



**MEETING DATE: 06/17/2024**

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: JIM SADRO, CITY MANAGER**  
**By: Susan Kim, Director of Community & Economic Development**

**SUBJECT: APPROVE INITIATION OF AMENDMENTS TO THE LA HABRA MUNICIPAL CODE RELATED TO  
CONDITIONAL USE PERMITS FOR NON-RESIDENTIAL USES IN THE CITY'S COMMERCIAL  
AND INDUSTRIAL ZONES**

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**RECOMMENDATION:**

That the City Council direct staff to initiate amendments to the La Habra Municipal Code related to conditional use permits for non-residential uses in the City's commercial and industrial zones.

**DISCUSSION:**

At the request of Mayor Nigsarian and Councilmember Surich, staff has prepared this agenda report to review the City's current Conditional Use Permit (CUP) regulations and process, and evaluate potential changes. Based on this report, it is recommended that Council direct staff to initiate the process to change the La Habra Municipal Code (LHMC) related to certain CUPs. This staff report is not intended to analyze any specific proposed change at this time but rather, to authorize staff to begin the process to analyse recommended changes and bring forward such changes to Council for consideration at a future date, as further described below in this report.

A CUP is a permit that requires discretionary approval from a city. These types of permits consent to a use not allowed by-right in a particular zone and are issued at the discretion of a local jurisdiction. Just as the name implies, the permit application is approved under a set of conditions and those conditions are set by the jurisdiction that the land falls within. Over the years, there have been requests by business and property owners to consider changes to the City's CUP regulations in order to create a more "business friendly" environment and help reduce costs for certain types of businesses to become established in the City. For reference, the City of La Habra's current standard conditions of approval are provided as Attachment 1.

As an example of how a CUP would be applied to a given type of project, if a property owner wanted to develop a car dealership on a property that is designated by the General Plan for Neighborhood Commercial land use and is located within the C-1 (Limited Commercial) Zone, the use would require the approval of a CUP. In evaluating the dealership's application to build in that zone, the City's Planning Division staff would consider the compatibility of the car dealership with its surrounding areas. Additionally, staff would consider issues such as noise, traffic flow, and other factors that may affect the area and may require that the proposed use meet a set of conditions to receive a permit. For example, staff may require that the dealership close before 8:00 p.m. so that their business operation does not adversely impact any adjacent residential land uses. If the property owner does not meet the conditions agreed upon, the CUP can be revoked by the City.

The City of La Habra (City) designates whether a use is permitted by right, requires a CUP, or is prohibited in each of City's Zones found in Table 18.06.040.A – Land Use Matrix, of Title 18 (Zoning) of the La Habra Municipal Code (LHMC or Code). The table (Attachment 2) shows the permitting requirements for 99 different types of uses across each of the City's 22 zones. Any use that is not explicitly identified in the table is prohibited, unless the City Planning Commission determines that the proposed use is substantially similar to another permitted or conditionally permitted use.

In order for the Planning Commission to approve a conditional use permit, it must make the following findings:

1. The granting of such conditional use permit will not be detrimental to the public welfare and will not unreasonably interfere with the use, possession and enjoyment of surrounding and adjacent properties and will not impair the character of the zone in which it is to be located.
2. The subject site is physically suitable for the type of land use being proposed.
3. The use is conditionally permitted within the subject zone and complies with the intent of all applicable provisions of the zoning code.
4. The granting of this conditional use permit is consistent with the comprehensive general plan.

The Planning Commission makes its decision following a public hearing. Notice of the public hearing is provided in the Orange County Register and by a mailed notice to property owners located within 300 feet of the subject property. The Planning Commission's decision may be appealed to the City Council within 10 days of the decision.

To assist with the Planning Commission's decision, City staff prepares a report and draft resolution that either supports approval or justifies denial of a CUP. Typically, staff will attempt to work out any issues regarding a project with the project applicant during staff review of the project application, and it is relatively uncommon that staff would recommend project denial after successfully working with an applicant. The staff report is provided to the Planning Commission and the public at least 72 hours in advance of the Planning Commission's regularly scheduled meetings, which occur on the second and fourth Mondays of each month.

