

DATE ISSUED: August 28, 2008 **REPORT NO. PC-08-121**

ATTENTION: Planning Commission, Agenda of September 4, 2008

SUBJECT: GELATERIA FRIZZANTE SIDEWALK CAFÉ PATIO –
NEIGHBORHOOD USE PERMIT 2008-16

**OWNER/
APPLICANT:** CHRISTINE KAUFMANN/
MICHAEL AND BETTY HOPKINS

SUMMARY

Issue: Should the Planning Commission approve or deny an appeal of Centre City Development Corporation's (CCDC) approval of Neighborhood Use Permit (NUP) 2008-16 for a sidewalk café located at 435 Island Avenue in the Gaslamp Quarter Planned District of the Downtown Community Plan Area?

Staff Recommendation:

1. **Deny** the appeal and **Uphold** CCDC's approval of NUP 2008-16.

Other Recommendation: The Gaslamp Quarter Association Land Use & Planning (GQA-LUP) Committee reviewed the project on May 13, 2008 and recommended unanimous approval of the project design, subject to conditions included in the NUP, specifically as it pertained to the minimum clear sidewalk path requirement.

Environmental Review: This project is Categorically Exempt from review under the California Environmental Quality Act, Class 3.

Fiscal Impact Statement: None.

Code Enforcement Impact: None.

Housing Impact Statement: None.

BACKGROUND

On April 18, 2008, Christine Kaufmann submitted an application for the approval of a NUP for a sidewalk café. The application was processed in accordance with Section 112.0503 of the Land Development Code (LDC) procedures for a Process Two application (Attachment F). The application was reviewed by the CCDC Planning and Engineering departments, along with the

GQA-LUP through which iterations were made to ensure compliance with the regulations in the LDC pertaining to sidewalk cafés. On July 1, 2008, a Notice of Future Decision was mailed out to all property owners and occupants within a 300-foot radius of the project site and on July 17, 2008, a decision to approve the NUP, subject to conditions, was issued by CCDC. A Notice of Decision was mailed on July 24, 2008 to notify interested parties of the decision. On August 8, 2008, Michael and Betty Hopkins filed an appeal to CCDC for the approval of the NUP.

DISCUSSION

Project Description:

The project site is located at 435 Island Avenue, on the south side of Island between Fourth and Fifth avenues, within the Gaslamp City Square mixed-use development (Attachment A). The project site is within the Gaslamp Quarter Planned District of the Downtown Community Plan Area. The Gaslamp Quarter is recognized as an entertainment and historic district that allows for mixed-use land uses in which a sidewalk café would be a use permitted through the approval of a NUP. Surrounding land uses include commercial, retail, residential, and institutional uses. The project site is on the block bounded by J Street, Fourth, Fifth, and Island Avenues which includes the mixed-use project known as Gaslamp City Square (Attachment C). The mixed-use project includes condominium units with ground-floor commercial/retail spaces such as Bank of America, SOHO Lab, Oakley, So Good Jewelry, Puma, Helio, Quiksilver, and Bice Restaurant, opening soon.

The project consists of adding a sidewalk café as an extension to the existing Italian ice cream shop Gelateria Frizzante. The sidewalk café is proposed to be approximately 158 square feet in area, encroaching up to seven feet and eleven inches (7'-11") into the public right-of-way. The sidewalk café will be delineated by a three-foot (3'-0") black metal railing to include café-style tables and chairs also black metal (Attachment B). The sidewalk café proposed will be open during the business hours of 12:00 p.m. (Noon) to 11:00 p.m. seven days a week. Gelateria Frizzante is not proposing any heaters, awnings, or umbrellas for the sidewalk café patio.

Appeal:

Michael and Betty Hopkins, who own, but do not reside in, a fourth floor unit in Gaslamp City Square, appealed the CCDC's decision to approve the NUP for the Gelateria Frizzante's sidewalk café (Attachment E). The appellants cite the following reasons they feel warrant denial of the application:

1. That sidewalk café will be detrimental to those residing in the area;
2. Inconsistencies in the regulatory documents and permissive sidewalk café regulations; and,
3. Setting a precedent to allow future sidewalk cafés proposed at Gaslamp City Square.

Mr. and Mrs. Hopkins, the appellants, claim that proper consideration has not been given to residents, especially those residing in Gaslamp City Square stating their primary concern to be the close proximity from the sidewalk café patio to the residential entry. In addition, the appellant claims that the regulatory documents such as the LDC and GQPDO are not consistent and do not properly address quality of life issues—ambient noise, smoking, accessibility—that impact residential living. Lastly, the Hopkins argue that allowing this sidewalk cafe sets a precedent for allowing future sidewalk café patios in the Gaslamp City Square perimeter that would hinder its existing appearance. These reasons, in the appellants’ opinion, would be grounds for denial of CCDC’s approval of the NUP.

