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# Th11c

**Prepared March 26, 2015 (for April 16, 2015 Hearing)**

**To:** Commissioners and Interested Persons

**From:** Susan Craig, District Manager  
Ryan Moroney, Coastal Analyst

**Subject: Santa Cruz City LCP Amendment Number STC-1-12 Part 4 (Outdoor Extension Areas into Public Right-of-Way for Commercial Use)**

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## SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz proposes to amend Section 24.12.190 of its Local Coastal Program (LCP) Implementation Plan (IP), and add Section 24.10.192 to the IP, to allow outdoor extension areas into public sidewalks for commercial uses, including outdoor sidewalk cafes and retail areas (such as “sidewalk sales”). The proposed amendment establishes a detailed administrative use permit and revocable license requirement for such outdoor extension areas. According to the City, the purpose of the amendment is to enhance the streetscape on the City’s corridors by introducing uses attractive to visitors in ways that activate and enliven the public street.

The current IP does not provide a permit process for outdoor extension areas onto public property for commercial uses with the exception of the City’s Downtown Recovery Plan Area. The proposed amendment would allow businesses to apply for a permit and revocable license authorizing outdoor extension areas into public sidewalks for commercial uses such as cafes, retail areas or other uses. The new use permit and licensing requirements authorize placement of ADA compliant barriers into public sidewalks, but would prohibit any other permanent structures, including columns and supporting poles. The amendment also specifically authorizes the placement of non-permanent low planters or fencing in the public right of way for café barriers if separation between the cafes and public right of way is desired.

The primary issue associated with the proposed IP amendment’s consistency with the LUP involves the encroachment of private commercial enterprise into public sidewalks and how that might affect public access to coastal resources. However, the proposed permit process addresses this concern by including location and design requirements to ensure that a minimum public sidewalk of at least six feet is maintained for extension areas. However, as currently worded, this location and design requirement would only apply to outdoor extension areas for cafes.

**Suggested Modification No.1** is therefore necessary to ensure that this minimum sidewalk of six feet is maintained for all outdoor extension area uses. It should also be noted that, in the coastal zone, the proposed amendment would apply only to the sidewalk on the inland side of Beach

**STC-1-12 Part 4 (Outdoor Extension Areas)**

Street.

As modified, the proposed amendment does not raise issues of consistency with the City’s certified Land Use Plan (LUP), which is the standard of review for the proposed IP changes. Staff therefore recommends that the Commission find the proposed amendment, if modified as recommended, consistent with and adequate to carry out the policies of the LUP, and that the Commission approve the amendment with suggested modifications. The motion and resolution are found on page 3 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on March 11, 2015. The proposed amendment includes IP changes only and the 60-day action deadline is May 10, 2015. Thus, the Commission has until May 10, 2015 to take a final action on this LCP amendment.

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**EXHIBITS**

Exhibit 1: Proposed IP Amendment

## I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make two motions in order to act on this recommendation.

### A. Deny the IP Amendment as submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the IP amendment as submitted and adoption of the following resolution. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission reject Implementation Plan Amendment Number STC-1-12 Part 4 (Outdoor Extension Areas) as submitted by the City of Santa Cruz.*

***Resolution:** The Commission hereby denies certification of Implementation Plan Major Amendment Number STC-1-12 Part 4 (Outdoor Extension Areas) as submitted by the City of Santa Cruz and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment as submitted.*

### B. Certify the IP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission certify Implementation Plan Major Amendment Number STC-1-12 Part 4 (Outdoor Extension Areas) if it is modified as suggested in this staff report.*

***Resolution:** The Commission hereby certifies Implementation Plan Major Amendment Number STC-1-12 Part 4 (Outdoor Extension Areas) to the City of Santa Cruz Local Coastal Program if modified as suggested and adopts the findings set forth in this staff report on the grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment if modified.*

## STC-1-12 Part 4 (Outdoor Extension Areas)

### II. SUGGESTED MODIFICATION

The Commission hereby suggests the following modification to the proposed LCP amendment, which is necessary to make the requisite Coastal Act consistency findings. If the City of Santa Cruz accepts the suggested modification within six months of Commission action (i.e., by October 16, 2015), by formal resolution of the City Council, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in cross-out format and text in underline format denotes proposed text to be added/deleted by the City. Text in double cross-out and double underline denotes text to be added/deleted by the Commission.

#### 1. Modify IP Section 24.12.192 (3)(a) as follows:

##### 3. Location and Design Requirements.

- a. The extension area for cafes shall project no more than 10 feet from the property line into the public right of way, and in no case shall an ~~café~~ extension area result in an unobstructed public walk way of less than 6 feet.