The current cost to process a CUP is \$6,532. In addition, the applicant is responsible for costs associated with the environmental review required for the project pursuant to the California Environmental Quality Act (CEQA). CEQA includes criteria for determining whether a project is exempt from CEQA or requires preparation of more detailed analysis, such as a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR). Projects exempt from CEQA pay a fee of \$443. Projects requiring detailed analysis under CEQA pay the direct costs of a consultant to prepare this analysis plus an additional fee of 25% of the consultant costs to cover costs associated with City staff review of the analysis and management of the consultant. Typically, most uses that are proposed within existing tenant spaces are exempt from CEQA.

Additional fees may apply if the project is subject to Design Review (\$6,532), needs a Planned Unit Development Permit (\$10,416), or a Precise Plan (\$10,416). Design Review is required for all new development, major remodeling or structural rehabilitation of more than twenty-five percent of the building area, and additions that result in additional floor area, in the City's commercial and multi-unit dwelling zones; OS (Open Space), M-1 (Light Manufacturing) and SP-1 (La Habra Boulevard Specific Plan) Zones; and the MX (Mixed Use) Overlay Zone. The same type of construction activity within the City's PC-1 (Planned Commercial-Industrial Zone) requires approval of a Planned Unit Development Permit and a Precise Plan. Typically, most uses that are proposed within existing tenant spaces do not require processing of a Design Review, Planned Unit Development Permit, or a Precise Plan.

As indicated by their names, review of a CUP focuses on the use proposed; whereas, a Design Review and review of a Planned Unit Development Permit or a Precise Plan focus on the design, site planning and esthetics of the project, and are done to ensure that developments requiring this level of review or permitting meet or exceed the City's desired development standards.

The table below provides a comparison of CUP fees that are levied by surrounding cities (as of January 2024) compared to the City of La Habra's current CUP fee.

City	CUP Fee
La Habra	\$6,532
Placentia	\$10,276 (standard), \$3,313 (minor)
Fullerton	\$9,600 (major), \$6,522 (minor)
Whittier	\$5,938
Buena Park	\$4,575 (major) <sup>1</sup> , \$2,885 (minor)
La Mirada	\$3,013
Brea	Billed on an hourly rate - \$2,000 Deposit

1. Reflects 15 hours of work by the project planner; if additional hours are required, the applicant is billed based on an hourly rate

As noted in the table above, the CUP fees assessed in the City of La Habra are about average in comparison to surrounding cities that charge a flat fee. However, some cities differentiate between fees for a major or "standard" CUP versus what would be considered to be a "minor" CUP. The difference between a major and minor CUP is often based on the size of the facility or whether the project is new construction or a new tenant moving into an existing building. The City of La Habra currently does not make this differentiation; however, staff believes that this option could be explored if requested by the City Council. In addition, the City of Brea collects a deposit and then charges an hourly rate for costs associated with the processing of the CUP. This method allows applicants to pay according to the amount of work directly associated with the processing of each project; however, this method requires additional staff time and effort to carefully track, account for and invoice the work done at the posted hourly rates.

The fee for a CUP in La Habra is listed in the City's Master Schedule of Fees. The City Council approves increases to the Master Schedule of Fees by resolution in conjunction with the approval of the budget. The fee for a CUP is increased annually according to the Consumer Price Index (CPI) pursuant to Section 4.08.010 of the LHMC. The fees listed in the Master Schedule of Fees were most recently set by City Council through the adoption of Resolution No. 5734, on April 4, 2016, after the completion of a comprehensive user fee study to determine the actual cost of providing the covered by the fees. Under state law, fees may only be set at an amount not to exceed the actual cost of providing the service for which the fee is being assessed. The cost to provide the service is based on factors such as personnel costs, materials, personnel time, and overhead.

When the Master Schedule of Fees was adopted in 2016, the City Council elected to modify the CUP fee to reflect 85 percent of the full recovery of the costs associated with providing the service, in essence providing a 15 percent General Fund subsidy. Two years later, on June 4, 2018, the City Council adopted Resolution No. 5846 to increase the CUP fee to reflect 100 percent full cost recovery. Since 2018, the CUP fee has not been increased more than the CPI, nor has it been decreased below 100 percent full cost recovery, as identified by the 2015 fee study. The City Council has several options available to it if there is interest in amending the Master Schedule of Fees to reduce the current CUP fee and reintroduce a General Fund subsidy for that service. The Master Schedule of Fees would also have to be amended if the City Council desires to establish a "minor" CUP service, along with the City's standard CUP.

