



THE CITY OF SAN DIEGO  
**REPORT TO THE PLANNING COMMISSION**

**DATE ISSUED:** March 14, 2013                      **REPORT NO. PC-13-011**

**ATTENTION:** Planning Commission, Agenda of March 28, 2013

**SUBJECT:** 710 GARNET SIDEWALK CAFE,  
PROJECT NO. 243190, PROCESS 2 APPEAL

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**OWNER:** Gregory Y. Yee & Maria Do Carmo Monteiro Revocable Trust

**APPLICANT:** Scott Slaga

**SUMMARY**

**Issue:** Should the Planning Commission approve or deny an appeal of the Development Services Department's approval of a Neighborhood Use Permit to allow the construction of a sidewalk café at 710 Garnet Avenue within the Pacific Beach Community Planning Area?

**Staff Recommendation:** DENY the appeal and APPROVE Neighborhood Use Permit No. 873355.

**Community Planning Group Recommendation:** On February 28, 2013 the Pacific Beach Planning Group voted 10-5-2 to recommend denial of the proposed sidewalk café.

**Environmental Review:** This activity is Exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15303 (e) – new construction (accessory structures including garages, carports, patios, swimming pools, and fences), and where the exceptions listed in CEQA section 15300.2 would not apply. A Notice of Right to Appeal (NORA) Environmental Determination (Attachment 9) was posted on October 8, 2012, in the offices of the Development Services Department. Applications to appeal the CEQA determination made by staff to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of the Notice or within 15 business days from the date of the environmental determination. No appeal was filed.

**Fiscal Impact Statement:** All review and processing costs are covered by the applicant through a deposit account.

**Code Enforcement Impact:** None with this project.

**Housing Impact Statement:** None with this project.

## **BACKGROUND**

### **Project Description**

The project site is located at 710 Garnet Avenue in the Pacific Beach Community Planning area, within the CV-1-2 Zone, within the State Coastal Zone, the Coastal Height Limit, First Public Right-of-Way, the Parking Impact and Transit Overlays, and within City Council District 2. The Neighborhood Use Permit is required pursuant to LDC Section 131.0522, Table 1310-05B and 126.0203.

The project would include installing a maximum three-foot high wrought-iron fence topped with a maximum two-foot clear frameless glass partition extending into the public right-of-way by five feet, four inches. The fence would require a ministerial Encroachment, Maintenance, and Removal Agreement (EMRA), and right-of-way permit.

The applicant is seeking permission for a 200 square-foot sidewalk café in front of an eating and drinking establishment. An existing short fence for a small sidewalk café in front of the business was approved on January 27, 2000. It is located at the eastern end of the site frontage and projects into the public ROW approximately six feet, and running a length of approximately 11 feet (see Attachment 10).

## **DISCUSSION**

Staff has reviewed the proposal and has no issues with the project. The installation is considered to be standard and similar to other sidewalk cafes approved in the area. The Pacific Beach Community Plan recommends an eight-foot clear distance between a sidewalk café fence and the nearest obstruction. The project would comply with this recommendation except at two discrete points: at one existing mature palm tree and at an existing street sign. Clear distance at the palm tree would be five feet; and seven-foot three inches at the street sign. To minimize the impact of the less than recommended clear distance at the palm tree, installation and maintenance of a tree grate would be required as a permit condition. Similar exceptions have been made in various locations around the City of San Diego and in Pacific Beach, in particular. Street trees and sidewalk cafes are seen as amenities to the public streetscape and need not be mutually exclusive. This is particularly true where the less than recommended distance is concentrated at a point rather than along a significant length of sidewalk café fence. As this is the case with this project, staff is able to recommend denial of the appeal and approval of the project.

On November 21, 2012, the staff decision to approve the proposed sidewalk café was appealed



by Ms. Ellie Fellers. Following are the appeal issues.

### **Appeal Issues**

Staff has summarized the appeal issues provided in the appeal and provided a response to each. The issues in general refer to: opposition to alcohol sales; hours of operation; complaints and service calls to the San Diego Police Department (SDPD); Noise, and the Pacific Beach Community Plan recommending the revitalization of Garnet Avenue.

### **Staff Response to Alcohol Sales Issues**

The Process 2 Staff Decision to approve Neighborhood Use Permit No. 873355 would allow the construction of a 200 square-foot Sidewalk Café in the public right-of-way adjacent to 710 Garnet Avenue. The design, construction, and operation of sidewalk cafes is regulated by San Diego Municipal Code (SDMC) Section 141.0621 (see Attachment 11). The Code permits sidewalk cafes in the public right-of-way, and requires staff to evaluate their suitability based on a wide variety of factors including but not limited to the impact of the cafe's location on pedestrian activity, the cafe's ability to stimulate pedestrian activity, the physical design and furnishings of the café, and the cafe's hours of operation. The code does not designate the issue of alcohol sales as a criterion to determine whether or not a proposed sidewalk cafe is appropriate. Alcohol sales and consumption at this property is regulated by the Alcoholic Beverage Control Board (ABC), and not the City of San Diego. Therefore the proposed Neighborhood Use Permit (NUP) is silent on the issue of alcohol, and staff did not evaluate the issuance of the NUP based on issues associated with alcohol sales or consumption.

### **Staff Response to Hours of Operation Issues**

Draft Permit Condition No. 20 of the proposed NUP would allow the hours of operation to match the hours of operation of the 710 Beach Club. While an ABC license would be required to serve alcohol on the sidewalk café, other non-alcoholic beverages and food could be served without the ABC license. In addition, the proposed permit condition could be modified to require that the sidewalk café close earlier than the associated 710 Beach Club, notwithstanding the ability or inability to serve alcoholic beverages.

### **Complaints and Services Calls to the San Diego Police Department**

The letter from the SDPD referred to in the appeal is addressed to the ABC and speaks to the issue of granting an on-sale alcohol license and not to the approval of a sidewalk café. The appeal fails to establish a nexus the stated SDPD's calls for service and the SDMC process for granting an NUP for a sidewalk café. SDPD's comments appear to be concerning the issuing of an alcohol license for a proposed sidewalk café, not concerning the construction of the sidewalk café or its encroachment into the public ROW. This is an important distinction. While an alcohol license could be issued for the proposed sidewalk café in the future, the ABC has the authority in that matter and only the Neighborhood Use Permit allowing the café in the public



right-of-way is before the Planning Commission. Other restaurants and bars have been issued permission to construct sidewalk cafés in the ROW and have operated with no issues relative to the Public Right-of-Way. Issues pertaining to the issuance of an alcohol license will be addressed by the ABC. If alcohol were not served at this location, the SDPD would not be providing crime statistics and service call data related to a proposed sidewalk café. Therefore, the crime statistics referenced are irrelevant to the approval of the sidewalk café.

### **Noise**

No music or amplified sound is proposed with the sidewalk café. The café would not create a greater opening or otherwise modify the existing establishment such that any noise associated with the amplified music from the 710 Club would be increased. The draft permit does not allow music or amplified sound. The proposed sidewalk café is not proposing to make disturbing excessive or offensive noise.

### **Safety**

The appeal indicates the 710 Beach Club's encroachment onto the sidewalk often forces walkers to go out into the street.

It is not clear from the appeal how the existing sidewalk café "forces" walkers into the street. The appeal does not indicate how the information in this appeal issue shows that the findings for the NUP for the proposed sidewalk café cannot be made. The appeal has provided no information to demonstrate that permitting the sidewalk café would negatively affect public health, safety and welfare.

### **Pacific Beach Community Plan Revitalization of Garnet Avenue**

The appeal states that the decision to approve the permit is in conflict with the Pacific Beach Community Plan related to "stimulating the physical rehabilitation and economic revitalization of the Garnet Ave commercial district."

The approval of the proposed sidewalk café would not hinder the stimulation of the physical rehabilitation and economic revitalization of the Garnet Avenue commercial district. Approving this permit would allow a sidewalk café in front of an established business, and would not affect any future revitalization or physical rehabilitation efforts. The project would be required to enter into an Encroachment, Maintenance and Removal Agreement. If the public ROW is needed in the future, the City could require that the sidewalk café be removed.

City regulations provide that a sidewalk cafe may be placed in front of this eating and drinking establishment provided the required permits are secured. Considering the application is part of this process.

The appeal provides no information to support the assertion that "Granting a Sidewalk Café permit for a bar does not promote the economic revitalization that granting a similar permit to



restaurant might.”

Granting a Sidewalk Café permit to this established business would not alter any effort to actively encourage mixed-use residential, office, and commercial development. This eating and drinking establishment is part of a well established mix of commercial businesses along Garnet Avenue. Garnet Avenue near the project site has various retail and commercial businesses, including clothing and shoe shops, coffee shops, condominiums and eating and drinking establishments.

### CONCLUSION

The issue before the Planning Commission is whether to approve or deny an application for a Neighborhood Use Permit for a sidewalk café. Staff has reviewed the proposal and found it to be consistent with all regulations related to sidewalk cafes and with the Pacific Beach Community Plan. Therefore, staff recommends denial of the appeal and approval of the project.

### ALTERNATIVES

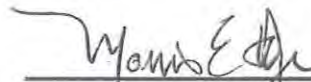
1. **Deny** the appeal and **Approve** Neighborhood Use Permit No. 873355, with **modifications**.
2. **Approve** the appeal and **deny** Neighborhood Use Permit No. 873355.

Respectfully submitted,



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Mike Westlake  
Assistant Deputy Director  
Development Services Department



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Morris E. Dye  
Project Manager  
Development Services Department

Attachments:

1. Appeal by Ms. Ellie Fellers
2. Aerial Map
3. Community Land Use Map
4. Location Map
5. Draft Permit Resolution with Findings
6. Draft Permit with Conditions
7. Project Site Plan
8. Notice of Right to Appeal Environmental Determination
9. Notice of Exemption
10. Permit for Existing Sidewalk Café
11. San Diego Municipal Code Sections 141.0621





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|  |   |   |                                    |
|--|---|---|------------------------------------|
| <br>THE CITY OF SAN DIEGO | City of San Diego<br>Development Services<br>1222 First Ave. 3rd Floor<br>San Diego, CA 92101<br>(619) 446-5210 | <h2 style="margin:0;">Development Permit/<br/>Environmental Determination<br/>Appeal Application</h2> | FORM<br><b>DS-3031</b><br>MAY 2010 |
|--|---|---|------------------------------------|

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

**1. Type of Appeal:**

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Process Two Decision - Appeal to Planning Commission | <input type="checkbox"/> Environmental Determination - Appeal to City Council    |
| <input type="checkbox"/> Process Three Decision - Appeal to Planning Commission          | <input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
| <input type="checkbox"/> Process Four Decision - Appeal to City Council                  |  |

**2. Appellant** Please check one  Applicant  Officially recognized Planning Committee  "Interested Person" (Per M.C. Sec. 113.0103)

Name: Ellie Fellers E-mail Address: NONE

Address: 4465 Ocean Dr, UNIT G2 Pacific Beach, Ca 92107 Telephone: (858) 273-3556

**3. Applicant Name** (As shown on the Permit/Approval being appealed). Complete if different from appellant.  
710 Beach Club - 710 Garnet Ave / PTS 243190

|   |                                 |                       |
|---|---------------------------------|-----------------------|
| <b>4. Project Information</b>   | Date of Decision/Determination: | City Project Manager: |
| Permit/Environmental Determination & Permit/Document No.:<br><u>Neighborhood Use Permit - Sidewalk Cafe</u> | <u>NOV 7, 2012</u>              | <u>Morris Dye</u>     |
| Decision (describe the permit/approval decision):   |                                 |                       |

**5. Grounds for Appeal** (Please check all that apply)

|   |  |
|---|--|
| <input checked="" type="checkbox"/> Factual Error (Process Three and Four decisions only)               | <input type="checkbox"/> New Information (Process Three and Four decisions only) |
| <input checked="" type="checkbox"/> Conflict with other matters (Process Three and Four decisions only) | <input type="checkbox"/> City-wide Significance (Process Four decisions only)    |
| <input checked="" type="checkbox"/> Findings Not Supported (Process Three and Four decisions only)      |  |

**Description of Grounds for Appeal** (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See attached

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NOV 21 2012

DEVELOPMENT SERVICES

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Tracy Elaine Fellers Date: NOV 20, 2012

**Note:** Faxed appeals are not accepted. Appeal fees are non-refundable.



DEVELOPMENT PERMIT APPEAL APPLICATION – Process Two Decision – Appeal to Planning Commission. Grounds for Appeal:

Section 112.0504 Process Two Appeal Hearing

(c) Grounds for Appeal.

(1) Factual Error. The statements and evidence relied upon by the decision maker when approving the permit were inaccurate.

- Development Services Dept Resolution No. CM-6291 states that “The proposed development will **NOT** be detrimental to the public health, safety, and welfare; and the project would provide a Sidewalk Café’ in front of the 710 Club’s existing bar.

A Sidewalk Café that serves alcohol is not possible because that requires a permit from ABC to sell alcohol, which was when the applicant applied for a permit to allow him to serve alcohol on his recently acquisition of the restaurant next door, which never had an alcohol license)..

(see attachment #1, ABC Report on Application for License)

The 710 Beach Club is a bar license (Type 48 On-Sale General Public Premises (Bar, Night Club).

(see attachment #1a, Ca Dep of ABC License info)

A Type 48 license prohibits minors (those under 21) from entering the premises. Further, a Type 48 or bar license does not require food service.

(see attachment #1c, Common ABC License Types and Their Basic Privileges).

Therefore, the 710 Beach Club cannot sell alcohol on their “Sidewalk Café” unless or until ABC grants a license to serve alcohol on the patio.

- Under Planning/Design Requirements #20. “The hours of operation of a sidewalk café’ shall be limited to the hours of operation of the associated eating or drinking establishment.” This means that this operation would be allowed to have patrons drinking on its outdoor patio until 2am. This will certainly further aggravate the existing noise created by this operation.  
(see attachment #1c, Quick summary of selected laws for retail licenses)
- No activity is authorized to be conducted on the premises until (a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and (b. The Permit is recorded in the Office of the San Diego County Recorder.  
(see attachment #1d Development Services Internal Order #24001930)

(2) N/A

(3) Findings Not Supported. The decision maker’s stated findings to approve the permit are not supported by the information provided to the decision maker;



- San Diego Police Department (SDPD) protested the issuance of an on-sale General Public Premises license to Blind Melons Inc on the grounds that it would add to high crime, over concentration of ABC licenses and tend to aggravate existing police problems in the vicinity.  
(see attachment #2, Oct 14, 2010 letter from SDPD to ABC).

ABC reported requested crime data from SDPD indicated 32 calls for service, 10 of which were noise disturbances. Other calls for service included 9 violent, 7 burglary alarms, 2 financial and 4 miscellaneous and 321 arrests within a 2/10 mile radius of the premise from Jan 1, 2010 to November 7, 2011).  
(see attachment 2a, ABC Premises Report, pg 4)

Though SDPD had granted PCorN in 2009, there they noted other issues currently exist; the 710 Club is a noisy, mixed use area. They cited law enforcement resource concerns, increased calls for service, possible increased fights, lots of U-turns on the cul-de-sac, and the ability to pass alcohol from the patio outside the premises.  
(Aug 21, 2012 ABC Appeal Hearing transcript--Attachment to be included when available from ABC hired court reporter)

PD might have expected an opportunity to impose conditions on an unconditioned license, especially given the 710 Club's license #232599 showed a long disciplinary history.  
(see attachment 1a, Ca Dep of ABC License Info) and  
(see attachment 2a, ABC Premises Report, pg 4).

However, when the 710 Club officers where Scott Slaga's title, Chief Financial Officer, was changed to Vice Pres/Treasurer, it allowed them to apply to ABC for a new license #503368. The new license showed no history of disciplinary actions.  
(see attachment #1b, Ca Dep of ABC License Info).

- On Nov 19, 2012 SDPD provided service data associated with 708-710 Garnet for the period 11/17/2011 to 11/17/2012 documenting 18 calls for service for a total out of service time of 11.34 hours. This would seem an indication that this operation continues to drain limited police services.  
(see attachment #3, SDPD e-mail sent Monday, November 19, 2012 2:44PM)
- SDPD reported fifty-seven noise complaints filed against the 710 Club alone were filed against properties at 710 and 714 Garnet Ave, and 4500 Ocean Blvd.

Noise complaints are made when there is interference to the quiet enjoyment of residential or commercial properties. Such complaints violate the city's noise ordinance.

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- Another resident, Joan Lieberman said her ground floor unit does not face the 710 Club, so she doesn't hear the noise but the booming reverberation from amplifiers/speakers still disturbs her.  
(see Aug 21, 2012 ABC Appeal Hearing transcript—Attachment to be included when available from ABC hired court reporter)
- This establishment has been causing problems for its neighbors since before 1993.
- January 25, 1993 "non-binding mediation" meeting with residents, bar owners, the police and trained mediators took place.
- February 22, 1993 the second "non-binding mediation meeting was held.
- One resident, Candy Hogan, reported she had made 141 noise complaints to SDPD in one year against Blind Melon's before the city stopped taking noise complaints and told protestants to go to "non-binding mediation."  
Ms Hogan purchased a decibel reader which read between 90 and 110 db. Following the non-binding arbitration's failure to mitigate the noise emanating from the 710 Club because Mr Slaga did not comply with the recommendation to keep his windows closed, Ms Hogan was forced to sell her unit and buy another in the back of See by the Sea where, although the noise does not reach her, the booming still does.
- December 5, 1994, Bob Borrego, Menas Realty wrote to complain that their obligation to disclose the unacceptable level of noise and the resulting vacating of condos by tenants.
- Blind Melons was issued three ticket citation violations from 1993 to 1997 for allegedly maliciously disturbing the peace, but all three charges were dismissed.
- City took Blind Melons to court on charges of disturbing the peace, but the case was thrown out.
- Residents of the Sea the See Condominium complex formed a Noise Abatement committee with the help of Mr Bob Hieder of Safe Streets Now to work toward a resolution to the on-going noise based on their rights.  
(SD Municipal Civil Code, Section 3479).
- In 1995 the city and Blind Melons went into mediation
- Bill Allen, owner of Crystal Pier double paned some windows and retained a security guard on call at a cost of \$3,000 per month. Mr Allen noted it was a huge financial burden. .He reported repeated noise complaints, intoxicated trespassers, unruly and uncontrollable rowdy crowds at the 710 Club's entrance and intoxicated patrons leaving the 710 Club.  
(see attachment #2a, ABC Premises Report, pg8)



- Ellie Fellers, resident of See the Sea Condos reported the 710 Club has removed the existing 3-ft high wrought iron railing required by the City's Sidewalk Café' Permit and replaced it with a permanent wooden structure. (see attachment #4, Sidewalk Café Information Bulletin 523)
  - Ms Fellers reports the 710 Beach Club's encroachment onto the sidewalk often forces walkers to go out into the street. She further cited the 6 documented reports to SDPD for noise disturbances, and a history of this operator failing to be a good neighbor. (see attachment #2a, ABC Premises Report, pg 8)
  - No operating condition imposed by ABC can prevent it from depriving nearby residents of their quiet enjoyment of property or from disturbing nearby hotel guests of the Ocean Park Inn or Crystal Pier.
  - Roll-up windows installed by the owner were not for the benefit of neighbors, since they did not mitigate the noise, but actually allowed for more noise to emanate. The open public view of the operations' activities is another strategy to advertise the bar's music and crowds to draw in more patrons.
  - Trash cans are available to the homeless who rummage through them then discard the trash thereby attracting rats. Operator has failed to secure trash/garbage to make them inaccessible to the homeless or to vermin until the time of trash pick up.
  - SD MC 59.5.0501(a) says it is unlawful for any person to make, continue, or cause to be made any disturbing, excessive, or offensive noise which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
  - SDMC 59.5.0502 (b)(2) (A) says noise should not be audible at a distance of fifty feet from the building. Noise is clearly audible fifty feet from the building.
  - SDMC 141.0504 Swap meets and other large outdoor retail facilities (d) states that hours of operation shall be limited so that neighboring development is not disturbed by noise. Both Crystal Pier and Ocean Park Inn operators assert they are disturbed by the noise from the 710 Beach Club
- (4) Conflicts. The decision to approve the permit is in conflict with the Pacific Beach Community Plan related to "stimulating the physical rehabilitation and economic revitalization of the Garnet Ave commercial district. Granting a Sidewalk Café' permit for a BAR does not promote the economic revitalization that granting a similar permit to restaurant might. Nor does it promote a mixture of commercial uses and services, but instead re-emphasizes alcohol-serving over bona-fide eating establishments. Granting a Sidewalk Café' permit to a bar also does not "Actively encourage mixed-use residential, office, and commercial development, but further entrenches alcohol over restaurants as a focus within the community.

