

RESOLUTION NO. 11221

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE REVOKING AND REPEALING IN ITS ENTIRETY, CONDITIONAL USE PERMIT NO. 2948-14, WHICH PERMITTED A MOTEL UPON PROPERTY LOCATED AT 428 E. LINCOLN AVENUE.

REVOCATION OF CONDITIONAL USE PERMIT NO. 2948-14 (JR Motel)

WHEREAS, the City Council has authority per Orange Municipal Code (“OMC”) Section 17.10.030.H to determine if (1) Conditional Use Permit (“CUP”) No. 2948-14 has been used in accordance with the terms of approval; (2) if any of the conditions or terms have been violated; (3) if any other ordinance or provision of law has been violated in connection with CUP No. 2948-14; and/or (4) if CUP No. 2948-14 was obtained under fraud or misinformation; and the City Council has the authority to revoke and rescind CUP No. 2948-14 in entirety; and

WHEREAS, on July 6, 2015, upon the application by Chih Chun Huang, of JR Investment Limited Partnership (“Owner”), and after a public hearing, the Planning Commission approved CUP No. 2948-14 to allow a 23,128 square foot, two-story with basement, 28-room motel located at 428 E. Lincoln Avenue; and

WHEREAS, CUP No. 2948-14 included findings that the proposed motel was a good use for the location, that a motel was a complementary use in the commercial zone, that the motel use was consistent with the applicable zoning designation, that the motel use was in response to services required by the community, and that the conditions imposed on the CUP would preserve the general welfare; and

WHEREAS, CUP No. 2948-14 contained conditions, compliance with which was an integral part of the approval; and

WHEREAS, the City has gathered a significant amount of evidence demonstrating violations of the conditions of CUP No. 2948-14, violations of other ordinances and provisions of law, and operations inconsistent with a motel use, all of which have been presented to the Planning Commission and City Council in staff reports and/or minutes dated October 7, 2019, November 4, 2019, December 16, 2019, March 2, 2020, and April 14, 2020, and are referenced in this resolution as if fully set forth herein; and

WHEREAS, the revocation proceeding for CUP No. 2948-14 was processed in accordance with the provisions of the OMC; and

WHEREAS, under authority of OMC Section 17.10.030.H, the Planning Commission held a public hearing on March 2, 2020, to determine if (1) CUP No. 2948-14 has been used in accordance with the terms of approval; (2) if any of the conditions or terms have been violated; (3) if any other ordinance or provision of law has been violated in connection with CUP No. 2948-14; and/or (4) if CUP No. 2948-14 was obtained under fraud or misinformation; and

WHEREAS, at their March 2, 2020, meeting the Planning Commission reviewed evidence in the staff report, evidence presented by the City Attorney's office, and heard testimony from the JR Motel owner/operator, his attorney and the public, after which the Planning Commission unanimously voted (5:0) to recommend that the City Council revoke and repeal CUP No. 2948-14 in its entirety; and

WHEREAS, the City Council conducted a duly advertised public hearing on April 14, 2020, on the matter of the proposed revocation of Conditional Use Permit No. 2948-14, upon property described as follows:

TWO PARCELS:

PARCEL A WHICH INCLUDES ALL OF LOTS 1, 2 AND 3 AND PORTION OF LOTS 4 AND 24 OF FRANKLIN'S ADDITION TO OLIVE HEIGHTS, IN THE CITY OF ORANGE, COUNTY OF ORANGE, AS PER MAP RECORDED IN BOOK 18, PAGE 71 OF MISCELLANEOUS MAPS, IN OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, AND

PARCEL B WHICH INCLUDES LOTS 4, 5, 6, AND 24 OF FRANKLIN'S ADDITION TO OLIVE HEIGHTS, IN THE CITY OF ORANGE, COUNTY OF ORANGE, AS PER MAP RECORDED IN BOOK 18, PAGE 71 OF MISCELLANEOUS MAPS, IN OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY,