As mentioned above, staff has occasionally received inquiries from business and/or property owners about removing the CUP requirement for certain types of uses. For instance, in 2022, City Council approved Ordinance No. 1839 to create a sub-category of restaurants, referred to as "food-to-go restaurants," that were permitted by right in the City's commercial zones, while all other restaurants continue to require approval of a CUP.

As noted above, Table 18.06.040.A – Land Use Matrix of the Zoning Code, shows the permitting requirements for 99 different types of uses across each of the City's 22 zones. To provide a sample comparison of surrounding city permitting requirements, in January 2024, staff reviewed the permitting requirements for each of the types of uses identified below in each of the surrounding cities' commercial zone that is most similar to the City's C-3 (General Commercial) Zone.

Use/Permitting Requirements P: Permitted by Right CUP: Conditional Use Permit						
City	Zone	Drive-Through Restaurant	Restaurant (no alcohol sales)	Alcohol Sales	Dance Studio	Commercial Daycare
La Habra	C-3	CUP	CUP	CUP	CUP	CUP
Brea	C-G	CUP	P	CUP	P	P
Buena Park	C-G	CUP	P	CUP	P	CUP
Fullerton	G-C	P <sup>1</sup>	P	CUP <sup>3</sup>	P <sup>2</sup>	CUP
La Mirada	C-4	CUP	P	CUP	P	CUP
Placentia	C-2	CUP	P	CUP	CUP	CUP
Whittier	C-2	CUP	CUP	CUP	CUP	CUP

As can be seen, permitting requirements vary among the surrounding cities, except for alcohol sales, for which staff found all the surveyed cities require a CUP.

**STAFF RECOMMENDATION**

Staff has reviewed the City's Land Use Matrix (Attachment 2) and recommends the Council consider the following revisions for non-residential uses in the City's commercial and industrial zones:

- Generally allow restaurants by right, but continue to require a CUP for drive-through facilities (restaurants and other facilities such as drive-through pharmacies and banks) and continue requiring a CUP for alcohol beverage sales and services.
- Revise the following use categories: Health clubs/spas; educational institutions including private schools, elementary, middle and high schools, colleges and universities, daycare and tutoring; and commercial schools (dance studios, martial arts, music, and vocal instruction) into the following use categories:
  - Dance and Fitness Studios Large (4,000 or more square feet) – Require CUP
  - Dance and Fitness Studios Small (under 4,000 square feet) – Permit by right
  - Educational Institutions - General (elementary, middle and high schools, colleges and universities) – Require CUP
  - Educational Institutions – Tutoring (academic, music, art and vocal instruction) – Permit by right
  - Commercial Day Care – Require a Minor CUP
- Require a Minor CUP instead of a CUP for "Retail stores selling pre-owned merchandise"
- Replace the term "Dog kennels" with "Animal boarding"; create a new category "Animal grooming"; consolidate and permit these uses and "Animal Hospital/Veterinary Clinic" by right if they are located entirely indoors, and by CUP if there are any outdoor areas for the animals.
- Consolidate the use "Clinic/urgent care facility (medical office without patient treatment; no overnight stay with outpatient treatment; no overnight stays)" with "Doctor/dentist office" and "Medical laboratories (not part of a medical office)" and permit these uses by right (Doctor/dentist offices and Medical laboratories are currently permitted by right)
- Consolidate "Administrative and professional offices (remove "medical" because it is already covered above)" with "General business offices" and permit by right.
- Permit "Remediation Services" by Minor CUP
- Permit "Showrooms" by right instead of by CUP

Staff is currently not recommending any changes to the SP-1 (La Habra Boulevard Specific Plan) Zone, since a separate effort to comprehensively update that document is currently underway.

