

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036



July 19, 1999

TO: COMMISSIONERS AND INTERESTED PERSONS

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FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
BILL PONDER COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR
AMENDMENT 2-99A (For Public Hearing and Possible Commission Action at
the Meeting of August 10-13, 1999)

SYNOPSISSUMMARY OF AMENDMENT REQUEST

The subject amendment request revises the City of Carlsbad Local Coastal Program (LCP) Implementation Plan. The LCPA involves the establishment of the Commercial/Visitor-Serving Overlay Zone (Chapter 21.208) and a change to the zoning map and will affect properties within the Mello I, Mello II and Agua Hedionda Lagoon segments of the City's LCP. The change to the zoning map will establish the boundaries of the overlay zone. The primary elements of the overlay zone involve: new procedural details for processing a commercial/visitor-serving project within the overlay zone; the requirement of a conditional use permit for commercial/visitor-serving projects; new parking standards for certain uses; architectural, signage and landscape provisions; and new enforcement provisions.

The basic rationale for the configuration and coverage area of the proposed Commercial/Visitor-Serving Overlay Zone is to include commercially designated parcels near the Legoland theme park, or adjacent to freeway frontage. Vacant parcels as well as developed parcels are included. The overlay zone will replace an Urgency Ordinance, which is currently in effect until August 30, 1999, which allows the City to review proposals within the overlay zone consistent with its development standards. If approved by the Coastal Commission, the proposed Commercial/Visitor-Serving Overlay Zone will be effective by September 1, 1999.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed amendments as submitted. The appropriate resolutions and motions begin on page 3. The findings for approval of the Implementation Plan Amendment as submitted begin on page 4.

BACKGROUND

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties and East Batiquitos Lagoon/Hunt Properties. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997 the City assumed permit jurisdiction and has been issuing coastal development permits for all of its segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from Bill Ponder at the San Diego Area Office of the Coastal Commission at 3111 Camino Del Rio North, Suite 200, San Diego, CA 92108, (619) 521-8036.

PART I. OVERVIEW

A. STANDARD OF REVIEW

The standard for Commission review of implementation plans is found in Section 30513 of the Coastal Act. Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held both Planning Commission and City Council hearings with regard to the subject amendment request. Each of these local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

A. RESOLUTION I (Resolution to approve certification of the City of Carlsbad LCP Implementation Plan Amendment #2-99A, as submitted)

MOTION I

I move that the Commission reject the City of Carlsbad LCP Implementation Plan Amendment #2-99A, as submitted.

Staff Recommendation

Staff recommends a **NO** vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution I

The Commission hereby approves certification of the amendment request to the City of Carlsbad Local Coastal Program on the grounds that the amendment conforms with and is adequate to carry out the provisions of the certified land use plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, which the approval would have on the environment.

**PART III. FINDINGS FOR APPROVAL OF THE CARLSBAD 2-99A
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION/Commercial/Visitor-Serving Overlay
Zone**

The subject amendment request revises the City of Carlsbad Local Coastal Program(LCP) by incorporating the City's Commercial/Visitor-Serving Overlay Zone (Chapter 21.208). The City's Municipal Code functions as the implementation plan for Carlsbad's LCP. Accordingly, a local coastal program amendment is proposed to ensure consistency between the proposed amended municipal code and the City's LCP. The primary elements of the overlay zone involve: new procedural details for processing a commercial/visitor-serving project within the overlay zone; the requirement of a conditional use permit for commercial/visitor-serving projects; new parking standards for certain uses; architectural, signage and landscape provisions; and, new enforcement provisions.

B. FINDINGS FOR APPROVAL

1) **Purpose and Intent of the Ordinance.** The purpose and intent of the Commercial/Visitor-Serving Overlay Zone is to ensure that new commercial development will be appropriately sited and designed. The prospect of a major new theme park opening in the City (Legoland) caused the City to reconsider the standard approval process for commercial projects within the area around, and near roads leading to, the Legoland theme park. Based on the experience of other cities which have undergone an accelerated economic stimulus due to new land uses, the City wanted a safeguard against unchecked, uncontrolled commercial development. The overlay zone is intended to be a tool by which the City can review the standard processing of commercial/visitor-serving projects while also instituting regulations to ensure high quality projects. It is also intended to be sufficiently detailed so that property owners and development applicants may design projects using established standards and criteria.

2) **Major Provisions of the Ordinance.** The overlay zone focuses on quality appearance, adequate and compatible functioning of a commercial use, adequate parking provisions, controlling signage, ensuring high quality architecture and providing detailed landscaping criteria. The overlay zone defines Commercial/Visitor-Serving Uses and requires such developments within the overlay zone to process a conditional use permit that would be approved by the City Council; the Planning Commission typically is the final decision maker for conditional use permits. The overlay zone has some requirements that include a mandated pre-filing submittal and review process; a project site notification process that physically posts a sign on the project site during project processing; and, enforcement provisions designed to provide rapid, effective code enforcement for code violations within the overlay zone. A Performance Monitoring Condition is required to ensure that applicable projects satisfy the intent and purposes of the overlay zone.

The Development Standards section of the overlay zone addresses the following: Parking, Signs, Building Height, Building Setbacks, Building Materials/Colors, Architectural Style, Landscaping and Use Separation Standards. In general terms, the overlay zone provides for: increased parking space requirements for certain uses; less signage than is allowed citywide (1 square foot of signage per lineal foot of building frontage vs. current allowance of 1.5 square feet of signage per lineal foot of building frontage); architectural criteria and the allowance for the review of building materials, texture and colors; and, specific landscaping criteria. Motels/hotels are subject to a 600-foot separation standard and gas stations are assigned locational and design criteria within the overlay zone. Prohibited uses within the overlay zone include: stand-alone liquor stores, outdoor display of goods or services, any drive-thru facility, and sales from temporary displays or mobile platforms on private or public property.

Under the Parking Development Standards, parking provisions are established in the overlay zone for the following: Motels/hotels/suites/inns/lodges/resorts; Time Share Projects; Gas Stations/mini-marts; Restaurants; Coffee shops/beverage-serving uses/delicatessens; Meeting rooms/assembly space/convention facilities; Individual retail/gift shops/toy stores/convenience stores/general sales; Shopping center retail; Museums; Visitor/information center; Bed and Breakfasts; Car rental agencies; and, Movie theaters. In most cases, the overlay zone requires incrementally more parking than do current codes citywide and/or accounts for employee parking. Some uses are assigned parking provisions in the overlay zone that are not directly addressed in citywide parking provisions.

In fact, several development standards are more restrictive than underlying designations. The overlay zone proposes to increase the restaurant parking because several restaurants within the proposed overlay zone currently experience parking shortfalls, especially mid-day during the workweek. It is anticipated that with the numerous homes coming onto the market in the vicinity, the growing industrial and office population combined with a renewed tourism thrust led by Legoland, there will be increased demands on restaurant sites. The current City standard for restaurants is 1 space for every 100 square feet of restaurant floor area up to a 4,000 sq.ft. structure beyond which the standard changes to 1 space for every 50 sq.ft. of restaurant floor area. The proposed standard within the overlay zone is 1 space for every 100 sq.ft. of restaurant area up to a 2,000 sq.ft. structure, beyond which the standard changes to 1 space for every 50 sq.ft. of floor area. The City found that the proposed restaurant ratio is in line with other cities that may be comparable to Carlsbad in either their size, tourism elements and/or coastal location. Some cities that use the 1:100 ratio also added required spaces for employees, indicating that the 1:100 ratio alone is insufficient. The City found that the current restaurant zone is inadequate given (1) current, real examples in the City; (2) the rapid growth of the City and rising worker population within and adjacent to the overlay zone; (3) concurrent tourism growth amidst the industrial office growth; and (4) restaurant standards of other cities.

