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PUBLIC WORKS
BUREAU OF
ENGINEERING

GARY LEE MOORE, P.E.
CITY ENGINEER

1149 S. BROADWAY, SUITE 700
LOS ANGELES, CA 90015-2213

<http://eng.lacity.org>

January 13, 2010

Honorable Jose Huizar, Chair
Public Works Committee
Los Angeles City Council

c/o Adam Lid
City Clerk
City Hall, Room ~~1060~~ 395

Dear Councilmember Huizar and Honorable Members:

**Subject: Discussion of Proposed Outdoor (Sidewalk) Dining Fees
Council File No. 08-3167**

RECOMMENDATION

That the City Council:

1. APPROVE and CONCUR with original the proposal of Recommendation No. 2 in Joint Report No. 1 (Bureau of Engineering/Bureau of Street Services) which was adopted by the Board of Public Works (Board) on April 10, 2006, in regard to assessment of an Administrative and Inspection Fee in the amount of \$300.00, to be paid to the Bureau of Engineering (BOE) bi-annually by permittees after the initial revocable permit for Sidewalk Dining is issued (Transmittal No. 1).

AND

ADOPT the ordinance previously prepared by the City Attorney for this proposed new fee (Transmittal No. 2).

OR
JAN 15 2010



2. APPROVE the Alternative Fee Proposal in Item No. 2B under the Discussion section of this report for lower bi-annual administrative fees of \$160.00, with no bi-annual inspection.

AND

DIRECT the City Attorney to prepare a draft ordinance for the proposed fees for City Council approval and Mayor's signature.

3. APPROVE Penalty Fee Proposal in Item No. 3 under the Discussion section of this report for charging penalty fees to repeat offenders.

AND

DIRECT the City Attorney to prepare a draft ordinance for the proposed fees for City Council approval and Mayor's signature.

DISCUSSION

This report is in response to comments made by Public Works Committee members during the October 7, 2009 meeting. The committee asked BOE to report back on the following items:

- Fees that other cities charge.
- Complaint based fee proposal for permittees found to be out of compliance with permit conditions.
- Sliding Scale fee proposal based on the size of the dining area, in-lieu of one standard fee that is charged to all.

This report discusses the following issues:

1. Original BOE Proposal for a Bi-Annual Administrative and Inspection Fee
 2. Alternative Fee Proposals
 3. Penalty Fee Proposal
 4. Comparison of Fees Charged by Other California Cities
1. *ORIGINAL BOE PROPOSAL FOR A BI-ANNUAL ADMINISTRATIVE AND INSPECTION FEE*

The proposed bi-annual administrative and inspection fee was created to allow BOE and the Bureau of Street Services (BSS) to verify compliance of sidewalk dining regulations under the permittee's revocable permit for renewal. The cost basis associated with the bi-annual renewal of the permit was established to recover the

labor costs associated with verifying permit compliance. The intent was to have a BSS Investigation and Enforcement Division investigator visit the permitted site to verify compliance of the sidewalk dining permit every two years. A Notice to Comply would be issued to restaurants that do not comply with their permit conditions and would be subject to Penalty Fees described in Item No. 3 of this discussion. BOE staff would process the bi-annual fee payment, verify liability insurance, verify that restaurant ownership information is up to date and issue the renewal permit for sidewalk dining. The proposed fee was estimated as shown in the following table (TABLE 1):

COST RECOVERY ANALYSIS (TABLE 1)

Classification	Hourly (1) Rate	Burden & Overhead Rate	Hours	Total (2)	Description of Work
St Services Investigator (BSS)	\$33.36	\$58.06	1.5	\$137.13	Conducts site visit
Sr Clerk Typist (BOE)	\$26.72	\$46.50	1.0	\$73.22	Mails notices and processes fee payments
Civil Engr Associate II (BOE)	\$31.09	\$54.11	1.0	\$85.20	Verifies permit compliance (insurance, ownership, etc.)
			Total	\$295.55	~ \$300

- Notes: 1. Hourly rates for base pay from City of LA payroll system.
 2. Total estimated cost is the sum of the hourly rate + Burden and Overhead Rate multiplied by the number of hours.