As previously described, the removal of the requirement for a CUP would not mean that the City does not have the ability to influence the design of the project. Any new development, major remodeling or structural rehabilitation of more than twenty-five percent of the building area, and additions that result in additional floor area, would still be subject to Design Review or a Planned Unit Development Permit and a Precise Plan. In addition, if a property or specific use is not complying with LHMC requirements, and/or creating a public nuisance, these issues can continue to be addressed through Code Enforcement action.

If the City Council chooses to initiate amendments to the LHMC to make any of these recommended modifications, staff recommends also updating Chapter 18.04 (Definitions), to make sure that each type of use is clearly defined. In addition, staff recommends that any Zone Change also include potential updates to Chapter 18.12 (Special Development Standards) and Chapter 18.14 (Off-Street Parking Requirements), to make sure that any additional requirements that may be needed for certain uses that would be permitted by right and would not have conditions of approval, would be appropriately addressed in these chapters. In addition, staff recommends reorganizing the Land Use Matrix to consolidate similar uses with the same permitting requirements, and format the table to make it easier to find specific uses (potentially alphabetically). If the City Council is interested in creating a new Minor CUP fee and service, staff would need to determine the appropriate fee level and approval process for this type of permit.

As indicated above, this staff report is not intended to analyze any specific recommended change, but to authorize staff to begin the work to bring forward changes for City Council review, at a future date. Following City Council's initiation, staff will prepare a draft ordinance and staff report for review by the Planning Commission at a noticed public hearing. The Planning Commission will, by resolution, make a recommendation to the City Council on the adoption of the draft ordinance. The City Council will then review the proposed changes at public hearing and will introduce the draft ordinance. If the City Council chooses to adopt the ordinance, the adoption will occur at a subsequent meeting and become effective 30 days later.

#### FISCAL IMPACT/SOURCE OF FUNDING:

Costs associated with City-initiated amendments to the LHMC that pertain to the Community and Economic Development Department are generally assumed as part of the Department's annual budget.

#### GENERAL PLAN RELEVANCE/CITY COUNCIL GOALS & OBJECTIVES:

#### Applicable General Plan Goals:

- Goal LU1: Growth and Change. Sustainable growth and change through orderly and well-planned development that provides for the needs of existing and future residents and businesses, ensures the effective provision of public services, makes efficient use of land and infrastructure, and promotes the health of the community.
- Goal LU 2: Land Use Diversity and Choices for Residents. A mix of land uses that meets the diverse needs of La Habra's residents, offers a variety of employment opportunities, and allows for the capture of regional population.
- Goal LU 11: Diverse Districts and Corridors. Vital, active, prosperous, and well-designed commercial districts that provide a diversity of goods, services, and entertainment and contribute to a positive experience for visitors and community residents.
- Goal LU 12: Places to Live, Work, and Shop. A diversity of well-designed districts and corridors containing an integrated mix of commercial, office, and/or housing that enable La Habra's residents to live close to businesses and employment, reduce automobile use, actively engage and enhance pedestrian activity.
- Goal LU 16: Quality Industrial and Commercial-Industrial Districts. A diversity of districts accommodating light industrial uses are developed that provide a variety of job opportunities for La Habra's residents, reducing their need to commute to other communities, while not unduly impacting the residential environment.
- Goal ED 1: Competitive Strength and Diversification. Diverse mix of business activity that serves consumers within the City and surrounding communities.
- Goal ED 2: Business Attraction, Retention and Assistance. Responsive support of new and expanding businesses within the community.
- Goal ED 4: Local Job Growth. Expanded base of well-paying jobs that employ marketable skills of local workforce.
- Goal ED 6: Development Assistance. Proactive administration, review, and approval of existing property improvements and prospective development projects.

#### Applicable City Council Goals and Objectives:

- Goal 5: Development Activity and Business Assistance:
  - Objective B: Monitor commercial property listings that have sales tax generating potential for potential acquisition and/or marketing to attract/retain businesses, and work with property owners and the brokerage community to develop land to its highest and best use.
  - Objective D: Continue to improve the City's business retention and expansion program.
  - Objective E: Continue to evaluate and improve the City's development review process and continue to foster a "business friendly" environment within all City departments.

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#### Attachments

ATT 1 Standard Conditions of Approval

ATT 2 Zoning and Land Use

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