Regarding the regulation of existing uses within the overlay zone, the intent was to minimize impacts. The overlay zone was not intended to abate any currently existing uses. Existing uses will be subject to the provisions of the overlay zone if they propose

new or expanded Commercial/Visitor-Serving uses that either invoke a higher parking standard, or add more than 200 square feet of floor area to existing structures. The Carlsbad Ranch Specific Plan is not part of the overlay zone; residential, church, school, industrial and office uses are exempt from the overlay zone; and, automobile dealerships within the Car Country Specific Plan are exempt from the overlay zone. Section 21.208.060 lists prohibited uses in the overlay zone. Gas stations, motels and hotels are subject to use separation and locational standards.

The conditional use permit is designated as the entitlement permit for applicable projects in the overlay zone. Related to the processing of such conditional use permits are regulations requiring pre-filing interaction between the city and applicant, project site notification to maximize public disclosure about a pending project, and new enforcement provisions which provide more rapid code enforcement compared to current citywide enforcement procedures.

The proposed overlay zone further adds that to be exempt, any existing on-site non-conformities with regards to building setbacks, parking or signage cannot be increased through the site's redevelopment.

3) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's Municipal Code serves as the Implementation Program for the Carlsbad LCP. The respective affected LUPs have recreation and visitor-serving use policies. Policy 6-4 of the Mello II LUP provides that additional overnight camping facilities should be provided in the coastal zone. Policy 6-5 states that approximately 40 acres of additional visitor-serving uses should be established in Carlsbad. Policy 6-8 defines a range of "visitor-serving" uses. Similarly, the Agua Hedionda Lagoon LUP's visitor-serving and recreation policy group reiterates Coastal Act policies which call for the provision of lower cost visitor-serving facilities, that public facilities including parking areas shall be distributed to mitigate against the impacts of overcrowding or overuse by the public of any single area and that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible (Coastal Act Sections 30213, 30212.5 and 30223). The Mello I LUP contains similar policies.

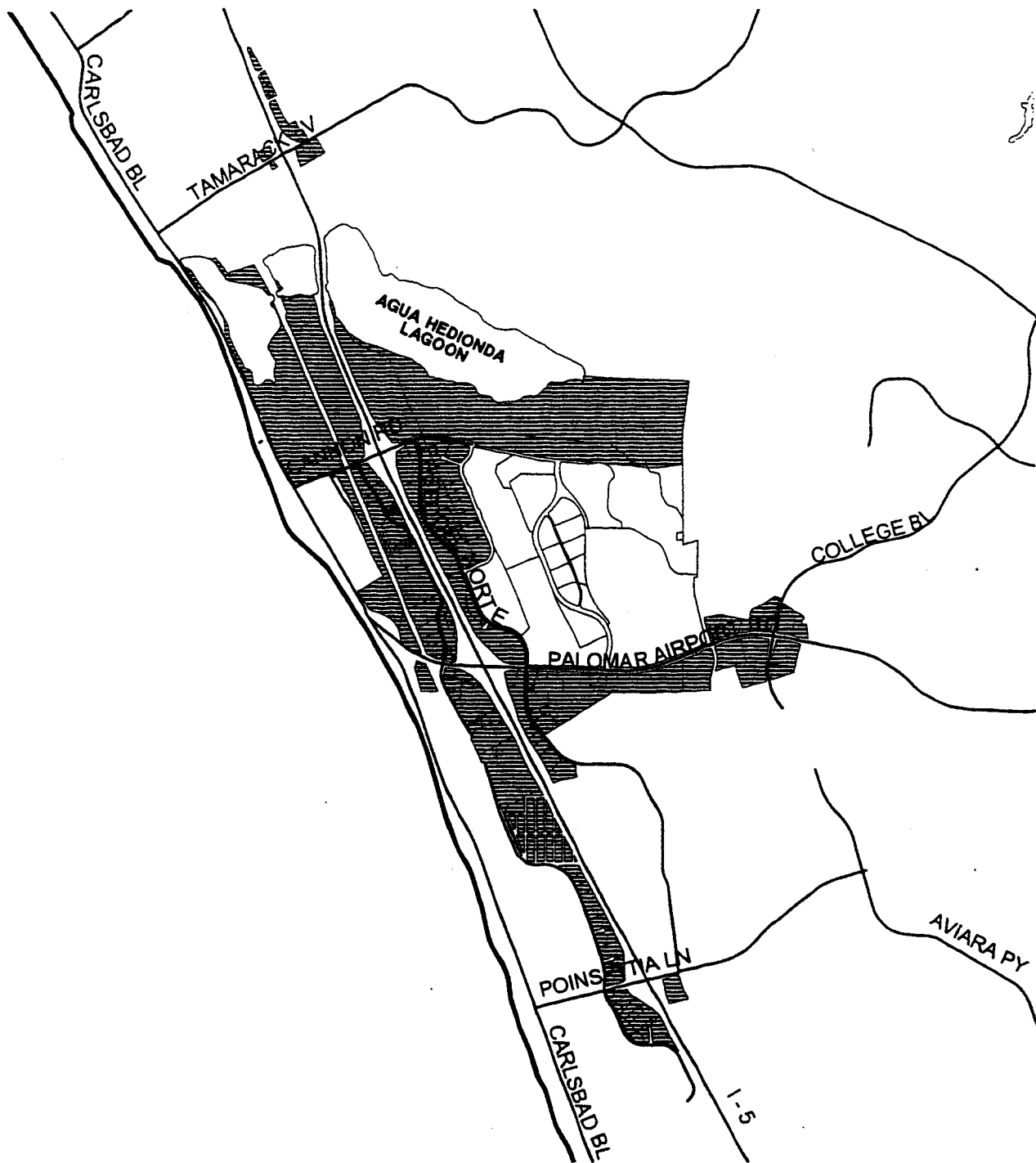
The proposed overlay zone does not alter any LCP land use designations or regulations. While the overlay establishes strict development and design standards, it would not result in the abatement of any existing visitor-serving uses, or be in conflict with any of the above LUP provisions. The proposed overlay will assure adequate on-site parking is provided to reduce traffic circulation problems, maximize public on-street parking and enhance public access opportunities. The landscape, signage and design standards will assure the scenic and visual quality of the coastal zone is protected. Thus, the Commission finds that the subject amendment to the implementation plan is consistent with and adequate to carry out the policies of the certified LUP.

**PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform to CEQA provisions. The proposed amendment deals with a new overlay zone within the City's coastal zone. As submitted, the proposed ordinance revisions would not result in inappropriate impacts to coastal resources. Therefore, the Commission finds that approval of the zoning amendment will not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act and that the proposed changes can be made.

