



CITY OF LONG BEACH

THE CITY PLANNING COMMISSION

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333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-7713 FAX (562) 570-6068

March 13, 2007

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

- 1) Receive supporting documentation into the record, conclude the public hearing and declare the ordinance regarding the permitting requirements for new churches and related parking requirements read the first time and laid over to the next regular meeting of the City Council for final reading; and
- 2) Adopt a Resolution requesting the Director of Planning and Building to submit an ordinance relating to churches in commercial and residential zones to the California Coastal Commission for certification and approval in accordance with the California Coastal Act. (Citywide)

DISCUSSION

In light of recent issues relating to storefront churches, City staff prepared a background report on issues relating to storefront churches. On October 13, 2006, the findings and recommendations were presented to the City Council (Attachment A). The next step after City Council review was to present the recommendations to the Planning Commission. On December 21, 2006, staff presented to the Planning Commission policy options for regulating storefront churches. After considering this information, the Planning Commission directed planning staff to draft text changes to the Zoning Ordinance regarding permitting requirements for new churches and related parking requirements. On February 1, 2007, after a duly noticed public hearing, the Planning Commission recommended that the City Council adopt an ordinance revising the permitting requirements for new churches, and to allow greater flexibility in the method meeting those parking requirements (Attachment B).

Under the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), churches and other religious assemblies and organizations, such as home bible studies, now have the protection of specific federal statutes against burdensome, restrictive or discriminatory land use regulations. Congress adopted the Act in response to "massive evidence" that churches, especially new, small or unfamiliar churches, are "frequently" discriminated against by zoning codes and in the discretionary process of land use regulation.

HONORABLE MAYOR AND CITY COUNCIL

March 13, 2007

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In practice, this generally means that a city cannot, as a general rule, deny a church the use of any land regardless of its zoning codes, as doing so would place a substantial burden on the church by limiting its "religious expression." The City can deny if it can show that denial was both necessary due to some compelling government interest AND the least restrictive means of achieving that interest, then a city would be at risk of violating Federal law.

Based on these Federal requirements found in RLUIPA, the City is compelled to provide a reasonable approval process for churches wishing to locate in Long Beach or legalize their existing sanctuary. The proposed amendment include the following revisions to the Zoning Code:

1. Amend the Commercial Use Table (Table 32-1) to allow churches in all commercial zones except Commercial Storage and Neighborhood Pedestrian (CNP District) with an Administrative Use Permit (AUP) instead of the current requirement for a Conditional Use Permit. This would allow the Zoning Officer to act as the hearing officer, with that decision being appealable to the Planning Commission. In addition, the time and cost involved in permit processing would be reduced, while still providing public input and the authority for reasonable conditions of approval to be added to insure building and fire code compliance and community compatibility.
2. Amend the Commercial Use Table (Table 32-1) to prohibit new churches in the CNP District. Currently, churches are permitted in this zone subject to approval of a CUP. This action is intended to protect pedestrian-oriented commercial corridors from non-contributing land uses. Due to their function and operation, storefront churches function poorly in these types of pedestrian districts. In pedestrian districts, the city is trying to foster active ground floor retail that encourages walking. In many cases, churches are unoccupied during normal business hours except for, typically, Sunday. Public assembly uses, such as private clubs and social halls, are currently prohibited in the CNP Districts and the exclusion of religious assembly use is a consistent and reasonable restriction.
3. Amend the Conditional/Administrative Use Section (21.52.213) to include language allowing the Zoning Administrator to allow greater flexibility when reviewing distance and deed restriction requirements for off-site parking and allowing provisions for tandem parking and compact spaces. This change will not reduce the required number of parking spaces but it will allow the flexibility in how those spaces are provided.

Assistant City Attorney Michael J. Mais reviewed this letter and prepared the attached resolution and ordinance on February 24, 2007.

COASTAL COMMISSION CERTIFICATION

On December 5, 2006, the City Council approved an ordinance amending Table 31-1 of the Zoning Code to allow existing churches in the R-1-N zone to expand with a Conditional Use Permit (Attachment C). Based on the limitation of the number of amendments that can be submitted to the California Coastal Commission, the resolution requesting California Coastal Commission certification includes the previously approved ordinance relating to expansion of churches in residential zones and the permitting requirements for the churches in commercial zoning districts discussed in this report.

