



Planning Commission Agenda Item

November 4, 2019

TO: Chair Glasgow and
Members of the Planning Commission

THRU: Anna Pehoushek
Assistant Community Development Director *ACP*

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

SUBJECT

PUBLIC HEARING: Continuation of Review 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. On October 7, 2019, the Planning Commission reviewed the JR Motel Conditional Use Permit (CUP) in light of reported violations of building codes, fire codes, Orange Municipal Codes, and project operating conditions. The Planning Commission continued its hearing on the matter with direction to staff to return with a resolution including for its consideration additional operating conditions to the JR Motel CUP.

RECOMMENDED ACTION

- 1) Adopt Planning Commission Resolution No. PC 21-19 entitled:

**A RESOLUTION OF THE PLANNING COMMISSION APPROVING
ADDITIONAL OPERATING CONDITIONS FOR CONDITIONAL USE
PERMIT NO. 2948-14 TO ENSURE THAT THE USE OPERATES AS A
23,128 SQUARE FOOT, TWO STORY WITH BASEMENT, 28-ROOM,
MOTEL LOCATED AT 428 E. LINCOLN AVENUE AND COMPLIES
WITH ALL CONDITIONS**

- 2) Alternatively, direct staff to initiate a revocation of the CUP and set a date for a Planning Commission hearing on the matter.

AUTHORIZATION/GUIDELINES

- 1) Orange Municipal Code Section 17.08.020B.2.d. authorizes the Planning Commission to review any existing CUP and impose additional conditions. The Section states:

“In exercising the powers given by this chapter, the Planning Commission may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination previously rendered by the Planning Commission.”

Based on evidence provided by staff at the October 7, 2019 Planning Commission meeting demonstrating that JR Motel violated building codes, fire codes, Orange Municipal Codes, and project conditions the Planning Commission may add project conditions to provide greater assurance that the use operates as a hotel/motel use, as approved, and according to findings adopted in Planning Commission Resolution No. PC 19-15.

- 2) 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 CUP. Persons who spoke on the project at the 2015 Planning Commission meeting were also noticed. The project site was also posted with the notification on that same date.

At the October 7, 2019, meeting the Planning Commission voted to continue its consideration of the item to November 4, 2019 for modification of conditions of approval. Because a date certain was set, no additional noticing is required.

ENVIRONMENTAL REVIEW

Categorical Exemption: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (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 is 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

ENTITLEMENT DESCRIPTION

On July 6, 2015, Planning Commission Resolution No. PC 19-15 approved a CUP for the JR Motel at 428 E. Lincoln Avenue. A full project description is included in the July 6, 2015, Planning Commission Staff Report (Attachment 1). Findings and conditions of approval are included in Planning Commission Resolution No. PC 19-15 (Attachment 2).

EXISTING ENTITLEMENT/ REQUIRED FINDINGS FOR MODIFICATION AND REVOCATION

Modification of Conditional Use Permit: Examples of additional conditions modifying Conditional Use Permit No. PC 2948-14 to provide greater assurance that the use operates as approved, as a hotel/motel, have been requested by the Planning Commission.

Required Findings:

1. A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.
2. A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.
3. A Conditional Use Permit must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is located.
4. A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.

Revocation of Conditional Use Permit: If the Planning Commission decides additional conditions will not accomplish its goal of gaining the applicant's continued compliance with the CUP conditions,

it may refer the CUP to return to the Planning Commission for a revocation hearing. If a revocation hearing is conducted, any Planning Commission vote for revocation would be a recommendation to the City Council based on one or more of the following:

Required Findings:

1. The conditional use permit has not been used in accordance with the terms of approval; or
2. The conditional use permit was obtained under fraud or misinformation; or
3. Conditions or terms of the conditional use permit have been violation.

The City Council would make the final determination on a recommendation for revocation.

ANALYSIS/STATEMENT OF THE ISSUES

The October 7, 2019 Planning Commission staff report (Attachment 3) describes the manner in which the use of the property conflicts with a motel use and unpermitted construction as the two issues meriting Planning Commission Review. At its October 7, 2019 meeting, the Planning Commission directed staff to return with a resolution that imposes additional conditions for the project as identified in the staff report and as added by the Planning Commission. Staff has also proposed additional conditions for the Planning Commission's consideration. The conditions are contained in Planning Commission Resolution No. PC 21-19. Proposed new conditions are as follows:

Conditions Requested by the Planning Commission:

1. No less than 90% of the occupancy at the hotel shall be transient, which is defined as for a period of thirty (30) consecutive calendar days or less. No more than 10% of the rooms may be rented pursuant to contracts or agreements that authorize occupancy longer than 30 days, not including occupancy for the on-site manager. Any existing contracts or agreements in excess of this maximum shall be terminated and all occupants, other than the manager, who have resided in the building for greater than 30 days, shall vacate by December 19, 2019.
2. The Conditional Use Permit shall return to the Planning Commission for revocation proceedings if all violations are not resolved by the end of the business day on December 19, 2019 (45 days from Planning Commission action). The Community Development Director shall have discretion to grant a deadline extension in writing for a reasonable time period if unforeseeable structural or life safety complications occur as a result of required demolition work.
3. The owner and/or operator of the business shall make records available for inspection to the City Business License Division upon reasonable request. All records provided shall be in English. Records to be made available include but are not limited to:
 - a. All records related to contracts, agreements, and invoices to tenants, including any agreements formulated by third party vendors and honored by JR Motel;
 - b. The dates and duration of stays of tenants;

- c. The names and contact information for tenants;
 - d. The room rate charged to tenants;
 - e. A list of hotel amenities offered including but not limited to transportation, meal service, equipment rental, or laundry service;
 - f. The rate charged for any incidental amenities provided, which shall be included on the copy of tenant invoices; and
 - g. Any other details related to room rental determined by City staff.
- 4. Inspections by the City staff of the building and facility shall occur every 30 days until such time that the heads of the City's Finance, Community Development, Police, and Fire Departments determine that lesser frequency is merited. The operator shall submit to City inspection of all rooms in the facility upon request by City staff.
 - 5. All transient occupancy tax due that the City has not received since the time the building received final inspection on April 18, 2017, shall be paid to the City by January 1, 2020. Transient occupancy tax shall be provided to the City for all booked rooms.
 - 6. If a future violation of any condition of approval or a violation of building, fire, or Orange Municipal Codes occurs, Conditional Use Permit No. 2948-14 shall be brought before the Planning Commission with a Planning Commission resolution recommending that the City Council revoke the permit.
 - 7. The use must be run as a hotel in perpetuity and may not operate as a boardinghouse or lodginghouse as defined by Orange Municipal Code Sections 17.04.021 and 17.04.031.

Additional staff recommended conditions for consideration:

- 8. The operator shall reimburse the City for staff time costs incurred for enforcement of violations and public hearing preparation and attendance. The total cost to be reimbursed shall be provided to the operator, accompanied by an itemization of staff, time spent and other costs. Reimbursement of documented City costs shall be made no later than thirty (30) days after receipt of invoice.
- 9. A sign permit shall be obtained to place the monument sign shown on Sheet A-1 of approved building plans, to identify the use as a hotel. Installation of the hotel-identifying monument sign shall occur by April 1, 2020.
- 10. All space on the Planning Commission approved plans, date stamped July, 6, 2015, shall be utilized as labeled on the plans, including but not limited to a reception desk, conference room, sitting area, and kitchenette. No other use of space shall occur than that labeled on approved plans.
- 11. By January 1, 2020, the hotel entry door to the lobby shown on Sheet A-1 of the approved building plans shall be key or combination controlled by registered guests/occupants and shall maintain a working intercom system that facilitates visitor notification to the manager that access to the facility is requested. An immediate entry system shall be installed, e.g., "buzz in" to facilitate emergency access.
- 12. The lower lobby entry doors, show on approved building plan Sheet A-2, shall be combination or key controlled by registered guests by January 1, 2020.
- 13. The owner shall provide copies of any written agreements with a tenant for occupancy longer than 30 days. (OMC 5.16.020G)

14. The operator shall comply with all requirements of Civil Code Division 3, Part 4, Title 3, Article 4, "Innkeepers", including the posting of rates.
15. No staff shall live on the premises, except the on-site manager.
16. A bona fide cashier and system of accounting for cash receipts shall be in place and a copy of such accounting system provided to the City.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. Planning Commission Staff Report Dated July 6, 2015
2. Planning Commission Resolution No. PC 19-15
3. Planning Commission Staff Report Dated October 7, 2019
4. Summary Table of City and Outside Agency Contact and Violations
5. Planning Commission Final Meeting Minutes Dated October 7, 2019
6. Vicinity Map
7. Site Photos
8. Business License Excerpts
9. Approved Plans date stamped July 6, 2015
10. Planning Commission Resolution No. PC 21-19
11. Document from Liu Law Inc., Received October 3, 2019