With regards to the potential detriment that this sidewalk café patio could have on residents in the Gaslamp City Square, staff would note that Gelateria Frizzante is a use permitted-by-right in the Gaslamp Quarter while an extension of it, as a sidewalk café, is permitted subject to specific standards and the NUP process. The sidewalk café will not be detrimental to the persons residing in the area as it will comply with the regulations of the LDC. The permit includes limitations on hours of operation, cleanliness of the patio, and the prohibition of musical and/or sound reproduction devices; noise levels would not be significantly increased above existing ambient noise levels from vehicles and patrons within this entertainment district; and smoking within the sidewalk café was not considered to be an issue as the sidewalk café is intended for eating, dining, and circulation on an Italian ice cream shop. Staff does not consider the quality of life issues to be compromised by this approval. Therefore, staff finds that not only do the GQPDO and LDC align but that the intent of the Gaslamp City Square is met by allowing a project of this nature at this location.

As for the concern to the residential entry, pursuant to Section 141.0621(g) of the LDC, the only provision for adjoining entries is for a commercial use and it requires an eight-foot (8’-0”) minimum clearance be maintained (Attachment F). Although there are no provisions establishing a required minimum path clearance to an adjoining residential entry, the sidewalk café is at least ten feet (10’ - 0”) from the Gaslamp City Square’s residential entry.

Lastly, Mr. and Mrs. Hopkins believe that allowing the proposed Gelateria Frizzante sidewalk café would set a precedent to allow more sidewalk café patios for future establishments that would in turn alter the Gaslamp City Square project in an undesired way. Staff notes that although the Gaslamp City Square was approved to include residential, it was approved as a

mixed-use project that included a commercial/retail component. Pursuant to Section 14I.0621(a) of the LDC, the decision maker evaluates the project to determine if the sidewalk café is a suitable use for the proposed site and will not infringe on the use of the public right-of-way by pedestrians, among other things. Gelateria Frizzante's sidewalk café is an appropriate use of the public right-of-way, especially in an area surrounded by the commercial/retail establishments serving tourists and residents alike, with a park across the street, and other restaurants within walking distance. The Gaslamp Quarter is recognized as downtown's entertainment and historic district intended for mixed-uses such as commercial, retail, and eating and drinking establishments. The appellants should have been aware, as a buyer of one of the units in this building, that the ground-floor commercial/retail units would one day be inhabited by tenants and that the project was located in an area characterized by restaurants, sidewalk cafes, and nightclubs. It would be inconsistent to deny the application for Gelateria Frizzante's sidewalk café since the application meets all the applicable land use codes and regulations set forth in the Gaslamp Quarter Planned District Ordinance, Design Guidelines, and the LDC and there are many similar cafes in the immediate neighborhood. During the public review period no other correspondence was received either in favor or against the proposed project.

Conclusion:

Staff has reviewed the project and has determined that the sidewalk café for Gelateria Frizzante (NUP 2008-16) not only complies with the development regulations for the Gaslamp Quarter Planned District Ordinance and the Gaslamp Quarter Design Guidelines, but the overall project also complies with the Sidewalk Café regulations of the LDC. A sidewalk café patio is permitted as long as it is an extension to an eating and drinking establishment which Gelateria Frizzante, as an Italian ice cream shop, qualifies for. The design of the sidewalk café patio is in compliance with the regulations and the location is appropriate as it is located on the ground-floor of a mixed-use project intended to encourage street-level activation. Furthermore, Gelateria Frizzante is located within the Gaslamp Quarter which is recognized as downtown's entertainment and historic district. The proposed sidewalk café patio for Gelateria Frizzante will provide a benefit as it meets the goals as outlined for the district. The Gaslamp Quarter has and will continue to encourage to attract the casual shopper, whether resident or visitor; bring together a spectrum of people of all backgrounds; offer daytime and nighttime entertainment and restaurant establishments; and provide activities which enrich the quality of life and broaden one's experience and understanding. Based on the information provided, staff recommends that the Planning Commission deny the appeal and uphold CCDC's decision to approve the NUP.

ALTERNATIVES

1. **Approve Neighborhood Use Permit with modifications.**
2. **Deny Neighborhood Use Permit, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,



