

3. CONTINUED HEARING:**3.1 REVIEW OF JR MOTEL CONDITIONAL USE PERMIT NO. 2948-14 – 428 E. LINCOLN AVENUE.** (item 3.1 was heard after item 4.2)

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 existing 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 and the use of building may not be operating as the intended motel use.

NOTE: 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.

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 Conditional Use Permit and set a date for a Planning Commission hearing on the matter.

Anna Pehoushek, Assistant Community Development Director, explained that this item was continued at the October 7, 2016 Planning Commission meeting at the request of the applicant.

Chad Ortlieb, Senior Planner provided a status report on the applicant's correction of Code violations and reviewed proposed additional conditions to be imposed on the applicant consistent with the staff report.

The Commission and staff discussed the following:

- Transient occupancy tax (TOT) requirements and lack of payment for the past three years.
- Lack of written 30-day occupancy agreements submitted to the City.
- Motel occupancy rules and duration of stay.
- Boarding house versus hotel medical facility definitions.
- Annual versus monthly inspections.

- No identifiable sign on premises and inability to obtain reservations or rates by phone or website; being hung up on when contacting hotel by phone to inquire about reservations/rates.

Chair Glasgow opened the public hearing.

Tony Lu, attorney for the applicant approached and stated that the hotel could not remain operational if the applicant were to adhere to all the conditions of approval. His comments included:

- Providing guests' names and contact information is an invasion of privacy.
- Monthly inspections are unduly invasive.
- Unclear about what a "bona fide" cash system is.
- Why there are concerns with the hotel being a birthing center; motel has never had criminals or broken any laws.
- No back tax is due; the City never asked for payment.
- Revocation of the Conditional Use Permit is too harsh for Building and Fire code violations.
- The definition of hotel versus boarding is not broadly defined in the code.
- Compensation for additional city staff resources is unreasonable.
- Hotel staff should be allowed to live on the premises.

Mr. Lu agreed to have his client provide a sign, keyless entry/intercom and to provide written agreements for stays over 30 days.

Chair Glasgow asked the applicant to step forward and asked if he understood the conditions that were required of him under the Conditional Use Permit and whether or not he knew he had to obtain the building permits.

The applicant and business owner Chih Chun Huang approached and stated he now understood that he should have obtained permits to make renovations.

Commissioner Vazquez asked the applicant if he ever considered a formal change to the Conditional Use Permit to recognize the facility as a boarding house which would allow guests to stay more than 30 days.

Mr. Lu responded that he had not, but does not believe the operation would fall under the boarding house definition.

Chair Glasgow closed the public hearing.

Mary Binning, Senior Assistant City Attorney, spoke to:

- The applicant's objection to the 30-day inspection.
- The characteristics of a hotel under the zoning code.
- 30-day agreements in order to avoid paying TOT.
- Whether or not this operation should be moved in a more appropriate zone that allows this type of use.
- The occupant actually owes the tax; therefore, the City has every right to obtain their contact

information.

- TOT is owed to the City even though they were erroneously told they did not have to pay any.
- The owner is accountable for all cash receipts.
- Room rates are required to be posted and should include all amenities being offered for that rate.

Shawn Horning, City of Orange Business License Finance Coordinator, stated that an accountable system needs to be in place with a breakdown of charges. Neither she nor her predecessor had received any 30-day rental agreements since the hotel's opening.

Staff and the Commission discussed the applicant's options if the Commission moved forward with a revocation of the Conditional Use Permit to Council.

Chair Glasgow indicated he was willing to give the applicant another good faith effort to conduct the business as a hotel with a set room rate and 30-day agreements on no more than two rooms. Violations of TOT regulations or the Code would necessitate a return to the Commission for review, and the payment of back taxes related to the original Conditional Use Permit.

Additional Commissioner discussion included:

- The applicant's disregard for the conditions.
- The conditions are reasonable and would not cease operations at the hotel.
- Appropriate action has not been taken to correct the situation.
- Past behavior is an indicator of future behavior.

A motion was made to direct staff to initiate a revocation of Conditional Use Permit No. 2948 – 14 to the first available Planning Commission meeting date.

MOTION: Commissioner Simpson
SECOND: Commissioner Vazquez
AYES: Commissioners Willits, Simpson, Vazquez and Martinez
NOES: Glasgow

MOTION CARRIED

4. NEW HEARING:

4.1 CONDITIONAL USE PERMIT NO. 3101-19 – BUTATON RESTAURANT, LOCATED AT 10 PLAZA SQUARE, #101

The applicant is requesting an Alcoholic Beverage Control (ABC) Type 41 (On Sale Beer and Wine – Eating Place) License for a new restaurant at 10 Plaza Square, #101 in the Plaza Historic District.

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of a