(CarlsbadLCPA2-99Astfrpt8.99)



COMMERCIAL/VISITOR-SERVING OVERLAY ZONE

ZC 99-03/ZCA 98-01/LCPA 98-

EXHIBIT NO. 1

**Carlsbad LCPA
#2-99A**

Map of
Commercial/Visitor-
Serving Overlay
Zone

"FINAL EXHIBIT"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING TITLE 21 OF THE CARLSBAD MUNICIPAL CODE BY THE ADDITION OF CHAPTER 21.208 AND AMENDING THE ZONING MAP TO ESTABLISH THE COMMERCIAL/VISITOR-SERVING OVERLAY ZONE

CASE NAME: COMMERCIAL/VISITOR-SERVING
OVERLAY ZONE

CASE NO.: ZCA 98-01/ZC 99-03

WHEREAS, the City Council passed a motion on June 24, 1997, directing staff to study the establishment of an appropriate mechanism or process to make the Council a standard part of the approval process for commercial projects in the general vicinity of the LEGOLAND theme park; and

WHEREAS, the City Council's stated objectives were to prevent negative aspects that could arise from unchecked commercial development such as signage, low quality architecture, traffic and circulation impacts, proliferation of certain uses and the potential for a degradation of quality of life; and

WHEREAS, on September 2, 1997, the City Council adopted Urgency Ordinance NS-418 to require Council's immediate approval for commercial projects within the designated coverage area of the urgency ordinance; and

WHEREAS, on October 15, 1997, the City Council extended the Urgency Ordinance and directed staff to develop a commercial/visitor-serving overlay zone; and

WHEREAS, staff has performed research, solicited input from affected property owners, participated in field trips and conducted public workshops with the City Council to develop the overlay zone per Council's direction; and

WHEREAS, the proposed overlay zone responds to Council by providing an entitlement process that is unique in the City approval, and establishes certain criteria and standards that are unique to designed to promote high quality commercial projects that function and time; and

EXHIBIT NO. 2
APPLICATION NO. Carlsbad LCPA #2-99A
Resolution and Ordinance for Commercial/Visitor- Serving Overlay Zone
1 of 16

1 WHEREAS, the overlay zone's coverage area, permit process and development
2 standards have been subject to public review and input and refinements have been made to the
3 ordinance to respond to various concerns so it will be a usable and effective ordinance; and

4 WHEREAS, the overlay zone continues the citywide prohibition on drive-thru
5 restaurants.

6 NOW, THEREFORE, the City Council of the City of Carlsbad, California, does
7 ordain as follows:

8 SECTION 1: That Title 21 of the Carlsbad Municipal Code is amended by the
9 addition of Chapter 21.208 to read as follows:

10 **CHAPTER 21.208**

11 **COMMERCIAL/VISITOR-SERVING OVERLAY ZONE**

12 **Sections:**

13 **21.208.010 Intent and Purpose.**

14 **21.208.020 Definitions.**

15 **21.208.030 Boundaries; Exceptions; Applicability.**

16 **21.208.040 Permitted Uses.**

17 **21.208.050 Uses Permitted by Conditional Use Permit.**

18 **21.208.060 Prohibited Uses.**

19 **21.208.070 Approval Process.**

20 **21.208.080 Pre-Filing Submittal and Meeting; Application for CUP.**

21 **21.208.090 Project Site Notification.**

22 **21.208.100 Development Standards.**

23 **21.208.110 Required Findings.**

24 **21.208.120 Performance Monitoring Condition.**

25 **21.208.130 Existing Uses, Building Permits and Business Licenses.**

26 **21.208.140 Administrative Enforcement Powers.**

27 **21.208.150 Administrative Notice, Hearing, and Appeal Procedures.**

28 **21.208.160 Judicial Enforcement.**

21.208.170 Remedies Not Exclusive.

21.208.180 Severability.

24 **21.208.010 Intent and Purpose.**

25 The intent and purpose of the Commercial/Visitor-Serving overlay zone is to supplement the
26 underlying zoning by providing additional regulations for Commercial/Visitor-Serving Uses.
27 The overlay zone is intended and designed to:

28 A. Control the location, operation and appearance of newly proposed
Commercial/Visitor-Serving Uses within the overlay zone to prevent the over-proliferation of
certain uses as well as to ensure high quality appearance and operation;

1 B. Maximize public disclosure about new Commercial/Visitor-Serving Use
2 proposals located within the overlay zone;

3 C. Design compatibility, vehicular circulation, and shuttle bus/alternative
4 transportation options into Commercial/Visitor-Serving Uses within the overlay zone;

5 D. Provide for the review of building materials and colors and establish architectural
6 criteria that discourages the use of corporate, standardized building forms, materials and styles;

7 E. Formalize the use of conditional use permits for all Commercial/Visitor-Serving
8 Uses within the overlay zone and emphasize the aspects of performance monitoring and
9 enforcement;

10 F. Establish the City Council as the final decision-maker for Commercial/Visitor-
11 Serving Uses in the overlay zone;

12 G. Require Commercial/Visitor-Serving conditional uses as listed in the Planned
13 Industrial (P-M) Chapter of this Title for underlying P-M zoned properties within the overlay
14 zone to be subject to the conditional use permit requirements and provisions of this Chapter,
15 except that such uses shall be consistent with the intent and purpose of the P-M zone whose
16 primary purpose is not to cater directly to the general public, and allows certain commercial uses
17 which cater to, and are ancillary to the uses allowed in the P-M zone; and,

18 H. Establish procedures in the overlay zone to provide for effective code
19 enforcement.

20 **21.208.020 Definitions.**

21 Terms used in this Chapter and not defined below shall be defined per Chapter 21.04 of this
22 Title. The following terms, as used in this Chapter, shall have the meaning established by this
23 Section:

24 A. "Applicant" means the property owner(s) of the site.

25 B. "Applicant's agent" means the authorized representative of the property owner
26 responsible for processing the overlay zone conditional use permit.

27 C. "Commercial/Visitor-Serving Use" means uses involving the provision of goods
28 or services designed primarily for tourists or visitors to the city, such as any of the following
either individually or in combination: commercial development with retail sales; lodging uses;
recreation vehicle (RV) parks, overnight RV parking, campgrounds or overnight campsite uses;
sales of souvenirs, gifts or toys; activities including food and/or beverage serving uses.
Commercial/Visitor-Serving Uses include, but are not limited to: gas stations/mini-marts, hotels,
motels, restaurants, delis, retail stores, gift shops, museums and visitor centers.

D. "Enforcement Agency" means the city's Community Development Department.

E. "Enforcement Official" means the city's Community Development Director.

F. "Freestanding sign" means a monument sign supported by the ground and not
supported by a pole.

G. "Time-share Project" means a project that meets the time-share definition
contained in Section 21.04.357 of this Title. Time share projects are distinguished between
"lock-off" units and standard units for the purpose of establishing different parking requirements
as outlined in Section 21.208.100 A 2. "Lock-off" units are defined as a timeshare unit which
allows the occupancy of less than the entire unit during a timeshare period such that each
occupant may occupy a part of the unit for a timeshare period with the remaining part of the unit
being "locked-off" and subject to use by others. Standard time share units do not have lock-off
provisions.

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1 **21.208.030 Boundaries; Exceptions; Applicability.**

2 A. This Chapter applies generally to all properties shown with the designation
3 "Commercial/Visitor-Serving Overlay Zone" on the Zoning Map as concurrently amended with
4 the adoption of this Chapter (pursuant to Section 21.05.050), as amended from time to time;
5 excepting therefrom any properties used as automobile dealerships within the Car Country
6 Carlsbad Specific Plan area, as amended from time to time.

7 B. Notwithstanding properties being within the boundaries of the overlay zone as
8 established above, the requirements for a conditional use permit, and the development standards
9 of this Chapter shall apply to:

- 10 1. Commercial/Visitor-Serving Uses within the overlay zone, and
11 2. The portions of mixed use projects constituting a Commercial/Visitor-
12 Serving Use

13 C. Where the provisions of this Chapter conflict with those of the underlying zone or
14 elsewhere in this code, this Chapter applies.

