



# Planning Commission

## Agenda Item

October 7, 2019

**TO:** Chair Glasgow and  
Members of the Planning Commission

**THRU:** Anna Pehoushek *AP*  
Assistant Community Development Director

**FROM:** Chad Ortlieb *C.O.*  
Senior Planner

### SUBJECT

**PUBLIC HEARING:** Operational Status of Conditional Use Permit No. 2948-14; JR Motel; 428 E. Lincoln Avenue

### SUMMARY

On July 6, 2015, the Planning Commission adopted Resolution No. PC 19-15 approving the JR Motel, a 23,128 square foot, two story with basement, 28-room motel on two then-vacant parcels located at 428 E. Lincoln Avenue. Since the time of operation, City inspections have determined that violations of building and fire codes have occurred, rooms have been subdivided to increase the number of guest rooms beyond that approved, the floorplan has been enlarged without approval, and the use of the building may not be operating as the purported motel use.

### RECOMMENDED ACTION

Review the status report of observed operating conditions and OMC and CUP violations, and provide direction to staff on the course of action the Planning Commission wishes staff to return with to the Planning Commission. Planning Commission action may include any one of the following:

- 1) Receive and file the status report on the Conditional Use Permit (CUP) and operating or code violations.
- 2) Receive and file the status report on the CUP and impose additional conditions of approval to assure the use operates as a motel and in compliance with the CUP.
- 3) Direct staff to initiate the revocation of the CUP and set a date for a Planning Commission hearing.

## AUTHORIZATION/GUIDELINES

The violation of local City regulations, including project conditions may merit Planning Commission consideration for permit revocation. Conditions and City regulations include the following:

- 1) Conditions of Planning Commission Resolution No. PC 19-15:
  - A. General Condition No. 1 of the Planning Commission Resolution No. PC 19-15 states:

“All construction shall conform in substance and be maintained in general conformance with plans and exhibits labeled Exhibit A in the Design Review Committee staff report. ... .”
  - B. General Condition No. 3 of Planning Commission Resolution No. PC 19-15 states:

“The applicant shall comply with all Federal, State and local laws, including all City regulations. Violation of any of those laws in connection with the use will be cause for revocation of this permit.”
  - C. General Condition No. 4 of Planning Commission Resolution No. PC 19-15 states:

“Any modifications to the plans ... shall be submitted for review and approval to the Community Development Director or designee.”
  - D. General Condition No. 5 of Planning Commission Resolution No. PC 19-15 states:

“... [T]his project is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Community Development Director for approval.”
  - E. Public Works/Engineering Condition No. 7 of Attachment 1 of Planning Commission Resolution No. PC 19-15 states:

“... [T]he import and export of dirt in any amount shall require a City Transportation Permit.”
  - F. Public Works/Engineering Condition No. 11 of Attachment 1 of Planning Commission Resolution No. PC 19-15 states:

“The grading plan shall detail all of the locations where retaining walls will be constructed, including height and engineering for each wall, and obtain a building permit for walls over three (3) feet in height prior to construction.”

- G. General Condition No. 61 of Attachment 1 of Planning Commission Resolution No. PC 19-15 states:

“Construction permits, including building permits, as required by the City of Orange shall be obtained for all construction work by Community Development Department’s Building Division and Public Works Grading Division. Failure to obtain the required building permits will be cause for revocation of this permit.”

The property owner has been pursuing building permits for building and fire code violations. Some violations have been rectified however, some violations remain. The property owner continues to make progress towards rectifying remaining complaints by obtaining the required demolition permit and by correcting easier to correct violations. However, should all the violations not be remedied in the timeline outlined in the issues disposition section of this staff report, cause for permit revocation by the Planning Commission may exist.

- 2) Provisions of Orange Municipal Code (OMC) Chapter 5.16 – Uniform Transient Occupancy Tax.
- A. Orange Municipal Code (OMC) Section 5.16.020.A (Uniform Transient Occupancy Tax – Definitions) defines “Hotel” as “any structure, ..., which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes ...” Section 5.16.020.G defines “Transient” as “any person who exercises occupancy ... for a period of thirty (30) consecutive calendar days or less, ... .”
  - B. OMC Section 5.16.020.G provides that a person occupying a hotel/motel room “shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.”
- 3) Provisions of OMC Title 17 – Zoning
- A. OMC Section 17.04.021 defines “Hotel” as “A residential building designed or used to be rented for transient occupancy by guests for dwelling, lodging, or sleeping purposes ... .” A similar definition exists for “Motel” in Section 17.04.032.
  - B. OMC Section 17.04.021 defines “Boardinghouse” as “A residence or dwelling, other than a hotel, wherein three or more rooms are rented under three or more separate written or oral rental agreements, leases or subleases or combination thereof ... .”
  - C. OMC Section 17.04.031 defines “Lodginghouse” as “A residence or dwelling, other than a hotel, wherein three or more rooms are rented under three or more separate written or oral rental agreements, leases or subleases or combination thereof ... .”

