

Please return to: _____

or call x _____ for
pick-up.

Dept Tracking No. _____

City Atty Matter No. _____

Date of Request **7/3/2012**

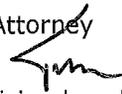
Internal Order No. _____

Docket Closing _____
2 wks before scheduled mtg

OFFICE OF THE CITY ATTORNEY
Legal Services Request Form

City Atty
Date of Receipt Stamp

To: City Attorney (M.S. 59)
Attention: Heidi Vonblum, Deputy City Attorney

From: **Tom Tomlinson, Interim Director DSD** 
Signature of Dept. Deputy Director Authorizing Legal Request

Re: Existing Matter No. _____
 New Matter Subject: **Jack in the Box restaurant remodel, 2959 Upas Street, North Park**

This is a request for legal services. Please establish an assignment based upon the following information:

- A. Requestor Name / Dept. (please print): **Tom Tomlinson** Telephone: **619-533-3187**
- B. Requested Response Date: As soon as possible (If response needed in less than 10 working days from the date of your request, please state specific reasons, including reference to any legal deadlines): The building permit has been issued and the project is under construction by the applicant. The applicant is relying on a building permit that may have been issued in error.
- C. Description of Legal Request: **Determine if the City issued a building permit in error, request a Stop Work Order, advise on revocation of building permit.**
- Please provide an email response acknowledging receipt of this Legal Services Request (detail on next page).
- Follow-up action required: Review second draft Execute document Other Draft Agreement
- D. Written Oral Attend Meeting / Hearing Citizen Inquiry
Review Document AIM
 Approve as to Form and Legality Council Inquiry
 Legal Review of Draft Permit, Contract, or Other Document Muni Code Amendment
 Legal Opinion/Advice: See attached Description. _____ Other _____

(PLEASE COMPLETE DESCRIPTION OF LEGAL REQUEST ON PAGE 2)

ATTORNEY TRANSMISSION RECORD

- Date Logged In: _____
- Sent Acknowledgment Email on _____
- Returned for additional information on _____
Information needed: _____
- Returned for further drafting on _____
- PLEASE RETURN FOR FURTHER REVIEW
- Assignment completed and returned on _____
- Signed as to form and legality on _____
- Deputy City Attorney Initials _____

Description of Legal Request (Please provide a detailed statement of the question or issue, including all necessary background information. Copies of background documents must be attached.):

The Development Services Department (DSD) issued a building permit for a remodel of a Jack in the Box restaurant (“Project”) at 2959 Upas Street in North Park. The site is zoned CN. As part of the remodel, the applicant’s plans included the retention of a drive-through, which is not an allowed development feature in the CN zone per the current Municipal Code. The permit was issued with the drive-through shown on the plans based on staff’s application of the Previous Conforming Premises and Uses section (LDC Ch 12, Art 7 Div 1). The site is currently under construction, substantial demolition and reconstruction has occurred, and the drive-through improvements have been removed and reconstructed as part of the construction and remodel process.

DSD has the following requests of the City Attorney’s Office.

- 1) Review staff’s application of the appropriate Municipal Code sections, including but not limited to, Previous Conforming Premises and Uses section in the issuance of a Process 1 construction permit that included a drive-through in a zone that does not currently allow this feature.
- 2) Should the permit application process be another process, such as a Process 2?
- 3) Determine if the building permit was issued in error.
- 4) Should a Stop Work Order be issued against the Project in accordance with sections 121.0308 “No Permission to Violate Codes” and section 121.0309 “Procedures For Issuing a Stop Work”?
- 5) Determine if the applicant has forfeited their vested rights to the continuing operation of the Project.
- 6) Advise as to options available to correct the issue, including but not limited to, revoking the building permit in accordance with sections 121.0314 (c) (2), (4) and (5).

The applicant is currently out of compliance with the issued permit due to the partial demolition of two walls that were not identified on the approved plans. Further inspections have been placed on hold pending a thorough review and approval of a construction change to the plans, which has been submitted by the applicant. Additional questions for the City Attorney include the following.

- 1) How would you advise staff process the review and approval of the construction change plans submitted considering the larger issues raised above that relate to the initial issuance of the permit?
- 2) Are we obligated to process the construction change per our standard process and under the auspices of the current permit, or can we hold the construction change request in abeyance until we resolve the larger permit issue?

May 31, 2013

North Park Planning Committee
Ms. Vicki Granowitz, Chair
2455 Pamo Ave.
San Diego, CA 92104

Members of the North Park Planning Committee Board –

On behalf of Jack in the Box, I wanted to share with you our plans for remodeling our restaurant located at 2959 Upas St. in North Park. As you know, last year the San Diego Planning Commission denied our application to build a new Jack in the Box restaurant at this location. At that hearing, the Commission noted that we could proceed with remodeling the existing building, and in the months following that hearing we've worked with the City of San Diego on securing all of the necessary permits for the remodel.

On May 28, we closed the restaurant in preparation for demolishing the interior next week. We expect construction will take approximately 10 weeks. Although we remain disappointed that we were unable to proceed with our plans to build a new restaurant and make other improvements to the property, we believe the remodeled restaurant will significantly enhance the property and neighboring community.

As you can see on the enclosed site plans and elevations:

- The locations of the driveways are not changing.
- The location and size of the building are not changing. We are not demolishing any of the exterior walls.
- We are constructing a 6-foot-high wall to replace the chain-link fence bordering the back of the property. We will plant landscaping along the side facing the Jack in the Box restaurant.
- We are relocating the trash corral closer to the alley.

In addition, when the restaurant re-opens, the hours of operation will be the same, and the restaurant will include all-new furnishings and amenities, including ceramic tile floors, decorative pendant lighting, graphic wall hangings and a mix of seating styles.

In remodeling this restaurant, we're making a significant investment to enhance the property. Jack in the Box has been serving the North Park community from this location since 1961, and we're looking forward to continue serving our friends and neighbors for many more years.

Sincerely,



Mike Hogenboom
Construction Manager
Jack in the Box Inc.