### III. FINDINGS AND DECLARATIONS

#### A. DESCRIPTION OF PROPOSED LCP AMENDMENT

The City's IP currently provides a permit process for outdoor extension areas into public sidewalks for cafes, retail areas or other uses, but only within the Downtown Recovery Plan Area. Based on input from several sources, including the Gibbs Consulting "Retail Study" and directly from business owners, the City is seeking to allow such outdoor extension areas citywide. The City believes that such extension areas could enhance streetscapes and provide greater economic opportunities for the other commercial corridors by enlivening the streetscapes and improving the neighborhood commercial character of these areas.

The proposed IP amendment would specifically authorize outdoor extension areas into public sidewalks on a citywide basis, subject to administrative use permit and revocable licensing requirements. The permitting process would provide for an application process, location and design requirements, and also require numerous permitting conditions. The location and design standards include a requirement that extension areas for cafes shall extend no more than ten feet from the property line into the public sidewalk, and in no case shall a café extension area result in an unobstructed public walkway of less than six feet. The new use permit and licensing requirements authorize placement of ADA compliant barriers into public sidewalks, but would prohibit any other permanent structures, including columns and supporting poles. Additionally, no permanent structures would be allowed within the public sidewalk, although non-permanent fencing or planters would be allowed to separate outdoor extension areas from the public sidewalk. Moreover, all permits would require a condition that "the applicant shall take actions to assure the use of the extension area in no way interferes with pedestrians or limits their free and unobstructed passage." Finally, all such permits and licenses would be subject to termination at any time with thirty days prior written notice from the City.

Please see Exhibit 1 for the proposed IP amendment text.

## **B. CONSISTENCY ANALYSIS**

### **Standard of Review**

The proposed amendment affects the IP components of the City of Santa Cruz LCP. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP.

### **IP Amendment Consistency Analysis**

This request involves a City-initiated LCP amendment to the City's Zoning Ordinance (Municipal Code), which is certified as part of its LCP Implementation Plan. No change to the City's certified LCP Land Use Plan is proposed. The City's LUP contains numerous policies requiring community design and character, including for pedestrian areas and visitor-serving commercial uses:

***Community Design Element Policy 3.6:** In pedestrian areas, require building design to be responsive to the pedestrian environment. These areas include, but are not limited to Downtown, South of Laurel, the Beach, wharf, shoreline, and commercial shopping areas.*

***Community Design Element Policy 3.6.1:** Encourage the use of pedestrian-scale fenestrations, awnings, marquees, entrance lobbies, balconies, landscaping, paving materials and other amenities.*

***Community Design Element Policy 3.6.2:** Encourage commercial and industrial developments to provide outdoor space for employees.*

***Community Design Element Policy 5.2:** Prepare and implement corridor plans for imageable paths, addressing visitor- serving uses, high traffic volumes, pedestrian and bicycle access, building and parking siting and design, landscaping theme, undergrounding of utilities, commercial/residential transition, comprehensive signs and other amenities.*

***Land Use Element Policy 2.7.2:** Improve the character and quality of visitor-serving commercial areas to encourage more off-season and overnight visits.*

***Land Use Element Policy 5.3.5:** Ensure that visitor-serving facilities are arranged and developed in a compact, integrated manner to reduce automobile circulation and emphasize pedestrian movement.*

***Economic Development Element Policy 5.5.3:** Identify ways to enhance and promote the identity of existing and potential visitor serving areas in the City such as Downtown, Beach Area, San Lorenzo River, Yacht Harbor, UCSC, West Cliff and East Cliff Drives, and the Wharf.*

In addition, the Beach/South of Laurel Area Plan, which is part of the certified LUP, contains policies relevant to the proposed amendment, including:

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*Community Design Policy 1.9: Expand the economic vitality of Downtown by transforming Beach Street into a “signature street” that will complement and complete the Pacific Avenue “signature” shopping district.*

*Community Design Policy 1.13: Balance the needs of automobiles, pedestrians and bicycles with wide sidewalks for promenading and pedestrian-oriented activities; narrow roadways to slow traffic; continuous bicycle routes; ample, accessible, at-grade pedestrian bike lanes or landscaped parkways to separate pedestrians and moving cars.*

*Community Design Policy 1.15: Provide public amenities such as benches, planters, lighting, street name and traffic sign posts, trash receptacles, public restrooms, bicycle racks, public telephone and information kiosks that are functionally and aesthetically integrated into the streetscape for pedestrian comfort, convenience and safety.*