D. OMC Table 17.13.030 lists permitted and prohibited uses in the C-2 zone. Hotels/Motels are permitted but Boardinghouses and Lodginghouses are prohibited.

4) Orange Municipal Code (OMC) Section 17.10.030.H addresses “Revocation of Conditional Use Permits.” The Section states that a CUP

- **shall** be revoked if it has not been used in accordance with the terms of approval or was obtained under fraud or misinformation; and
- **may** be revoked if any of the conditions or terms are violated, or if any ordinance or other provision of law is violated in connection with the permit.

The Section further states that “The Planning Commission shall hold a public hearing to determine if the terms of the conditional use permit are being violated in addition to any other ordinance or provision of law, and shall make a recommendation to the City Council. The City Council shall make the final determination on a revocation.”

## PUBLIC NOTICE

On September 25, 2019, the City sent a Public Hearing Notice to the property owner and a total of 133 property owners/occupants within a 300-foot radius of the site regarding Planning Commission review of the Conditional Use Permit. Persons who spoke on the project at the Planning Commission meeting were also noticed. The project site was also posted with the notification on that same date.

Depending on the direction and action provided to staff by the Planning Commission, a subsequent Public Hearing Notice will be sent if the Commission concludes that a revocation hearing of the Conditional Use Permit is warranted.

## ENVIRONMENTAL REVIEW

**Categorical Exemption:** The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15309 (Class 9 – Inspections) because the project performance is being reviewed by the Planning Commission. Should the Planning Commission recommend an enforcement action to be brought back to the Planning Commission, such action would be categorically exempt from the provisions of CEQA per State CEQA Guidelines 15321 (Class 21 – Enforcement Actions by Regulatory Agencies) because enforcement of project conditions of approval and the Orange Municipal Code would be occurring. No public review is required.

## ENTITLEMENT BACKGROUND

<i>Applicant:</i>	Chih Chun Huang; JR Investment Limited Partnership
<i>Property Owner:</i>	Chih Chun Huang; JR Investment Limited Partnership
<i>Property Location:</i>	428 E. Lincoln Avenue
<i>Existing General Plan Land Use Element Designation:</i>	General Commercial; Max 1.0 FAR (GC)
<i>Existing Zoning Classification:</i>	General Business (C-2)

<i>Applications/Entitlements:</i>	CUP No. 2948-14, MJSP No. 0782-14, and DRC No. 4752-14
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## ENTITLEMENT DESCRIPTION

On July 6, 2015, Planning Commission Resolution No. PC 19-15 approved a Conditional Use Permit for a 23,128 square foot, two story with basement, 28-room motel on two then-vacant parcels located at 428 E. Lincoln Avenue. The name of the use is JR Motel. A full project description is included in the July 6, 2015, Planning Commission Staff Report (Attachment A). Findings and conditions of approval are included in Planning Commission Resolution No. PC 19-15 (Attachment B).

## ANALYSIS/STATEMENT OF THE ISSUES

The issues identified by City staff at JR Motel relate to building and fire code violations, violations of approved entitlement and building plans, and operational characteristics which may contradict the basis of the Conditional Use Permit approval as a hotel.

### Issue 1: Use of the Property

Upon the completion and opening of the motel in 2017, staff began to receive contact from the public suggesting that the facility may not be operating as a motel, but rather a birthing center. Over the course of multiple inspections from 2017 to 2019, Fire Department, Code Enforcement, Building Division, Planning Division, and Police Department staff observed multiple child car seats in a storage area, refrigerators, bottle warmers, and other items commonly associated with infant care in the motel. There is also a child play room and a room with a number of bassinets.