15 **21.208.040 Permitted Uses.**

16 No Commercial/Visitor-Serving Uses are permitted uses, in the overlay zone. The only
17 permitted uses in the overlay zone are the residential, industrial and office uses authorized as
18 permitted uses by the zoning of the underlying zone, which are not subject to the provisions of
19 this Chapter. Those uses shall be developed subject to the development standards and
20 entitlement processes required by their underlying zoning. In addition, a roadside stand for the
21 display and sale of products produced on the same premises is an allowed use provided that the
22 floor area shall not exceed two hundred square feet and is located a minimum of 20 feet from any
23 street, highway or city right of way."

24 **21.208.050 Uses Permitted by Conditional Use Permit.**

25 Commercial/Visitor-Serving Uses may be permitted within the overlay zone by approval of
26 conditional use permit pursuant to this Chapter. Conditional uses otherwise allowed by
27 underlying zoning designations, within the overlay zone, that are not Commercial/Visitor-
28 Serving Uses, are not subject to this Chapter. Where the underlying zoning authorizes
conditionally approved uses (other than Commercial/Visitor-Serving Uses) Chapter 21.50, not
this Chapter, applies.

1 **21.208.060 Prohibited Uses.**

2 Notwithstanding any underlying zoning provision, the following uses are prohibited in the
3 overlay zone:

4 A. Stand-alone liquor stores where the retail sale of liquor and/or alcoholic beverages
5 is the primary form of business;

6 B. The outdoor storage or display of merchandise, goods or services for sale;

7 C. Except as authorized pursuant to Chapter 8.17 and/or 8.32 of this code, or a
8 conditional use permit issued pursuant to this Chapter, no person shall sell or offer to sell goods,
9 merchandise or services from, or by means of, any temporary display, vehicle, platform, wagon
10 or pushcart upon any public street, privately owned property, public parking lot, city right of way
11 or sidewalk within the overlay zone; and

12 D. Incidental Outdoor Dining Areas (which waive parking requirements for small
13 outdoor eating areas up to 400 square feet in size) are prohibited. All indoor and outdoor eating
14 areas shall provide parking as required by 21.208.100 A 4 of this Chapter.

1 **21.208.070 Approval Process.**

2 Notwithstanding Section 21.54.040, the City Council may approve, conditionally approve or
3 disapprove a conditional use permit within the overlay zone after the Planning Commission has
4 considered the application and made a recommendation to the Council pursuant to Chapter 21.54
5 and the special procedures added by this Chapter. The conditional use permit may be approved
6 for a limited period of time, and shall be subject to monitoring and enforcement pursuant to this
7 Chapter.

8 **21.208.080 Pre-Filing Submittal and Meeting; Application for CUP.**

9 A. Prior to filing an application for a conditional use permit for a
10 Commercial/Visitor-Serving Use within the overlay zone, the Applicant shall make a pre-filing
11 project submittal and then attend a pre-filing meeting.

12 1. Pre-Filing Submittal - The Applicant shall file a written pre-filing
13 submittal and shall follow the submittal requirements in accordance with the Planning
14 Department's "Preliminary Review Process" accompanied by the fee, therefore, established by
15 the City Council by resolution. The submittal shall demonstrate compliance with this Chapter,
16 including the proposal of an architectural style as required by Section 21.208.100 F.

17 2. Pre-Filing Meeting - Within 30 days of the Applicant's pre-filing
18 submittal, the Enforcement Official shall respond with a written City Response Letter,
19 thoroughly analyzing the proposal, establishing issues for resolution, and setting a time, date and
20 place to conduct a pre-filing meeting subject to the following:

21 a) Required attendance: Applicant or Applicant's agent, staff planner
22 and staff engineer.

23 b) Optional attendance: City Manager or designated representative,
24 any designated representative from a city department or division with an interest in, or concern
25 with, the proposed Commercial/Visitor-Serving development.

26 3. Primary purpose: discuss the city response letter, identify issues to be
27 resolved and establish final application requirements.

28 B. Good faith participation in the pre-filing meeting, is necessary for the submittal of
a formal conditional use permit application.

C. Upon completion of the pre-filing submittal and meeting, the Applicant may file a
formal application for a CUP pursuant to Chapters 21.50 and 21.54. The application shall be
accompanied by application(s) for any other required discretionary entitlement for the project
(including, but not limited to, a coastal development permit). Application for, and approval of, a
CUP pursuant to this Chapter shall satisfy all requirements for a site development plan, for the
project if such is required by the underlying zoning. If not otherwise required, in addition to the
application requirements for a conditional use permit (including special requirements in this
Chapter) formal conditional use permit application exhibits subject to this Chapter shall show the
following:

1. All State and Uniform Building Code requirements for disabled parking
spaces and related pathways.

2. All proposed rooftop equipment, mechanical enclosures and any Uniform
Building Code requirements relating to rooftop access, ladders or other rooftop structural
features.

21.208.090 Project Site Notification.

In addition to the public notice requirements of Section 21.54.060, the Applicant shall provide
project site notification as follows:

1 A. Upon city determination of completeness of a formal application, the Applicant
2 shall physically post the following notice on the project site. The Applicant shall maintain the
3 posted notice in good and legible condition until the application is withdrawn or scheduled for
4 public hearing, whichever occurs first. Such notice shall state "APPLICATION IN PROCESS",
5 and shall include:

- 6 1. A yellow color background.
- 7 2. A brief but complete explanation of the matter to be considered.
- 8 3. The Applicant's name/phone number and Applicant's agent (if applicable)
9 name and phone number.
- 10 4. Planning Department contact information.

11 B. Concurrent with public noticing for a public hearing, the Applicant shall
12 physically post a notice on the project site for the entire term of the public notice period until,
13 and inclusive of, the actual public hearing date. Such notice shall state "PENDING PUBLIC
14 HEARING", and shall include the same information required above, but:

- 15 1. An orange color background; and
- 16 2. Date, time and place of pending public hearing.

17 C. Notices required by subsections A and B above shall comply with the following:

- 18 1. Sign location shall be in a conspicuous location so that the Notice is
19 visible from all portions of the project site which abut a private or public street.
- 20 2. Sign material shall be durable enough to withstand the elements. Signs
21 shall be secured to a ground mounted pole with a minimum pole height of four (4) feet and a
22 maximum pole height of six (6) feet.
- 23 3. Sign dimensions shall be: four (4) feet in height and three (3) feet in
24 length.
- 25 4. Letter height for the "APPLICATION IN PROCESS" or "PENDING
26 PUBLIC HEARING" headings shall be six (6) inches.
- 27 5. Letter height for the project descriptions shall be three (3) inches.
- 28 6. All other letter heights shall be two (2) inches.
7. All letter colors shall be black.
8. A city seal of the City of Carlsbad shall be displayed in the upper central
portion of the notice with a minimum diameter of three (3) inches.
9. Applicant or developer phrases or logos are not allowed.
10. Applicant must obtain project planner approval of color and text, prior to
posting.

11. The Public Hearing Notice shall be removed upon withdrawal of the
application or completion of the public hearing process, whichever occurs first.

12. Any removed or damaged notices shall be immediately replaced. Failure
to do so may cause the public hearing to be re-scheduled by the Enforcement Official.

13 D. The Planning Director may modify any of the criteria listed above in subsections
14 C 1-7 if determined necessary to achieve maximum disclosure of the project and/or to optimize
15 visibility of the sign.

26 **21.208.100 Development Standards.**

27 Notwithstanding any underlying zoning provisions, the development standards below shall
28 supersede other provisions of this Title, and shall be applied to conditional use permits issued
pursuant to this Chapter.