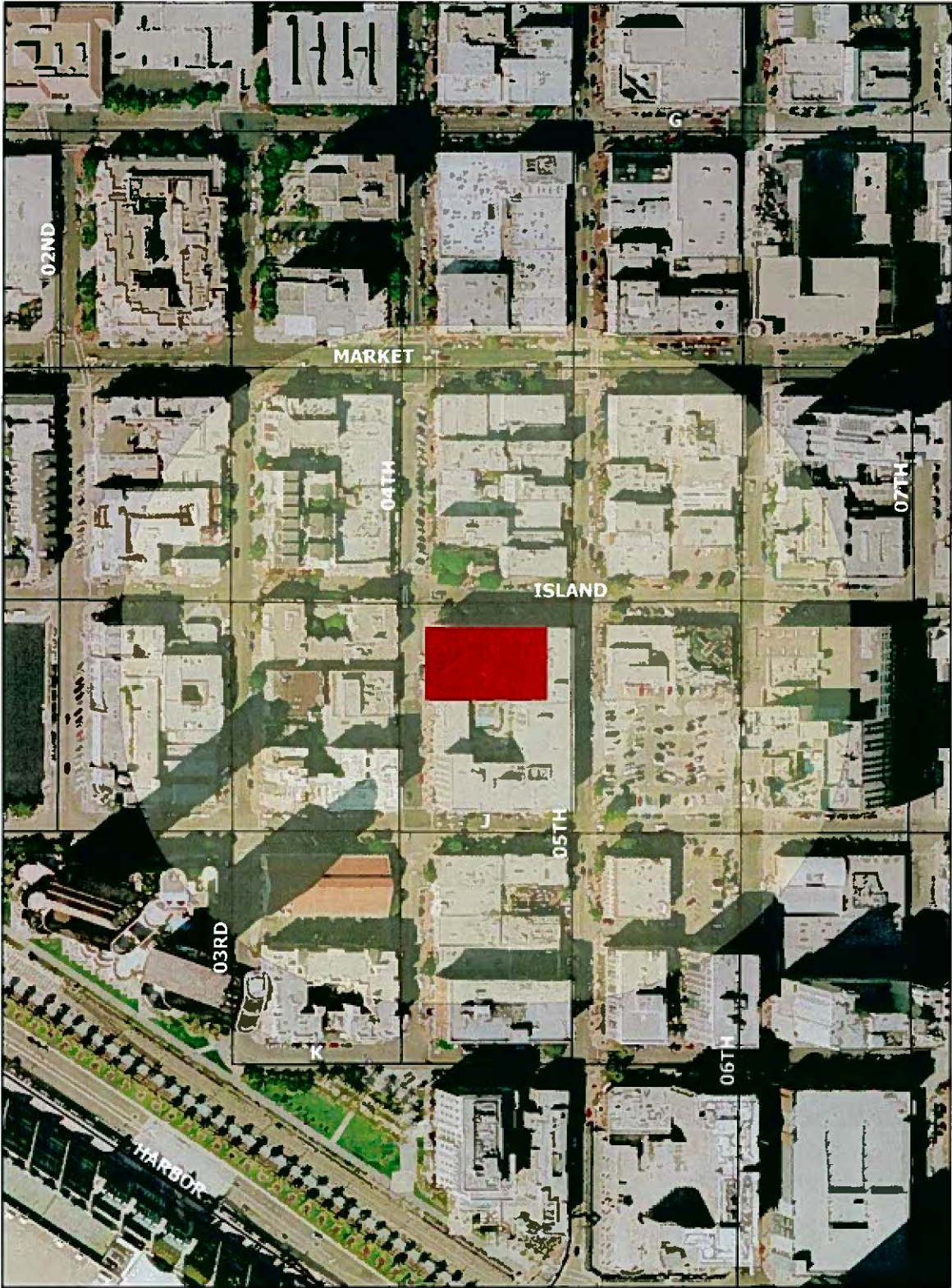
Lorena Cordova
Junior Planner
Centre City Development Corporation

BONA/lgc

Attachments:

- A. Project Location Map
- B. Project Plans
- C. Project Site Photos
- D. Draft Permit with Conditions
- E. Copy of Appeal
- F. LDC Sections 141.0621 and 112.0503

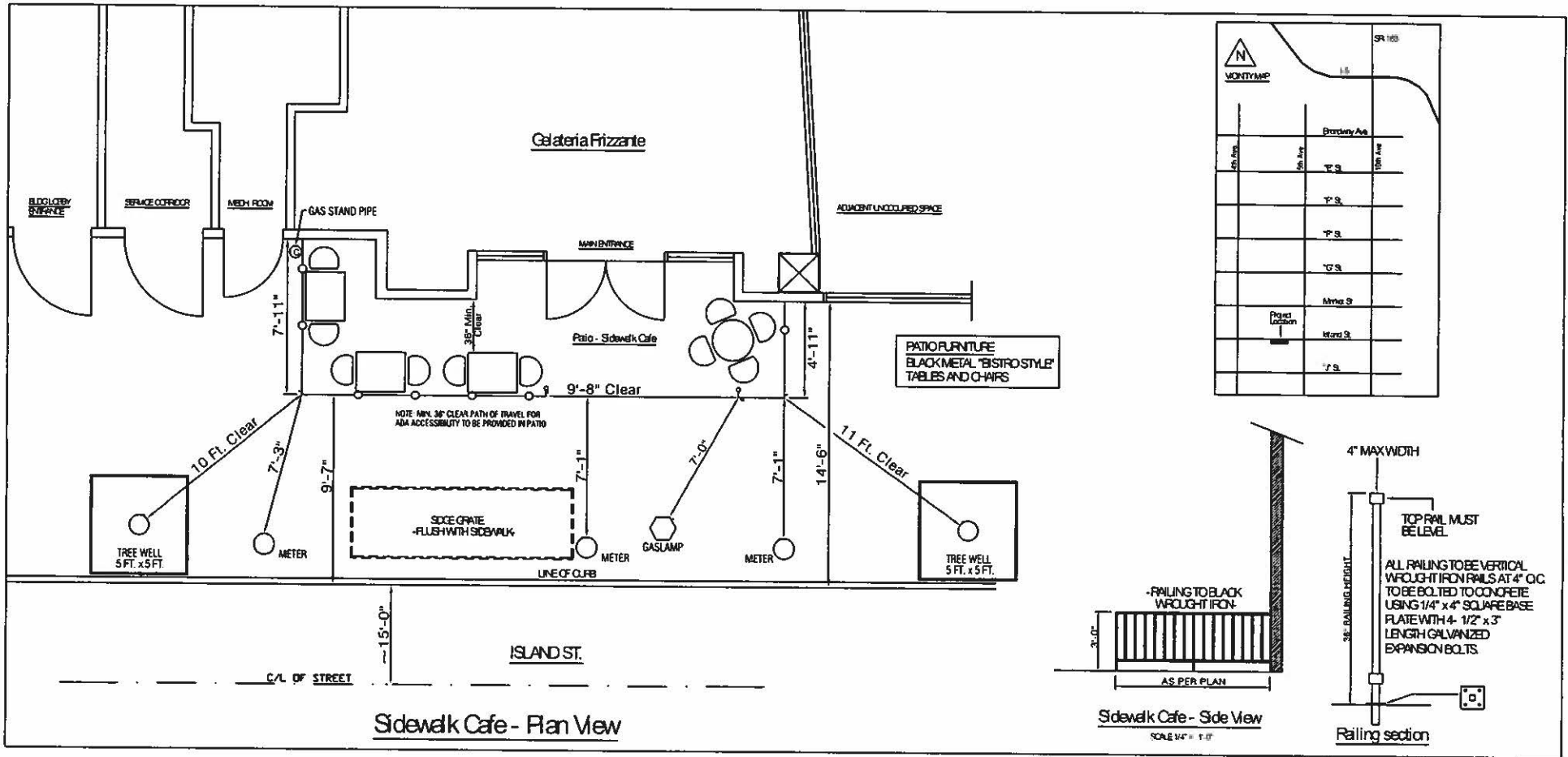
Gelateria Frizzante Project Location Map