The Alcoholic Beverage Control has never been willing or able to prevent this operation from its on-going disturbances of nearby residents, hotels and cottages. The City's process that grants a Neighborhood Use Permit in spite of police protest, documented problems cited by nearby residents, hotels, and cottages and gives priority to retailers over the public health, welfare, and safety of citizens is an issue of social justice.

There are a number of technologies that the owner could adopt to ensure no audible noise outside his premises, but neither the ABC nor the city has ever required him to do so.

Residents are entitled to the peaceful enjoyment of their property and should not be trumped by a City Department that gives businesses, even a business that has shown itself to be an on-going problem for nearby residents and hotels, a higher priority than the public's health, welfare, and safety of citizens.

We respectfully request a cost analysis for all associated city costs (e.g. police service calls, emergency calls, maintenance, etc) for the 710 Beach Club for 2011.

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Frances Eleanor Fellers

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November 20, 2012



State of California  
**REPORT ON APPLICATION FOR LICENSE**

Department of Alcoholic Beverage Control

*attach #1*

|  |  |  |   |  |  |
|--|--|--|---|--|--|
| 2. DIVISION<br>Southern  |  | 3. DISTRICT/BRANCH<br>SAN DIEGO                |   | 1. PENDING NUMBER<br>48-503368   |  |
| 5. APPLICANT NAME(S)<br>BLIND MELONS INC   |  |  |   | 4. DATE<br>December 8, 2011  |  |
| 6. MAILING ADDRESS (Street number and name, city, zip code) (if different from premises address)<br>710 GARNET AVE, SAN DIEGO, CA 92109-2408   |  |  |   | 7.<br><input type="checkbox"/> Temp <input checked="" type="checkbox"/> Perm |  |
| 8. DBA<br>7 10 BEACH CLUB  |  |  |   | 9. CENSUS TRACT<br>0079.01 <i>MSZ</i>  |  |
| 10. PREMISES ADDRESS (Street number and name, city, zip code)<br>710 GARNET AVE, SAN DIEGO, CA 92109-2408  |  |  |   | 11. GEOGRAPHICAL CODE<br>3710  |  |
| 12. LICENSES APPLIED FOR<br>48, 58 [1]   |  |  | 13. TRANSACTION TYPE (If intercounty transfer, show transferor's county)<br>Premises to Premises Transfer |  |  |
| 14. TEMPORARY PERMIT ISSUED<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Effective   |  |  | 15. LICENSES ALREADY HELD<br>48, 58 -232599   | 16. EFFECTIVE DATE/ESTD COMPLETION DATE<br>Issuance                          |  |
| 17. COPIES MAILED DATE<br>September 14, 2010   |  | 18. DATE PREMISES POSTED<br>September 22, 2010 | 19. 23985.5 DATE<br>September 22, 2010  | 20. DATE PREMISES INSPECTED<br>October 10, 2010 & July 25, 2011              |  |
| 21. WHERE POSTED<br>FRONT WINDOW FACING SIDEWALK AT EYE LEVEL  |  |  |   |  |  |
| 22. PUBLICATION DATE(S)<br>October 13, 2010; October 6, 2010; September 29, 2010   |  |  | 23. PUBLISHER NAME<br>San Diego Metropolitan/Uptown Examiner/Daily Business Report                        |  |  |
| 24. TRANSFEROR NAME<br>BLIND MELONS INC  |  |  |   | 25. TRANSFEROR LICENSE NUMBER<br>48-232599                                   |  |
| 26. TRANSFEROR ADDRESS (if Prem-to-Prem or Double Transfer)<br>708-10 GARNET AVE, SAN DIEGO, CA 92109  |  |  |   |  |  |
| 27. ALIEN VERIFICATION<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A   |  | 28. DATE CLEARED<br>N/A                        | 29. FORM NUMBER/NOTATION<br>N/A   | 30. LIMITED VERIFICATION DATE<br>None  |  |
| 31. PENDING DISCIPLINARY ACTION AGAINST TRANSFEROR<br>NONE   |  |  |   |  |  |
| 32. TRANSFEROR'S LICENSE ORIGINALLY ISSUED DURING LAST 5 YEARS<br><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A If yes, date:   |  |  | 33. MAIL LICENSE TO D. O.<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          | 34. HEARING TIME   |  |
| 35. FORMER LICENSEE AT THESE PREMISES<br>BLIND MELONS INC  |  |  |   | 36. LICENSE NUMBER<br>48-232599  |  |
| 37. ATTACHMENTS<br><input type="checkbox"/> Conditions <input type="checkbox"/> ABC-256 <input checked="" type="checkbox"/> ABC-243 <input type="checkbox"/> ABC-226 <input type="checkbox"/> ABC-231 <input type="checkbox"/> ABC-140 <input checked="" type="checkbox"/> ABC-253 <input checked="" type="checkbox"/> ABC-257 <input type="checkbox"/> Other: |  |  |   |  |  |
| 38. REMARKS<br>There are eight (8) verified protests on this application.  |  |  |   |  |  |

|                                 |  |                 |
|---------------------------------|--|-----------------|
| 39. RECOMMENDATION<br>Denial    | LICENSING REPRESENTATIVE/INVESTIGATOR<br><i>Maritza Gonzalez</i> | DATE<br>1/20/12 |
| Denial                          | SUPERVISOR<br>Tannie Kelpin                                      | DATE            |
| RECOMMENDATION<br>Denial        | DISTRICT ADMINISTRATOR<br><i>Jennifer Hill</i>                   | DATE<br>1/23/12 |
| RECOMMENDATION<br><b>DENIAL</b> | ASSISTANT DIRECTOR<br><i>J. Hill</i>                             | DATE<br>1/18/12 |

SEE PAGE 2 FOR REPORT: 1. MORAL CHARACTER 2. PREMISES 3. FINANCIAL

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**California Department of Alcoholic  
Beverage Control**  
*License Query System Summary  
as of 11/4/2010*

| <b>License Information</b>  |
|---|
| <b>License Number:</b> 232599   |
| <b>Primary Owner:</b> BLIND MELONS INC                                      |
| <b>ABC Office of Application:</b> 10 - SAN DIEGO                            |
| <b>Business Name</b>  |
| <b>Doing Business As:</b> 7 10 BEACH CLUB                                   |
| <b>Business Address</b>   |
| <b>Address:</b> 708-10 GARNET AVE <b>Census Tract:</b> 0079.01              |
| <b>City:</b> SAN DIEGO <b>County:</b> SAN DIEGO                             |
| <b>State:</b> CA <b>Zip Code:</b> 92109                                     |
| <b>Licensee Information</b>   |
| <b>Licensee:</b> BLIND MELONS INC   |
| <i>Company Officer Information</i>  |
| <b>Officer:</b> SLAGA, SCOTT P (CHIEF FINANCIAL OFFICER)                    |
| <b>Officer:</b> CREVISTON, DAVID WAYNE (PRESIDENT)                          |
| <b>License Types</b>  |
| <b>1) License Type:</b> 58 - CATERER PERMIT                                 |
| <b>License Type Status:</b> ACTIVE  |
| <b>Status Date:</b> 02-DEC-2003 <b>Term:</b> 12 Month(s)                    |
| <b>Original Issue Date:</b> 01-OCT-1994 <b>Expiration Date:</b> 30-SEP-2010 |
| <b>Master:</b> N <b>Duplicate:</b> 1 <b>Fee Code:</b> P40                   |
| <b>2) License Type:</b> 48 - ON-SALE GENERAL PUBLIC PREMISES                |
| <b>License Type Status:</b> ACTIVE  |
| <b>Status Date:</b> 02-DEC-2003 <b>Term:</b> 12 Month(s)                    |
| <b>Original Issue Date:</b> 19-JUL-1989 <b>Expiration Date:</b> 30-SEP-2010 |
| <b>Master:</b> Y <b>Duplicate:</b> 0 <b>Fee Code:</b> P40                   |
| <b>Current Disciplinary Action</b>  |
| <i>... No Active Disciplinary Action found ...</i>                          |
| <b>Disciplinary History</b>   |
| <b>Reg. Number:</b> 93028959  |
| <b>Reg. Number:</b> 95034399  |
| <b>1) Section:</b> 25658(a)   |
| <b>2) Section:</b> 25665  |





**California Department of Alcoholic  
Beverage Control**  
*License Query System Summary  
as of 11/4/2010*

**License Information**

License Number: 503368

Primary Owner: BLIND MELONS INC

ABC Office of Application: 10 - SAN DIEGO

**Business Name**

Doing Business As: 7 10 BEACH CLUB

**Business Address**

Address: 710 GARNET AVE    Census Tract: 0079.01

City: SAN DIEGO    County: SAN DIEGO

State: CA    Zip Code: 92109

**Licensee Information**

Licensee: BLIND MELONS INC

*Company Officer Information*

Officer: CREVISTON, DAVID WAYNE (PRESIDENT/SECRETARY)

Officer: SLAGA, SCOTT P (VICE PRESIDENT/TREASURER)

**License Types**

1) License Type: 58 - CATERER PERMIT

License Type Status: PEND

Status Date: 14-SEP-2010    Term: 12 Month(s)

Original Issue Date:    Expiration Date:

Master: N    Duplicate: 1    Fee Code: P40

License Type was Transferred On:    FROM: [48-232599](#)

2) License Type: 48 - ON-SALE GENERAL PUBLIC PREMISES

License Type Status: PEND

Status Date: 14-SEP-2010    Term: 12 Month(s)

Original Issue Date:    Expiration Date:

Master: Y    Duplicate: 1    Fee Code: P40

License Type was Transferred On:    FROM: [48-232599](#)

**Current Disciplinary Action**

... No Active Disciplinary Action found ...

**Disciplinary History**

... No Disciplinary History found ...

**Hold Information**



Department of Alcoholic Beverage Control  
**COMMON ABC LICENSE TYPES  
AND THEIR BASIC PRIVILEGES**

| LICENSE TYPE | DESCRIPTION  |
|--------------|--|
| 01           | <b>BEER MANUFACTURER - (Large Brewery)</b> Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.  |
| 02           | <b>WINEGROWER - (Winery)</b> Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises. |
| 20           | <b>OFF SALE BEER &amp; WINE - (Package Store)</b> Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.  |
| 21           | <b>OFF SALE GENERAL - (Package Store)</b> Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.   |
| 23           | <b>SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery)</b> Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.  |
| 40           | <b>ON SALE BEER - (Bar, Tavern)</b> Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.  |
| 41           | <b>ON SALE BEER &amp; WINE - EATING PLACE - (Restaurant)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.  |
| 42           | <b>ON SALE BEER &amp; WINE - PUBLIC PREMISES - (Bar, Tavern)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.   |
| 47           | <b>ON SALE GENERAL - EATING PLACE - (Restaurant)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.  |
| 48           | <b>ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.  |
| 49           | <b>ON SALE GENERAL - SEASONAL</b> - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.   |





**QUICK SUMMARY OF SELECTED LAWS FOR  
RETAIL LICENSEES**



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**Introduction**

This pamphlet explains, in simple terms, some State laws and rules that retail licensees must follow. There are other State and local laws not listed here. When in doubt, call your local ABC office. You can also buy the entire set of ABC laws and rules from your local ABC office for \$11.50 plus tax.

*ABC Penalties.* ABC decides penalties for licensees on a case-by-case basis. ABC gives consideration to the type of violation, the licensee's past record, and the facts of each case. ABC penalties may be probation, suspension of the ABC license, a fine of \$750-\$6,000, or revocation of the ABC license.

*Definitions.* "B&P" means the Business and Professions Code. "CCR" means the California Code of Regulations. "PC" means the Penal Code. "H&S" means the Health and Safety Code. The term "licensee" as used here, means licensees, their agents, and employees. "Alcohol" means an alcoholic beverage. "On-sale" means bars, restaurants, taverns, clubs, hotels, motels, etc. "Off-sale" means liquor stores, grocery stores, convenience stores, etc. "Minor" means person under age 21.

| Subject   | Possible Penalties  |
|---|---|
| <p><b>1. After Hours</b><br/>Licensees may not sell, give, or deliver alcohol (by the drink or by the package) between 2:00 a.m. and 6:00 a.m. of the same day. No person may knowingly purchase alcohol between 2:00 a.m. and 6:00 a.m. (Sec. 25631 B&amp;P) Licensees may not permit patrons or employees to consume alcohol between 2:00 a.m. and 6:00 a.m. of the same day (even if someone bought the drinks before 2:00 a.m.). (Sec. 25632 B&amp;P) Some ABC licenses have special conditions (restrictions) as to hours of sale that are stricter than the law. Those licenses are marked "Conditional." (23800-23805 B&amp;P)</p>   | <p><i>Criminal:</i> For the licensee or employee who sells or permits consumption after hours and for the patron who knowingly purchases after hours, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>2. Attire and Conduct</b><br/>On-sale licensees may not permit these acts:<br/>"(1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.<br/>(2) To employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph (1) above.<br/>(3) To encourage or permit any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any other person.<br/>(4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof."<br/>(Rule 143.2 CCR. Also violates Sec. 311.6 PC if conduct is "obscene;" e.g., intercourse, sodomy, masturbation, etc.)</p> | <p><i>Criminal:</i> Violation of Rule 143.2 CCR carries no criminal penalty. For violation of Sec. 311.6 PC, the penalty is a maximum six months in county jail and/or a maximum \$1,000 fine. (Sec. 19 PC)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |

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| <p><b>3. Authority of Peace Officers/Refusing Inspection</b><br/> Police officers, sheriffs' deputies, and ABC investigators are sworn law enforcement officers (peace officers) with powers of arrest. Whether in plainclothes or uniform, peace officers have the legal right to visit and inspect any licensed premises at any time during business hours <i>without a search warrant or probable cause</i>. This includes inspecting the bar and back bar, store room, office, closed or locked cabinets, safes, kitchen, or any other area within the licensed premises. It is legal and reasonable for licensees to exclude the <i>public</i> from some areas of the premises. However, licensees <i>cannot and must not</i> deny entry to, resist, delay, obstruct, or assault a peace officer. (Secs. 25616, 25753, and 25755 B&amp;P; 148 and 241(b) PC)</p> | <p><i>Criminal:</i> For refusing to permit an inspection, the penalty is a \$100-\$1,000 fine and/or one to six months in county jail. (Sec. 25616 B&amp;P)<br/> For resisting, delaying, or obstructing a peace officer, the penalty is a maximum \$1,000 fine and/or maximum one year in county jail. (Sec. 148(a) PC)<br/> For assaulting a peace officer, the penalty is a maximum \$2,000 fine and/or a maximum one year in county jail. (Sec. 241(b) PC)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>4. Beer Keg Registration</b><br/> Licensees selling keg beer (six gallon capacity or larger): (a) Must tag all kegs and have the customer sign a receipt; (b) Must retain the receipts on the premises for six months and make them available to peace officers; (c) May not return any deposit upon the return of any keg that does not have an identification tag.<br/> It is against the law for a customer to: (a) Possess a keg containing beer knowing that the keg does not have an identification tag; or (b) Provide false information to the licensee. (Section 25659.5 B&amp;P)</p>  | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail for (1) the licensee, (2) the person who possesses the unidentified keg; and (3) the customer who provides false information to the licensee. (Sec. 25617 B&amp;P).</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>5. Clerk's Affidavit; Posting of Sign</b><br/> Any person selling alcohol at an off-sale premises must sign a statement that he or she understands basic ABC laws and must disclose any ABC law convictions. The licensee must post signs in the store that warn customers. (See Form ABC-299 for wording.) (Sec. 25658.4 B&amp;P)</p>  | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>6. Concurrent Sales of Alcohol and Gasoline</b><br/> Licensees who sell both gasoline and alcohol must abide by the following conditions:<br/> 1. No beer or wine within five feet of the cash register or front door (unless in a permanently affixed cooler since 1/1/88);<br/> 2. No alcohol advertisements at the fuel islands;<br/> 3. No alcohol sales from a drive-in window;<br/> 4. No alcohol sales from an ice tub;<br/> 5. No self-illuminated beer or wine advertisements on buildings or windows; and<br/> 6. Cashiers selling beer or wine between 10:00 p.m. and 2:00 a.m. must be at least age 21. (Section 23790.5(d) B&amp;P)</p>  | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>7. Conditional Licenses</b><br/> Some ABC licenses have special restrictions (conditions) limiting the hours of alcohol sales, type of entertainment, etc. Licensees must keep a copy of any conditions on the premises, abide by them, and show them to any peace officer upon request. (Secs. 23800-23805 B&amp;P)</p>  | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>8. Contaminated Beverages</b><br/> Licensees and their employees may not sell, furnish or give away alcoholic beverages containing any deleterious or poisonous substance. (Sec. 347(b) PC)<br/> Licensees may not allow open bottles of alcoholic beverages to become contaminated with insects or other foreign matter. (Secs. 25620, 25623 and 25634 H&amp;S)</p>  | <p><i>Criminal:</i> For the licensee or employee who violates the penal code, the penalty is a fine up to \$2,000 and/or up to one year in county jail. (Sec. 347(b) PC)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |



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| <p><b>9. Discrimination</b><br/> A licensee, other than certain exempt club licensees, who refuses to provide full and equal accommodations, facilities, privileges, or services in the licensed premises by reason of one's sex, color, race, religion, ancestry, etc., may be subject to disciplinary action. There may be no discrimination as to the price of drinks based on race, religion, sex, marital status, membership or non-membership in an organization, or on any other conditions which would result in discrimination against the general public. (Sec. 51 Civil Code and Sec. 125.6 B&amp;P)</p>   | <p><i>Criminal:</i> None<br/><br/> <i>ABC:</i> Decided on a case-by-case basis</p>  |
| <p><b>10. Disorderly Conduct</b><br/> Licensees may not permit these acts in or about their licensed premises:<br/> (a) Lewd conduct in public<br/> (b) Prostitution<br/> (c) Accosting others for the purpose of begging<br/> (d) Loitering in or about public toilets for a lewd or lascivious purpose<br/> (e) Loitering without apparent reason and refusing to identify oneself upon the request of any peace officer<br/> (f) Being under the influence of alcohol and/or drugs in public and unable to exercise care for one's own safety or the safety of others. (647 PC)</p>  | <p><i>Criminal:</i> For the person committing the illegal act, the penalty is a maximum six months in county jail and/or a maximum \$1,000 fine. (Sec. 19 PC)<br/><br/> <i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>11. Disorderly House</b><br/> Licensees may not permit their licensed premises to become a disorderly house. A disorderly house is a licensed outlet (on- or off-sale) that (a) disturbs neighbors with noise, loud music, loitering, littering, vandalism, urination or defecation, graffiti, etc., and/or (b) has many ongoing crimes inside such as drunks, fights, assaults, prostitution, narcotics, etc. The licensed premises includes the parking lot. (Sec. 25601 B&amp;P; 316 PC)</p>   | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)<br/><br/> <i>ABC:</i> Decided on a case-by-case basis</p>  |
| <p><b>12. Drink Solicitation</b><br/> On-sale licensees may not:<br/> (a) Employ hosts, hostesses, or entertainers who solicit others to buy them drinks, alcoholic or non-alcoholic<br/> (b) Pay or agree to pay such an employee a percentage of the receipts from the sales of drinks solicited<br/> (c) Permit any person, whether an employee or not, to loiter for the purpose of soliciting an alcoholic drink<br/> (Sees. 24200.5(b) and 25657(a)(b) B&amp;P; Rule 143 CCR; Sec. 303(a) PC)</p>   | <p><i>Criminal:</i> For the licensee, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)<br/> For the drink solicitor, the penalty is a maximum \$1,000 fine and/or six months in county jail unless specific penalty. (Sec. 303(a) PC)<br/><br/> <i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>13. Drug Paraphernalia</b><br/> Licensees may not sell any product knowing, or under circumstances where one reasonably should know, that the customer intends to use the product for illegal drug purposes. This includes, but is not limited to, scales and balances, diluents and adulterants, balloons, envelopes, containers, pipes, screens, syringes, needles, scouring pads, blow torches, or cigarette papers. (Secs. 11014.5, 11364.5, and 11364.7(a) H&amp;S)<br/> The law presumes that a licensee, or his/her agent(s), knows that an item is drug paraphernalia if ABC or any other state or local law enforcement agency notifies the licensee in writing that a thing (e.g., a glass vial, pipe screen, wiry sponge or scouring pad, roach clips, etc.) is commonly sold or marketed as drug paraphernalia. (See also Form ABC-546-A, Notice to Licensees Concerning Drug Paraphernalia Under Section 24200.6 Business and Professions Code) (Sec. 24200.6 B&amp;P)</p> | <p><i>Criminal:</i> The penalty is a maximum six months in county jail and/or a maximum \$1,000 fine. (Sec. 19 PC)<br/><br/> <i>ABC:</i> Decided on a case-by-case basis</p>  |



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| <p><b>14. Entertainers and Conduct</b><br/> On-sale licensees who offer entertainment must abide by the following rules:<br/> “(1) No licensee shall permit any person to perform acts of or acts which simulate:<br/> (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.<br/> (b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.<br/> (c) The displaying of the pubic hair, anus, vulva or genitals.<br/> (2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.<br/> No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.<br/> No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.”<br/> (Rule 143.3 CCR. Also violates Sec. 311.6 PC if conduct is “obscene;” e.g., intercourse, sodomy, masturbation, etc.)</p>   | <p><i>Criminal:</i> Violation of Rule 143.3 CCR carries no criminal penalty. For a violation of Sec. 311.6 PC, the penalty is a maximum six months in county jail and/or a maximum \$1,000 fine. (Sec. 19 PC)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>15. False I.D. (Possession or Use of)</b><br/> Minors may not possess or use identification that is altered, borrowed, stolen, counterfeit, or fraudulently obtained using false birth documents. (Sec. 25661 B&amp;P)</p>  | <p><i>Criminal:</i> For the minor, the penalty is a minimum \$250 fine and/or 24-32 hours of community service. Second offense is a maximum \$500 fine and/or 36-48 hours community service. (Sec. 25661 B&amp;P)</p> <p><i>ABC:</i> Not applicable</p>              |
| <p><b>16. Food Requirements</b><br/> Type 41, 47, and 49 licensees must operate and maintain their licensed premises as a bona fide eating place. They must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal meal hours are: Breakfast 6:00 a.m. - 9:00 a.m. lunch 11:00 a.m. - 2:00 p.m.; and dinner 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open.</p> <p>The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, posters, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the local health department.</p> <p>Incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales is not compliance. “Meals” means the usual assortment of food commonly ordered at various hours of the day. The service of only sandwiches or salads is not considered compliance. However, certain specialty entrees, such as pizza, fish or ribs, and an assortment of other foods, such as soups, salads or desserts, may be considered a meal.</p> <p>The Department will presume that a licensee is operating as a bona fide eating place if the gross sales of food prepared and sold to guests on the premises exceeds the gross sales of alcoholic beverages. “Prepared” means any processing preliminary to the final serving of food. (Note: Some licensees have a “conditional” license that requires food sales to be 50% or more of the total gross sales.) (Secs. 23038 and 23787 B&amp;P)</p> | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |



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| <p><b>17. Harmful Matter</b><br/>Licensees may not rent, sell, give, or show harmful matter to persons under age 18. Harmful matter includes, but is not limited to, a book, magazine, newspaper, or video tape that “. . . depicts or describes in a patently offensive way sexual conduct and . . . lacks serious literary, artistic, political, or scientific value for minors.” If licensees sell harmful matter, they must use reasonable care in ascertaining the true age of a minor.</p> <p>If licensees sell or rent videos of harmful matter, they must create an area within their licensed premises for the placement of the videos and advertising material and label it, “Adults Only.” Minors must not be able to readily access the videos or view the video box covers.</p> <p>If licensees sell books or magazines of harmful matter, they should contact their local police or sheriff’s department about any local ordinances that may apply. Some cities and counties require licensees to place “blinder racks” in front of such material so that the lower two-thirds of the material is not exposed to view.<br/>(Secs. 313 and 313.1 PC and Sec. 25612.5(c)(9) B&amp;P)</p>  | <p><i>Criminal:</i> The penalty for a first offense of selling, giving, or showing harmful matter to a juvenile is a maximum \$2,000 fine and/or one year in county jail. The penalty for a second offense is State prison. Failure to create and label the “adults only” area is an infraction punishable by a maximum \$100 fine. (Sec. 313.4 PC and Sec. 25612.5(c)(9) B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>18. Law Enforcement Problem</b><br/>Licensees may not permit their licensed premises to be a problem for the local law enforcement agency by needing an undue number of calls for service. The licensed premises includes the parking lot. (Sec. 24200(a) B&amp;P)</p>  | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>19. Minors (Attempt to Purchase by)</b><br/>Minors may not even try to buy alcohol. (Sec. 25658.5 B&amp;P)</p>  | <p><i>Criminal:</i> For the minor, the penalty is a maximum \$100 fine and/or 24-32 hours community service. For the second offense, the penalty for the minor is a maximum \$250 fine and/or 36-48 hours of community service. (Sec. 25658.5 B&amp;P)</p> <p><i>ABC:</i> Not applicable</p>  |
| <p><b>20. Minors (Employment of)</b><br/><b>On-Sale Licensed Premises.</b> Licensees may not employ minors on the portion of any premises which is primarily designed and used for the sale and service of alcohol for consumption on the premises. (Secs. 25663(a) and 25667 B&amp;P) <i>Exception:</i> Minor musicians (see #14)<br/><i>Restaurants:</i> In a bona fide public eating place, persons age 18 or older may serve alcohol in an area primarily designed and used for the sale and service of food for consumption on the premises as an incidental part of their overall duties. Bartenders and cocktail waitresses must be 21.<br/><i>Concession Stands:</i> A person who is at least 18 but not yet 21 may serve alcohol, as an incidental part of his or her duties, at a fixed concession stand that sells food products, soft drinks, and alcohol.<br/><i>Pizza Parlors:</i> A person under age 21 may not serve alcohol while working behind a fixed counter where only soft drinks, alcohol, and other beverages are dispensed and food items are served at another counter within the premises.</p> <p><b>Off-Sale Licensed Premises.</b> Persons age 18 and older may sell alcohol unsupervised. Persons age 17 and younger may sell alcohol if under the continuous supervision of a person age 21 or older. (Sec. 25663(b) B&amp;P)</p> | <p><i>Criminal:</i> For the licensee, the penalty is a maximum \$1,000 fine and/or six months in county jail. No penalty for the minor employee. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |



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| <p><b>21. Minors (Entering and Remaining in Bars/Taverns)</b><br/>Licensees may not permit minors to enter and remain in any bar or tavern (license Types 42, 48, and 61), even during hours when the premises is closed. Both the licensee and the minor may be cited. <i>Exception:</i> Minors may enter and remain at any time for lawful business. For example, delivery and repair persons. (Sec. 25665 B&amp;P)</p>   | <p><i>Criminal:</i> For the minor, the penalty is a minimum \$200 fine; a maximum \$1,000 and/or six months in county jail. For the licensee, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Secs. 25665 and 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>22. Minors (Possession of Alcohol by)</b><br/>Minors may not possess alcohol in public. <i>Exceptions:</i> A minor may possess alcohol in public if (a) the minor is making a delivery for his licensed employer, or (b) a parent, guardian, or adult relative has given alcohol to a minor and asked the minor to deliver it to some other adult. A licensee may not give alcohol to a minor on the telephoned or written order of a parent. (Sec. 25662(a) B&amp;P)</p> | <p><i>Criminal:</i> For the minor, the penalty for a first offense is a \$250 fine or 24-32 hours community service. For a second offense, the penalty is a maximum \$500 fine and/or 36-48 hours community service. (Section 25662(a) B&amp;P)</p> <p><i>ABC:</i> Not applicable</p>  |
| <p><b>23. Minors (Purchase or Consumption by)</b><br/>Minors may not purchase alcohol. Minors may not consume alcohol in an on-sale licensed premises. (Sec. 25658(b) B&amp;P)</p>  | <p><i>Criminal:</i> For the minor, the penalty is a \$250 fine and/or 24-32 hours of community service. For a second or subsequent offense the penalty is a maximum \$500 fine and/or 36-48 hours community service. (Sec. 25658(e)(1) B&amp;P)</p> <p><i>ABC:</i> For a first offense, the penalty is a \$750-\$3,000 fine, license suspension, or probation. For a second offense within three years, the penalty is a mandatory license suspension. For a third offense within three years, the license may be revoked. (Sec. 25658.1 B&amp;P)</p>  |
| <p><b>24. Minors (Sales/Furnishing to)</b><br/>No person may sell, furnish, or give alcohol to a minor. No person may cause or permit this to occur. This includes sales to minor "decoys" used by local law enforcement agencies. (Sec. 25658(a) B&amp;P)</p>  | <p><i>Criminal:</i> For the seller, the penalty is a \$250 fine and/or 24-32 hours of community service. For a second or subsequent offense the penalty is a maximum \$500 fine and/or 36-48 hours community service. (Sec. 25658(e)(1) B&amp;P)</p> <p>For the furnisher, the penalty is a \$1,000 fine and a minimum 24 hours community service. (Sec. 25658(e)(2) B&amp;P)</p> <p>If the minor consumes the beverage and thereafter causes great bodily injury or death to the minor or any other person, the person who purchases and furnishes to the minor faces 6-12 months in county jail and/or a maximum \$1,000 fine. (Sec. 25658(e)(3) B&amp;P)</p> <p><i>ABC:</i> For a first offense, the penalty is a \$750-\$3,000 fine, license suspension, or probation. For a second offense within three years, the penalty is a mandatory license suspension. For a third offense within three years, the license may be revoked.</p> |



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| <p><b>25. Musicians (Minors)</b><br/>Musicians who are at least age 18 but not yet 21 can be employed in all types of on-sale premises, only if the following conditions exist: (a) There is no topless or nude entertainment, either live or on film; (b) The area of employment is restricted for the exclusive use of musicians and entertainers; (c) No alcohol is sold, served, or consumed in the restricted entertainment area; (d) The restricted area is readily identifiable. It must be a room, a stage, or an area bounded by partitions or other barriers at least 30 inches high; (e) While performing, the musician must remain in the restricted area.</p> <p>At a bar or tavern (license Type 42, 48, or 61) the minor musician must remain in the restricted area at all times, except when: (a) Entering or leaving the premises, (b) Setting up equipment, (c) Visiting restrooms, (d) Resting or changing clothing in a room which is not used for sale, service, or consumption of alcohol by the public, (e) Auditioning when the place is not open for business. An entertainer is a musician if the bulk of his or her performance involves making music with an instrument or his or her voice. (Sec. 25663.5 B&amp;P)</p>   | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>26. Narcotics and Dangerous Drugs</b><br/>Licensees may not knowingly permit illegal sales, negotiations, or use of narcotics or dangerous drugs on the licensed premises. (Secs. 24200.5(a) and 24200(a) B&amp;P; various H&amp;S)</p>  | <p><i>Criminal:</i> Most drug offenses are felonies, punishable by imprisonment in State prison</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |
| <p><b>27. Objectionable Conditions (Failure to Correct)</b><br/>Upon notice, licensees must take reasonable steps to correct objectionable, nuisance conditions on or about the licensed premises and on abutting public sidewalks up to 20 feet from the premises, within a reasonable period of time. The conditions include disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise. <i>Exception:</i> Restaurants (license Types 41 and 47), hotels, motels, wineries, and beer manufacturers are not responsible for correcting nuisance conditions on abutting public sidewalks. (Sec. 24200[e][f][g] B&amp;P).</p>  | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>28. Obviously Intoxicated Persons and Habitual Drunkards</b><br/>No person may sell or give alcohol to anyone who is obviously intoxicated. No person may cause or permit this to occur. A person is obviously intoxicated when the average person can plainly see that the person is intoxicated. In other words, the person looks or acts drunk. This includes regular customers who "always act that way." It does not matter that the person is not driving. For there to be a violation of law, the prosecutor must prove that the server either saw or had the chance to see the signs of intoxication before the service. Some of the signs of intoxication are: being overly friendly, using foul language, argumentative, belligerent, slurred speech, slow, deliberate movements, swaying, drowsy, stumbling, red, watery eyes, or alcoholic breath.</p> <p>No person may sell or give alcohol to anyone who is a habitual drunkard (a person who has lost control over his or her drinking). No person may cause or permit this to occur. A server may discover a habitual drunkard in one of two ways: (a) A family member tells you the person has a drinking problem and asks you not to serve, or (b) the patron is a regular and unable to handle drinking on a regular basis. A licensee or server who has been warned and still serves a habitual drunkard faces possible ABC disciplinary action and criminal prosecution. (Secs. 25602(a) and 23001 B&amp;P; 397 PC)</p> | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> The first offense is decided on a case-by-case basis. For a second offense within three years, the penalty is a mandatory license suspension.</p> <p><i>Civil:</i> Lawsuit (for service to an underage, obviously intoxicated person) (Sec. 25602.1 B&amp;P). Civil penalties are money judgments or settlements, usually against everyone (seller or server, licensee, licensee's insurer, etc.). They are determined by the court or jury during a civil lawsuit.</p> |



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| <p><b>29. Off-Sale Beer and Wine License Privileges</b><br/> Type 20 licensees cannot sell more than 52 gallons of wine at one time or sell alcohol for resale. (Sec. 23393 B&amp;P)</p>  | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>30. Off-Sale General License Privileges</b><br/> Type 21 licensees cannot (a) sell more than 52 gallons of wine at one time, or (b) sell alcohol for resale. <i>Exception:</i> Licensees may sell alcohol for resale to the holder of a Daily On-Sale General license. (Secs. 23393 and 23394 B&amp;P)</p>  | <p><i>Criminal:</i> For the violator, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Secs. 25351 and 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |
| <p><b>31. Operating Standards, Retail</b><br/> The following requirements apply to stores (license Type 20 and 21), bars and taverns (license Types 40, 42, 48, and 61). These requirements do not apply to restaurants (license Types 41 and 47), convention centers, exhibit halls, auditoriums, ballparks, stadiums, coliseums, hotels, motels, a certain marine park, wineries, or beer manufacturers.</p> <ol style="list-style-type: none"> <li>1. Post "No Loitering" signs upon written notice from the ABC;</li> <li>2. Post "No Open Container" signs upon written notice from the ABC;</li> <li>3. No alcohol consumption inside a store or outside a bar or tavern;</li> <li>4. Illuminate the exterior of the premises, including adjacent public sidewalks and parking lots under the licensee's control, during all hours of darkness when open for business;</li> <li>5. Remove litter daily from the premises, adjacent sidewalks and parking lots under licensee's control and sweep/clean these areas weekly;</li> <li>6. Remove graffiti from premises and parking lot within 72 hours (3 days) of application;</li> <li>7. Have no more than 33% of windows covered with advertising or signs;</li> <li>8. Have incoming calls blocked at pay phones upon request of local law enforcement or ABC; and</li> <li>9. Create a separate area for any video recordings of harmful matter (as defined in Penal Code Section 313). The area must be labeled "Adults Only." Minors may not be able to readily access the videos or view the video box covers.</li> <li>10. Have a copy of the operating standards available during normal business hours for viewing by the general public. (Section 25612.5(c) B&amp;P)</li> </ol> | <p><i>Criminal:</i> The licensee only (not employees) may be cited for each violation of the operating standards. For the licensee, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>32. Removal of Opened Wine Bottle</b><br/> Restaurants (license Type 41 and 47) may allow patrons to remove a partly-consumed bottle of wine from the premises upon departure. (Customers should place any open bottles in the trunk area of their vehicle to avoid violating the Vehicle Code.) (Sec. 23396.5 B&amp;P)</p>   | <p>Not applicable. This is a permissive section of law.</p>   |
| <p><b>33. Retail Delivery Orders</b><br/> Employees cannot deliver alcohol without a delivery order. It must state the quantity, brand, proof, price, name and address of the customer, and name and address of the store. The licensee must keep the order on file for two years after delivery. (Rule 17(e) CCR)</p>  | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-base basis</p>   |
| <p><b>34. Retail Store Qualifications</b><br/> Licensees may sell alcohol only in the original package for consumption off the premises. Licensees must conveniently display all alcohol. Licensees must make any alcohol deliveries from the licensed premises. Licensees may only take telephone orders for alcohol when the store is open to the general public. (Rule 27 CCR)</p>   | <p><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |



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| <p><b>35. Retail-to-Retail Sales</b><br/> Retail licensees may not purchase alcohol for resale from another retail licensee. Licensees must purchase alcohol for resale from a non-retail licensee only. Warehouse-type discount stores are licensed retailers, and they cannot sell alcohol for resale to other retailers. For example, a retail licensed store may not sell to the bar down the street who has run out of a certain brand of liquor. It would be illegal for both the store and the bar to do so. The borrowing of alcohol between retail licensees is an illegal, retail-to-retail sale. <i>Exception:</i> A licensee who has three or more outlets licensed exactly the same may transfer products between that licensee's stores. Also, type 21 licensees may sell distilled spirits for resale to the holder of a Daily On-Sale General license. (Sec. 23402 B&amp;P)</p>   | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Secs. 25351 and 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> |
| <p><b>36. Returns by Consumers to Retailers</b><br/> Returns of all types of alcoholic beverages by consumers to sellers were once ruled to be illegal under both State and federal law. In 1961, the Federal Government approved the return by consumers of alcoholic beverages which were spoiled, deteriorated, contaminated, or otherwise unfit for human consumption. This approval was made on the condition that there would be a bottle-for-bottle exchange or cash refund for the unsatisfactory merchandise. It was necessary for a consumer to bring back a partially emptied bottle or a bottle which clearly showed deterioration of the product, such as sediment, to qualify for the refund. The Department adopted the federal policy that same year. Later, the Department modified its approval to the extent that other types of alcoholic beverages could be exchanged for those which were unfit for human consumption.</p> <p>A consumer may also make an exchange or receive a refund on an item purchased in error if the unopened container is returned to the seller. The advertising of "money-back guarantees" is specifically disapproved, however.</p> <p>A consumer cannot overbuy for a party and then return any of the unused alcoholic beverages. Neither can the recipient of a gift exchange it for other merchandise or be given a credit, because the recipient is not returning alcoholic beverages; if the retailer gave anything of value for the beverages, the retailer would be buying from other than a wholesaler. Sales to consumers are final except as previously set forth. The Department and federal law agree in this respect. (Sec. 25600(a)(2))</p> | <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>37. Right to Refuse Service to Minors</b><br/> Licensees and their employees have the legal right to refuse service to anyone who cannot show adequate written evidence of age. A licensee or employee may seize any identification presented by a person that shows the person to be under the age of 21 years or that is false, so long as a receipt is given to the person from whom the identification is seized and the seized identification is given within 24 hours of seizure to the local law enforcement agency that has jurisdiction over the licensed premises. A licensee, his or her agent or employee's decision to not seize a license shall not create any civil or criminal liability. (Sec. 25659 B&amp;P)</p>  | <p>Not applicable. This is a permissive section of law.</p>  |



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| <p><b>38. Signs</b><br/> Bars and taverns (License Types 42, 48, and 61) must post signs reading, “No Person Under 21 Allowed.” Licensees must post one at or near each public entrance, visible from the exterior, and one inside in a prominent place. The signs must be at least 7” x 11” and have lettering at least 1” in height. (Rule 107 CCR)<sup>1</sup></p> <p>No more than 33% of the square footage of the windows and clear doors of an off-sale premises may have advertising or signs of any sort. (Sec. 25612.5(c)(7) B&amp;P)<sup>2</sup></p> <p>Stores (license Types 20 and 21) must post one or more customer warning signs in the store (see form ABC-299 for wording). (Sec. 25658.4 B&amp;P)<sup>2</sup></p> <p>Upon written notice from the ABC, licensees must post “No Loitering” and “No Open Container” signs. <i>Exception:</i> This law does not apply to restaurants (license Types 41 and 47), convention centers, exhibit halls, auditoriums, ballparks, stadiums, coliseums, hotels, motels, a certain marine park, wineries, or beer manufacturers. (Sec. 25612.5(c)(1)(2) B&amp;P)<sup>2</sup></p> <p>Signs may not be obnoxious, gaudy, blatant, or offensive, and must not obstruct the view of the interior of the premises from the street. (Sec. 25612 B&amp;P)<sup>2</sup></p> <p>All on- and off-sale licensees must post warning signs reading, “Warning: Drinking spirits, beer, coolers, wine, and other alcoholic beverages may increase cancer risk and, during pregnancy, can cause birth defects.” (Sec. 12601(b)(1)(D)(1) and 12601(b)(4)(E) CCR)<sup>3</sup></p> | <p><sup>1</sup><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> <p><sup>2</sup><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> <p><sup>3</sup><i>Criminal:</i> None</p> <p><i>ABC:</i> Decided on a case-by-case basis</p> <p><i>Civil:</i> A civil lawsuit may be brought against an alcohol manufacturer or distributor by the Attorney General, a district attorney, or a private citizen. Judgments are a maximum of \$2,500 per day per violation, with 25% of the sum going to the plaintiff. Civil penalties <u>do not</u> apply to the retail licensee. (Sec. 12601 CCR)</p> |
| <p><b>39. Substitution of Brands</b><br/> No person may substitute types or brands of alcohol without first informing the purchaser. (Sec. 25609 B&amp;P)</p>  | <p><i>Criminal:</i> For the licensee or employee, the penalty is a maximum \$1,000 and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>  |
| <p><b>40. Undisclosed Ownership; Changes in Ownership</b><br/> The ABC license must reflect the true ownership of the licensed business. There can be no hidden owners or silent partners. Licensees must report any and all ownership changes to the ABC. (Secs. 23300 and 23355 B&amp;P; Rule 68.5 CCR)</p>  | <p><i>Criminal:</i> The penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>41. Unlawful Possession on Licensed Premises</b><br/> Licensees may not allow any alcohol on the premises other than what they are licensed to sell. <i>Exception:</i> Type 41 licensees may possess brandy, rum, or liqueurs for cooking purposes. (Section 25607(a)(b) B&amp;P)</p>  | <p><i>Criminal:</i> For the licensee, employee or patron, the penalty is a maximum \$1,000 fine and/or six months in county jail. (Sec. 25617 B&amp;P)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |
| <p><b>42. Weapons</b><br/> Licensees may not possess or sell certain firearms and/or weapons, including but not limited to, undetectable firearms, nunchakus, short-barreled shotguns, short-barreled rifles, metal knuckles, billy clubs, dirks, and daggers. (Sec. 12020 PC)</p>   | <p><i>Criminal:</i> The penalty is imprisonment in the county jail not exceeding one year or in a State prison. (Sec. 12020(a) PC)</p> <p><i>ABC:</i> Decided on a case-by-case basis</p>   |

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO  
PROJECT MANAGEMENT  
PERMIT CLERK  
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001930

**NEIGHBORHOOD USE PERMIT NO. 873355**  
**710 GARNET SIDEWALK CAFÉ PROJECT NO. 243190**  
**DEVELOPMENT SERVICES DEPARTMENT**

This Neighborhood Use Permit No. 873355 is granted by the Development Services Department of the City of San Diego to the Gregory Y. Yee and Maria Do Carmo Monteiro Revocable Trust Owner/Permittee, and Scott Slaga, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0621. The project site is located at 710 Garnet Avenue in the CV-1-2 zone of the Pacific Beach Community Planning Area. The project site is legally described as: all that portion of Block 193 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof Nos. 791 and 854, filed in the Office of the County Recorder of San Diego County December 29, 1894 and September 28, 1898, respectively, lying Westerly of the center line of the North and South alley in said Block and Southerly of a line drawn parallel with the distant 58.00 feet Northerly at right angles from the Southerly line of said Block.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners and Permittees for a 200 square-foot sidewalk café for an existing restaurant and bar. The development is described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated November 7, 2012, on file in the Development Services Department.

The project shall include:

- a. A 200 Square-foot Sidewalk Cafe;
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.



**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by November 27, 2015.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owners/Permittees for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owners/Permittees are informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is

required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

11. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

12. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

13. The sidewalk café shall be used only for dining, drinking, and circulation. The cafe may provide either waiter/waitress service or self-service.

14. The sidewalk café shall be operated so that unsafe conditions are not created for the physically disable, blind, or partially sighted.



15. The furnishings of the interior of the sidewalk café 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 delimited café area adjacent to the barrier. Lighting fixtures may be permanently affixed to the front of the main building.
16. 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 café.
17. Trash or storage areas shall not be located on or adjacent to the public right-of-way.
18. Musical instruments or sound reproduction devices shall not be operated or used within the sidewalk café. For the purposes of enforcement of Municipal Code Section 59.0101 et. Seq., the property line shall be considered the boundary of the sidewalk café.
19. The sidewalk café shall be free of litter at all times.
20. The hours of operation of a sidewalk café shall be limited to the hours of operation of the associated eating or drinking establishment.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Development Services Department of the City of San Diego on November 7, 2012 and Resolution No CM-6291.

Neighborhood Use Permit No. 873355:  
November 7, 2012

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

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Morris E. Dye  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

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**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**Gregory Y. Yee and Maria Do Carmo Monteiro  
Revocable Trust**  
Owner/Permittee

By \_\_\_\_\_  
Gregory Y. Yee  
Co-Trustee

**Gregory Y. Yee and Maria Do Carmo Monteiro  
Revocable Trust**  
Owner/Permittee

By \_\_\_\_\_  
Maria Do Carmo Monteiro  
Co-Trustee

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**





THE CITY OF SAN DIEGO

IN REPLYING  
PLEASE GIVE  
OUR REF. NO.  
1914141113

October 14, 2010


Jennifer Hill  
District Administrator  
Alcoholic Beverage Control  
1350 Front Street, Suite 5056  
San Diego, California 92101

OCT 14 2010

Dear Ms Hill:

The San Diego Police Department wishes to protest the issuance of an Application for an On-Sale General Public Premises License (Type 48-503368) for BLIND MELONS INC dba 710 BEACH CLUB located at 710 Garnet Avenue, San Diego, CA 92109-2408 on the grounds that it will add to high crime, an over-concentration of ABC licenses and tend to aggravate existing police problems in the vicinity. However, with conditions satisfactory to the Police Department, withdrawal of the protest would be considered.

Sincerely,

  
Linda Griffin, Sergeant  
San Diego Police Department  
Vice Admin Unit

CITY OF SAN DIEGO POLICE DEPARTMENT  
VICE OPERATIONS

1401 BROADWAY, SAN DIEGO, CA 92101-5729  
PHONE: (619) 531-2452 FAX: (619) 531-2449







*Atch 29 Kansas Report***PREMISES REPORT:**

The applicant has operated this bar from 1989 to the present day without conditions on the ABC license. Through out the last 22 plus years the premises has offered a variety of entertainment such as live music, dancing, beer pong tournaments, board games and karaoke. The premises has two roll up door/windows that open onto the sidewalk where the patio will be constructed facing Garnet Avenue and 61.4 residents. The premises is rectangular in shape and measures approximately 45' X 50' in size. The premises is located on the north side of Garnet Avenue, on a commercial strip between an alley to the east and Ocean Boulevard and Crystal Pier to the west. Furthermore, to the south of the premises is a condominium complex established in 1975 within 100 feet of the proposed premises. The application filed at this premises is for a patio expansion of the public premises. The ABC-257, Licensed Premises Diagram and the ABC-253, Supplemental Diagram, are attached.

The planned hours of operation are 1:00 PM – 2:00 AM Monday – Thursday; 12:00 PM – 2:00 AM Friday; 9:00 AM – 2:00 AM Saturday and Sunday. There is no off street parking provided by the premises.

**License History:**

The premises has been licensed continuously with Type 47 and 48 licenses since 1954. In 1989 the license was transferred to the applicant who has since operated this premises. The following disciplinary action was taken by the Department.

| Date       | Violation                                      | Penalty   | Reg #    |
|------------|--|---|----------|
| 08/30/1993 | Section 25665 B & P                            | 10 day suspension with 5 days stayed/ POIC  | 93028959 |
| 11/13/1995 | Section 25658(a) B & P and Section 25665 B & P | 15 day suspension with 5 day stayed/ POIC   | 95034399 |
| 04/22/1996 | Section 25658(a) B & P and Section 25665 B & P | 25 day suspension with 15 day stayed. 5 days reimposed from Reg. 95034399. Suspension served for 15 days. | 96035907 |

**Section 23790 (Zoning):**

The premises is properly zoned and allows for the intended use of the applied-for premises.

**Section 23789 (Consideration Points):**

There are no consideration points.

**Rule 61.4/Residences:**

On 10/10/10, I did the premises inspection and walked the surrounding neighborhood. I determined that there are approximately 16 residences located within 100 feet from the premises.

On 10-11-10, I mailed ABC-205 contact letters to the residences within 100 feet, and received one verified protest within the protest period.

The 61.4 residences are as follows:

| <u>Address</u>        | <u>Approx.<br/>from Prem.</u> | <u>Objections</u> | <u>Separation Factor(s)</u> |
|-----------------------|-------------------------------|-------------------|-----------------------------|
| 4465 Ocean Blvd., #4  | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #5  | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #6  | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #7  | 50-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #23 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #24 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #25 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #26 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #42 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #43 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #44 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #45 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #61 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #62 | 60-100'                       | PROTEST           | Garnet Ave                  |
| 4465 Ocean Blvd., #63 | 60-100'                       | No response       | Garnet Ave                  |
| 4465 Ocean Blvd., #64 | 60-100'                       | No response       | Garnet Ave                  |

**Separation Factors:**

The 61.4 residences located within the condominium complex at 4465 Ocean Blvd., are separated by Garnet Avenue, a two lane street, and sidewalks that run along the north and south sides of that street.

**Section 23958.4:**

| <u>Census Tract</u> | <u>Population</u> | <u>On-Sale</u> |                 |
|---------------------|-------------------|----------------|-----------------|
|                     |                   | <u>Allowed</u> | <u>- Exists</u> |
| 0079.01             | 5184              | 6              | 54              |

**Crime Statistics:**

The City of San Diego Police Department has designated their reporting district, per Section 23958.4 of the Business and Professions Code, as the census tract.

Premises is located within the City of San Diego Police Department's Reporting District #79.01.

Reported Part I Crimes and Part II Arrests for the City of San Diego for the period of 01-01-10 through 12-31-10 = 73,656.



Number of Reporting Districts in the City of San Diego = 301.

City average crime rate (73656/301) = 244.7.

High Crime rate per Section 23958.4 (120 X 244.7) = 293.64.

Reported crimes in Reporting District #0079.01 for the calendar year of 2010 are 1226 or 501% of the average.

Section 23958.4 applies due to the high crime rate. Over-concentration of licenses does not apply as this is a premises expansion application that will not increase the license count.

**Public Convenience or Necessity:**

The City of San Diego Police Department has been designated as the local governing body to determine if the Public Convenience or Necessity have been met. On 6-30-10 Sgt. Linda Griffin from the City of San Diego Police Department approved the Public Convenience or Necessity for a Type 48 Off-Sale General Public Premises license for the premises.

**LAW ENFORCEMENT CONTACT:**

On 10-14-10, the Department received a protest from the San Diego Police Department in reference to the applied-for license. The SDPD stated that they protest the issuance of the license on the grounds that it will aggravate an existing police problem, add to an over-concentration of licenses in the vicinity and the premises is located in a high crime area. However, with satisfactory condition they would withdraw their protest.

On April 11, 2011 I requested crime stats from SDPD. In May, June and August of 2011 I received crime stats for that current period from SDPD. On November 14, 2011 I received crime stats for the entire period of 01/01/2010 through 11/07/2011. This included calls for service for the proposed premises. Between 01/01/2010 and 11/07/2011 there were 32 calls for service of which ten (10) were for noise disturbances. The disturbances appear to occur most frequently on the weekend, from 2230 hours on Fridays to 0300 hours on Sundays.

The other calls for service included the following:

- 9 violent
- 7 burglary alarm
- 2 financial
- 4 miscellaneous

In June of 2011, SDPD Vice Sgt. Linda Griffin indicated that the SDPD would stand by its original protest of this application, based on the facts that the premises was located in a high crime and over-concentrated census tract and that the issuance of the license would create additional law enforcement problems.

**PROTEST INFORMATION:**

In total, eight (8) protests were filed against this application, including the San Diego Police Department Protest. The protests have been verified and still stand.

The following is a list of all protestants:

|    | <u>Name of Protestant</u>   | <u>Approximate Distance<br/>From Premises</u> | <u>Separation Factor(s)</u>                 |
|----|---|---|---|
| 1. | San Diego Police Department<br>1401 Broadway,<br>San Diego, CA 9101                       | N/A   |   |
| 2. | Scott Chipman<br>2247 Emerald St.<br>San Diego, CA 92109                                  | 2 miles                                       | commercial/residential                      |
| 3. | Diane Farlez<br>1380 Garnet Ave #E280<br>San Diego, CA 92109                              | 0.70 miles                                    | commercial/residential                      |
| 4. | Frances Elena Fellers<br>4465 Ocean Blvd. #62<br>San Diego, CA 92109                      | 60 feet                                       | Garnet Ave.                                 |
| 5. | Candy Hogan<br>4461 Ocean Blvd #69<br>San Diego, CA 92109                                 | 270 feet                                      | Garnet Ave & residential                    |
| 6. | Joan Lieberman<br>4465 Ocean Blvd.#13<br>San Diego, CA 92109                              | 200 feet                                      | Garnet Ave & residential                    |
| 7. | Kathleen Lippitt<br>12835 Chaparral Ridge Rd<br>San Diego, CA 92130                       | 15.5 miles                                    | commercial/residential/hwys                 |
| 8. | Crystal Pier Hotel & Cottages<br>Willis M Allen<br>4500 Ocean Blvd<br>San Diego, CA 92109 | 50 feet                                       | intersection of Garnet Ave &<br>Ocean Blvd. |



**The protests are based, in whole or in part, on the following:**

1. Over-concentration of licenses.
2. High crime.
3. Increase in existing noise problem & disorderly behavior
4. Increase noise problems that interfere with the quiet enjoyment of nearby residents' property
5. Contribute to an existing police problem

**Over-Concentration of licenses:**

The protestants are concerned that the premises is located in a census tract that is over-concentrated with licenses.

The proposed premises is located within census tract #0079.01 which is over-concentrated per Section 23958.4 of the Business and Professions Code. This census tract allows for 6 On-Sale type licenses and 54 currently exist. The premises is located in an area that is currently saturated with alcoholic beverage licensed establishments. I conducted a search of the surrounding area and determined that there are approximately eighteen (18) on-sale type establishments within approximately 1000' of the proposed premises however, the granting of this license will not increase the number of licenses in this Census Tract because it is currently licensed.