A. Parking. The number of parking spaces required for Commercial/Visitor-Serving
Uses within the overlay zone shall be calculated based on the ratios established below according

1 to land use. Fractional parking spaces are to be rounded up to the nearest whole number.
2 Compact space provisions are provided in Section 21.44.110 of this Title. Any use not listed
3 below and subject to the provisions of this Chapter, shall be subject to a parking ratio to be
4 determined by the Planning Director based on the requirements of similar uses. The Planning
5 Director's determination may be appealed in accordance with Section 21.54.140 of this Title; or
the determination may be incorporated into the project design and conditional use permit
application. All State and Uniform Building Code requirements for disabled parking spaces and
related pathways shall be shown on the conditional use permit application exhibits.

6 1. Motels/Hotels/Suites/Inns/Lodges/Resorts. 1.2 spaces per unit, plus
7 parking as required per this Chapter for additional ancillary uses (restaurant, retail space, meeting
8 rooms, etc.) as calculated on an individual basis. In addition, these uses shall provide adequate
shuttle bus circulation and passenger drop-off/pick-up facilities to be developed on a case-by-
case, site-by-site basis. Tour bus/passenger bus parking provisions may also be required based
on the specific project and location.

9 2. Time Share Projects. Lock-off units require 1.5 spaces per unit; standard
10 units require 1.2 spaces per unit. In addition, time share projects shall be subject to the following
requirements:

11 a. Adequate shuttle bus circulation and passenger drop-off/pick-up
facilities to be developed on a case-by-case, site-by-site basis;

12 b. An Interim Parking/Unit Marketing Plan which will address the
13 initial sales efforts to sell time share units and the corresponding need to provide additional
14 interim parking while sales are on-going. The Interim Parking/Unit Marketing Plan shall be
15 approved by the City Council as one of the approving project exhibits and shall indicate where
interim parking is to be provided, the amount of spaces involved, adequate screening and
landscaping, and the conversion or integration of the interim parking site into the overall time
share project.

16 3. Gas station/mini-mart. 1 space/300 square feet of gross floor area plus
17 three additional employee parking spaces. Gas stations with work bays shall park the work bay
areas at a ratio of four spaces for every work bay. In addition, gas stations shall conform to the
use separation and design criteria contained in Section 21.208.060 H 1 of this Chapter.

18 4. Restaurant. 1 space/100 square feet of gross floor area up to two thousand
19 (2,000) square feet. Two thousand square feet or greater: Twenty spaces plus 1 space/50 square
20 feet in excess of two thousand square feet. Outdoor eating areas require 1 space/100 square feet
of gross floor area specifically designed, designated and approved for outdoor dining.
Recommended design features include adequate shuttle bus circulation and passenger drop-
off/pick-up facilities in addition to tour bus/passenger bus parking provisions.

21 5. Coffee shop/beverage-serving use/delicatessen. 1 space/300 square feet of
22 gross floor area excluding seating areas for eating and/or drinking. Indoor and outdoor seating
areas shall park at 1 space/100 square feet of area.

23 6. Meeting rooms, assembly space, convention facilities. 1 space/100 square
feet of gross floor area.

24 7. Individual retail, gifts shops, toy stores, convenience stores, general sales.
1 space/300 square feet of gross floor area plus two additional employee parking spaces.

25 8. Shopping Center Retail. Minimum 1 space/200 square feet of gross
26 center. Restaurants in shopping center projects shall provide separate parking as required above
in Section 21.208.100 A 4.

27 9. Museums. 1 space/500 square feet of gross floor area plus a minimum of
28 two additional employee parking spaces. In addition, museums shall provide adequate shuttle

1 bus circulation, passenger drop-off/pick-up facilities, and tour bus/passenger bus parking
2 provisions to be developed on a case-by-case, site-by-site basis.

3 10. Visitor/information center. 1 space/400 square feet of gross floor area plus
4 two additional employee parking spaces. In addition, visitor/information centers shall provide
5 adequate shuttle bus circulation, passenger drop-off/pick-up facilities, and tour bus/passenger bus
6 parking provisions to be developed on a case-by-case, site-by-site basis.

7 11. Bed and breakfast. Minimum two spaces, one of which shall be covered
8 for the manager's unit, plus one space per guest room.

9 12. Car rental agencies. 1 space/250 square feet of gross floor area for the car
10 rental office space and customer waiting area. The rental car fleet parking shall be addressed
11 through a Fleet Parking Plan which will be reviewed and considered as part of the conditional
12 use permit application. In addition, car rental agencies shall provide shuttle bus circulation and
13 passenger drop-off/pick-up facilities to be developed on a case-by-case, site-by-site basis.

14 13. Movie theaters. Proposals involving movie theaters shall submit land use
15 and parking studies or other appropriate documents to justify the proposed parking provisions as
16 part of the pre-filing submittal process per Section 21.208.080 of this Chapter. At the close of
17 the pre-filing submittal process, the Planning Director shall determine what the applicable
18 parking ratios are. The Applicant may appeal the Planning Director's decision in accordance
19 with Section 21.54.140 of this Title.

20 B. Signs. Except as provided herein, the provisions of Chapter 21.41 apply within
21 the overlay zone. All signage shall be reviewed and approved as part of the conditional use
22 permit process. No internally illuminated thru-face channel letter signs will be allowed to face
23 residentially zoned properties.

24 1. Maximum sign area. The maximum sign area allowance shall not exceed
25 one square foot per lineal foot of building frontage located on the lot. For corner lots or
26 buildings, with two building frontages, sign allowance will be based on .90 square foot per the
27 combined lineal footage. Shopping centers or other combined projects subject to the provisions
28 of this Chapter including projects that propose freeway service facility uses and signs, as defined
in Sections 21.41.030(10)(A) and (B)(i-iv) and regulated by Section 21.41.070(3)(B), shall
process a sign program as part of the conditional use permit. Freeway service facility center sign
programs shall not allow more than a total of 100 square feet of freestanding sign area for
projects of eight (8) acres or less; or 150 square feet of freestanding sign area for larger sites.
Such sign programs may also allow a maximum of .60 square feet of wall signage per lineal foot
of commercial tenant/suite frontage; a maximum of .90 square feet of wall signage per combined
lineal footage of freestanding corner buildings; and, a maximum of 1 square foot of signage per
lineal foot of freestanding or anchor tenant building frontage. Shopping centers or combined
projects that do not propose freeway service facilities, shall be allowed a maximum of .75 square
feet of wall signage per lineal foot of commercial tenant/suite frontage; a maximum of 1 square
foot of wall signage per combined lineal footage of freestanding corner buildings; a maximum of
1 square foot of signage per lineal foot of freestanding or anchor tenant building frontage; and, a
maximum of 125 square feet of additional freestanding signage.

2. Maximum sign height. No freestanding sign shall exceed six feet in
height, except for freeway service facility signs; and freestanding multi-tenant directory signs for
shopping centers and/or mixed use Commercial/Visitor-Serving projects, which shall not exceed
10 feet in height, pursuant to a City Council approved sign program.

3. Sign colors. Sign colors and materials are part of the discretionary review
process. Sign colors shall complement the overall building style without dominating the building
design.

1 4. Landscaping related to signs. Freestanding signs are subject to the
2 landscaping requirements contained in subsection G of this Section.

3 C. Building Height. The allowed building height for projects subject to this Chapter
4 shall be determined by the development standards of the underlying zoning. Any proposed
5 rooftop equipment or other structural features shall be screened from public view.