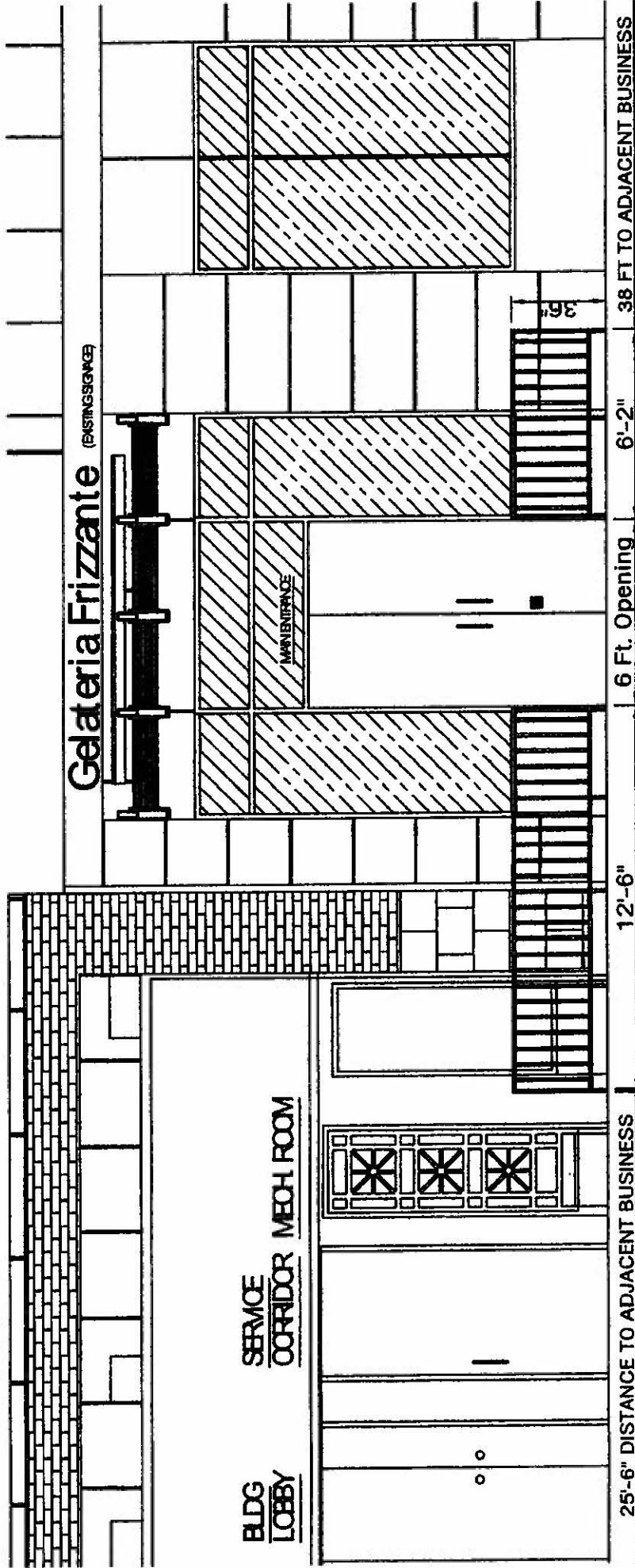


PROJECT SITE



500 Ft. BUFFER





- NO NEWS SIGNAGE PROPOSED
- NO NEW LIGHTING PROPOSED
- NO PATIO HEATERS TO BE INSTALLED
- NO CANOPY, AWNINGS OR UMBRELLAS PROPOSED

