuant to Section 17.44.210 of the Zoning Ordinance to allow the change of use with less than required parking based on a payment of fees in-lieu of required parking (Section 17.44.190).

Section 2. The Planning Commission on May 17, 1999 conducted a duly noticed public hearing to consider the application for amendment of a Conditional Use Permit and Parking Plan, and based on the testimony and evidence, both written and oral, which was presented to and considered by the Planning Commission, approved the requested amendment subject to conditions as contained in P.C. Resolution 99-27.

Section 3. The City Council on July 13, 1999 conducted a duly noticed public hearing to consider the appeal of the Planning Commission decision to approve the subject amendments to

1 the Conditional Use Permit and Parking Plan, at which testimony and evidence, both written and  
2 oral, was presented to and considered by the Planning Commission.

3 **Section 4.** Based on evidence received at the public hearing, the City Council makes the  
4 following factual findings:

5 1. On January 13, 1998, the Planning Commission approved the applicant's request for  
6 on-sale alcohol, live entertainment, and extended hours in conjunction with an existing restaurant  
7 use located within the second floor of the Loreto Plaza commercial building (previously  
8 "Casablanca" restaurant).  
9

10 2. The applicant proposes to expand the restaurant by converting 1,150 square feet of  
11 the contiguous building interior (existing office space) utilizing a shared kitchen with no through  
12 pedestrian access.  
13

14 3. The change of use to a more intense use requires additional parking pursuant to  
15 Section 17.44.140(E) of the Zoning Ordinance. The applicant proposes to contribute fees in-lieu  
16 of parking pursuant to Section 17.44.190.  
17

18 4. Given the existing lot size and building coverage it is not feasible to provide additional  
19 off-street parking on site without a complete redevelopment of the site.

20 **Section 5.** Based on the foregoing factual findings, the City Council makes the following  
21 findings pertaining to the application to amend the Conditional Use Permit and Parking Plan:

22 1. The site is zoned C-2, and is suitable for the proposed use with the proposed  
23 amendment;  
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25 2. The existing use with the proposed expansion is compatible with surrounding  
26 commercial and residential uses.  
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1           3. The imposition of conditions as required by this resolution will mitigate any negative  
2 impacts on nearby residential or commercial properties.

3           4. Calculating the increased parking requirement based on the credit for a previous  
4 restaurant banquet use converted to office/retail within the building, and pursuant 17.44.140 (E)  
5 when the use of an existing building is changed to a more intense use, and applying a portion of  
6 the credit to outdoor dining (2 parking spaces), results in a net additional off-street parking  
7 requirement of five (5) spaces for the proposed expansion. No additional parking credits are  
8 available for the two Loreto Plaza buildings (49 and 53 Pier Avenue) as long as the applicant  
9 operates the restaurant as contemplated in this permit.  
10

11           5. In accordance with the City's outdoor dining regulations for Pier Avenue (Section  
12 12.16.100 of the Municipal Code) and in order to avoid pedestrian/food service conflicts and  
13 resulting safety hazards on the upper walkway, outdoor dining on the bridge must be adjacent to  
14 a restaurant food service area. Thus outdoor dining on the bridge must not occur until and unless  
15 a Certificate of Occupancy is issued for the approved expansion area for its use as a restaurant.  
16

17           6. The City Council, at its meeting of May 25, 1999, continued the parking in-lieu fee  
18 program, and determined that the parking in-lieu fee is \$12,500 per required parking space,  
19 payable in lump sum prior to issuance of Certificate of Occupancy.  
20

21           7. This project is Categorically Exempt pursuant to Section 15303c of the California  
22 Environmental Quality Act.  
23

24           Section 6. Based on the foregoing, the City Council hereby sustains, in part, the Planning  
25 Commission decision to approve the Conditional Use Permit Amendment and Parking Plan, and  
26 sustains, in part, the appeal relative to allocation of parking credits for outdoor dining, subject to  
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1 the following Conditions of Approval superseding the Conditions of Approval in P.C.  
2 **Resolution 99-27:**

3  
4 **CONDITIONS OF THE PARKING PLAN:**

- 5 1. The proposed expansion shall be substantially consistent with approved plans.  
6 Modifications to any of the plans shall be reviewed and may be approved by the  
7 Community Development Director.
- 8 2. In order to compensate for required parking that cannot be provided on site, the  
9 applicant shall contribute fees to the City's parking improvement fund in lieu of the  
10 required five (5) parking spaces, as set forth in Section 17.44.190 of the Zoning  
11 Ordinance, at the amount of \$12,500 per required space as set forth by resolution of  
12 the City Council. The payment of fees in-lieu of parking shall be made prior to  
13 issuance of a Certificate of Occupancy for the approved expanded area of the  
14 restaurant.
- 15 3. The parking credit of four spaces for the building based on the conversion of a former  
16 restaurant banquet room to retail/office use is specifically restricted to the Parking  
17 Plan for the subject restaurant expansion.
- 18 4. Outdoor dining on the bridge over the public right-of-way shall not be permitted, nor  
19 shall parking credits be used for outdoor dining purposes, until, or unless, a  
20 Certificate of Occupancy is issued for the approved restaurant expansion.

21 **CONDITIONS FOR THE OPERATION OF THE RESTAURANT WITH ON-SALE**  
22 **ALCOHOL AND LIVE ENTERTAINMENT:**

- 23  
24 5. The hours for live entertainment within the northerly portion of the restaurant shall  
25 be limited to the hours between 9:00 P.M. to 1:15 A.M. Monday through Friday, and  
26 from 2:00 P.M. to 1:15 A.M. on Saturday, Sundays, and Federal and State Holidays,  
27 Cinco De Mayo, and St. Patrick's day. Live entertainment shall not be permitted in  
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1 the expanded restaurant area at the south end of the building which is the subject of  
2 this amendment.

- 3 6. The establishment shall not adversely effect the welfare of the residents, and/or  
4 commercial establishments nearby.
- 5 7. The business shall provide adequate staffing, management and supervisory  
6 techniques to prevent loitering, unruliness, and boisterous activities of the patrons  
7 outside the business and in nearby public areas.
- 8 8. Noise emanating from the property shall be within the limitations prescribed by the  
9 City's noise ordinance and shall not create a nuisance to surrounding residential  
10 neighborhoods, and/or commercial establishments.
- 11 9. The Police Chief may determine that a continuing police problem exists, and may  
12 authorize the presence of a police approved doorman and/or security personnel to  
13 eliminate the problem, and then shall submit a report to the Planning Commission,  
14 which will automatically initiate a review of this conditional use permit by the  
15 Commission.
- 16 10. The exterior of all the premises shall be maintained in a neat and clean manner, and  
17 maintained free of graffiti at all times.
- 18 11. Any significant changes to the interior layout, which would alter the primary  
19 function of the business as a restaurant, shall be subject to review and approval by  
20 the Planning Commission.
- 21 12. The project and operation of the business shall comply with all applicable  
22 requirements of the Municipal Code.

23 **CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:**

- 24 13. If entertainment is to include amplified live entertainment, an acoustical study shall  
25 be reviewed and approved by the Community Development Director and shall be  
26 implemented in the building.
- 27 14. Management shall be responsible for maintaining music/entertainment volumes at  
28 reasonable levels.