To date, there are approximately 300 Revocable Permits issued for sidewalk dining citywide. Therefore, if the bi-annual fees are adopted, fees of approximately \$90,000 would be collected after the second year the ordinance is adopted and every other year after that. The ordinance allows for fee increases based on cost recovery.

2. ALTERNATIVE FEE PROPOSALS

As requested by the Public Works Committee, the following fee alternatives were also considered:

- A. Sliding Fee Scale: The Sliding Fee Scale renewal alternative is bi-annual fees that are based on the area of encroachment for sidewalk dining. BOE and BSS staff would verify permit compliance as outlined in BOE's original proposal in DISCUSSION Item No. 1. This alternative charges a higher fee as sidewalk encroachments increase in size. The sliding fee scale is shown in TABLE 2 below:

SLIDING FEE SCALE (TABLE 2)

Fee Category	Encroachment Size, sq. ft.	Fee, \$
Small	Under 50 sq ft	\$150.00
Medium	50 sq ft to 100 sq ft	\$250.00
Large	More than 100 sq ft	\$400.00

At this time it is unknown if this fee proposal for renewal would provide the City with 100% cost recovery for the work performed. This is because the number of existing restaurants that fall under the category of small, medium or large encroachment sizes is unknown. Work performed by the City under this alternative includes all administrative and inspection services provided under the original proposal. Since it is unknown if the City would be able to recover 100% of the cost required to perform the work, this alternative is not recommended. Additionally, the City Attorney has indicated that implementation of this fee methodology may be problematic.

- B. Revocable Permit Affidavit with Bi-Annual Administrative Fees (without Inspection):
 This alternative requires the permittee to pay a lower bi-annual fee of \$160.00, to allow BOE staff to process the permit renewal and verify that the status of the applicant's liability insurance and restaurant ownership information is up to date. Field inspection by a BSS investigator would not be necessary; however, at the time fees are required, the permittee would be required to submit a signed and notarized Revocable Permit Affidavit. The affidavit includes a declaration, under penalty of perjury, that the owner is in full compliance with the revocable permit conditions. Failure to submit an affidavit prior to the permit expiration date shall cause the permit to expire which will revoke the privilege of operating a sidewalk dining area in the public right-of-way.

A field inspection by a BSS investigator would only be scheduled if a complaint is received.

3. PENALTY FEE PROPOSAL

If a BSS investigator confirms that a permittee's sidewalk dining area is not in compliance with the revocable permit conditions, a Penalty Fee and Inspection fee shall be charged according to TABLE 3 below:

PENALTY FEES (TABLE 3)

Penalty	Penalty Fee	Inspection Fee	Total
1 st	* \$280	\$140	\$420
2 nd	* \$560	\$140	\$700

3 rd	** Revocation	None	-
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These fees apply to occurrences that happen within a one calendar year period of time.

- * Revocation of the permit may be imposed depending on the type and magnitude of the non compliance occurrence. In case of such an action only the inspection fee will be assessed against the restaurant.
- ** When a Revocable permit is revoked a new Revocable permit will not be issued for a minimum period of one year.

The BSS estimates that \$140.00 would be required to recover the cost of an investigator making one and/or maybe two visits to the site. Past inspection records indicate that approximately 60 complaints a year could be expected to be received for investigations of restaurants with sidewalk dining. At that rate, the annual cost estimated for performing this function is approximately \$8,400.00.

4. *COMPARISON OF FEES CHARGED BY OTHER CITIES IN CALIFORNIA*

Several cities in California were contacted to provide comparisons of fees charged in conjunction with sidewalk dining facilities. These fees are compiled in a table on Transmittal No. 3. Our research shows that the City of Los Angeles has the highest initial application fee compared with the others, however, the City does not charge an annual renewal fee at this time.

The proposed bi-annual administrative and inspection fee of \$300 or \$160 for renewal of the permit falls below most other annual fees in our study and is well below the annual fees charged by cities such as Pasadena, San Francisco and Santa Monica. In light of this research, the proposed renewal fee of \$300 bi-annually appears reasonable and is in-line with the overall fees charges by most cities in our research.