Sidewalk Cafe - Elevation View SCALE: 1/4" = 1'-0"



RECORDING REQUESTED BY:

Centre City Development Corporation
401 B Street, Suite 400
San Diego, CA 92101

AND WHEN RECORDED MAIL TO:

Centre City Development Corporation
401 B Street, Suite 400
San Diego, CA 92101

THIS SPACE FOR RECORDER'S USE ONLY

*NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT OF
REAL PROPERTY AFFECTING THE TITLE TO OR
POSSESSION THEREOF*

**GASLAMP QUARTER PLANNED DISTRICT SIDEWALK
CAFÉ PERMIT 2008-16**

**GELATERIA FRIZZANTE
435 ISLAND AVENUE**

**CENTRE CITY DEVELOPMENT CORPORATION
DECISION OF THE PRESIDENT**

**NEIGHBORHOOD USE PERMIT NO. 2008-16
GASLAMP QUARTER PLANNED DISTRICT SIDEWALK CAFÉ PERMIT**

**Gelateria Frizzante
435 Island Avenue**

WHEREAS, Christine Kaufmann of Gelateria Frizzante (Italian ice cream shop), Permittee, has submitted an application for a Neighborhood Use Permit (NUP) to establish a sidewalk café at 435 Island Avenue and more particularly described as, Modules E, F, G, H as shown on that certain condominium plan for Parcel 1 of Parcel Map No. 19567, in the City of San Diego, County of San Diego, recorded on September 3, 2004, as File No. 2004-0844099, located within the Gaslamp Quarter Planned District of the Downtown Community Plan Area; and,

WHEREAS, the President of Centre City Development Corporation (CCDC) considered the plans and materials submitted prior to the decision, the inspection of the subject property, the comments received from the appropriate City departments, and public comments submitted prior to the decision; and,

WHEREAS, the President considered the width of the sidewalk, the design and relationship of the café to other uses Island Avenue, the pedestrian volume, and the impact the café's location will have on the character of the area; and,

WHEREAS, the President found that the establishment of a sidewalk café in this location , subject to conditions, will not adversely affect the neighborhood and will implement the goals of the Progress Guide and General Plan and the Downtown Community Plan; and,

WHEREAS, the President found that the sidewalk café will not be detrimental to persons residing, visiting, or working in the area; and,

WHEREAS, the sidewalk café will comply with all relevant regulations in the Municipal Code, and all applicable building laws including State laws and regulations.

NOW, THEREFORE, BE IT RESOLVED, BY THE PRESIDENT:

1. NUP 2008-16 is hereby approved, subject to the plans with the CCDC "APPROVED" stamp dated July 17, 2008 on file in the office of CCDC and the following conditions:
 - a) The sidewalk café area (158 square feet maximum) shall be surrounded by the approved metal railing not to exceed three feet (3'-0") in height. The sidewalk café railing shall be installed so as to maintain a minimum clear path of seven feet (7' - 0") along Island Avenue. The clear path is to be measured from the outermost point of the sidewalk café to the edge of the curb or the nearest vertical

obstruction in the public right-of-way. Any proposed modifications to the sidewalk café shall be reviewed and approved by CCDC prior to installation.

- b) The sidewalk café may exist only in conjunction with and adjacent to a street-level eating and drinking establishment at 435 Island Avenue. The café shall only be used for dining, drinking and circulation. Any change of use shall be reviewed and approved by CCDC.
 - c) No alcohol, food or beverages shall be served or permitted within the sidewalk café past 12:00 a.m. seven days a week.
 - d) The Permittee shall obtain and provide CCDC with an approved copy of an Encroachment Maintenance and Removal Agreement (EMRA) and a Public Improvement Permit (if applicable) from the City of San Diego Engineering Services Division prior to the installation of the sidewalk café.
 - e) No tables, chairs, A-frame signs, or any other furnishings or decorative displays shall be located in the public right-of-way in front of or adjacent to the sidewalk café.
 - f) The applicant shall be responsible for maintaining the sidewalk within, and adjacent to, the café enclosure clean and free of litter at all times.
 - g) The café shall meet all applicable disabled accessibility codes.
 - h) No signs (including banners and/or pennants) are permitted on or within the sidewalk café except that the name and type of establishment may appear on the awning or umbrellas as approved by CCDC. Umbrellas shall not be permitted within the café if awnings or canopies cover the café.
 - i) The design of all furniture, awnings, umbrellas and heaters shall be approved by CCDC prior to installation and shall be maintained in good condition at all times. All umbrellas shall maintain a minimum of 7'0" clearance above the sidewalk. Heaters shall also be approved by the San Diego Fire Department.
 - j) No musical instruments or sound reproduction devices shall be operated or used within the sidewalk café.
 - k) A public liability insurance policy of at least \$1,000,000 shall be required before approval of an EMRA. Such liability insurance shall be provided in a form and amount acceptable to the City Engineer. The policy shall name the City of San Diego as an additional insured and shall be maintained at all times.
2. This Permit is a Covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

State of California

County of San Diego

On _____ before me, _____,
Date Name, Title of Officer

personally appeared _____,
Name(s) of Signer(s)