6 D. Building Setbacks. Commercial/Visitor-Serving buildings located adjacent to
7 Palomar Airport Road or Cannon Road east of the I-5 interstate freeway shall maintain a
8 minimum setback of 50 feet. Except in the P-M zone, where the underlying zone setback shall
9 apply, new Commercial/Visitor-Serving buildings shall maintain a minimum public street
10 setback of 30 feet. All setback areas shall be exclusive of parking spaces, parking overhang,
11 circulation aisles and trash enclosures. Improvements in this area shall be limited to landscaping,
12 access driveway(s), signage, lighting fixtures, screen walls, and pedestrian walkways or
13 sidewalks. For parcels eight acres or less in size, the back ten feet of the required setback may be
14 used as circulation aisles or parking spaces provided there is adequate use of landscaping and
15 screen walls. The minimum building setback from any freeway right of way shall be 30 feet of
16 which the back twenty feet may accommodate circulation aisles, trash and/or recycling
17 enclosures, and/or parking spaces. All development proposals subject to this Chapter shall
18 provide decorative paving in the primary approach driveway to the project for an area of at least
19 900 square feet (30 x 30 foot area) covering, at a minimum, the width of the driveway. The
20 decorative paving shall be depicted on landscape plans and shall be located adjacent to, but not
21 on, city right-of-way adjacent to the project entrance. Side and rear setbacks not subject to the 30
22 foot public street setback shall be assessed as part of the discretionary review of the conditional
23 use permit application, however, a minimum setback of ten feet entirely landscaped shall be
24 required.

25 E. Building Materials/Colors. Building materials and colors are part of the
26 discretionary review process. The use of illuminated awnings is not allowed. Metal awnings or
27 canopies are not allowed. High quality simulated building materials such as imitation brick,
28 stone, marble or wood may be approved. The primary colors of blue, red, yellow and green shall
29 not be dominate building colors. The use of colors shall be balanced and in the context of the
30 proposed architectural style.

31 F. Architectural Style. Two primary architectural styles are allowed in the overlay
32 zone as described in general terms below. One of the two styles shall be proposed in conditional
33 use permit applications, except as provided below in subsection 3.

34 1. Village Architectural Style. This style involves the use of wood and
35 composition shingle roof materials, steep pitched (7:12 and greater) gabled roofs, gabled
36 windows, use of dormers in gabled roofs, no mansard roof forms, applied surface detail
37 ornamentation and irregular building forms with a variety of roof peaks.

38 2. Contemporary Southwest Architectural Style. This style involves the use
39 of Spanish/mission style clay roof tiles on a rectangular building form, white stucco walls, arches
40 and arched doorways with wooden beams, low pitched roofs, multi-pane windows and the use of
41 glazed/decorative tiles and tile paving.

42 3. Alternative Architectural Styles. An alternative architectural style may be
43 proposed on a conditional use permit application if it is specifically supported by the Enforcement
44 Official at the conclusion of the pre-filing procedures outlined in Section 21.208.080. This
45 alternative architectural style may accommodate a reasonable version of a user's corporate
46 architectural style, provided the corporate architectural elements do not dominate the building
47 design so as to create incompatibility in the area; or detract from the overlay zone's objective of
48 ensuring high quality appearances for Commercial/Visitor-Serving Uses. Final approval of the

1 proposed alternative architectural style is by the City Council as part of the conditional use permit
2 review.

3 G. Landscaping. Landscaping shall be designed to complement the project's
4 proposed architectural style. Landscape plans shall be consistent with the City's Landscape
5 Manual. The following landscaping regulations shall apply to development proposals subject to
6 this Chapter:

7 1. Freestanding sign landscape theme. Every freestanding sign shall provide
8 adjacent landscaping which promotes a common theme throughout the overlay zone. The
9 freestanding sign and related landscaping theme shall be shown on project landscape exhibits and
10 will consist of, at a minimum:

11 a). Six (6) bird of paradise plants (*Strelitzia reginae*) with a minimum
12 container size of five gallons. These plants shall be located in clusters around the sign.

13 b) One *Phoenix roebelenii* palm tree with a minimum container size
14 of fifteen (15) gallons to be located to one side of the freestanding sign amidst the bird of
15 paradise plant clusters. The *roebelenii* palm may be replaced with another palm tree species if
16 supported by staff to be consistent with the overlay zone's common landscaped sign theme and
17 approved with the conditional use permit by the City Council.

18 c) Appropriate ground cover such as agapanthus shrubs, or other
19 similar substitute subject to discretionary review, bark and/or turf in a visually pleasing
20 combination.

21 d) The minimum area for the provision of the freestanding sign and
22 corresponding landscaped theme shall be 80 square feet, designed to encompass the minimum
23 perimeter of the sign's base or foundation area.

24 e). The above requirements are not necessary for qualified freeway
25 service signage, however, the structural base of allowed freeway service signs shall be
26 adequately located and screened from view by landscaping as part of the conditional use permit
27 application.

28 2. Required Trees. Parking lot trees shall be provided at a ratio of one tree
for every six parking spaces provided. These trees shall be located in planting areas that are
outside of required setback areas. All trees shall be a minimum container size of fifteen (15)
gallons, however, at least 50% of required parking lot trees shall be a minimum of 24 inch box
size. All parking lot planter strips and parking island dimensions, configurations and
landscaping shall conform to Appendix E of the City's Landscape Manual, except that for sites
eight acres or less in size, individual planting islands with a minimum width of 6 feet may be
provided. Such planting islands shall have a minimum length of 30 feet, however, the minimum
length shall not be less than the length of adjacent parking stalls. Street trees required by the
street tree requirements of section IV.D.3 of the Landscape Manual shall all be 24 inch box sizes.
In addition to the street tree requirements of the Landscape Manual, and except for the slope
planting requirements of section IV.E.3 of the Manual for slopes over 8 feet in vertical height,
setback landscaping trees shall be provided in clusters at a ratio of 1 tree for every 1000 square
feet of setback area. Except for street trees which shall be 24 inch box sizes, setback area trees
shall be a minimum container size of fifteen (15) gallons, however, at least 50% of required
setback area trees shall be a minimum of 24 inch box sizes. For the calculation of setback areas,
multiply the length of the setback times 20 feet; for interior lot and freeway setbacks, multiply
the length of the setback times 10 feet. The use of existing on-site trees may be considered to
replace required trees at a 1:1 ratio, on a case-by-case, site-by-site basis. For existing trees to be
considered, landscape plans shall indicate tree caliper width at three feet above existing grade,
and photographs of the subject trees shall be submitted.

1 3. Screening of Areas. The following areas shall be specifically designed to
2 be screened from public points of view:

3 a) Parking Areas. All surface parking areas shall be screened by the use
4 of forty-two (42) inch high screen walls to be complemented with landscaping in front of the
5 walls within setback areas. Screen walls shall be architecturally finished to complement the
6 project's architecture and shall provide an architectural cap on top of the wall. The screening
wall height may reduce to thirty inches to comply with engineering sight distance requirements
as necessary. Vines and attaching plant forms shall be used to further obscure the screening
walls. The use of existing trees and/or grade separations to screen parking areas may be
considered on a case-by-case, site-by-site basis.

7 b) Loading/Delivery/Trash Enclosure Areas. All areas used for loading
8 activities, receiving deliveries and trash enclosure locations shall be located onsite so as to be
9 screened from public points of view. Landscaping may assist this objective but is secondary to
10 locating these areas onsite and/or using solid masonry walls, to minimize visibility.