TRANSMITTALS

1. Joint Report No. 1, Board of Public Works, Revisions to Recommended Modifications to the Bureau of Engineering's Policy on Sidewalk Dining Within the Public Right-of-Way, adopted April 10, 2006.
2. Draft Ordinance for new Administrative and Inspection Fee for Revocable Permits for Sidewalk Dining.

Honorable Jose Huizar, Chair
Public Works Committee
January 13, 2010
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3. Comparison of Outdoor Dining Fees of Other California Cities, September 2009.

If you require additional information, please contact Shahin Behdin at (213) 482-7044 or Wesley Tanijiri at (213) 482-7062.

Sincerely,



Gary Lee Moore, P.E.
City Engineer

GLM/MEK/LMP/SB:wkt/tlw/RpttoPWConsidewalkdining-feesRA.doc

Attachments

cc: Cynthia M. Ruiz, President, Board of Public Works
Valerie Shaw, Board of Public Works
William Robertson, BSS
James A. Gibson, Board of Public Works
Clayton White, BSS
Michael E. Kantor, BOE
Lemuel Paco, BOE
Julia Moye, BOE

Department of Public Works

Bureau of Engineering
Bureau of Street Services
Joint Report No. 1

ADOPTED BY THE BOARD OF
PUBLIC WORKS OF THE CITY
of Los Angeles, California
AND REFERRED TO THE CITY COUNCIL
APR 10 2006


Secretary

April 10, 2006
CD Nos. ALL

**REVISIONS TO RECOMMENDED MODIFICATIONS TO THE BUREAU OF ENGINEERING'S POLICY ON
SIDEWALK DINING WITHIN THE PUBLIC RIGHT-OF-WAY, ADOPTED SEPTEMBER 16, 2005 -
CLARIFICATION OF LANGUAGE IN RECOMMENDATION NO. 2**

RECOMMENDATIONS

1. That your Board approve the revisions made to the Recommended Modifications to the Bureau of Engineering's Policy on Sidewalk Dining, adopted on September 16, 2005.
2. That your Board transmit a copy of the approved report to the City Council for approval of fees proposed in Item No. 2 of the Discussion Section of this report and request the City Attorney to prepare a draft ordinance for the proposed fees for City Council approval and Mayor's signature.
3. Transmit a copy of this report to the following Departments and Bureaus:
 - a. Bureau of Engineering (BOE), Central District Office at 201 N. Figueroa St, 3rd Floor, Mail Stop 503, Attention: Lem Paco, P.E.
 - b. Bureau of Street Services (BSS), 600 S. Spring Street, Suite 1200, Mail Stop 550.
 - c. Department of Building and Safety (DBS), 201 N. Figueroa Street, Mail Stop 115
 - d. Department of City Planning, 200 N. Spring Street, Mail Stop 395
 - e. City Attorney's Office, 200 N. Main Street, Mail Stop 140

TRANSMITTALS

1. Sidewalk Dining Revocable Permit Flowchart
2. Examples of Adjacent Properties
3. Notification Letter to Adjacent Property Owners
4. Display Permit

DISCUSSION

Background

On June 30, 2005, The Board of Public Works ("Board") instructed the BOE to review the current revocable permit policies with regard to Sidewalk Dining and report back to the Board in 60 days. BOE headed a task force along with the BSS, the City Planning

Department, the DBS and Council District 5 representatives to review the current policies. The Task Force held several meetings to discuss the policies and agreed to the following revised policy, which includes a mechanism to monitor and update the permit to ensure continuous compliance.