They are as follows:

| <u>Db/a/Address</u>                               | <u>Type</u> | <u>Approximate Distance</u> | <u>Premises Description</u> |
|---|-------------|-----------------------------|-----------------------------|
| 1. Hennesseys Tavern<br>4650-13250 ½ Mission Blvd | 47          | 780 feet                    | American                    |
| 2. Kabuki Sushi<br>4475 Mission Blvd., Ste. C     | 41          | 384 feet                    | Japanese                    |
| 3. Thrusters Lounge<br>4633 Mission Blvd          | 48          | 645 feet                    | Bar                         |
| 4. PB Bar & Grill Club Tremors<br>860 Garnet Ave  | 47          | 642 feet                    | American                    |
| 5. Moondoggies Pacific Beach<br>826-32 Garnet Av  | 47          | 534 feet                    | American                    |
| 6. Bare Back Grill<br>4640 Mission Blvd.          | 47          | 753 feet                    | New Zealand                 |
| 7. Surfside Sushi<br>4527 Mission Blvd            | 47          | 372 feet                    | Japanese                    |

|  |    |          |                         |
|--|----|----------|-------------------------|
| 8. Firehouse Restaurant<br>722 Grand Ave             | 47 | 600 feet | American                |
| 9. Pacific Beach Shore Club<br>4343 Ocean Blvd       | 47 | 900 feet | American                |
| 10. Pacific Beach Ale House<br>721 Grand Ave         | 75 | 250yds   | Brewery                 |
| 11. China Restaurant<br>877 Hornblend St             | 47 | 750 feet | Chinese                 |
| 12. Tower 23<br>723 Felspar St                       | 47 | 354 feet | Seafood                 |
| 13. Miller Field Plates & Pints<br>4465 Mission Blvd | 47 | 372 feet | American (sports grill) |
| 14. Dirty's<br>4654-56 Mission Blvd                  | 41 | 849 feet | American                |
| 15. Joes Crab Shack<br>4325 Ocean Blvd               | 47 | 900 feet | Seafood                 |
| 16. Il Padrino<br>859 Hornblend St                   | 41 | 726 feet | Italian                 |
| 17. Narraya<br>4475 Mission Blvd                     | 41 | 438 feet | Thai                    |
| 18. Gringos Cantina<br>4474 Mission Blvd             | 47 | 342 feet | Mexican                 |

In addition, the San Diego Police Department has protested this application, in part, based on the fact that it will add to the high crime rate, and the over-concentration of licenses in Census Tract 00079.01.

**High Crime:**

The protestants are concerned that the premises is located in a census tract where there already exist a police problem and adding the patio expansion of the public premises will further aggravate the matter.

The proposed premises is located within the City of San Diego Police Department's Reporting District #79.01, which is considered high crime per Section 23958.4 of the Business and Professions Code. There presently exists a law enforcement problem and the issuance of this patio expansion of the public premises would aggravate that existing problem as it is located in an area that is currently saturated with alcoholic beverage licensed establishments.



For the calendar year of 2010, SDPD reported 1226 part I crimes and part II arrests within census tract 0079.01, resulting in a 501.0% crime rate. SDPD also reported 1116 alcohol related arrests and citations during 2010, resulting in an 1806.9% crime rate in CT 79.01. Furthermore there were a total of 32 calls for service resulting in 21.5 Out Of Service Time Hours for San Diego Police Department.

**Increase in existing noise problem & disorderly behavior:**

The protestants are concerned that adding this patio expansion of the public premises alcoholic beverage license will cause the residential areas and streets around the premises to be unsafe.

Mr. Willis Allen, a protestant of record and the proprietor of the Hotel and Cottages located approximately 50 feet of proposed premises, has had to hire security guards to handle the problems that emanate from the proposed premises. Such problems are: repeated noise complaints, intoxicated trespassers jumping the fence into the hotel/cottages after hours, disturbing overnight guests and potentially jeopardizing their safety, and urinating on his property. After my meeting with hotel manager, Jim Boston on July 29, 2011, I briefly reviewed logs kept by the security guard staff, who documented incidents resulting from intoxicated patrons leaving the proposed premises.

Mr. Boston also mentioned uncontrollable rowdy crowds at the entrance of the proposed premises. There are at times fights that spill out of premises and onto the hotel property jeopardizing the safety of their guests.

**Increase in noise problems that interfere with the quiet enjoyment of nearby residents' property:**

The protestants are concerned that nearby residents will be disturbed by noise problems, caused by patrons leaving the bar and interfering with the quiet enjoyment of the resident's property.

Ms. Frances Fellers, a protestant of record residing within 60 feet of the premises, has placed several calls for service regarding noise. The SDPD logged 10 calls for service specifically for noise disturbances, 6 calls were placed by Ms. Fellers. Per Ms. Fellers after years of attempting to maintain open communication with the licensee regarding the noise, the licensee has proven not to be a good neighbor as the disturbances occur repeatedly. Ms. Fellers believes the issuance of this patio expansion of the public premises alcoholic beverage license will add to the existing noise problem that already has caused sleepless nights.

Mr. Willis Allen, a protestant of record who operates a hotel business located approximately 50 feet from the proposed premises, has made several attempts for mediation through city councilmen and city zoning in order to restrict and control the noise, but to no avail. Mr. Allen's business has also placed numerous calls for service when the noise disturbs their guests. Mr. Allen agrees that the issuance of this patio expansion of the public premises alcoholic beverage license will result in louder noise and more disturbances. Although Mr. Allen himself is not a nearby resident, his guests are nearby residents for the duration of their stay.

Based on the proximity of residents to the premises, and the past experience of the protestants in the area, it is plausible that the noise problem will increase with the issuance of this patio expansion to the public premises alcoholic beverage license.



**Contribute to existing police problem:**

The protestants are concerned that the addition of the patio expansion of the public premises alcoholic beverage license will further exasperate an area already plagued with ongoing police problems.

As shown in this report, the crime statistics provided by the San Diego Police Department indicate that one of the main problems in this area is alcohol-related crime. This Census Tract has a 1806.9% average of alcohol-related crimes when compared to other census tracts throughout the City of San Diego. Furthermore there have been 32 calls for service between January 1, 2010 and November 7, 2011 for various other types of disturbances which include; disturbance with violence, disturbance of noise, disturbance with domestic violence.

Based on the high crime statistics and the crimes related to alcohol, it is possible that issuance of this patio expansion to the public premises alcoholic beverage license could add to the current law enforcement problems in the area and negatively affect nearby residential areas as well as local roadways.

**CONCLUSION:**

On the basis of the foregoing and in consideration of the applicability of Section 23958.4 and eight (8) verified protests including the San Diego Police Department protest, I recommend that the patio expansion of the public premises alcoholic beverage license application be denied.

**EXHIBITS:**

1. San Diego Police Department crime statistics for calendar year 2010 for Census Tract.#0079.01.
2. San Diego Police Department Calls for service
3. Area Sketch
4. Pictures
5. Residential protests (7)
6. San Diego Police Departments protest



# Calls For Service

Address Information: 710-710 GARNET\*

Date Range: 01/01/2010 - 11/07/2011, 00:00 - 23:59 Hours

No Crime Type, Disposition or Priority specified.

Sorted by: Crime Type asc

11/9/2011

| INCIDENT #   | DATE/TIME            | LOCATION      | TYPE     | DIS | BEAT | OST  |
|--------------|----------------------|---------------|----------|-----|------|------|
| P10050021862 | Mon 05/10/2010 23:17 | 710 GARNET AV | 1147     | K   | 122  | 0.84 |
| P10030021639 | Thu 03/11/2010 10:56 | 710 GARNET AV | 1185     | O   | 122  | 0.46 |
| P10120004678 | Fri 12/3/2010 11:12  | 710 GARNET AV | 1185     | K   | 122  | 0.99 |
| P10050042835 | Thu 05/20/2010 11:50 | 710 GARNET AV | 211A     | K   | 122  | 0.48 |
| P10070043465 | Wed 07/21/2010 2:51  | 710 GARNET AV | 211A     | U   | 122  | 1.41 |
| P10110027405 | Sun 11/14/2010 23:30 | 710 GARNET AV | 211A     | U   | 122  | 0.07 |
| P10120051792 | Tue 12/28/2010 2:19  | 710 GARNET AV | 211A     | K   | 122  | 0.04 |
| P10050061943 | Sat 05/29/2010 1:51  | 710 GARNET AV | 242      | A   | 122  | 0.88 |
| P10100006195 | Sun 10/3/2010 16:56  | 710 GARNET AV | 242      | O   | 122  | 1.37 |
| P11090032663 | Thu 09/15/2011 23:53 | 710 GARNET AV | 242      | K   | 122  | 0.17 |
| P10020046465 | Mon 02/22/2010 22:15 | 710 GARNET AV | 245-SUSP | K   | 122  | 1.20 |
| P10030055792 | Sat 03/27/2010 1:14  | 710 GARNET AV | 415      | K   | 122  | 0.35 |
| P10090031699 | Thu 09/16/2010 1:02  | 710 GARNET AV | 415DV    | K   | 122  | 0.98 |
| P10090060530 | Wed 09/29/2010 0:47  | 710 GARNET AV | 415N     | K   | 122  | 0.00 |
| P11020050998 | Sat 02/26/2011 1:18  | 710 GARNET AV | 415N     | K   | 122  | 0.04 |
| P11030042657 | Tue 03/22/2011 0:33  | 710 GARNET AV | 415N     | K   | 122  | 0.44 |
| P11030048508 | Fri 03/25/2011 0:02  | 710 GARNET AV | 415N     | K   | 122  | 0.00 |
| P11040052681 | Thu 04/28/2011 1:03  | 710 GARNET AV | 415N     | K   | 122  | 0.42 |
| P11050032385 | Mon 05/16/2011 23:38 | 710 GARNET AV | 415N     | K   | 122  | 0.10 |
| P11050038224 | Fri 05/20/2011 0:40  | 710 GARNET AV | 415N     | K   | 122  | 0.04 |
| P11050060702 | Mon 05/30/2011 23:42 | 710 GARNET AV | 415N     | K   | 122  | 0.05 |
| P11060008050 | Sat 06/4/2011 23:44  | 710 GARNET AV | 415N     | K   | 122  | 0.05 |
| P11090026711 | Tue 09/13/2011 0:20  | 710 GARNET AV | 415N     | K   | 122  | 0.20 |
| P11040045634 | Sun 04/24/2011 4:27  | 710 GARNET AV | 415V     | K   | 122  | 0.27 |
| P11090011390 | Mon 09/5/2011 23:56  | 710 GARNET AV | 415V     | O   | 122  | 2.36 |
| P11050022552 | Thu 05/12/2011 5:34  | 710 GARNET AV | 459      | R   | 122  | 6.50 |
| P10060051487 | Fri 06/25/2010 3:41  | 710 GARNET AV | 459A     | J   | 122  | 0.23 |
| P10080004219 | Tue 08/3/2010 1:40   | 710 GARNET AV | 459A     | K   | 122  | 0.12 |
| P11010000530 | Sat 01/1/2011 3:05   | 710 GARNET AV | 488R     |     | 122  | 0.36 |
| P11070063270 | Sun 07/31/2011 12:02 | 710 GARNET AV | 530      | R   | 122  | 0.58 |
| P10070054291 | Mon 07/26/2010 3:44  | 710 GARNET AV | 647F     | K   | 122  | 0.51 |
| P11090024405 | Sun 09/11/2011 19:52 | 710 GARNET AV | 647F     | CAN | 122  |      |

Total # of Calls = 32

Total Out of Service Time = 21.51

**Kathy Lippitt**

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**Subject:** FW: 710 Beach Club - 710 Garnet Ave, SD 92109 - File 48-503368

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**From:** Underwood, Thomas [<mailto:tunderwood@pd.sandiego.gov>]  
**Sent:** Monday, November 19, 2012 2:44 PM  
**To:** Kathy Lippitt  
**Subject:** RE: 710 Beach Club - 710 Garnet Ave, SD 92109 - File 48-503368

Hi Kathy,  
For 708-710 Garnet, from 11/17/2011 to 11/17/2012, there were 18 calls for service for a total out of service time of 11.34 hours.  
Tom

*Tom Underwood, Sergeant*  
*Vice Administration*  
*(619) 531-2349*  
[Tunderwood@pd.sandiego.gov](mailto:Tunderwood@pd.sandiego.gov)





HOW TO OBTAIN A NEIGHBORHOOD USE PERMIT FOR A

# Sidewalk Cafe

CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT  
1222 FIRST AVENUE, MS 302 SAN DIEGO, CA 92101-4101

CALL (619) 446-5300 FOR APPOINTMENTS AND (619) 446-5000 FOR INFORMATION

INFORMATION  
BULLETIN

## 523

MARCH 2009

This information bulletin describes the minimum submittal requirements for a Sidewalk Cafe Neighborhood Use Permit application. If the proposed sidewalk cafe is located in the Centre City Development Corporation (CCDC) planning area, please contact CCDC at (619) 235-2200 to process your Neighborhood Use Permit for a sidewalk cafe. To find out if your project is in the CCDC planning area, which includes most of the downtown San Diego area, call our general information number at (619) 446-5000 or CCDC at (619) 235-2200. If the proposed sidewalk cafe is within the Coastal Overlay Zone, a Coastal Development Permit may also be required (see Land Development Code Section 126.0704).

### I. WHAT IS A SIDEWALK CAFE?

A sidewalk cafe is an area adjacent to a street level eating and/or drinking establishment, and is located on the sidewalk area within the public right-of-way. This area is used exclusively for dining and drinking. The sidewalk cafe area is separated from the pedestrian area of the sidewalk and is enclosed by railings or landscaping in planter boxes, or a combination of both. Contained within the area of the sidewalk cafe may be such items as canopies, awnings and umbrellas.

### II. SUBMITTAL REQUIREMENTS

Phone (619) 446-5300 to schedule a submittal appointment for a Sidewalk Cafe Neighborhood Use Permit. At this appointment, provide information in the quantities shown below.

#### A. Application Package

Provide one copy of the following documents:

1. **General Application (DS-3032)**
2. **Supplemental Discretionary Application (DS-3035)**
3. **Deposit Account/Financially Responsible Party (DS-3242)**
4. **Ownership Disclosure Statement (DS-318)**, Signed by the adjacent street level business owner of the property proposing the sidewalk cafe.
5. **Encroachment and Maintenance Removal Agreement (DS-3237)**. The Agreement must be signed by the owner of the property proposing the sidewalk cafe and notarized. If the property owner and business owner are different, ensure this

### Documents referenced in this Information Bulletin

- **Coastal Development Permit, (SDMC Section 126.0704)**
- **Information Bulletin 502, Fee Schedule for Construction Permits - Grading & Public Right-of-Way**
- **Information Bulletin 503, Fee Schedule for Development & Policy Approvals/Permits**
- **Information Bulletin 512, How to Obtain Public Noticing Information**
- **Ownership Disclosure Statement, DS-318**
- **General Application, DS-3032**
- **Supplemental Discretionary Application, DS-3035**
- **Encroachment and Maintenance Removal Agreement, DS-3237**
- **Deposit Account/Financially Responsible Party, DS-3242**

form is signed and notarized by the *property owner*.

6. **Grant Deed** - A copy of the Grant Deed is required to provide proof of current ownership for the property proposing the sidewalk cafe.

#### B. Photographic Survey

Provide one set of photographs showing the area for the proposed sidewalk cafe. The photographs should be in color (minimum size 3" x 5" and maximum size of 8" x 10"), placed in an envelope (not mounted), and include a map with key indicating the location and direction each photograph was taken. In addition to print photos, if available provide a CD-R containing digital photos submitted for the "Photographic Survey." The photos should be saved in the .jpg format, numbered consistently with the provided key map, and sized no smaller than 3" by 5" and no larger than 8" x 10".

#### C. Public Notice Package

A public notice package is required as part of your submittal. This will be used to notify adjacent tenants and property owners of the proposed sidewalk cafe. See Information Bulletin 512, "How to Obtain Public Noticing Information" for more details.

#### D. Plans

Plans must be fully dimensioned and no larger



than 8 1/2 inches by 11 inches. Provide eight (8) sets of plans, to include:

**1. Development Summary** - Provide, in a table format, the following information on the first page of the plans:

- a. Provide a bullet point narrative that details the project's complete scope of work, including all existing and proposed improvements, any proposed development regulation deviations, and the required permits/approvals.
- b. Show the Project Team - List name and phone number of all consultants including engineers, architects, designers and contractors.
- c. Show legal description and Assessor Parcel Number(s) for the property on which the development is proposed.
- d. Show owner's name and address.
- e. Show type of construction of the adjacent street-level business per the California Building Code.
- f. Show occupancy classification of the adjacent street-level business per the California Building Code.
- g. List the name and type of the adjacent street-level business that the sidewalk cafe will be serving. Indicate if the business is existing or proposed.
- h. Provide the total square footage of the sidewalk cafe area.
- i. Show the zoning designation and all overlay zone designations.

**2. Site Plan**

A site plan is a dimensioned drawing which shows the general layout of the sidewalk area and building frontage. See Figure 1 for a sample sidewalk cafe site plan.

- a. Street, curb, sidewalk, property lines and all existing/proposed improvements in the sidewalk area.
- b. Frontage of the building or tenant space serving the proposed sidewalk cafe and adjacent buildings or tenant spaces.
- c. Boundaries of the sidewalk cafe.
- d. Dimension the distance between the sidewalk cafe and the entrance to the adjacent commercial business (8-foot minimum).
- e. Dimension the distance between the railing of the sidewalk cafe and the curb. A minimum of 8'-0" of paved sidewalk must be provided for sufficient pedestrian traffic.
- f. Dimension the distance between any obstruction (parking meters, lights, signs, mail boxes, trees, tree grates, etc.) In the sidewalk area to the railing of the

sidewalk cafe. A minimum distance of 8'-0" is required for pedestrian traffic.

- g. Plans must reflect that the direction and extent of swing of gates or other objects placed within the sidewalk cafe area do not project beyond the delineated perimeter.
- h. Plans must establish that the approved means of egress from the existing building are not blocked, diminished or in any way altered as a result of the new sidewalk cafe.
- i. Dimension clearances for disabled access within the sidewalk cafe area.

**3. Method of Attachment**

Show the method used to attach the railing of the sidewalk cafe to the sidewalk. See Figure 2 for a sample drawing of a standard method of rail attachment.

**4. Elevation Plan**

This is a dimensioned drawing of the face of the building which can be seen from the sidewalk. See Figure 3 for a sample elevation drawing. Include the following information on the elevation drawing:

- a. Front view of the sidewalk cafe and adjacent businesses.
- b. Type of sidewalk cafe enclosure used, such as railings, planters (maximum height of three (3) feet).
- c. Dimension height of enclosure.
- d. Description of furniture to be used in the sidewalk cafe.
- e. Umbrellas, awnings, canopies or outdoor heaters (propane or piped gas type), if proposed. Clearance to combustibles from the heater must be shown. A minimum distance of 7'-0" is required between the bottom of any umbrella or awning and the sidewalk.
- f. Dimension the distance between the proposed sidewalk cafe and any adjacent sidewalk cafes.
- g. Indicate any proposed lighting in the sidewalk cafe area.
- h. Show all the proposed and existing signs related to sidewalk cafe and the restaurant.

**5. Deposit / Fees**

These must be paid at the time of submittal. See Information Bulletin 503, "Fee Schedule for Development & Policy Approvals/Permits."