___ personally known to me - **OR** -

___ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

Signature of Notary

445 Island Avenue #415
San Diego, CA 92101

August 2, 2008

CCDC Board
CCDC Planning Department
401 B Street Ste 400
San Diego, CA 92101

Dear Board Members,

We appeal the decision to allow a NUP (2008-16) to Gelateria Frizzante at 435 Island Avenue based on the following:

1)The Neighborhood Use Sidewalk Cafe Permit grants permission based on submitted plans and states that “the sidewalk cafe will not be detrimental to persons residing, visiting, or working in the area.” However, THE SIDEWALK CAFE-ELEVATION VIEW (attached) submitted by Gelateria Frizzante indicates that the planned patio is [“25’-6” distance to adjacent *business*]. Please note that an “adjacent business” is the entrance to a residential entity. A condominium with 5 floors **above** the proposed patio. There is no indication that the patio is below the “first floor” residences, not professional offices. There is no indication on the plans that a passenger loading zone is in close proximity.

Although this patio is small, it’s impact is huge in relationship to the development of Island Avenue and the rest of Gaslamp City Square.

2) As defined, the Gaslamp City Square property is mixed use-commercial **and** residential with underground parking (which increases foot traffic around the square). There appear to be inconsistencies in the provisions for development because there are very few *specifications* in the Land Development Code and Gaslamp Planning District Guidelines that indicate relevance to residents or residential property.

For example: 157.0304 Permitted Uses (revised)

- (b) Permitted Uses Only Above or Below the First Floor..
- (3) Dwelling Units
- (c) Specialized Units

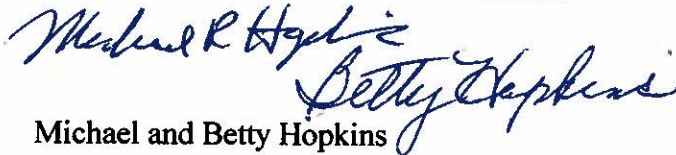
These articles offer very few explicit *specifications* regarding ambient noise, right-of-way or handicapped provisions - which impact residential living. Actually, the word resident or residential appears very few times throughout the guidelines.

3) The Sidewalk Cafe articles: sec.141.0621nd 157.0305 are extremely permissive and mention practically no considerations to establishments with permanent residents (such as mixed-use entities). For instance, there is no differentiation between sidewalk cafe placed below a first floor with residents versus a first floor with commercial or professional offices. Certainly, noise, smoking, and handi-capped right-of-way are factors that impact quality of life.

4)Specialized Uses in the Public Right of Way 157.0304 (rev.) indicates “proposed uses must meet safety and design criteria set forth in Gaslamp Quarter Planned District Design Guidelines”. Due to the fact that the mixed-use site -Gaslamp City Square is unique in design, location, and size of residential units, consideration should be given to the long-range plan for “the square”. At present, the commercial and residential character of the development is an outstanding blend. (GASLAMP CITY SQUARE is a centerpiece graphic on the ccdc.com website.) Granting the permit for a sidewalk cafe at 435 Island Avenue sets the precedent to allow, at the least, further patio establishment at the corner of Island and Fourth Avenue and/or at the corner and block of J Street and Fourth Avenue (Red Pearl or Oceanaire). This would certainly impact residential units and pedestrian traffic. Consider line-of-sight for vehicular traffic leaving the parking lot.

Lack of thoughtful planning of future USE issues can destroy the character of design as well as the quality of life for residents.

With these considerations and concerns, we respectfully request that you deny the NUP 2008-16 for Gelateria Frizzante.