11 4. Maintenance. All landscaped areas shall be maintained in a healthy,
12 thriving manner. Failure to maintain such areas in conformance with approved landscape plans
13 and concepts, may result in administrative fines and/or revocation or other discretionary action
14 pursuant to the Performance Monitoring Condition (see Section 21.208.120) or other
15 enforcement procedures in this Chapter.

16 H. Use Separation Standards. The uses below are subject to use separations
17 standards.

18 1. Gas stations, gas stations/mini-marts.

19 a) Location. New gas stations or gas stations/mini-marts shall only
20 be permitted at intersections where at least one of the streets is classified as a prime, major or
21 secondary arterial on the General Plan. A maximum of two stations may be allowed at each such
22 intersection. Where a T-intersection is involved, a maximum of one station may be allowed.
23 The proposed site may not adjoin any residential property.

24 b) Lot dimensions. The minimum lot size, or the minimum area
25 exclusively designated for this use in a mixed use project, shall be fifteen thousand square feet.
26 Street frontage along the non-arterial roadway shall be a minimum of one hundred fifty (150)
27 feet.

28 c) Design Criteria. On corner lots, no access shall be made with the
prime or major arterial roadway; no driveway access shall be allowed within 100 feet of a prime
or major arterial roadway intersection and may be limited to a right in, right out only access; and,
fuel delivery circulation design shall be accommodated onsite on a case-by-case, site-by-site
basis.

 2. Motels/Hotels. Commercial/Visitor-Serving motel and hotel uses shall
maintain a minimum separation of six hundred (600) feet; business hotels or motels located on P-
M zoned property serving the adjacent industrial office area, and not the general public, are not
subject to the separation standard. Use separation standards shall be measured from proposed
building edge to existing, or approved, building edge. Separation distances shall be measured at
points of closest proximity to reveal the minimum separation involved. Individual motel or hotel
buildings that comprise one motel or hotel use are not subject to the 600 foot separation standard.
For project sites of 6 acres and larger: Up to two motels or hotels may be located onsite provided
that a minimum setback of two hundred (200) feet shall be provided from any public street(s)
adjacent to the project site; and the two motel or hotel uses/structures have a minimum separation
of one hundred fifty (150) feet. All motel/hotel structures, regardless of project site acreage,

1 shall maintain a minimum separation of six hundred (600) feet from any residentially zoned
2 property line.

3 **21.208.110 Required Findings.**

4 In addition to the findings required for the granting of a conditional use permit pursuant to
5 Section 21.42.020, conditional use permits issued pursuant to this Chapter are subject to the
6 following findings prior to approval:

7 A. That the proposed project is adequately designed to accommodate the high
8 percentage of visitor, tourist and shuttle bus/alternative transportation users anticipated given the
9 proposed use and site location within the overlay zone;

10 B. That the building forms, building colors and building materials combine to
11 provide an architectural style of development that will add to the objective of high quality
12 architecture and building design within the overlay zone; and

13 C. That the project complies with all development and design criteria of the overlay
14 zone.

15 D. For gas stations, motel, hotel or restaurant uses on a Planned Industrial zoned
16 property: That the proposed use is commercial in nature and therefore subject to the overlay
17 zone, however, the proposed use is consistent with the intent and purpose of the P-M zone whose
18 primary purpose is not to cater directly to the general public, and allows certain commercial uses
19 which cater to, and are ancillary to the uses allowed in the P-M zone.

20 E. For recreation vehicle (RV) parks, overnight RV parking, campgrounds or
21 overnight campsite uses: That the proposed use complies with all the provisions of
22 21.42.010(2)(H)(a-e) of this title.

23 **21.208.120 Performance Monitoring Condition.**

24 Projects shall be continuously monitored, including at least one formal annual review, to assure
25 long term compliance with all conditions of approval, compatibility with adjacent properties,
26 enforce sign regulations and provide a basis for recommending approval of subsequent permit
27 extension requests. To achieve this, the following condition shall be placed on permits within
28 the overlay zone:

"If, at any time, the City Council, Planning Commission or Planning Director determine
that there has been, or may be, a violation of the findings or conditions of this conditional use
permit, or of the Municipal Code regulations, a public hearing may be held before the City
Council to review this permit. At said hearing, the City Council may add additional conditions,
recommend additional enforcement actions, or revoke the permit entirely, as necessary to ensure
compliance with the municipal code and the intent and purposes of the Commercial/Visitor-
Serving Overlay Zone, and to provide for the health, safety and general welfare of the City."

29 **21.208.130 Existing Uses, Building Permits and Business Licenses.**

30 For existing uses that propose a change in use, apply for a building permit or apply for a new
31 business license, the provisions of this Chapter shall not apply provided that all of the following
32 criteria are met: the proposal is consistent with the uses allowed by the site development plan or
33 specific plan, if any, applicable to the subject site; the proposal does not invoke a higher parking
34 standard pursuant to Section 21.208.100 A of this Chapter; and, the proposal does not involve an
35 increase of greater than 200 square feet to existing square footage. For such proposals, the
36 additional 200 square feet of area shall be parked subject to the parking standards of this Chapter.
37 Existing structures that propose demolition and redevelopment may be re-built to the same
38 square footage as allowed by a valid entitlement prior to the effective date of this ordinance, or

up to an additional 200 square feet, without being subject to the requirements of this Chapter, provided there is no increase in the degree of non-conformity with regards to building setbacks, parking or signage. If a higher parking standard, or more than 200 square feet of increased square footage is involved, the new, or intensified, portion of the existing use shall be subject to all of the procedures, standards and conditional use permit requirements of this Chapter. Existing sign programs and related sign permits are not subject to the provisions of this overlay zone, except that if any existing use proposes an amendment to its existing, approved sign program to increase overall signage allowance, or to increase or alter approved sign locations, then the entire sign program including existing signs shall be subject to the sign standards of Section 21.208.100 B of this Chapter pursuant to the normal processing of such sign program amendment.

21.208.140 Administrative Enforcement Powers.

A. The Enforcement Agency and Enforcement Official can exercise any enforcement powers as provided in Chapter 1.08 of this Code. In addition to the general enforcement powers provided in Chapter 1.08 of this Code, the Enforcement Agency and Enforcement Official have the authority to utilize the following administrative remedies as may be necessary to enforce this Chapter:

B. Civil Penalties. Any person who violates any of the provisions of this Chapter or any condition of a conditional use permit issued pursuant to this Chapter shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000.00) for each day such a violation exists. The violator shall be charged for the full costs of any investigation, inspection, or monitoring survey which led to the detection of any such violation, for abatement costs, and for the reasonable costs of preparing and bringing legal action under this subsection. In addition to any other applicable procedures, the Enforcement Agency may utilize the lien procedures listed in Sections 21.208.150 C 5 and D 2 and Section 21.208.160 B 3 to enforce the violator's liability.

21.208.150 Administrative Notice, Hearing, and Appeal Procedures.

A. Unless otherwise provided herein, any notice required to be given by the Enforcement Official under this Chapter shall be in writing and served in person or by registered or certified mail. If served by mail, the notice shall be sent to the last address known to the Enforcement Official. Where the address is unknown, service may be made upon the owner of record of the property involved. Such notice shall be deemed to have been given at the time of deposit, postage prepaid, in a facility regularly serviced by the United States Postal Service whether or not the registered or certified mail is accepted.