**III. SEPARATE PERMITS REQUIRED**

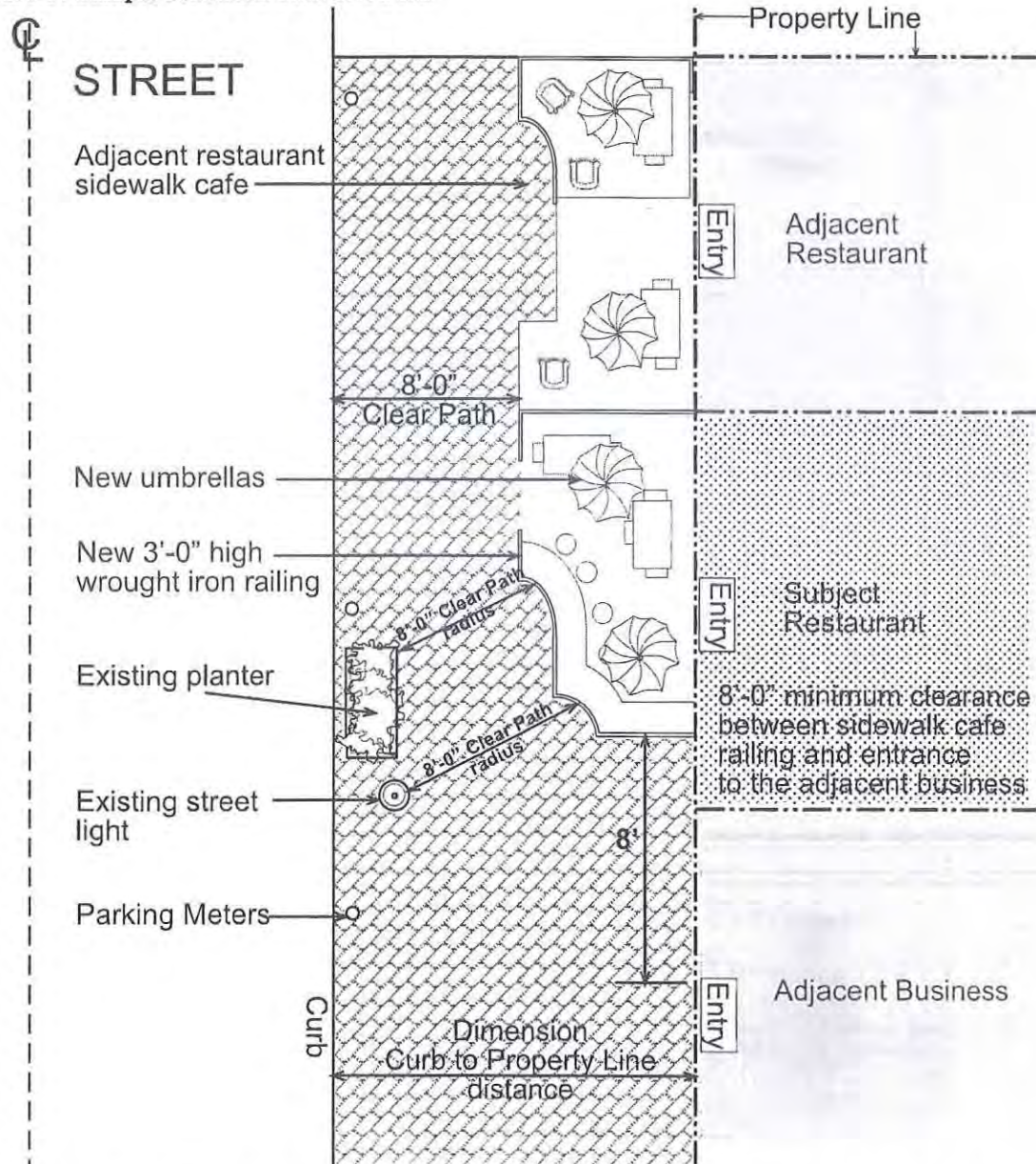
A Public Right-of-Way Permit will be required before the Neighborhood Use Permit for a sidewalk cafe can be finalized. This requires a separate fee



for the inspection of the sidewalk cafe and the recording of the Encroachment and Maintenance Removal Agreement (see Information Bulletin 502, "Fee Schedule for Construction Permits - Grading and Public Right-of-Way"). A building permit is not required unless the proposal includes awnings, canopies, lighting for the

sidewalk cafe, or signs. No signs are permitted on the sidewalk cafe except that the name and type of establishment may appear on the umbrellas or valance of an awning not to exceed four (4) square feet per side. A sign permit is not required for the 4 square feet permitted on the umbrellas or awnings. A separate sign permit is required for any signs on the building frontage.

Figure 1 / Sample Sidewalk Cafe Site Plan



**Property Owner or Tenant Information**  
 Mr. & Mrs. Smith  
 1234 Elm St.  
 San Diego, CA 92100

**Sidewalk Cafe Address**  
 5678 Maple St.  
 San Diego, CA 92100

**Legal Description**  
 Lot 1213, Block 4  
 City Heights Subdivision  
 Map 5678  
 APN # 123-456-07

Figure 2 / Standard Method of Rail Attachment

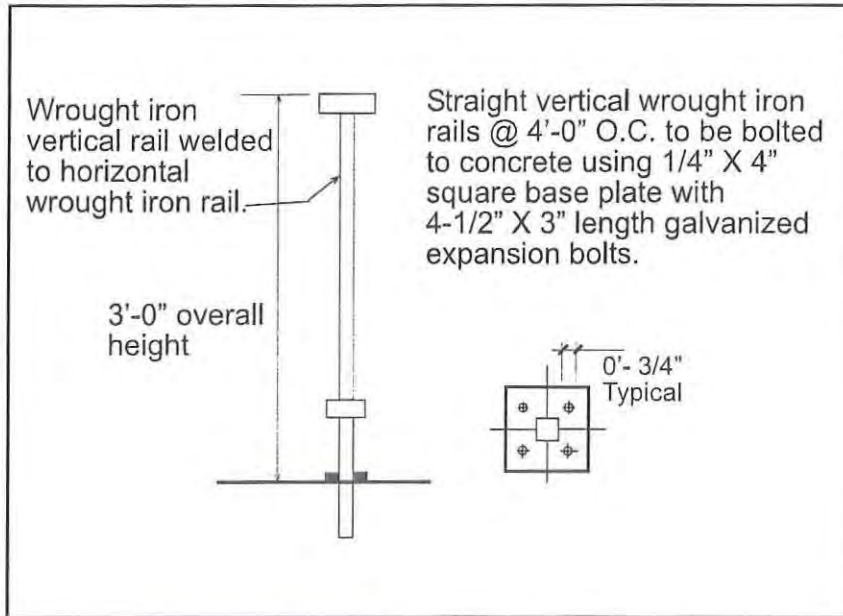
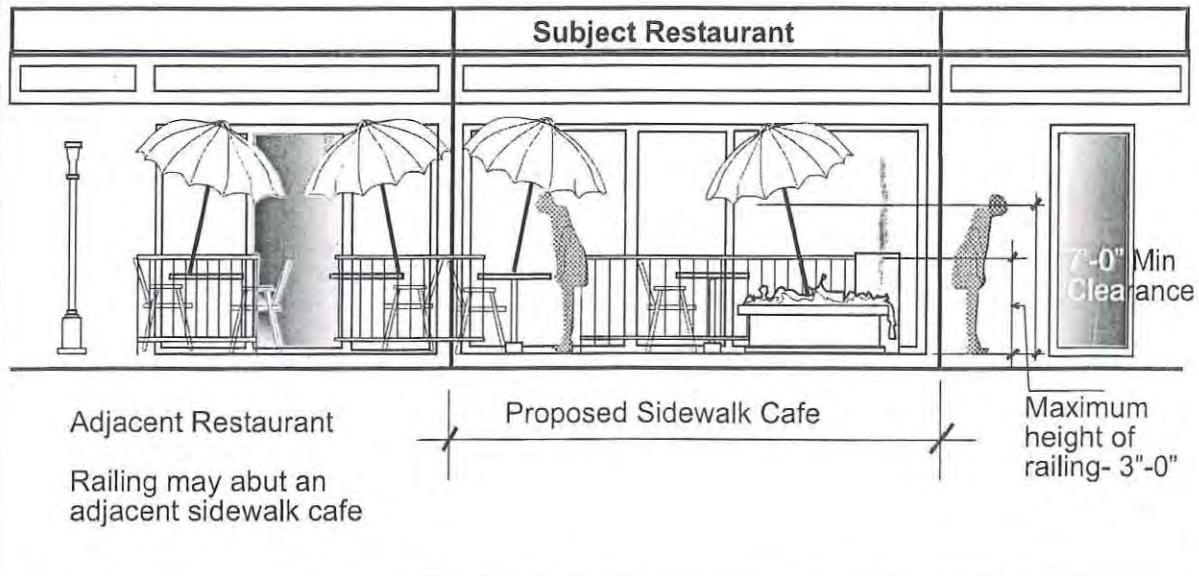


Figure 3 / Sample Sidewalk Cafe Elevation

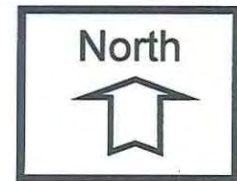






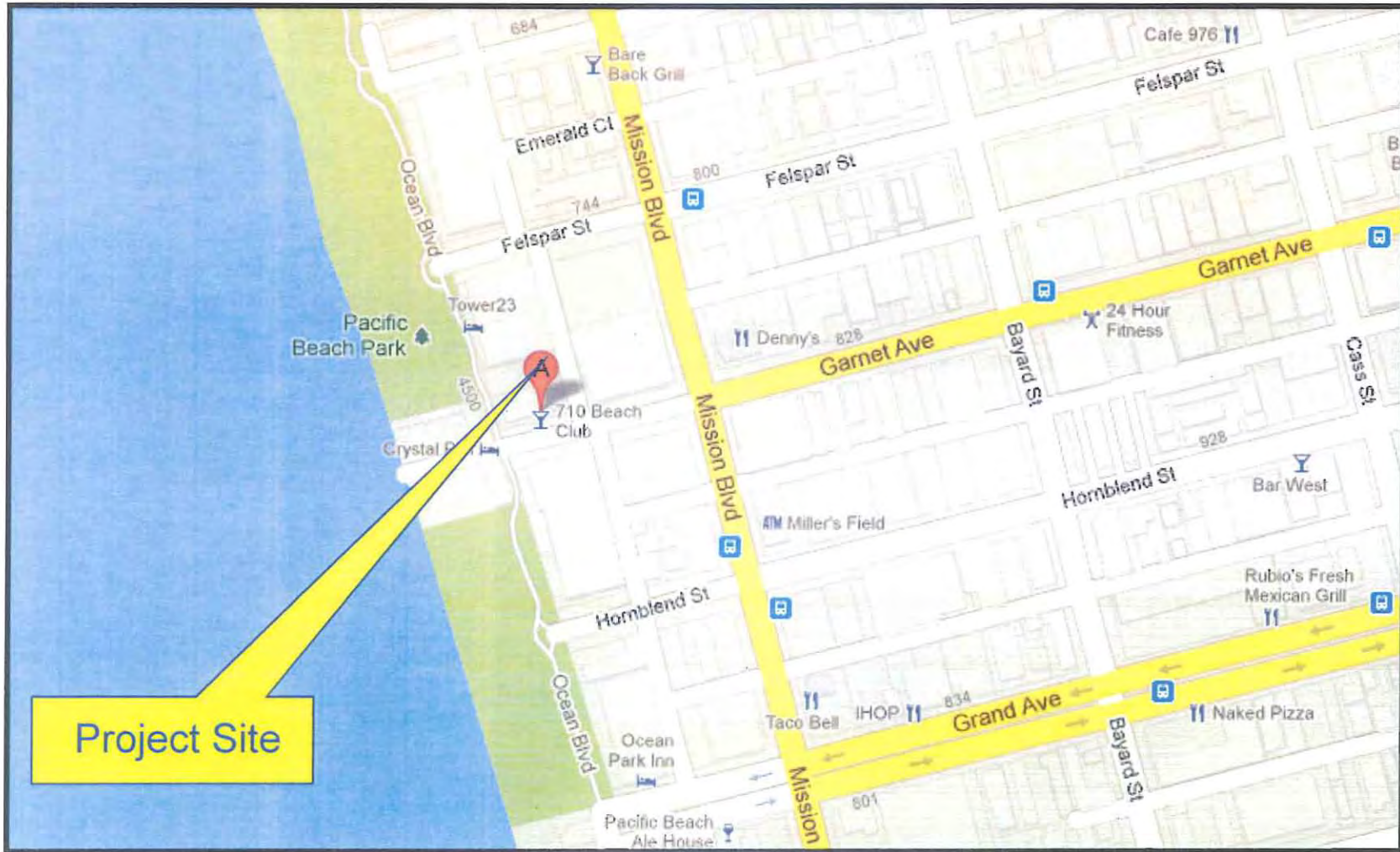
## Location Aerial Photo

**710 GARNET SIDEWALK CAFE – 710 GARNET AVENUE**  
**PROJECT NO. 243190**









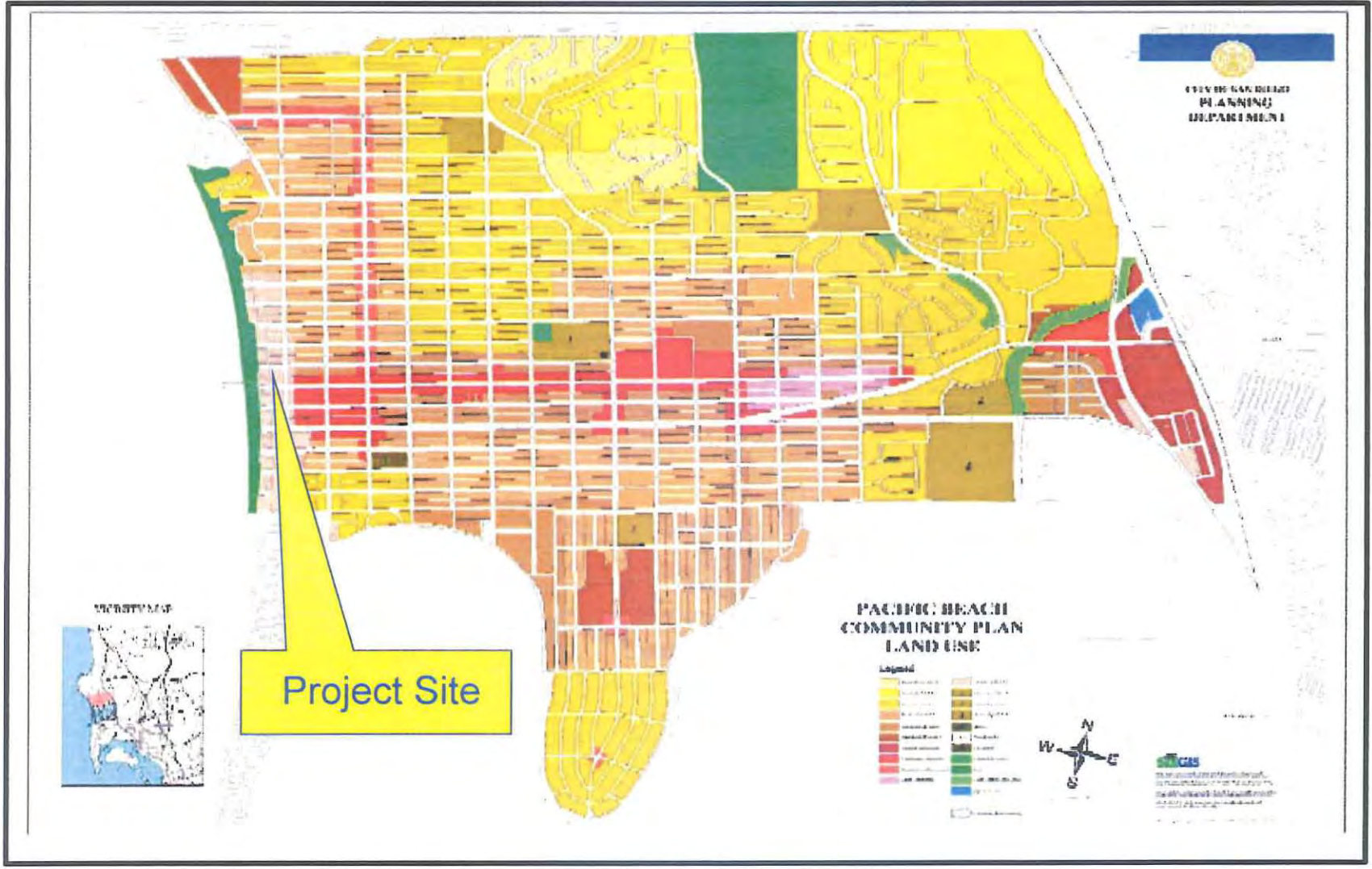
## Project Location Map

**710 GARNET SIDEWALK CAFÉ – 710 GARNET AVENUE**  
**PROJECT NO. 243190**









## Land Use Map

710 GARNET SIDEWALK CAFÉ - 710 GARNET AVENUE

PROJECT NO. 243190







PLANNING COMMISSION RESOLUTION NO.  
NEIGHBORHOOD USE PERMIT NO. 873355  
710 GARNET AVENUE SIDEWALK CAFÉ PROJECT NO. 243190

WHEREAS, Gregory Y. Yee and Mario Do Carmo Monteiro Revocable Trust, Owner/Permittee, and Scott Slaga, Permittee filed an application with the City of San Diego for a permit for a 200 square-foot sidewalk café (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 873355 at an existing restaurant; and

WHEREAS, the project site is located at 710 Garnet Avenue in the CV-1-2 Zone of the Pacific Beach Community Planning Area; and

WHEREAS, the project site is legally described as all that portion of Block 193 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof Nos. 791 and 854, filed in the Office of the County Recorder of San Diego County December 29, 1894 and September 28, 1898, respectively, lying Westerly of the center line of the North and South alley in said Block and Southerly of a line drawn parallel with the distant 58.00 feet Northerly at right angles from the Southerly line of said Block; and

WHEREAS, on October 8, 2012 the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15303(e), New Construction (accessory structures, including garages, carports, patios, swimming pools and fences and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; and

WHEREAS, on November 7, 2012, the Development Services Department of the City of San Diego approved Neighborhood Use Permit No. 873355 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, on November 21, 2012 Ms Ellie Fellers appealed the Development Services Department approval to the San Diego Planning Commission; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated March 28, 2013.

FINDINGS:

Neighborhood Use Permit - Section 126.0205

- 1. The proposed development will not adversely affect the applicable land use plan;**

The project would provide for a sidewalk café in front of an existing restaurant and bar at 710 Garnet Avenue.



One goal of the Pacific Beach Community Plan (Plan) is to create a pedestrian oriented environment along Garnet Avenue. The Plan also recommends that the streetscape design provide flexibility in the placement of street trees to encourage outdoor seating for commercial property owners (Page 89). The proposed sidewalk café would help create a pedestrian environment along this part of Garnet Avenue. The addition of seated restaurant customers in close proximity to pedestrians using the sidewalk would increase the pedestrian experience and would present a more human scale at the developed frontage of the building.