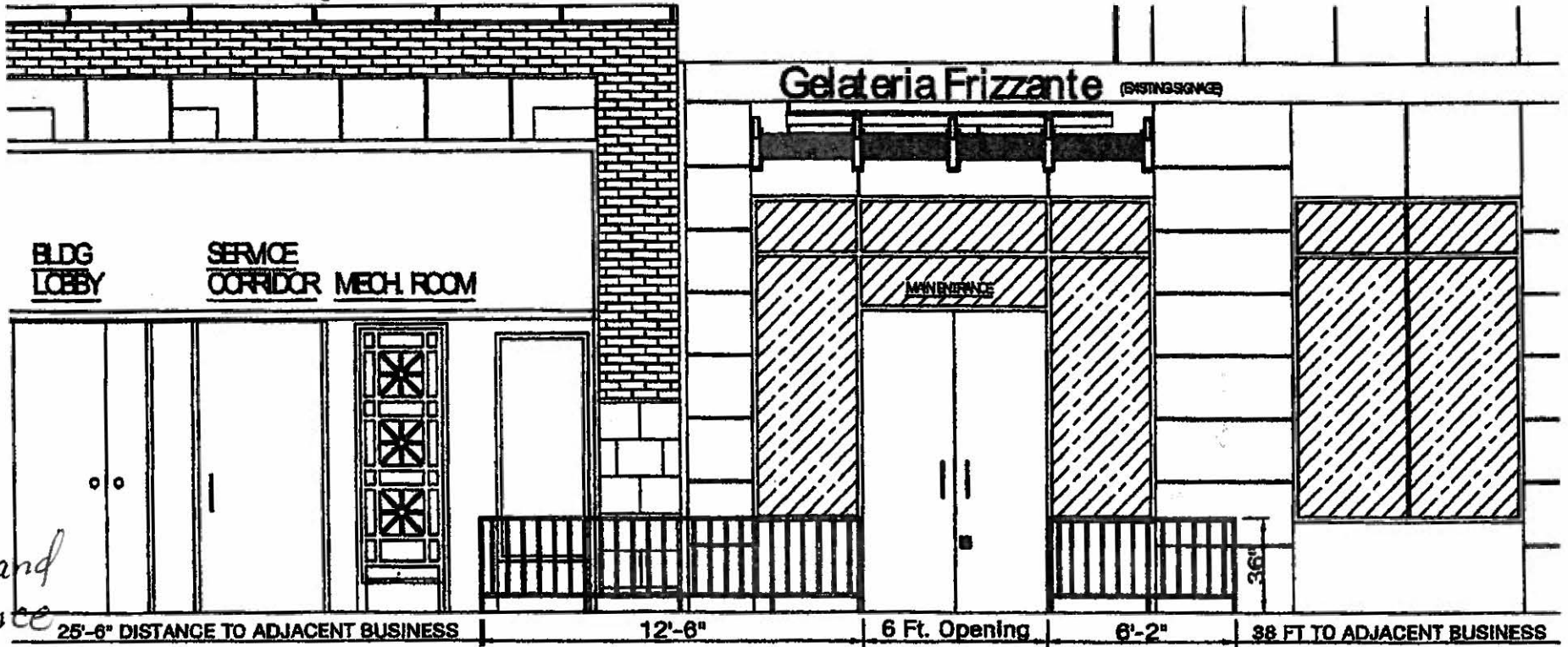


Michael and Betty Hopkins
Residents/owners

Enclosed: Check \$100

above ground floor — Residents - 3rd Floor

7th Floor



145 Island
Entrance
to 103
Condominium units

Sidewalk Cafe - Elevation View SCALE 1/4" = 1'-0"

- NO NEW SIGNAGE PROPOSED
- NO NEW LIGHTING PROPOSED
- NO PATIO HEATERS TO BE INSTALLED
- NO CANOPY, AWNINGS
- NO UMBRELLAS PROPOSED

Passenger loading in close proximity

Notations: BFA.
8/02/08

- (12) Any permit issued by the City of San Diego shall be void if the facility does not obtain other required local and state permits or does not comply with regulations enforced by the local enforcement agency, the Air Pollution Control District, or other applicable regulatory agencies.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 3-1-2006 by O-19467 N.S.; effective 8-10-2006.)

§141.0621 Sidewalk Cafes

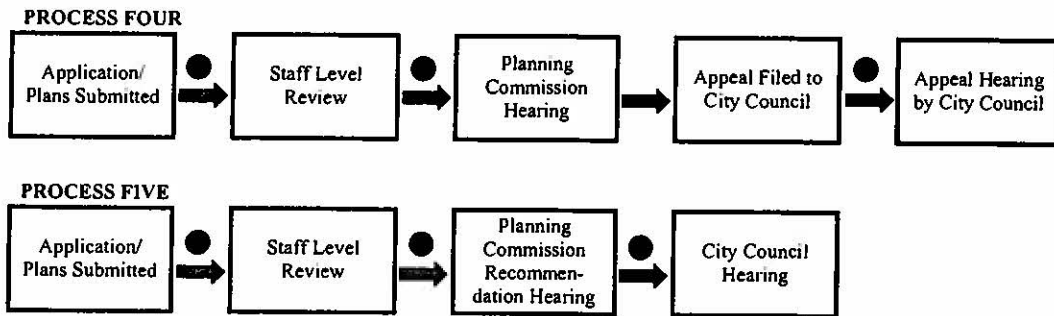
Sidewalk cafes may be permitted with a Neighborhood Use Permit in the zones indicated with an "N" in the Use Regulations Tables in Chapter 13, Article I (Base Zones) subject to the provisions of this section.

- (a) The decision maker will evaluate the following to determine if a sidewalk cafe is a suitable use for the proposed site and will not infringe on the use of the *public right-of-way* by pedestrians:
- (1) The width of the sidewalk;
 - (2) The design and relationship of the cafe to other existing or planned uses in the vicinity;
 - (3) The amount of pedestrian use and the impact of the cafe's location on pedestrian activity; and
 - (4) The ability of the cafe to fit the character of the area, create an outdoor pedestrian plaza, intensify pedestrian activity, and make the *street* activity more attractive.
- (b) A sidewalk cafe may be located within the *public right-of-way* only in conjunction with, and adjacent to, a street-level eating or drinking establishment.
- (c) A sidewalk cafe shall be used only for dining, drinking, and circulation. The cafe may provide either waiter/waitress service or self-service.