Proposed Sidewalk Dining Policies

All revocable permits require application fees, a sketch, proof of sufficient liability insurance, waiver of damages and photographs of the encroachment area. In addition to the standard requirements for revocable permits, all applications for sidewalk dining (Transmittal No. 1) shall be subject to the following requirements:

1. Outdoor dining in the public sidewalk (public right-of-way) shall comply with the requirements set forth in the Los Angeles Municipal Code (LAMC) Section 12.03 (Outdoor Eating Area) and the Zoning Administrator's Interpretation (ZAI) of zoning regulations related to outdoor dining in ZAI 1808 (Dining Terraces or Outdoor Patio Dining) as applied to private property by the DBS.
2. Revocable permits for Sidewalk Dining shall be subject to an Inspection and Administrative Fee in the amount of \$300, to be paid bi-annually (every two years) after the initial permit is issued. The fee shall be paid to the City of Los Angeles, BOE no later than 30 days prior to the expiration date displayed on the permit. The Inspection and Administrative Fee is required to recover costs associated with field inspection and administrative time the Department of Public Works dedicates to verifying and updating revocable permit documentation. All previously issued permits for sidewalk dining will be subject to the bi-annual fee.
3. BOE personnel shall notify, in writing, all property owners adjacent to the proposed encroachments as shown in Transmittal No. 2. The notification letter shall include a description and sketch detailing the scope of the proposed encroachments (Transmittal No. 3). BOE shall notify the appropriate Council District office and local Neighborhood Council to obtain their position on the proposed encroachments. The issuance of the revocable permit shall be subject to appeal by adjacent property owners. Appeals must be received, in writing, within 14 calendar days of the date of the notification letter. If no appeals are submitted to BOE within 14 calendar days of the date of the notification letter, BOE personnel shall continue the revocable permit process. Appeals of BOE's determination on the proposed encroachments require a board report which will be heard by the Board at a regularly scheduled public meeting.
4. A display permit shall be posted in plain view from the outside of the restaurant indicating the approved encroachments permitted in the public right-of-way (Transmittal No. 4).
5. Maintain a 7-foot clear space between encroachments (tables and chairs) and obstructions, such as power poles, street lights, parking meters and trees.

April 10, 2006
Page 3

6. Pay Sewerage Facility Charge (SFC) fees for the additional seats added to the restaurant. Fees will be determined by BOE personnel.
7. Maintain the sidewalk in front of the restaurant in a clean and uncluttered manner at all times.
8. If railings are proposed by the applicant, they shall be a minimum height of 30 inches and a maximum height of 42 inches. The railings shall be attached to the sidewalk by a method approved by BOE personnel. Attached railings shall be installed by obtaining an A-Permit and installed at locations approved by BOE personnel. Tables and chairs must be removed during non-business hours.
9. No encroachments will be allowed within the visibility triangle as described in the Los Angeles Municipal Code Section 62.200.
10. Applications for all new revocable permits for sidewalk dining shall be charged the "Field Investigation Required" fee of \$963 (\$900 +7 percent) per the current BOE fee schedule dated January 1, 2005, "Standard Fees, Charges and Deposits".
11. If a full hearing before the BPW is required, the applicant shall be charged the "Full Board Report" fee of \$2,568 (\$2,400 + 7 percent) per the current BOE fee schedule dated January 1, 2005, "Standard Fees, Charges and Deposits".
12. Umbrellas approved by BOE personnel shall be mounted in a stable base to prevent accidental or wind-blown tipping over.
13. A change in the restaurant ownership will require a new revocable permit application to be submitted and approved. If the application is approved, a new permit shall be issued once the new restaurant owner information, proof of liability insurance and Waiver of Damages is provided.

Proposed Plan for Unpermitted Sidewalk Dining

In order to establish the Sidewalk Dining policy citywide, it will necessitate the identification of unpermitted sidewalk dining locations currently in existence. This may be accomplished by utilizing the BSS, Street Services Investigators as part of their daily inspection routine and during responses to complaints.

In order to help distinguish between permitted and unpermitted encroachments, the BOE will "geocode" all existing permitted sidewalk dining permits on NavigateLA and provide a list of these locations to the inspectors. With the list of permitted locations, the inspectors will be able to identify which restaurants have obtained the proper permits.

The investigators will cite the unpermitted locations and require the removal of the encroachments until a sidewalk dining permit is obtained.