The Plan further recommends an eight-foot clear distance between the sidewalk café enclosure and the sidewalk curb. The project is consistent with this recommendation except at two points: at an existing palm tree that would be five feet away from the café enclosure edge and at a street sign that would be seven feet, three-inches away from the café enclosure edge. The tree and street sign post widths combined measure slightly less than one foot in width. The entire length of the café is proposed to be 37.5 feet. Therefore, the portion of the sidewalk that would not present eight feet clear distance from the café enclosure edge to the adjacent curb is 2.6 percent of the café length. Given 97.4 percent of the sidewalk café length would be consistent with the Plan recommendation, and the project would help create a pedestrian environment as called for in the Plan, the proposed development will not adversely affect the applicable land use plan.

**2. The proposed development will not be detrimental to the public health, safety, and welfare; and**

The project would provide for a sidewalk café in front of an existing restaurant and bar at 710 Garnet Avenue.

The proposed sidewalk café would be consistent with the standards established in the Land Development Code (LDC) 141.1102 meeting setback requirements and with LCD 113.0273 in that visibility areas would be properly observed. Therefore, the project would not be detrimental to the public health, safety and welfare.

**3. The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.**

The project would provide for a sidewalk café in front of an existing restaurant and bar at 710 Garnet Avenue.

Section 141.0621 of the Land Development Code requires that 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. It further states that 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 Code Section further states that 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. Given the minimum clear path would be met for 97.4 percent of the sidewalk café length and the length of the entire sidewalk café is proposed to be 37.5 feet, no congestion would result from the installation of this sidewalk café.



To maximize the clear path distance at the existing palm tree, permit conditions would require the applicant install and maintain a tree grate at the base of this palm tree to cover the brown dirt tree well area at the base of the tree. This, in effect, would provide passable clear width from the sidewalk café edge to near the closest edge of the tree. Pedestrians would be able to walk on the tree grate and realize the full five-foot clearance at this location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Neighborhood Use Permit No. 873355 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Neighborhood Use Permit No. 873355, a copy of which is attached hereto and made a part hereof.

---

Morris E. Dye  
Development Project Manager  
Development Services

Adopted on: March 28, 2013

Job Order No. 24001930





**RECORDING REQUESTED BY**  
 CITY OF SAN DIEGO  
 DEVELOPMENT SERVICES  
 PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001930

**NEIGHBORHOOD USE PERMIT NO. 873355**  
**710 GARNET SIDEWALK CAFÉ PROJECT NO. 243190**  
**PLANNING COMMISSION**

This Neighborhood Use Permit No. 873355 is granted by the Planning Commission of the City of San Diego to the Gregory Y. Yee and Maria Do Carmo Monteiro Revocable Trust Owner/Permittee, and Scott Slaga, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0621. The project site is located at 710 Garnet Avenue in the CV-1-2 zone of the Pacific Beach Community Planning Area. The project site is legally described as: all that portion of Block 193 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof Nos. 791 and 854, filed in the Office of the County Recorder of San Diego County December 29, 1894 and September 28, 1898, respectively, lying Westerly of the center line of the North and South alley in said Block and Southerly of a line drawn parallel with the distant 58.00 feet Northerly at right angles from the Southerly line of said Block.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners and Permittees for a 200 square-foot sidewalk café for an existing restaurant and bar. The development is described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 28, 2013, on file in the Development Services Department.

The project shall include:

- a. A 200 Square-foot Sidewalk Cafe;
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning

regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by March 28, 2016.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owners/Permittees for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owners/Permittees are informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.



9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

11. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

12. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

13. The sidewalk café shall be used only for dining, drinking, and circulation. The cafe may provide either waiter/waitress service or self-service.



14. The sidewalk café shall be operated so that unsafe conditions are not created for the physically disable, blind, or partially sighted.
15. The furnishings of the interior of the sidewalk café 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 delimited café area adjacent to the barrier. Lighting fixtures may be permanently affixed to the front of the main building.
16. 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 café.
17. Trash or storage areas shall not be located on or adjacent to the public right-of-way.
18. Musical instruments or sound reproduction devices shall not be operated or used within the sidewalk café. For the purposes of enforcement of Municipal Code Section 59.0101 et. seq., the property line shall be considered the boundary of the sidewalk café.
19. The sidewalk café shall be free of litter at all times.
20. The hours of operation of a sidewalk café shall be limited to the hours of operation of the associated eating or drinking establishment.
21. A City Standard tree grate shall be installed around the bottom of the existing palm tree that is shown to be five feet from the proposed sidewalk café and nine feet, six inches from the western end of the proposed sidewalk cafe.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on March 28, 2013 and Resolution No.



Neighborhood Use Permit No. 873355:  
March 28, 2013

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

\_\_\_\_\_  
Morris E. Dye  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
~~The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of~~  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**Gregory Y. Yee and Maria Do Carmo Monteiro  
Revocable Trust**  
Owner/Permittee

By \_\_\_\_\_  
Gregory Y. Yee  
Co-Trustee

**Gregory Y. Yee and Maria Do Carmo Monteiro  
Revocable Trust**  
Owner/Permittee

By \_\_\_\_\_  
Maria Do Carmo Monteiro  
Co-Trustee

By \_\_\_\_\_  
Scott Slaga  
Permittee

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**







The City of San Diego

DEVELOPMENT SERVICES DEPARTMENT  
1222 FIRST AVENUE  
SAN DIEGO, CA 92101-4155  
619-446-5000

CONSTRUCTION PLAN

SITE ADDRESS: 710 GARNET AVE  
SAN DIEGO, CA 92109

DISCRETIONARY PROJECT NO: N/A  
BUILDING PROJECT NO: N/A  
INTERNAL ORDER NO: -  
PROJECT TRACKING NO: 243190

NOTES

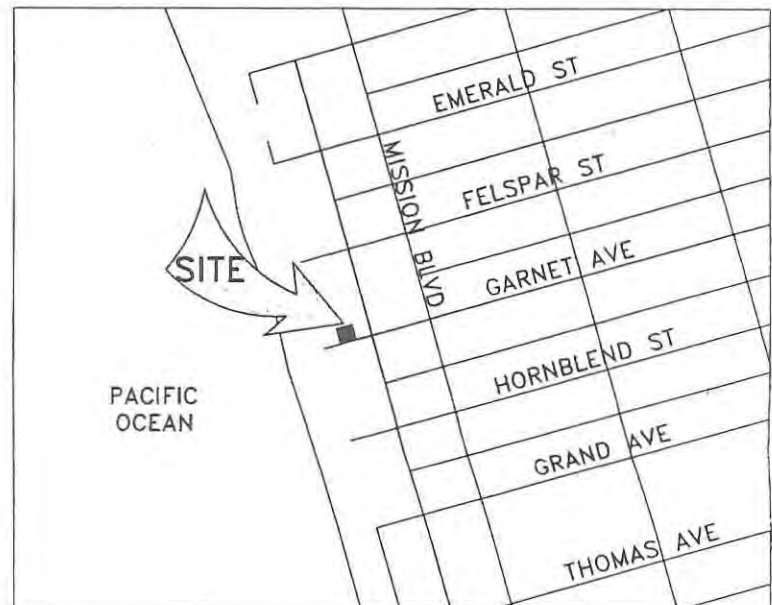
1. THE CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN (11"x17") FOR APPROVAL, PRIOR TO STARTING WORK. THE PLANS SHALL BE SUBMITTED TO THE TRAFFIC CONTROL PERMIT COUNTER AT THE ADDRESS IN THE ABOVE HEADING, ON THE 3RD FLOOR, BOOTH 22. FOR QUESTIONS, CALL (619) 446-5150. THE CONTRACTOR SHALL OBTAIN A TRAFFIC CONTROL PERMIT A MINIMUM OF TWO (2) WORKING DAYS PRIOR TO STARTING WORK, AND A MINIMUM OF FIVE (5) DAYS IF WORK WILL EFFECT A BUS STOP OR AN EXISTING TRAFFIC SIGNAL, OR WILL REQUIRE A ROAD OR ALLEY CLOSURE.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CLEANUP OF ALL SILT AND MUD ON ADJACENT STREET(S), DUE TO CONSTRUCTION VEHICLES OR ANY OTHER CONSTRUCTION ACTIVITY, AT THE END OF EACH WORK DAY, OR AFTER A STORM EVENT THAT CAUSES A BREECH IN INSTALLED CONSTRUCTION BMPS THAT COMPROMISES STORM WATER QUALITY WITHIN ANY STREET(S). A STABILIZED CONSTRUCTION EXIT MAY BE REQUIRED TO PREVENT CONSTRUCTION VEHICLES OR EQUIPMENT FROM TRACKING MUD OR SILT ON TO THE STREET.
3. THE STORAGE OF ALL CONSTRUCTION MATERIALS AND EQUIPMENT MUST BE PROTECTED AGAINST ANY POTENTIAL RELEASE OF POLLUTANTS THE ENVIRONMENT.
4. A CONCRETE WASHOUT SHALL BE PROVIDED ON ALL PROJECTS THAT PROPOSE THE CONSTRUCTION OF CONCRETE IMPROVEMENTS THAT ARE TO BE POURED IN PLACE ON SITE.
5. BEFORE EXCAVATION, CALL UNDERGROUND SERVICE ALERT (800) 422-4133
6. PRIOR TO ANY DISTURBANCE TO THE SITE, EXCLUDING UTILITY MARK-OUTS AND SURVEYING, THE CONTRACTOR SHALL MAKE ARRANGEMENTS FOR A PRE-CONSTRUCTION MEETING WITH THE CITY OF SAN DIEGO FIELD ENGINEERING DIVISION (858) 627-3200.
7. THE CONTRACTOR IS RESPONSIBLE FOR THE COST OF REPLACING ALL SURVEY MONUMENTS WHICH ARE DAMAGED OR DESTROYED BY CONSTRUCTION. PRIOR TO CONSTRUCTION, SURVEY MONUMENTS THAT ARE LOCATED IN THE CONSTRUCTION WORK AREA SHALL BE TIED-OUT AND REFERENCED BY A LAND SURVEYOR. UPON COMPLETION OF CONSTRUCTION, ALL DESTROYED SURVEY MONUMENTS ARE REQUIRED TO BE REPLACED, AND A CORNER RECORD OR RECORD OF SURVEY SHALL BE PREPARED AND FILED WITH THE COUNTY SURVEYOR AS REQUIRED BY THE PROFESSIONAL LAND SURVEYORS ACT, SECTION 8771 OF THE BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA.
8. IF ANY VERTICAL CONTROL IS TO BE DISTURBED OR DESTROYED, THE CITY OF SAN DIEGO FIELD SURVEY SECTION MUST BE NOTIFIED, IN WRITING, AT LEAST 3 DAYS PRIOR TO THE CONSTRUCTION. THE CONTRACTOR WILL BE RESPONSIBLE FOR THE COST OF REPLACING ANY VERTICAL CONTROL BENCHMARKS DESTROYED BY THE CONSTRUCTION.
9. ALL APPROVALS GRANTED HEREON ARE BASED ON INFORMATION PROVIDED BY THE APPLICANT. APPROVAL OF THIS PERMIT DOES NOT AUTHORIZE VIOLATION OF ANY CODES OR REGULATIONS. THE CITY'S RESIDENT ENGINEER RESERVES THE RIGHT TO MODIFY THE WORK TO BE DONE, AS ACTUAL FIELD CONDITIONS MAY DICTATE.

SPECIFICATIONS/STANDARD DRAWINGS

ALL WORK SHALL BE DONE IN ACCORDANCE WITH THIS PLAN, THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, AND THE CITY OF SAN DIEGO STANDARD DRAWINGS, AS LAST AMENDED.

LEGEND

| DESCRIPTION                         | STANDARD DRAWING | SYMBOL |
|-------------------------------------|------------------|--------|
| PROPOSED SIDEWALK                   | N/A              | =====  |
| CAFE W/ 3' MAX. HEIGHT WOOD RAILING |                  |        |
| W/ 2' MAX. GLASS TOP                |                  |        |



VICINITY MAP  
NTS

DEVELOPMENT SERVICES DEPARTMENT  
APPROVED CONSTRUCTION PLAN

ENGINEERING PERMIT NUMBER \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

ENCROACHMENT NOTE:  
FOR BUILDING AWNING AND PRIVATE SIDEWALK CAFE WITH 5' MAX. HEIGHT METAL AND GLASS RAILING WITHIN THE PUBLIC WAY, SEE EMRA APPROVAL #

SHEET 1 OF 4

THE FOLLOWING INFORMATION IS TO BE PROVIDED BY THE WATER REVIEW SECTION PLAN REVIEWER DIVISION OF INFORMATION AND APPLICATION SERVICES: ENTER THIS INFORMATION INTO I.O.S.

FIRE SERVICE BILLING CODE: \_\_\_\_\_  
FIRE SERVICE BILLING CODE: SP: \_\_\_\_\_ ST: \_\_\_\_\_ FH# \_\_\_\_\_  
WATER SECTION REVIEWER NAME: \_\_\_\_\_ DATE: \_\_\_\_\_  
SEWER SECTION REVIEWER NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

NSSQ: \_\_\_\_\_  
CONNECTIONS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PREPARED FOR:  
NAME: 710 BEACH CLUB  
ADDRESS/PHONE: 710 GARNET AVE, S.D., CA 92103

PREPARED BY: KSA  
NAME: KYLE STEPHENS, AIA, NCARB  
ADDRESS/PHONE: 1350 COLUMBIA STREET, #702  
(619) 253-2742

PERMIT NUMBER:







DEVELOPMENT SERVICES DEPARTMENT  
1222 FIRST AVENUE  
SAN DIEGO, CA 92101-4155  
(619) 446-5000

CONSTRUCTION PLAN

DISCRETIONARY PROJECT NO: N/A  
BUILDING PROJECT NO: N/A  
INTERNAL ORDER NO: -  
PROJECT TRACKING NO: 243190

THE CITY OF SAN DIEGO

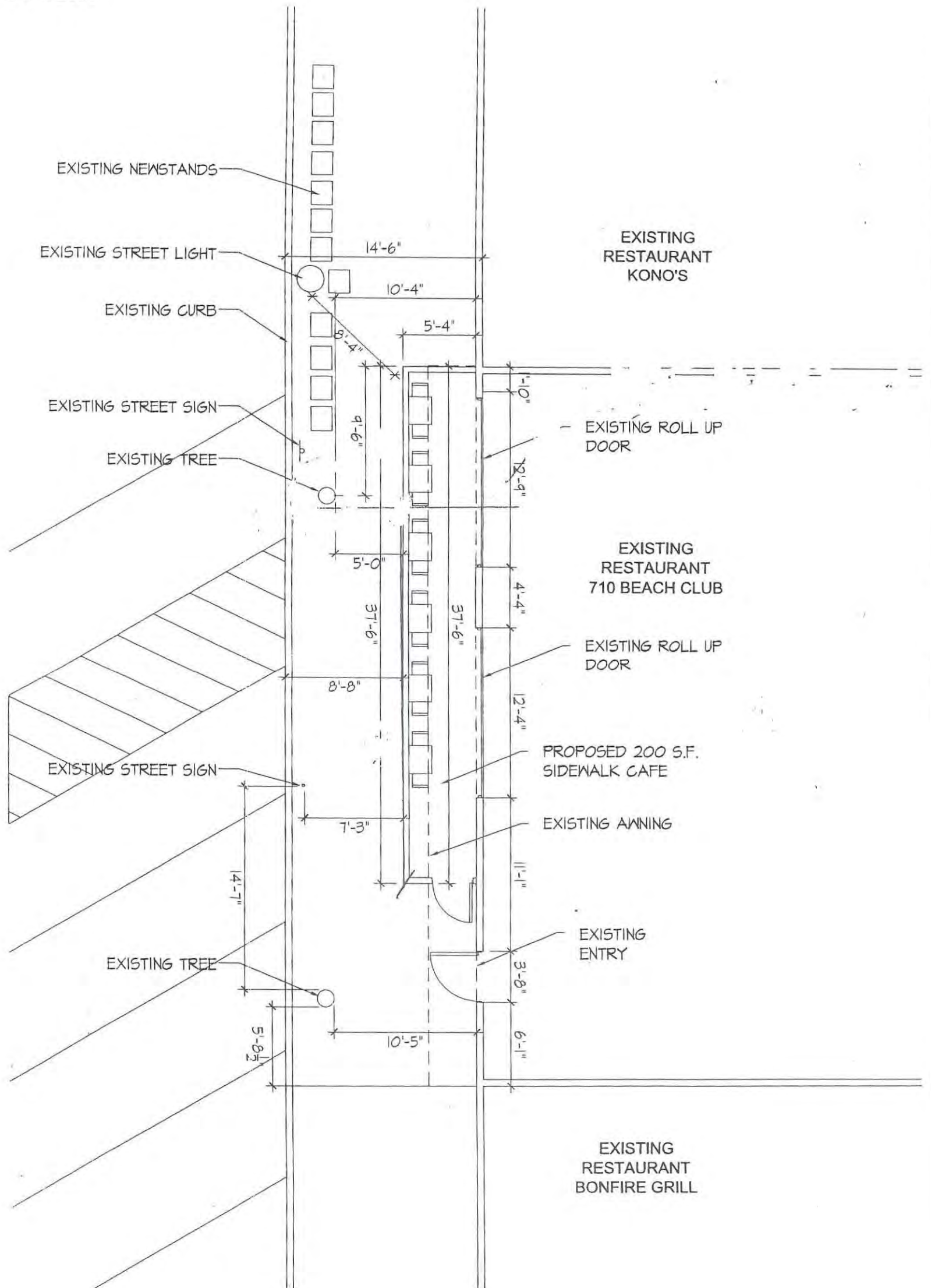
SITE ADDRESS: 710 GARNET AVE  
SAN DIEGO, CA 92109

PROPERTY OWNER:  
GREGORY YEE

LEGAL DESCRIPTION:  
LOT 9 AND 10, BLOCK 193, MAP 791/854, PACIFIC BEACH,  
CITY OF SAN DIEGO, COUNTY OF SAN DIEGO  
APN: 415-583-07-00

SITE ADDRESS:  
710 GARNET AVE.  
SAN DIEGO, CA 92109

GARNET STREET (80'-0" R.O.W.)