TIMING CONSIDERATIONS

The Municipal Code requires the Planning Commission recommendation to be transmitted by the Department of Planning and Building to the City Clerk for presentation to the City Council within 60 days following Planning Commission action. However, since the City is the applicant, this timeframe is not binding.

FISCAL IMPACT

None.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

LESLIE GENTILE, CHAIR
CITY PLANNING COMMISSION

By:


SUZANNE FRICK
DIRECTOR OF PLANNING AND BUILDING

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Attachments:

- A. City Council Memoranda - October 13, 2006
- B. Planning Commission Staff Report – February 1, 2007
- C. City Council Report – December 5, 2006
Ordinance
Resolution



Attachment A

Date: October 13, 2006
To: Gerald R. Miller, City Manager
From: Suzanne Frick, Director of Planning and Building
For: Mayor and Members of the City Council
Subject: Storefront Churches

The Department of Planning and Building has prepared this analysis in response to issues related to storefront churches. This paper provides background information and policy options for consideration.

Current Land Use Regulations

Churches and other religious institutions are located throughout the city within every major zoning district. As shown on Figure 1, using the utility billing information, 295 religious institutions were identified. As indicated on Table 1, the most common zoning district for churches is residential, recognizing that these uses are neighborhood serving. There are 117 religious organizations in residential districts, with nearly half located in the R-1-N zoning district. Larger churches that are community serving intend to be located on arterial streets. Of the 74 religious organizations in commercial districts, 37 are located in the Community Automobile-oriented (CCA) district. Half of all religious organizations identified are located either in the R-1-N, CCA or the Institutional zoning district.

The term “storefront” church is used to describe places of worship that occupy retail or office spaces along commercial corridors. They tend to begin initially with very small congregations, between 15 and 30 parishioners, and operate independently of each other and other mainline denominations.

For the purposes of land use regulation, storefront churches fall within the definition of a “church” in the Long Beach Municipal Code. The Long Beach Municipal Code defines the use as follows:

“Church” means an institutional land use providing facilities for worship or the assemblage of the public for worship. Accessory uses include personal counseling and education in subjects relating to personal life, and also the building or buildings where such activities take place. This definition includes cathedral, mosque, synagogue or temple and other religious worship places.

As indicated in Table 2, storefront churches are a permitted use in the Institutional Zone and are permitted subject to the approval of a Conditional Use Permit (CUP) in all the Commercial Zones except for the Commercial Storage

Zone. New churches are prohibited in the Industrial and Residential Zones. However, legal nonconforming churches in some residential zones can be expanded subject to approval of a CUP.

The City's zoning policy related to churches has changed over time. Between 1968 and 1979, churches were permitted in all commercial zones. In 1979 the zoning ordinance was amended to require a CUP in most commercial zones. During the 1980s and the early 1990s, the zoning ordinance was twice amended to further prohibit churches on many commercial corridors. However, in the mid-1990s, the current land use regulation was established to allow churches in all Commercial Zones (except for the Commercial Storage Zone) with a CUP.

The approval of new churches on commercially zoned corridors and the expansion of existing churches in selected residentially zoned districts require a CUP. The approval of a CUP is a discretionary action by the Planning Commission, appealable to the City Council, and provides an opportunity for the Planning Commission to ensure that the use, design and location does not adversely impact the surrounding uses. The approval process for a CUP is approximately two months and, effective November 5, 2006, the permit fee for a CUP will be \$2,540.

Storefront churches that convert retail or office spaces to assembly use must meet stricter zoning and building code standards. The parking standard for public assembly use, which is much higher than a retail use, is a significant obstacle for some churches. A typical retail building would require four (4) parking spaces per 1,000 square feet; whereas, a public assembly use would require 20 parking spaces per 1,000 square feet for the congregation area. The reuse of a retail space may also involve extensive retrofitting of retail or office space to comply with building and fire codes. For example, renovations may include additional building exits, installation of fire sprinklers, additional access provisions for persons with disabilities, or installation of restroom facilities.

The exact number of storefront churches is unknown. However, they are generally found on older commercial corridors developed on small lots with little off-street parking. These mature corridors are less desirable to commercial tenants because of the lack of off-street parking and therefore have lower lease rates. In turn the lower lease rates are attractive to small religious congregations.