The BOE and the BSS, Investigation and Enforcement Division have discussed the issue and it was agreed that Street Services Investigators would be utilized from various programs within the Bureau of Street Services.

Therefore, we recommend granting the City Engineer authority to modify the revocable permit policies for Sidewalk Dining and work with the City Attorney to draft an ordinance for City Council approval to allow changes to the current fee structure by charging Inspection and Administrative fees for Revocable Permits with the specific purpose of Sidewalk Dining.

(LMP CWR GH NS)

Report prepared by:

Respectfully submitted,

Central District

Lemuel M. Paco, P.E.
District Engineer
Phone No. (213) 482-7049

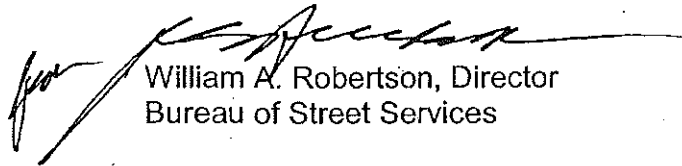


Gary Lee Moore, P.E.
City Engineer

LMP/WT/01-2006-0024.CEN.fdc

Questions regarding this report
may be referred to:

Writer: Wesley Tanijiri, P.E.
Phone No. (213) 482-7062
Fax No. (213) 482-7007



William A. Robertson, Director
Bureau of Street Services



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. RD 8 - 0440
NOV 20 2008

REPORT RE:

DRAFT ORDINANCE ADDING SUBSECTION (a) TO SECTION 62.118.2 OF THE LOS ANGELES MUNICIPAL CODE REQUIRING ANY RESTAURANT WISHING TO ENGAGE IN DINING ACTIVITIES WITHIN THE DEDICATED PUBLIC RIGHT-OF-WAY TO OBTAIN A REVOCABLE PERMIT FROM THE BOARD OF PUBLIC WORKS, AS ADMINISTERED BY THE BUREAU OF ENGINEERING, AND TO PAY A FEE IN ADDITION TO THE REVOCABLE PERMIT FEE

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

Pursuant to your request, this office has prepared and now transmits for your action the attached draft ordinance, approved as to form and legality. This draft ordinance adds Subsection (a) to Section 62.118.2 of the Los Angeles Municipal Code (LAMC) requiring any restaurant wishing to engage in dining activities within the dedicated public right-of-way to obtain a revocable permit from the Board of Public Works (Board), as administered by the Bureau of Engineering, and to pay a fee in addition to the revocable permit fee to cover the inspection and administrative costs for ensuring compliance with the revocable permit conditions for sidewalk dining. The fee for inspection and administrative costs shall be collected every two (2) years beginning two (2) years after initial permit issuance.

Council Rule 38

In accordance with the requirements of Council Rule 38, this office has forwarded the draft ordinance to the Bureau of Engineering and requested that any comments that it may have, be addressed directly to the City Council when you consider this matter.

PUBLIC WORKS

NOV 20 2008

The Honorable City Council
of the City of Los Angeles
Page 2

If you have any questions regarding this matter, please contact Assistant City Attorney Christopher M. Westhoff at (213) 978-8158. He or another member of this office will be available when you consider this matter in order to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:CMW:fa
Transmittal

M:\General Counsel (GC)\WESTHOFF, CHRIS\reports to council\LAAC SECTION 62.118.2(a) and (a)1-final.doc

Transmittal No. 2

ORDINANCE NO. _____

An ordinance adding Subsection (a) to Section 62.118.2 of the Los Angeles Municipal Code (LAMC) requiring any restaurant wishing to engage in dining activities within the dedicated public right-of-way to obtain a revocable permit from the Board of Public Works (Board), as administered by the Bureau of Engineering, and to pay a fee in addition to the revocable permit fee to cover the inspection and administrative costs for ensuring compliance of the revocable permit conditions for sidewalk dining. The inspection and administrative fees shall be collected every two (2) years beginning two (2) years after initial permit issuance.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 62.118.2 of the Los Angeles Municipal Code is hereby amended by adding Subsection (a) thereto, to read:

(a) Every restaurant wishing to engage in sidewalk dining activities within the dedicated public right-of-way must obtain a revocable permit from the Board, as administered by the Bureau of Engineering, as described in LAMC Section 62.118.2. The Board shall adopt, from time to time, as it deems necessary, policies setting forth the requirements and conditions under which the Board, through the Bureau of Engineering, may grant revocable permission for sidewalk dining activities.