SITE PLAN

SCALE: 1/8" = 1'-0"



SHEET 2 OF 4

PREPARED FOR:  
NAME: 710 BEACH CLUB  
ADDRESS/PHONE: 710 GARNET AVE, S.D., CA 92103

PREPARED BY: KSA  
NAME: KYLE STEPHENS, AIA, NCARB  
ADDRESS/PHONE: 1350 COLUMBIA STREET, #702  
(619) 253-2742

PERMIT NUMBER:







DEVELOPMENT SERVICES DEPARTMENT  
1222 FIRST AVENUE  
SAN DIEGO, CA 92101-4155  
(619) 446-5000

CONSTRUCTION PLAN

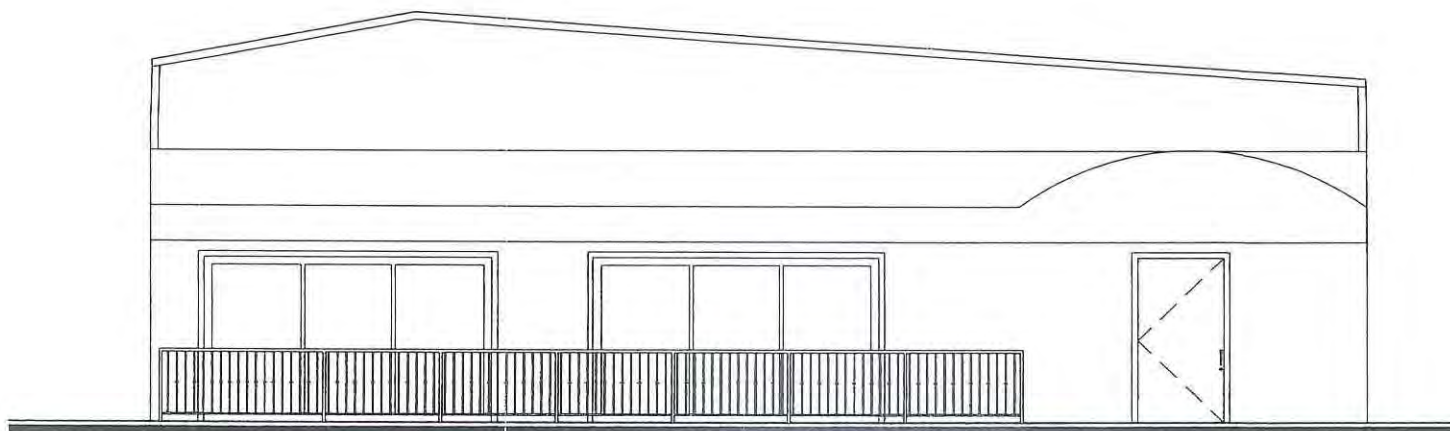
DISCRETIONARY PROJECT NO: N/A  
BUILDING PROJECT NO: N/A  
INTERNAL ORDER NO: -  
PROJECT TRACKING NO: 243190

THE CITY OF SAN DIEGO

SITE ADDRESS: 710 GARNET AVE  
SAN DIEGO, CA 92109

PROPERTY OWNER:  
GREGORY YEE  
  
SITE ADDRESS:  
710 GARNET AVE.  
SAN DIEGO, CA 92109

LEGAL DESCRIPTION:  
LOT 9 AND 10, BLOCK 193, MAP 791/854, PACIFIC BEACH,  
CITY OF SAN DIEGO, COUNTY OF SAN DIEGO  
APN: 415-583-07-00



SOUTH ELEVATION

SCALE: 1/8"=1'-0"

SHEET 3 OF 4

PREPARED FOR:  
NAME: 710 BEACH CLUB  
ADDRESS/PHONE: 710 GARNET AVE, S.D., CA 92103

PREPARED BY: KSA  
NAME: KYLE STEPHENS, AIA, NCARB  
ADDRESS/PHONE: 1350 COLUMBIA STREET, #702  
(619) 253-2742

PERMIT NUMBER:







DEVELOPMENT SERVICES DEPARTMENT  
 1222 FIRST AVENUE  
 SAN DIEGO, CA 92101-4155  
 (619) 446-5000

**CONSTRUCTION PLAN**

DISCRETIONARY PROJECT NO: N/A  
 BUILDING PROJECT NO: N/A  
 INTERNAL ORDER NO:  
 PROJECT TRACKING NO: 243190

THE CITY OF SAN DIEGO

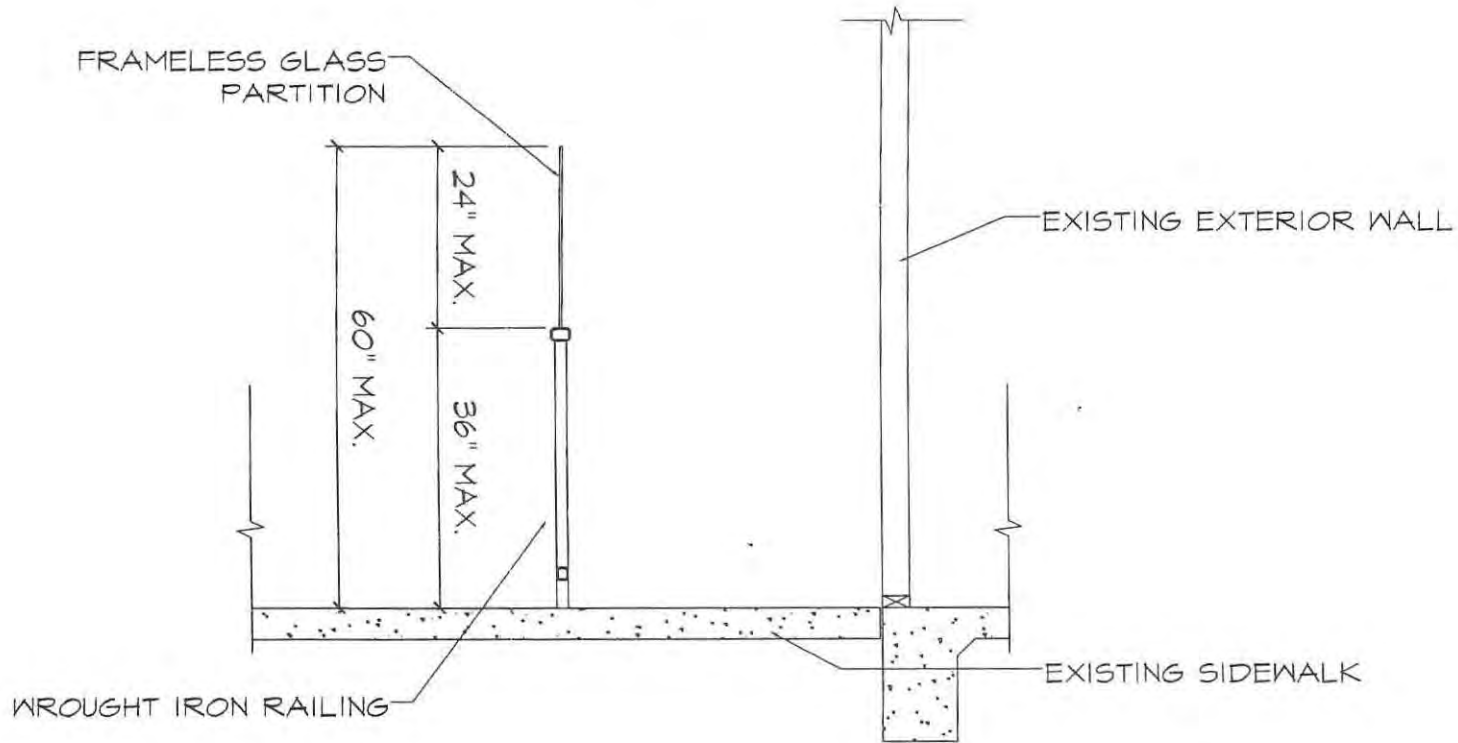
SITE ADDRESS: 710 GARNET AVE  
 SAN DIEGO, CA 92109

PROPERTY OWNER:  
 GREGORY YEE

SITE ADDRESS:  
 710 GARNET AVE.  
 SAN DIEGO, CA 92109

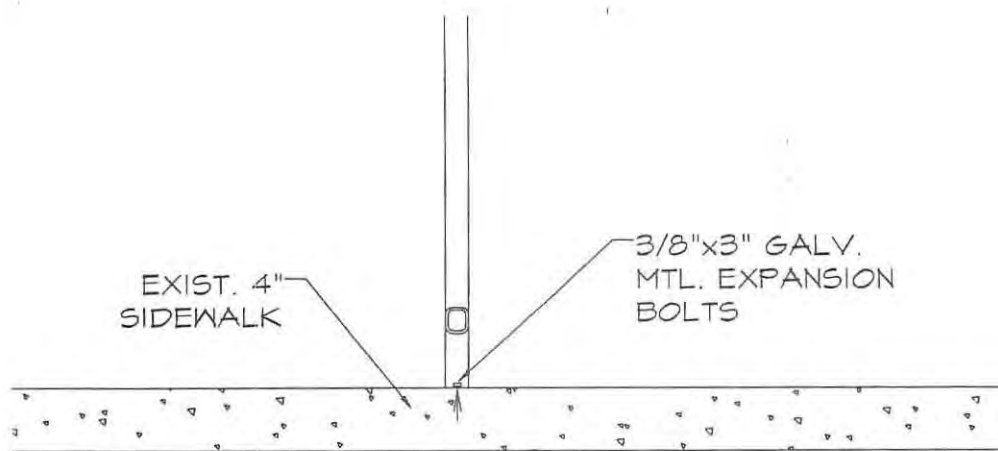
LEGAL DESCRIPTION:

LOT 9 AND 10, BLOCK 193, MAP 791/854, PACIFIC BEACH,  
 CITY OF SAN DIEGO, COUNTY OF SAN DIEGO  
 APN: 415-583-07-00



**SECTION I**

SCALE: 1/2"=1'-0"



**ATTACHMENT DETAIL**

SCALE: 1/2"=1'-0"

SHEET 4 OF 4

PREPARED FOR:  
 NAME: 710 BEACH CLUB  
 ADDRESS/PHONE: 710 GARNET AVE, S.D., CA 92103

PREPARED BY: KSA  
 NAME: KYLE STEPHENS, AIA, NCARB  
 ADDRESS/PHONE: 1350 COLUMBIA STREET, #702  
 (619) 253-2742

PERMIT NUMBER:







THE CITY OF SAN DIEGO

Date of Notice: October 8, 2012

# NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order or WBS No. 24001930

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**PROJECT NAME/NUMBER:** 710 Garnet Sidewalk Cafe / 243190

**COMMUNITY PLAN AREA:** Pacific Beach

**COUNCIL DISTRICT:** 2

**LOCATION:** 710 Garnet Avenue, San Diego, CA 92109 (Lots 9 and 10, Block 193 of Pacific Beach)

**PROJECT DESCRIPTION:** Neighborhood Use Permit to create a 200-square-foot sidewalk cafe for an existing restaurant. The project would include installing a fence that would extend into the public right of way by 5 feet 4 inches and would continue to leave a clear path of travel of 9 feet 2 inches. The project is located at 710 Garnet Avenue in the CV-1-2 Zone within the State Coastal, Coastal Height Limit, First Public Roadway, Parking Impact, and Transit Area within the Pacific Beach Community Planning Area in Council District 2 of the City of San Diego.

**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego City Staff

**ENVIRONMENTAL DETERMINATION:** This project is exempt pursuant to the California Environmental Quality Act Section 15303 (e) – new construction (accessory structures including garages, carports, patios, swimming pools and fences)

**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego

**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:** This project is exempt because no grading is proposed and this project would not cause any health or human safety impacts and no sensitive resources are located within or adjacent to the site. In addition the project is exempt because it meets the criteria set forth in CEQA section 15303 (e) – new construction (accessory structures including garages, carports, patios, swimming pools and fences) – and where the exceptions listed in CEQA section 15300.2 would not apply. Therefore, no adverse impacts would occur.

**DEVELOPMENT PROJECT MANAGER:** Morris Dye  
**MAILING ADDRESS:** 1222 1<sup>st</sup> Avenue  
San Diego CA 92101 MS 501  
**PHONE NUMBER:** 619-446-5201

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On October 8, 2012 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 15 business days from the date of the posting of this Notice. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.



## NOTICE OF EXEMPTION

(Check one or both)

TO:  RECORDER/COUNTY CLERK  
 P.O. BOX 1750, MS A-33  
 1600 PACIFIC HWY, ROOM 260  
 SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO  
 DEVELOPMENT SERVICES DEPARTMENT  
 1222 FIRST AVENUE, MS 501  
 SAN DIEGO, CA 92101

OFFICE OF PLANNING AND RESEARCH  
 1400 TENTH STREET, ROOM 121  
 SACRAMENTO, CA 95814

PROJECT NO.: 243190

PROJECT TITLE: 710 Garnet Sidewalk Cafe

PROJECT LOCATION-SPECIFIC: 710 Garnet Avenue, San Diego, CA 92109 (Lots 9 and 10, Block 193 of Pacific Beach)

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: Neighborhood Use Permit to create a 200-square-foot sidewalk cafe for an existing restaurant. The project would include installing a fence that would extend into the public right of way by 5 feet 4 inches and would continue to leave a clear path of travel of 9 feet 2 inches. The project is located at 710 Garnet Avenue in the CV-1-2 Zone within the State Coastal, Coastal Height Limit, First Public Roadway, Parking Impact, and Transit Area within the Pacific Beach Community Planning Area in Council District 2 of the City of San Diego.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Scott Slaga  
 2635 Loring Street  
 San Diego, CA 92109  
 619-384-3127

## EXEMPT STATUS: (CHECK ONE)

- MINISTERIAL (SEC. 21080(b)(1); 15268);  
 DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));  
 EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))  
 CATEGORICAL EXEMPTION: This project is exempt pursuant to the California Environmental Quality Act Section 15303 (e) – new construction (accessory structures including garages, carports, patios, swimming pools and fences)  
 STATUTORY EXEMPTIONS:

REASONS WHY PROJECT IS EXEMPT This project is exempt because no grading is proposed and this project would not cause any health or human safety impacts and no sensitive resources are located within or adjacent to the site. In addition the project is exempt because it meets the criteria set forth in CEQA section 15303 (e) – new construction (accessory structures including garages, carports, patios, swimming pools and fences) –and where the exceptions listed in CEQA section 15300.2 would not apply. Therefore, no adverse impacts would occur.

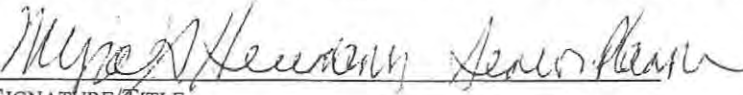
LEAD AGENCY CONTACT PERSON: Lizzi

TELEPHONE: (619) 619-446-5159

## IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?  
 YES  NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA

  
 SIGNATURE/TITLE

10/4/12  
 DATE

## CHECK ONE:

- SIGNED BY LEAD AGENCY  
 SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:





DOC # 2000-0097817

FEB 28, 2000 10:47 AM

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
PLANNING AND DEVELOPMENT  
REVIEW

2378

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 13.00

AND WHEN RECORDED MAIL TO  
PROJECT MANAGEMENT  
MAIL STATION 302



SPACE ABOVE THIS LINE FOR RECORDED 2000-0097817

CITY OF SAN DIEGO  
DECISION OF PLANNING AND DEVELOPMENT REVIEW  
HEARING OFFICER - 99-0746

SIDEWALK CAFE PERMIT

WHEREAS, GREGORY YEE, OWNER; BONNIE R. RAY, APPLICANT, sought a Sidewalk Cafe Permit to establish a Sidewalk Cafe within the public right-of-way where such use requires a Sidewalk Cafe Permit - Lots 9 and 10 and a portion of Lot 8, Block 193, Pacific Beach, Map No. 791, located at 712 Garnet Avenue, in the CV (Commercial Visitor), State Coastal Overlay Zone, within the Pacific Beach Community Planning Area; and,

WHEREAS, on December 10, 1999, the Decision-Maker considered the request and approved the permit noting that the sidewalk cafe encroached 6 feet into the public right-of-way for 11 feet parallel to the curb, that the entry way to the adjacent business to the east of the sidewalk cafe was within 2 feet of the sidewalk cafe rail where the criteria require 8 feet, and that the design was in conformance with the Uniform Building Code and general conformance with the design criteria for sidewalk cafes; and

WHEREAS, on December 10, 1999, the Decision-Maker also found that sidewalk cafe at this location would not adversely affect the neighborhood and would implement the goals of the Progress Guide and General Plan and Community Plan. The Decision Maker also determined that the sidewalk cafe would not be detrimental to persons residing, visiting or working in the area and found that the sidewalk cafe would comply with all relevant regulations in the Municipal Code and all applicable building laws including State laws and regulations; and,

WHEREAS, on December 21, 1999, an appeal of the Decision Maker's decision was filed with the City by Willis M. Allen; and

WHEREAS, on January 27, 2000, following a review of the project case file, conversations with both the applicant and the appellant and conducting a site visit, the Hearing Officer reviewed the decision of the Decision Maker and determined that with certain operational limits relating to noise and hours the cafe could be open, no impacts would result in the operation of this cafe at this location; and,

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NOW, THEREFORE, BE IT RESOLVED, by the Hearing Officer of the City of San Diego, that in light of the foregoing, the appeal filed by Willis M. Allen in the decision to approve the Sidewalk Cafe Permit sought by GREGORY YEE, OWNER, BONNIE R. RAY, APPLICANT, in Case No. 99-0747, is hereby DENIED and the APPROVAL granted by the Decision Maker sustained, subject to the requirements below.

Prior to construction of the sidewalk cafe, an Encroachment Removal Agreement must be obtained from the Planning and Development Review Department. The applicant shall additionally close the sidewalk cafe at 10:30 p.m., except on days when a national holiday is being observed. On those days, the sidewalk cafe may remain in use until 1:00 a.m. The applicant shall also take all steps necessary to minimize noise emanating from the sidewalk cafe. The applicant shall comply with all Uniform Building Code requirements and shall secure all necessary permits. To secure all necessary permits, THE APPLICANT IS NOTIFIED that substantial modification to the building to comply with applicable building, fire, mechanical and plumbing codes and state laws requiring access for disabled persons may be required.

This approval is not a permit or license, and any permits and licenses required by law must be obtained from the proper department. Furthermore, if any condition of this grant is violated, or if the same be not complied with in every respect, then this permit shall be subject to termination in accordance with Section 101.0550.

Pursuant to Section 111.0504 of the San Diego Municipal Code, this is the final decision on this project.

Date: January 27, 2000



Robert Didion  
Program Manager

RWD:SV:ey

This information will be made available in alternative formats upon request.

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ALL-PURPOSE CERTIFICATE

Type/Number of Document \_\_\_\_\_

Date of Approval \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

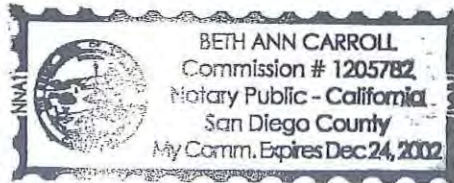
*Robert Didion*

Robert Didion, Development Project Manager

On 2-10-00 before me, BETH ANN CARROLL (Notary Public), personally appeared Robert Didion, Program Manager of Planning and Development Review Department of the City of San Diego, personally known to me 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 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.

WITNESS my hand and official seal

Signature *Beth Ann Carroll*  
Beth Ann Carroll



(Seal)

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed *Gregory Yee*  
Typed Name **GREGORY YEE, OWNER**

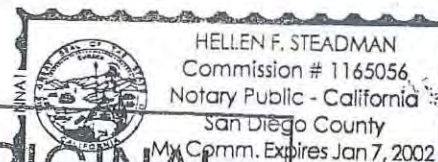
Signed *Bonnie R. Ray*  
Typed Name **BONNIE R. RAY, APPLICANT**

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On FEBRUARY 14, 2000 before me, HELLEN F. STEADMAN (Name of Notary Public) personally appeared GREGORY YEE + BONNIE R. RAY, 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.

WITNESS my hand and official seal.

Signature *Hellen F. Steadman*



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**§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 1 (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.

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