The facility has no exterior signage and is not advertised as a motel. There is no website and no phone number available to the public. Investigation through the internet and a phone call to the motel using the number listed on the Business License application revealed that it is not possible to make reservations. Staff contacted the phone number on file for the motel, attempted to book a room, and gave several dates a few months out. Staff was informed “we are completely booked for a year.” So, essentially, no member of the public can book a room at the premises.

Other observations include a room full of washing machines, and a large industrial kitchen, much larger than that normally associated with a hotel or motel that does not have a restaurant associated with it.

Staff from the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and Orange County Health Department (OCHD) accompanied City staff during an inspection. The Health Department corrections were kitchen related such as food handling certificates. As documented by police department staff conversations with ICE, staff are Chinese nationals on visas and the use predominantly facilitates long-term housing of pregnant women, many of whom are not United States citizens or legal residents and are from China. DHS/ICE made several contacts with the Motel employees and found employees who had overstayed their visas. ICE took other

employees' information and was going to conduct further investigations in the future. No arrests were made by DHS/ICE during the inspection. No disposition is known for any observations by DHS, ICE, or OCHD.

The City Business License Department reports that in the three years the JR Motel has been in operation, no Transient Occupancy Tax (TOT) has been paid. All reported room rentals have been for periods over 30 days. Of the 23 hotels/motels in the City, JR Motel is the only one that has never had a single room rented for transient occupancy.

## Issue 2: Unpermitted Construction

From 2017 to 2019 City staff inspections revealed un-permitted construction in multiple locations in the building.

In 2017, a City staff inspection identified that panic hardware needed to be installed at both front and rear doors, a Knox key missing from the Knox Box needed to be provided, and a lock and hasp required removal from the kitchen doors. The violations were corrected to the City's satisfaction at that time.

In 2019, City staff again inspected the building and identified exiting issues, unpermitted plumbing on floors 1 and 2, alterations of the basement/kitchen level to create a hallway corridor in underfloor area with an exit door that lacks exit signage and doors that swing the wrong way, un-permitted electrical wiring for a row of refrigerators in the unpermitted corridor, and two un-permitted rooms added in the underfloor area for the "live in staff" to stay. Windows were added at the understory retaining wall for the unpermitted rooms. Immediate structural concern necessitating evacuation of the building was not identified but immediate discontinued occupancy of unpermitted rooms was requested. Window removal and structural verification will be required concurrent with a demolition permit. In addition, the unfinished underfloor area accessed by the non-permitted corridor is being used for storage and is not sprinklered. The unfinished underfloor area is enlarged by additional non-permitted grading and has a non-permitted slab. These violations have not been corrected to date.

Another violation was observed in that several of the suites located on the upper floors apparently that were illegally converted into two separate rooms through the addition of additional hallway doors. Window shades covered the main/front lobby doors and hinder emergency exit hardware (repeat violation). A lock and hasp was observed on the kitchen doors (repeat violation). A sink was installed in a common area without a permit. A shower and plumbing fixtures were installed in the common upstairs and downstairs restrooms.

From the 2019 violations, exiting issues, occupancy of unpermitted rooms, and the lock and hasp on the kitchen door has been resolved. The remaining issues will receive follow up inspections to verify compliance.

Access to the "Manager's Suite" was not obtained. It is unknown if any alterations have been made at this area.

A summary table of City and outside agency contact and violations is provided in Attachment 1.

## **PLANNING COMMISSION OPTIONS**

Staff will continue to seek compliance for the Building, Fire, and Municipal Code violations occurring at JR Motel. Staff is seeking Planning Commission direction on options for the JR Motel Conditional Use Permit based on the violation history and operational history. Options include:

1. Take no other action. Under this option, staff would not return before the Planning Commission.
2. Direct staff to return to the Planning Commission with a status report within a specified time.
3. Direct staff to return to the Planning Commission with a resolution that includes additional conditions, thereby modifying the JR Motel CUP. Examples may include:
  - Require that the owner provide copies of the written agreements with each tenant demonstrating an occupancy longer than 30 days. (OMC 5.16.020G)
  - Require that the owner make records available to inspection by Business License (OMC 5.16.110)
  - Require further justification for consideration of this use as a hotel/motel as opposed to a boardinghouse/lodginghouse.
  - Set a deadline for complete rectification of all violations.
  - Require periodic City inspections for violations.
  - Other conditions as determined by the Planning Commission.
4. Direct staff to initiate revocation of the JR Motel CUP based on violation of the terms of the CUP and on-going Code violations. Staff would then schedule a revocation hearing before the Planning Commission consisting of a public hearing and recommendation for action by the City Council. Orange Municipal Code Section 17.10.030.H addresses the "Revocation of Conditional Use Permits" as follows:
  1. A conditional use permit granted in accordance with the terms of this chapter shall be revoked if:
    - a. It has not been used in accordance with the terms of approval;
    - b. Was obtained under fraud or misinformation; or
  2. A conditional use permit may be revoked if any of the conditions or terms are violated, or if any ordinance or other provision of law is violated in connection with the permit.