- (d) The area of the sidewalk cafe shall be delineated by a barrier consisting of railings, *fences*, or a combination of railings and *fences*, and planter boxes that are 3 feet in height or less; solid walls are not permitted. The barrier may be either permanently installed or moveable; if it is moveable, it shall be affixed to the sidewalk while the cafe is open for business. A clear, transparent, shatterproof glass or similar material may be used on top of the 3-foot barrier to enclose the cafe to minimize windy or cold climatic conditions. The enclosure must meet the following requirements.
 - (1) The height of the sidewalk cafe barrier plus the clear enclosure shall not exceed 5 feet.
 - (2) If an enclosure is used, *awnings* shall not be used as a cafe covering.
- (e) A clear path, free of all obstructions to the flow of pedestrian traffic, shall be provided in the *public right-of-way* and shall be maintained at all times. Obstructions include traffic signals or *signs*, light standards, parking meters, phone booths, bus stops, trash receptacles, benches, trees, and similar objects. The clear path shall be a paved sidewalk that is at least 8 feet wide. The clear path shall be measured in the following manner:
 - (1) The clear path shall be measured from the outermost point of the sidewalk cafe to the curb or to the nearest obstruction within the flow of pedestrian traffic;
 - (2) Recesses in the *building facade* shall not be used to satisfy the clear path requirement; and
 - (3) The decision maker may grant an exception to the minimum clear path width if pedestrian volumes and existing *street* conditions are such that no congestion would result.
- (f) The sidewalk cafe shall be designed and operated so that unsafe conditions are not created for the physically disabled, blind, or partially sighted. Gates or other objects placed within a sidewalk cafe shall not swing or project beyond the delineated perimeter of the cafe. Cantilevered projections are not permitted. A change in paving pattern and texture may be required to alert pedestrians of a change in sidewalk use.

- (g) No portion of a sidewalk cafe may be located within 8 feet of the entrance to a ground *floor* commercial use other than the entrance to the adjacent restaurant. An exception to the minimum distance between sidewalk cafes and adjacent business entrances may be granted by the decision maker after a review of existing conditions in the surrounding commercial area and on the *street* adjacent to the sidewalk cafe if the affected, adjacent property owners and first *floor* tenants give notarized, written permission for the encroachment. The decision maker's review will take into consideration the effect that the exception may have on adjoining businesses in terms of visibility and access.
- (h) *Awnings* shall be secured to the main building.
- (i) The furnishings of the interior of a sidewalk cafe shall consist solely of moveable tables, moveable chairs, and moveable umbrellas. Landscaping may be placed in moveable planters or planted in the ground inside the delineated cafe area adjacent to the barrier. Lighting fixtures may be permanently affixed to the front of the main building.
- (j) The name and type of establishment may be placed on umbrellas or on the valance of an *awning*. Other *signs* are not permitted on the sidewalk cafe.
- (k) Trash or storage areas shall not be located on or adjacent to the *public right-of-way*.
- (l) Musical instruments or sound reproduction devices shall not be operated or used within a sidewalk cafe. For purposes of enforcement of Municipal Code Section 59.5.0101 et. seq., the *property line* shall be considered the boundary of the sidewalk cafe.
- (m) Sidewalk cafes shall be free of litter at all times.
- (n) The hours of operation of a sidewalk cafe shall be limited to the hours of operation of the associated eating or drinking establishment.
- (o) Within the beach impact area of the Parking Impact Overlay Zone, sidewalk cafes shall not exceed 200 sq ft in area without providing parking. Required parking shall be provided at a ratio not less than one parking space for every additional 200 sq ft (or portion thereof) above the first 200 sq ft.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)



Key

● Public Notice to Property Owners and Tenants within 300 Feet and to Community Planning Groups

○ "Limited" Notice to Applicant and Anyone Requesting Notice

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

(Amended 11-28-2005 by O-19444; effective 2-9-2006.)

§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner.

- (a) Notice. The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.
- (b) Decision Process. The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

This 11 *business days* minimum time frame for a staff decision will be extended by a period not to exceed an additional 20 *business days* to allow time for a recommendation by a recognized community planning group, if requested by the group's chair, or the chair's designee. Notification of the decision shall be given to the *applicant* and to those persons who request notification in accordance with this section, no later than 2 *business days* after the *decision date*.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§112.0504 Process Two Appeal Hearing

The Planning Commission shall hear appeals of Process Two decisions subject to the following.

- (a) **Persons Who Can Appeal.** The following persons may request an appeal hearing after the designated staff person's decision:
 - (1) An *applicant*; or
 - (2) Any other person who files an application for a Process Two appeal hearing in accordance with Section 112.0504(b).
- (b) **Request for a Process Two Appeal Hearing.** A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date*.
- (c) **Scheduling an Appeal Hearing.** The City Manager shall assign a date for an appeal hearing before the Planning Commission no later than 10 calendar days after the date on which an application for the appeal hearing is filed with the City Manager. The appeal hearing shall generally be held within 60 calendar days following the filing of the application for the hearing. The appeal hearing shall be noticed in accordance with Section 112.0308.
- (d) **Power to Act on the Decision at Appeal Hearing.** At the conclusion of the appeal hearing, the Planning Commission may affirm, reverse, or modify the staff decision.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0505 Process Three

An application for a permit, map, or other matter acted upon in accordance with Process Three may be approved, conditionally approved, or denied by a Hearing Officer in the following manner.

- (a) **Notice.** The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.