AND AS PER MAP FILED IN BOOK 374, PAGE 30 OF PARCEL MAPS, IN THE OFFICE OF THE RECORDER OF ORANGE COUNTY WITH ASSESSOR PARCEL NOS. 374-301-09 AND 374-301-10.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Orange hereby revokes and repeals CUP No. 2948-14, in its entirety, based on the following:

SECTION 1 – FINDINGS

Pursuant to OMC Section 17.10.030.H, a Conditional Use Permit shall be revoked by the City Council, upon the recommendation of the Planning Commission, if:

- It has not been used in accordance with the terms of approval;
- It was obtained under fraud or misinformation; or

- Any of the conditions or terms are violated, or any ordinance or other provision of law is violated in connection with the permit.

The Planning Commission's recommendation to the City Council is to revoke and repeal CUP 2948-14 in its entirety.

Based on the evidence presented at the April 14, 2020 public hearing, the City Council finds the following grounds for revocation:

1. Violations of Terms and Conditions of Approval of CUP 2948-14

General Condition No. 1: "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. ... Any change to the exterior of the building from the approved plans shall be subject to review and approval by the Design Review Committee."

- A. From 2017 to 2019, City staff inspections revealed unpermitted construction in multiple locations in the building. There was unpermitted alteration of the building's underfloor area to create a hallway corridor lined with refrigerators and two new bedrooms, all supplied with unpermitted electrical, plumbing, and mechanical service. Additionally, upper floor rooms approved as two-room suites were subdivided and additional hallway doors were added, resulting in the creation of two rentable rooms where only one was approved.
- B. Sheet A-1 of the approved plans designate a conference room, a sitting area, and a registration counter in the lobby area, but the conference room is routinely used as a dining room, the sitting area is used as a buffet area, and there is no registration counter as required.
- C. City staff inspections revealed an unpermitted exterior door leading from the unpermitted basement hallway to the parking lot.

Finding: The Owner's deviation from the approved plans and exhibits and the change to the exterior of the building constitute violations of General Condition No. 1.

General Condition No. 3: "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."

The following Orange Municipal Codes (OMC) have been violated:

- A. OMC Section 17.10.030.G:

"Approval May Be Conditional. In granting any conditional use permit, the reviewing body may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part

of the terms under which the conditional use permit is granted, shall be deemed a violation of this Code and punishable under this Code.”

Under this Section, the Owner’s violation of the CUP conditions of approval as set forth herein, including violation of General Condition No. 1 as described above, are a violation of the Zoning Code.

- B. OMC Section 15.04.010 adopts the California Building Code (“CBC”) by reference:

“A. It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, convert or demolish, equip, use, occupy or maintain any building or structure in the City, or cause the same to be done or to perform or maintain any grading work or cause the same to be done contrary to, or in violation of, any of the provisions of this chapter.”

Section 105.1 of the CBC states:

“It shall be unlawful for any person to ... construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, unless a separate permit for each building or structure has first been obtained from the Building Official.”

Under this Section, the Owner’s unpermitted construction as described above, is a violation of the CBC.

- C. OMC Section 15.32.010 adopts the California Fire Code (“CFC”) by reference. Section 109.4 of the CFC states:

“Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be prosecuted in accordance with Chapter 1.08 of the Orange Municipal Code. Each day that a violation continues shall be deemed a separate offense.”

City Fire inspectors discovered numerous violations of the CFC in 2017 and 2019, including lack of required sprinklers, lack of evacuation plans, locked exits, covered exits, and an illegally constructed doorway into the parking lot.

Finding: The Owner’s construction of the additional hallway and bedrooms in the basement, complete with electrical, mechanical and plumbing improvements in the underfloor area of the building, the addition of an exterior door from the basement hallway to the parking lot, the addition of doorways to suites on the upper floors, and alterations made to exit and life-safety

panic hardware without a building permit constitute violations of the City's Zoning Code, violations of California Building Code, violations of the California Fire Code, and violations of General Condition No. 3.