The Planning Commission shall hold a public hearing to determine if the terms of the conditional use permit are being violated in addition to any other ordinance or provision of law, and shall make a recommendation to the City Council. The City Council shall make the final determination on a revocation.

<b>ATTACHMENTS/EXHIBITS</b>
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Attachments to Report:

1. Summary Table of City and Outside Agency Contact and Violations
2. Planning Commission Staff Report Dated July 6, 2015
3. Planning Commission Resolution No. PC 19-15
4. Vicinity Map
5. Site Photos
6. Business License Excerpts
7. Approved Plans date stamped July 6, 2015



## ATTACHMENT 1 – Summary Table of City and Outside Agency Contact and Violations

Date	Action, Observation, or Violation	Disposition
9-27-17	<p>A joint inspection with the property owner present was completed involving City staff from fire, police, business licensing, and building.</p> <p>Staff observed that the business appears geared toward Birth Tourism. Several tenants were in rooms at the time of the inspection. All occupants appeared to be foreign (non-English-speaking) and pregnant.</p> <p>Corrective actions identified were:</p> <ol style="list-style-type: none"> <li>1. All transit occupancy tax (TOT) needs to be submitted to the Finance Department.</li> <li>2. Panic hardware needs to be installed at both front and rear doors.</li> <li>3. The Knox key missing from the Knox Box needs to be provided.</li> <li>4. A lock and hasp needs to be removed from the kitchen doors.</li> </ol>	<p>All records were submitted and all violations were corrected. The code enforcement case was closed on August 8, 2017.</p> <p>Proof of intent to travel for purpose of obtaining United States citizenship by tenants was not established, nor is enforcement of such matters within the purview of the City of Orange.</p> <p>Corrections observed:</p> <ol style="list-style-type: none"> <li>1. The Finance Department confirmed that TOT reporting requirements have been met. Because all rooms rented are reported to be 30 days or more, no tax is collected.</li> <li>2. Panic hardware was installed.</li> <li>3. The Knox key was replaced.</li> <li>4. The lock and hasp was removed.</li> </ol>
5-1-19	<p>Police staff, including code enforcement staff, conducted an inspection of the JR Motel with staff from the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and Orange County Health Department (OCHD).</p> <p>Police staff conducted a business check and inspection to ensure that all prior violations remained corrected. The inspection revealed:</p> <ul style="list-style-type: none"> <li>• Exiting issues</li> </ul>	<p>The disposition of violations identified by City staff is described in the data from 5-16-19, below.</p> <p>No disposition is known for any observations by DHS, ICE, or OCHD.</p>

Date	Action, Observation, or Violation	Disposition
	<ul style="list-style-type: none"> <li>• Unpermitted plumbing on floors 1 and 2</li> <li>• Alterations of the basement/kitchen level to create more rooms built specifically for the "live in staff" to stay. The Building Inspection Supervisor was called to the site and confirmed that the lower level was altered without required permitting.</li> </ul> <p>The Health Department required corrections were kitchen related such as food handling certificates</p> <p>DHS/ICE made several contacts with the motel employees and found employees who had overstayed their visas. They took other employee's information and were going to conduct further investigations in the future. No arrests were made by DHS/ICE.</p>	
5-16-19		<p>The property owner admitted to staff that he constructed the corridor, corridor exit door, two new rooms, electrical and plumbing, and additional entry doors to suites without building permits.</p> <p>The applicant timeline, approved by staff, for correcting the rooms, corridor, corridor exit, and underfloor area is as follows:</p> <ul style="list-style-type: none"> <li>• Submit a demolition plan by 08/27/19. A demolition plan was submitted on 8/30/19.</li> <li>• Obtain a demolition permit by 09/06/19</li> <li>• Complete demolition and receive inspections by 10/21/19</li> </ul>