*Circulation Policy 3.10: Develop and promote pedestrian travel as a viable transportation mode by developing and maintaining a safe, comprehensive, convenient, accessible and aesthetically pleasing pedestrian system.*

*Circulation Policy 3.27: Provide pedestrian enhancements along Front Street and Pacific Avenue corridors, including appropriate urban design elements as opportunity sites develop, with lighting, sidewalk furniture and plantings.*

*Circulation Policy 3.28: Improve Beach Street as a pedestrian-oriented corridor by implementing compatible features from the Urban Design Recommendations.*

The primary issue associated with the proposed IP amendment’s consistency with the LUP involves the encroachment of private commercial enterprise into public sidewalks, which has the potential to impact public access to coastal resources. This is because allowing a commercial business to extend its operations into public sidewalks could affect public access if the access along the sidewalks were impeded or blocked. However, the proposed permit process addresses this concern by including location and design requirements to ensure that a minimum public sidewalk width of at least six feet is maintained adjacent to outdoor extension areas. However, as proposed, the location and design requirement would only apply to cafes. Thus, for example, a bookshop or art gallery could place temporary displays, such as for a “sidewalk sale,” into a sidewalk, potentially obstructing the sidewalk and adversely impacting public access. **Suggested Modification No.1** eliminates this problem by deleting the word “café,” so that the language in the amendment applies to all outdoor extension areas uses.

It is also important to note that sidewalk widths vary in many areas of the City and many are not wide enough to support outdoor extension uses. As noted above, the proposed amendment would only apply to sidewalks that are of sufficient width to provide at least a six-foot-wide unobstructed public sidewalk in conjunction with an outdoor extension area use. As the City’s staff report indicates, “areas in the City where these would be appropriate are on major streets such as Beach Street, Water Street, and Soquel Avenue.” Of these three major thoroughfares, only Beach Street is in the coastal zone and thus it would only be outdoor extension areas on Beach Street that would have the potential to impact coastal access. However, because nearly all commercial uses that would support such outdoor extension areas are located on the inland side

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of Beach Street, and because the wide sidewalk on the seaward side of Beach Street would remain completely open to pedestrians, it is not likely that the IP amendment would result in any negative impacts to public access. Finally, the proposed IP amendment would implement several LUP policies identified above with respect to providing enhanced visitor serving commercial uses by providing greater economic opportunities for the important visitor-serving Beach Street commercial corridor.

In conclusion, as modified, any outdoor extension area would be required to maintain a minimum six-foot-wide unobstructed public sidewalk for pedestrian use. Moreover, such outdoor extension areas would implement several LUP policies related to enhancing and enlivening the Beach Street Area's streetscape and visitor-serving commercial appeal. For these reasons, the proposed IP amendment can be found consistent with and adequate to carry out the certified LUP.

### **C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of Santa Cruz adopted a Negative Declaration for the proposed LCP amendment and in doing so found that the amendment would not have significant adverse environmental impacts. The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Specifically, Section 21080.9 of the California Public Resources Code – within CEQA – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP amendments. The Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. CEQA Guidelines Sections 13542(a), 13540(f), and 13555(b).

The City's LCP Amendment consists of an Implementation Plan (IP) amendment. The Commission incorporates its findings on land use plan conformity into this CEQA finding as if it is set forth in full. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment, as modified, is not expected to result in any significant adverse impact on the environment. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, with incorporation of the suggested modifications, would have on the environment within the meaning of CEQA. Thus, the proposed amendment, if modified as recommended, will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

Changes to Section ~~23.12.190~~, 24.12.192

24.12.192 OUTDOOR EXTENSION AREAS.

The purpose of outdoor extension areas is to enhance streetscape on the City's corridors by introducing uses attractive to pedestrians into the pedestrian environment, configured and arranged in ways which activate and enliven the public street. These uses include outdoor eating areas, retail areas and landscaping. In this section the term "adjacent business" shall apply to the business using the extension area. If the sidewalk width allows it – the adjacent business maybe



separated by the extension area by the public walk way. This section is applicable city-wide, except for areas within the Downtown Recovery Plan which is subject to 24.10.2340.

1. Administrative Use Permit and Revocable License. No person shall use an extension area unless an Administrative Use Permit and Revocable License are obtained pursuant to this part.