B. When the Enforcement Official determines that a violation of one or more provisions of this Chapter or any condition of a conditional use permit issued pursuant to this Chapter exists or has occurred, any violator(s) or property owner(s) of record shall be served by the Enforcement Official with a written notice and order. The notice and order shall state the Municipal Code Section or the condition violated, describe how violated, the location and date(s) of the violation(s), and describe the corrective action required. The notice and order shall require immediate corrective action by the violator(s) or property owner(s); where the violation is a continuing violation which does not create an immediate danger to health or safety, the notice shall provide a reasonable time, not less than three (3) working days, to correct or otherwise remedy the violation, prior to the imposition of administrative fines. The notice and order shall also explain the consequences of failure to comply, including that civil penalties shall begin to immediately accrue if compliance is not immediately achieved (or, if applicable within three days from the date the notice and order is issued). The notice and order shall identify all hearing

1 rights. The Enforcement Official may propose any enforcement action reasonably necessary to
2 abate the violation.

3 C. If cure or abatement of the violation(s) is not immediately achieved (or, if
4 applicable within three days) from the date the notice and order is issued, the Enforcement
5 Official shall request the City Manager to appoint a Hearing Officer and fix a date, time, and
6 place for hearing. The Enforcement Official shall give written notice thereof to the violator(s) or
7 owner(s) of record, at least ten days prior to the date for hearing.

8 1. The Hearing Officer shall consider any written or oral evidence presented
9 to determine whether the violation(s) exists, and/or civil penalties should be imposed, consistent
10 with rules and procedures for the conduct of hearings and rendering of decisions established and
11 promulgated by the city manager.

12 2. In determining whether action should be taken or the amount of a civil
13 penalty to be imposed, the Hearing Officer may consider any of the following factors:

- 14 a) Duration of the violation(s).
- 15 b) Frequency or recurrence.
- 16 c) Seriousness.
- 17 d) History.
- 18 e) Violator's conduct after notice and order.
- 19 f) Good faith effort to comply.
- 20 g) Economic impact of the penalty on the violator(s).
- 21 h) Impact of the violation on the community.
- 22 i) Any other factor which justice may require.

23 3. If the violator(s) or owner(s) of record fail to attend the hearing, it shall
24 constitute a waiver of the right to a hearing and adjudication of all or any portion of the notice
25 and order.

26 4. The Hearing Officer shall render a written decision within ten days of the
27 close of the hearing, including findings of fact and conclusions of law, identifying the time frame
28 involved and the factors considered in assessing civil penalties, if any. The decision shall be
effective immediately unless otherwise stated in the decision. The Hearing Officer shall cause
the decision to be served on the Enforcement Official and all participating violators or owners of
record.

5. If the persons assessed civil penalties fail to pay them within the time
specified in the Hearing Officer's decision, the unpaid amount constitutes either a personal
obligation of the person assessed or a lien upon the real property on which the violation occurred,
in the discretion of the Enforcement Official. If the violation(s) is not corrected as directed the
civil penalty continues to accrue on a daily basis. Civil penalties may not exceed one hundred
thousand dollars (\$100,000.00) in the aggregate. When the violation is subsequently corrected,
the Enforcement Official shall notify the violator(s) and/or owner(s) of record of the outstanding
civil penalties and provide an opportunity for hearing if the amount(s) is disputed within ten days
from such notice.

24 D. Judicial Appeal of Hearing Officer Determination.

25 1. Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of
26 Civil Procedure, within 20 days after service of the final administrative order or decision of the
27 Hearing Officer is made in accordance with this Section regarding the imposition, enforcement
28 or collection of the administrative fines or penalties, a person contesting that final administrative
order or decision may seek review by filing an appeal to be heard by the superior court, where
the same shall be heard de novo, except that the contents of the local agency's file in the case

1 shall be received in evidence. A court proceeding under this Section is a limited civil case
2 authorized by Government Code Section 53069.4. A copy of the notice of appeal shall be served
in person or by first-class mail upon the local agency by the contestant.

3 2. The Enforcement Official shall take all appropriate legal steps to collect
4 these obligations, including referral to the city attorney for commencement of a civil action to
5 recover said funds. If collected as a lien, the Enforcement Official shall cause a notice of lien to
6 be filed with the county recorder, inform the county auditor and county recorder of the amount of
the obligation, a description of the real property upon which the lien is to be recovered, and the
name of the agency to which the obligation is to be paid. Upon payment in full, the Enforcement
Official shall file a release of lien with the county recorder.

7 **21.208.160 Judicial Enforcement.**

8 A. Criminal Penalties. Any person who violates any provision of this Chapter or any
condition of a conditional use permit issued pursuant to this Chapter is guilty of a misdemeanor.

9 B. Injunction/Abatement of Public Nuisance; Violations deemed a public nuisance.

10 1. In addition to the other civil and criminal penalties provided herein, any
11 condition caused or permitted to exist in violation of any of the provisions of this Chapter or any
12 condition of a conditional use permit issued pursuant to this Chapter, is a threat to the public
health, safety, and welfare and is declared and deemed a public nuisance, which may be
summarily abated and/or restored as directed by the Enforcement Official in accordance with the
procedures identified in Chapter 6.16.

13 2. A civil action to abate, enjoin or otherwise compel the cessation of such
14 nuisance may also be taken by the city, if necessary. The Enforcement Official may also cause
the city to seek a petition to the Superior Court for the issuance of a preliminary or permanent
injunction, or both, or an action to abate a public nuisance, as may be appropriate.

15 3. The full cost of such abatement and restoration shall be borne by the
16 owner of the property and the cost thereof shall be a lien upon and against the property in
accordance with the procedures set forth in Section 21.208.140.

17 C. Other Civil Action. Whenever a notice and order or Hearing Officer's decision is
18 not complied with, the City Attorney may, at the request of the Enforcement Official, initiate any
appropriate civil action in a court of competent jurisdiction to enforce such notice and order and
decision, including the recovery of any unpaid civil penalties provided herein.

19 **21.208.170 Remedies Not Exclusive**

20 Remedies set forth in this Chapter are not exclusive but are cumulative to all other civil and
21 criminal penalties provided by law, including, but not limited to, amortization, abatement, and
22 summary removal pursuant to Chapter 21.41 and or California Business and Professions Code
Sections 5412 -5412.3 and 5492 through 5497. The seeking of such other remedies shall not
preclude the simultaneous commencement of proceedings pursuant to this Chapter.

23 **21.208.180 Severability**

24 If any section, subsection, sentence, clause or phrase of the ordinance codified in this Chapter is
25 for any reason held to be invalid or unconditional by the decision of any court of competent
26 jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance
27 codified in this chapter. The City Council declares that it would have passed the ordinance
28 codified in this chapter and each section, subsection, sentence, clause and phrase thereof,
irrespective of the fact that any part thereof be declared invalid or unconditional.

1 SECTION 2: Title 21 of the Carlsbad Municipal Code is amended by the
2 amendment of the Zoning Map by the addition of the Commercial/Visitor-Service Overlay Zone
3 on property as shown on the exhibit marked ZC 99-03, attached hereto and made a part hereof.

4 EFFECTIVE DATE: This ordinance shall be effective thirty days after its
5 adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be
6 published at least once in a publication of general circulation in the City of Carlsbad within
7 fifteen days after its adoption. *(Not withstanding the preceding, this ordinance shall not be*
8 *effective within the City's Coastal Zone until approved by the California Coastal Commission.)*
9

10 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
11 Council on the _____ day of _____ 1999, and thereafter.

12 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
13 Carlsbad on the _____ day of _____ 1999, by the following vote, to wit:

14 AYES:

15 NOES:

16 ABSENT:

17 ABSTAIN:
18
19
20

21 _____
CLAUDE A. LEWIS, Mayor

22 ATTEST:
23

24 _____
ALETHA L. RAUTENKRANZ, City Clerk

25
26 (SEAL)
27
28