General Condition No. 4: "Any modifications to the plans ... shall be submitted for review and approval to the Community Development Director or designee."

The Owner did not submit any of the building plan modifications to the City for approval.

Finding: The Owner's failure to submit plans to the Community Development Director prior to making modifications to the suites, the basement, and the lobby area, constitutes a violation of General Condition No. 4.

General Condition No. 5: "... [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."

The Owner did not submit to the City any application for changes to the approved precise plan and made the changes without approval. The Owner did not submit to the City any application for changes from the motel use to a boarding house use and operated contrary to the approved motel use.

Finding: The Owner's failure to submit a changed precise plan to the Community Development Director prior to altering the approved plan, constitutes a violation of General Condition No. 5. In addition, the Owner's failure to submit notification or a plan for a change of use to the Community Development Director prior to beginning operations as a boarding or lodging house constitutes a violation of General Condition No. 5.

General Condition No. 61 of Attachment 1: "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 Owner constructed substantial alterations to the building, excavated the basement, added bedrooms and bathrooms, installed plumbing and electrical connections, subdivided suites, added windows and a door into the exterior and made other alterations to the approved building and hardware, all without obtaining permits.

Finding: The Owner failed to obtain any construction or building permits as required by the City, prior to constructing the additional hallway and bedrooms complete with electrical, mechanical and plumbing improvements in the underfloor area of the building, adding an exterior door from the basement hallway to the parking lot, adding hallway doors and subdividing suites on the upper floor areas, and altering exit and life-safety panic hardware. All of these actions constitute a violation of General Condition No. 61.

2. The CUP Was Obtained Under Misinformation

CUP 2948-14 was obtained based on the Owner's characterization of the proposed use as a motel. Notwithstanding any lack of intent to misrepresent the type of use approved, the operations of the JR Motel are inconsistent with a motel use and are instead consistent with a boarding house or lodging house. A boarding house or lodging house is prohibited in the C-2 (General Business) zone.

- A. OMC Section 17.04.027 defines "Hotel" as: "A residential building designed or used to be rented for transient occupancy by guests for dwelling, lodging, or sleeping purposes containing six or more guest rooms or suites of rooms not containing cooking facilities," OMC Section 17.04.032 states that motels are otherwise defined as hotels.
- B. OMC Section 5.16.020.G defines "transient" as referring to a period of thirty (30) consecutive calendar days or less.
- C. OMC Section 17.04.021 and 17.04.030 define "boarding house" and "lodging house" as:

"BOARDING HOUSE - 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, whether or not the owner, agent or rental manager resides within the residence."

"LODGING HOUSE - A residence or dwelling, other than a hotel, wherein lodging and meals are provided to five or more persons for compensation, whether direct or indirect. In determining the number of persons lodging in a lodging house, all residents shall be counted, including an owner, agent or manager."
- D. Table 17.13.030 prohibits a boarding house or lodging house in the C-2 zone, but allows such uses in the R-3 and R-4 zones, subject to a CUP.

The operational characteristics of the JR Motel are atypical of any other hotel/motel in the City. These characteristics include:

- 100% of the occupancies have been for longer than 30 days (until October 2019 when some rooms began to be reported as transient);
- Three meals a day are included;
- Full laundry facilities are included;
- Transportation to and from doctor appointments are included;
- A separate nursery room with numerous bassinets, staff wearing scrubs and bottle warmers are all located on-site and these services are included;
- Strollers are available to each occupant;

- There is no exterior sign indicating it is a hotel;
- There is no registration desk;
- There is no on-line advertising on typical hotel platforms;
- There is no publically accessible phone number for reservation inquiries;
- The on-line advertising that exists is directed toward expectant mothers seeking long term stays; and
- The owner has stated that all occupants have rented rooms pursuant to written agreements.