2. Outdoor Extension Area Application. Application for an Outdoor Extension Area shall be made jointly by the property owner and the business operator of the business located on the property adjacent to the extension area, and shall be filed with the planning department on the appropriate application form, accompanied with the following information:

- a. Name and address of the property owner and business operator. Both parties and/or their authorized representatives shall sign the application.
- b. The expiration date of the business license of the business intending to operate the extension area.
- c. A drawing showing the extension area in its relationship to the building, sidewalk and street, for the extension area and thirty feet along the sidewalk in either direction. The drawing shall show dimensions of the extension area, locating doorways and access points, show width of sidewalk (distance from curb to building face and property line), existing and projected pedestrian traffic movements, location of utilities that might affect or be affected by the application proposal, parking meters, bus stops, benches, trees, landscaping, trash receptacles and other street furniture, or any other potential sidewalk obstruction. The drawing of the extension area shall show its intended use, any furniture or display stands, fixtures, signs, canopies and other overhead appurtenances, landscaping and planters, trash receptacles, and any other matter to be placed in the area.

3. Location and Design Requirements.

- a. The extension area for cafes shall project no more than 10 feet from the property line into the public right-of-way, and in no case shall a cafe extension area result in an unobstructed public walk way of less than 6 feet.
- b. The elevation of the extension area shall be the same as the public sidewalk, and shall meet ADA accessibility standards outlined below.
- c. No permanent structures will be allowed within the public right-of-way, with the exception of ADA complying barriers.
- d. If a separation between the cafe and the public walkway is desired this shall be achieved through low planters or fencing; the maximum height of such planters (including the planting) shall be no more than 4 feet in order to maintain the public view of the extension area. Wind block types of clear fencing can exceed 4 feet.

- e. A canvas awning will be permitted to extend over the full depth of the cafe extension area; no columns or supporting poles will be permitted within the public right-of-way.
- f. The use of removable umbrellas within sidewalk extension areas is also encouraged, provided that 7 feet of vertical clearance is provided from the sidewalk.
- g. Removable wind screens that are of a transparent material and that are an integral part of the planter may be permitted to extend the seasonal use of the cafe area. Such screens shall not exceed a height of 6 feet and shall be separated from the awning to provide for air movement.
- h. Extension areas that include a "take-out" or service window shall submit a management plan that includes specifics on outdoor trash collection and disposal, security and customer queuing. The management plan will include designated staffing and will be designed to ensure that the site is kept clean, trash is managed, that the outdoor area is attractive and that customer queuing does not impede access to the side walk.

4. Conditions of Approval. The Administrative Use Permit and Revocable License may be conditioned to achieve the purpose of this part. In addition to any other appropriate conditions, standard conditions shall include:

- a. The approval for this use shall be issued to the operator of the adjacent business, and shall not be transferable.
- b. The extension area shall be permitted only in conjunction with the establishment which is operating in the adjacent building and to which the extension area is appurtenant.
- c. The applicant shall notify the planning department and police department at least three working days in advance of the date work is to begin to establish the outdoor use.
- d. The applicant shall take actions to assure that the use of the extension area in no way interferes with pedestrians or limits their free and unobstructed passage.
- e. The extension area and all its contents shall at all times be maintained in a clean and attractive condition; all landscaping and planting shall be maintained in a presentable and healthy condition.
- f. The extension area shall be operated in conformance with the hours specified in the approval.
- g. The extension area shall be operated in conformance with any applicable city, county or state laws.

- h. Use of the extension area is approved for an indefinite term, except as it may be limited as a condition of the approval, but shall be subject to termination at any time on thirty days' prior written notice upon a determination by the city that the public interest requires vacating the extension area, or as provided in Section 24.10.2340 subsection (4)(g).
- i. The licensee shall meet the liability and insurance requirements of the City's Risk Manager. A certificate of insurance shall be furnished to the city prior to the use of an extension area.

5. Denial, Revocation or Suspension of License. The zoning administrator may deny, revoke, or suspend a license for use of an extension area if it is found:

- a. That the provisions of this part or conditions of approval have been violated, or
- b. Any necessary health permit has been suspended, revoked or canceled, or
- c. The licensee does not meet the insurance requirements of the license, or
- d. The City determines that the public interest requires vacating the extension area.

6. Effective Date of Action.

- a. Ten days' written notice of proposed action of denial, revocation or suspension shall be given to the property owner and holder of the revocable license.
- b. Revocation or suspension of a license on the basis of subsections 5(a)(b) or (c) shall be effective upon the action.
- c. The property owner and holder of the revocable license may appeal said denial, revocation or suspension to the Planning Commission with the appropriate fee. An appeal shall not stay such action.