1. Every restaurant in possession of a revocable permit to engage in sidewalk dining activities within the public right-of-way pursuant to LAMC Section 62.118.2 (a) shall also be responsible for an Inspection and Administrative Fee to cover the City's cost to inspect the location and verify compliance with permit conditions. The Inspection and Administrative Fee shall be paid once every two (2) years, beginning two (2) years after issuance of the sidewalk dining permit. The Board shall set such fees at an amount that recovers the City's cost of inspection and permit administration and adopt such fees as permitted by the Los Angeles Municipal Code. This fee shall also apply to all existing revocable permits which have been previously issued by the Board for sidewalk dining activities at the time this ordinance is effective. As such, the restaurants with previously issued sidewalk dining permits shall pay the required Inspection and Administrative Fee once every two (2) years, beginning two (2) years after the date this ordinance becomes effective. The Inspection and Administrative Fee shall be paid to the City no later than 30 days prior to the expiration date displayed on the sidewalk dining permit. Non-payment of the Inspection and Administrative Fee will result in revocation of the sidewalk dining permit.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

KAREN E. KALFAYAN, City Clerk

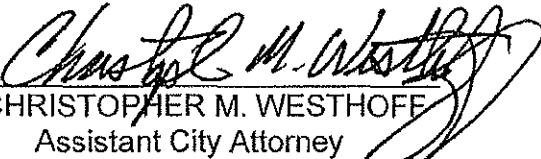
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By 
CHRISTOPHER M. WESTHOFF
Assistant City Attorney

Date 10/27/08

File No. _____

COMPARISON OF OUTDOOR DINING WITH OTHER CALIFORNIA CITIES

City	Initial Application Fee	Liability Insurance	Annual Fee	Comparable Annual Fees (3)	Parking Requirements
Pasadena	\$181.45 Appl + \$39 Issue permit	--	\$75.25 Renewal fee + \$3.90/SF to \$13.30/SF (2)	\$75.25 + \$780 to \$2,660 (2)	None
Fullerton (1)	--	\$1 Million	\$2.00/SF	\$400.00	Exempt in downtown areas
San Francisco	\$107.80	\$1 Million	\$5.89/SF	\$1,178.00	None
Culver City	\$500.00	--	\$5.00/SF	\$1,000.00	--
Long Beach	--	--	\$250 up to 50 SF \$500 up to 200 SF \$750 up to 400 SF \$2/SF over 400 SF	\$500.00	--
Oakland	No Fee: 15 chairs \$931.77 > 15 chairs	--	\$900.00	\$900.00	--
Santa Monica	\$210.00	--	\$10.44/SF to \$22.80/SF (2)	\$2,088.00 to \$4,560.00	Exempt for up to 200 sq ft
San Jose	\$500.00	--	\$75.00	\$75.00	25 chairs or more 1 space req'd
Burbank	\$50.00	\$1 Million	\$150.00	\$150.00	None (6)
Los Angeles	\$1,284.00	\$1 Million	\$150.00 (4)	\$150.00 (4)	Per LAMC 12.08 and ZAI 1808 (5)

Notes:

1. Data collected from 2005 survey.
2. Based on the Fair Market Value rate for different areas within the City of Pasadena.
3. Based on "typical" encroachment of a 5-ft by 40-ft area (200 SF) with 6 tables and 12 chairs for outdoor dining.
4. Proposed Bi-Annual Administrative and Inspection fee of \$300.00 is charged once every two years.
5. If outdoor dining is located in a Commercial zone and unroofed, no additional parking is required.
6. The number of tables and chairs allowed is based on existing parking of the restaurant. No additional parking required.