Finding: The operational characteristics of the JR Motel are not in accord with the definition of “hotel” and are in accord with the definitions of “boarding house” and “lodging house” in that rooms are rented under rental agreements, meals are provided and no transient occupancy exists. Boarding/lodging houses are not allowed in the C2 zone. Approval of the JR Motel as a motel use when, in fact, it has at all times been operating as a boarding house or lodging house, was based on misinformation as to the actual use intended.

3. Violation of OMC Chapter 5.16 – Uniform Transient Occupancy Tax (“TOT”)

- A. OMC Section 5.16.030 requires the payment of TOT by each transient occupying a hotel.
- B. OMC Section 5.16.020.G defines “transient” as any person who exercises occupancy in a hotel for a period of thirty (30) consecutive calendar days or less, and they 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.
- C. OMC Section 5.16.020.A defines “hotel” as including a hotel, motel, lodging house and rooming house.
- D. OMC Section 5.16.050 requires the operator of a hotel/motel/lodging house/rooming house to collect the TOT at the same time as the rent is collected.
- E. OMC Section 5.16.070 requires the operator of a hotel/motel/lodging house/rooming house to remit TOT to the City.

From March 2017, when the JR Motel business license was issued, until October 2019, no TOT was paid by the JR Motel, and all gross rents were claimed as exempt. It is the only establishment in the City licensed as a hotel, which was consistently reporting and paying no TOT. The JR Motel did pay TOT in October and November 2019, but claimed exemption for 90% and 80% of the rooms respectively. It was not until December 2019 that the JR Motel paid TOT on the majority of the rooms. At no time has the JR Motel provided any documentation establishing written agreements with its tenants for occupancies over 30 days nor has it made up any TOT owed prior to October 2019.

Finding: TOT has been required, but not paid, for occupancies up to 30 days at the JR Motel and its claimed exemptions for occupancies over 30 days have not been supported by written documentation; therefore, JR Motel has violated OMC Chapter 5.16 by failing to collect and remit TOT to the City.

4. Violation of Civil Code Section 1863

California Civil Code Section 1863 states:

“(a) Every keeper of a hotel, inn, boardinghouse or lodginghouse, shall post in a conspicuous place in the office or public room, and in every bedroom of said hotel, boardinghouse, inn, or lodginghouse, a printed copy of this section, and a statement of rate or range of rates by the day for lodging. (b) No charge or sum shall be collected or received for any greater sum than is specified in subdivision (a).”

The JR Motel did not have the required innkeeper’s room rate signage posted in the lobby of the motel.

Finding: The Owner did not post the required signs and has violated Civil Code Section 1863.

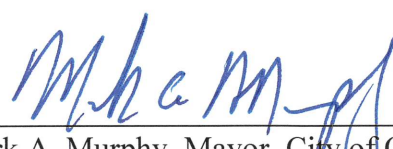
5. Other Considerations.

In addition to violating the CUP, the OMC, the Civil Code, and operating as a different use than that approved, the Owner has disregarded the conditions of approval on more than one occasion, in an egregious manner, generating a substantial amount of work for City staff in attempting to gain compliance and remedy non-permitted work.

SECTION 2 – ENVIRONMENTAL REVIEW

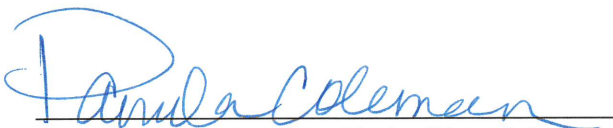
The proposal is categorically exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines Section 15321 (Class 21 - Enforcement Actions by Regulatory Agencies).

ADOPTED this 14th day of April 2020.



Mark A. Murphy, Mayor, City of Orange

ATTEST:



Pamela Coleman, City Clerk, City of Orange

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the 14th day of April 2020, by the following vote:

AYES: COUNCILMEMBERS: Alvarez, Murphy, Nichols, Monaco
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None



Pamela Coleman, City Clerk, City of Orange