Date	Action, Observation, or Violation	Disposition
5-16-19	<p>Building, planning, fire, and police staff conducted a follow up inspection of the site with the property owner/operator present. Violations and observations include:</p> <p><b><u>Violations:</u></b></p> <ol style="list-style-type: none"> <li>1. Two unpermitted rooms were added and occupied by 3 live-in staff in each room. Discontinued occupancy of the non-permitted rooms was requested to immediately occur and removal of the rooms was requested.</li> <li>2. Windows were added at the basement level retaining wall for the unpermitted rooms. The alterations may require a Structural Engineer's drawing/calculations and plan check submittal. Immediate structural concern necessitating evacuation of the building was not identified. Window removal and structural verification will be required concurrent with a demolition permit.</li> <li>3. A corridor was added at the unfinished underfloor area and has an unpermitted door to the ground floor. The corridor lacks exit signage, the doors swing in the opposite direction that is required. The corridor contains a row of refrigerators with power supplied by outlets and conduit that do not have a building permit. Removal of the corridor and exit door was requested.</li> <li>4. The unfinished underfloor area accessed by the non-permitted corridor is being used for storage and is not sprinklered. The unfinished underfloor area is</li> </ol>	<ol style="list-style-type: none"> <li>1. Occupancy of the live-in staff rooms has discontinued. The rooms remain. See compliance timeline for room removal above.</li> <li>2. The windows remain. See compliance timeline for window removal above.</li> <li>3. The corridor remains. See compliance timeline for corridor removal above.</li> <li>4. Storage has discontinued in the underfloor area. Non-permitted grading and slab remain. See compliance timeline for underfloor area correction above.</li> </ol>

Date	Action, Observation, or Violation	Disposition
	<p>enlarged by additional non-permitted grading and has a non-permitted slab. Foundational bracing is on top of the slab. Staff requested that all non-permitted walls be removed with a demolition permit. Building staff will inspect the slab at the time wall removal is inspected and determine the next steps for corrective action.</p> <ol style="list-style-type: none"> <li>5. The upper floors have "suites" converted into two separate rooms through the addition of additional hallway doors. Removal of the doors and reversion to walls was requested.</li> <li>6. Window shades covered the main/front lobby doors and hinder emergency exit hardware (repeat violation). Removal was requested.</li> <li>7. A lock and hasp was observed on the kitchen doors (repeat violation). Removal was requested.</li> <li>8. A sink was installed in a common area without a permit. Permitting or removal was requested.</li> <li>9. A shower/plumbing fixtures was installed in the common upstairs and downstairs restrooms. Removal of the showers with capping/termination of plumbing was requested.</li> </ol> <p><b>Observations:</b></p> <ul style="list-style-type: none"> <li>• When staff suggested that the employees could be relocated to upstairs rooms, the property owner stated that the rooms already housed with three people each.</li> <li>• The motel is not open to the public. Staff contacted the phone number on file for the motel, attempted to</li> </ul>	<ol style="list-style-type: none"> <li>5. Suite conversion with additional doors remain. See compliance timeline above.</li> <li>6. Window shades have been removed.</li> <li>7. Lock and hasp has been removed.</li> <li>8. The sink remains.</li> <li>9. Shower and plumbing fixtures continue to require removal and inspection.</li> </ol> <p>To the best of staff knowledge the observations remain accurate.</p>

Date	Action, Observation, or Violation	Disposition
	<p>book a room, and gave several dates a few months out. Staff was informed “we are completely booked for a year.” So, essentially, no member of the public in or visiting Orange can book a room at the “motel.”</p> <ul style="list-style-type: none"> <li>• The facility has no exterior signage.</li> <li>• The facility is not advertised as a motel.</li> <li>• There is a common dining area and a hallway of refrigerators.</li> <li>• There is a room full of washing machines.</li> <li>• There is a child play room and storage area for several child car seats as well a room with several bassinets.</li> <li>• There is a table in the common area with several parcels on it.</li> <li>• The use predominantly facilitates long-term housing of pregnant women, many of which are not United States citizens and are from China, as documented by police department staff conversations with ICE.</li> <li>• Staff are Chinese nationals on visas as confirmed by ICE. At least one has an expired visa.</li> <li>• Access to the “Manager’s Suite” was not obtained. It is unknown if any alterations have been made at this area.</li> </ul>	