A common concern by residents and business groups about storefront churches, which closed during normal business hours, is that they create "dead space" in commercial districts. In addition, for those areas that are in transition, storefront churches are viewed as a sign of blight by prospective tenants.

Comparative Land Use Regulations

A comparative land use survey was conducted to determine how Long Beach religious assembly use regulations compare to other California cities (see Table 3). The cities of Carson, Garden Grove, Gardena, Glendale, San Jose and Bellflower were selected because they are older established cities with a full range of residential, commercial, and industrial uses.

All cities surveyed, except for Garden Grove, allow churches in commercial zoning districts either by right or by conditional use permit. All of the cities surveyed allow new churches in at least some residential districts with a conditional use permit. However, Long Beach is the one exception that does not allow new churches in any residential zoning district.

Many cities indicated that the ability to meet the parking requirement is an obstacle for storefront churches obtaining a permit. Long Beach has one of the least restrictive parking standards for religious assembly. One (1) space per 35 square feet of assembly area is the average of cities surveyed. Whereas, Long Beach's parking standard for religious assembly is one (1) space for 50 square feet of assembly area.

Lastly, none of the cities interviewed stated that storefront churches created a neighborhood nuisance issue.

Federal Religious Land Use and Institutionalized Persons Act

Under the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), churches and other religious assemblies and organizations, such as home bible studies, now have the protection of specific federal statutes against burdensome, restrictive or discriminatory land use regulations. Congress adopted the Act in response to "massive evidence" that churches, especially new, small or unfamiliar churches, are "frequently" discriminated against by zoning codes and in the discretionary process of land use regulation.

The land use provisions of RLUIPA seek to protect individuals, houses of worship and other religious institutions from discrimination in zoning and other land use regulations. In passing this law, Congress found that the right to assemble for worship is at the very core of the free exercise of religion. Congress further found that religious assemblies cannot function without a physical space adequate to their needs and consistent with their theological requirements.

To address these concerns, RLUIPA prohibits zoning and land use laws that "substantially burden" the religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This

prohibition applies in any situation where the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses (i.e., land use decisions).

If a government passes or enforces a law regarding land use that *does* impose on a person's free exercise of religion, then the government must be able to prove two things:

1. The law furthers a "compelling governmental interest."
2. The law is the least restrictive means of furthering that compelling governmental interest.

If a government cannot prove *both* of these things, then the law, ordinance, or regulation is in violation of RLUIPA.

In practice, this means that a city cannot, as a general rule, deny a church the use of any land regardless of its zoning, as doing so would place a substantial burden on the church by limiting its "religious expression." Unless a city can show that denial was both *necessary* due to some compelling government interest AND the *least restrictive* means of achieving that interest, then a city would be at risk of violating Federal law.

Code Enforcement Activity

The combined requirements for providing adequate parking, applying for a CUP and providing building upgrades makes the establishment of storefront churches potentially expensive, time consuming and difficult. As a result, many storefront churches operate without a permit and only become known to the City as a result of code enforcement activity. When a commercial enterprise applies for a business license, the request is also checked for zoning code conflicts and other regulations. Whereas, for churches a business license is not required and there is not a "trigger" in the process to identify zoning code conflicts before storefront churches are established. Code enforcement identifies these un-permitted uses as a result of a complaint being filed or through enforcement sweeps on selected corridors.

Proactive code enforcement on selected corridors between January 2004 and August 2006 resulted in 4 locations cited for operating a church without a permit. As a result of these citations, 19 storefront churches have either received a CUP or have ceased operation (see Table 4). As indicated on Table 5, there are 21 active cases of storefront churches operating without a permit.

All cited storefront churches are located in commercially zoned districts with more than half located within the Community Commercial Automobile-Oriented (CCA) Zoning District. As shown on Figure 2, the vast majority of the cases are

located in North Long Beach. These citations likely only include a portion of the storefront churches operating without a permit because code enforcement activity targets selected areas of the City and has not completed its corridor enforcement program.

The majority of the storefront church CUP applications are the result of code enforcement action. When these applications are filed, it is a priority for Planning staff to work dutifully with storefront church applicants to bring them into compliance. As shown on Table 6, between January 2004 and August 2006, the Planning Commission heard six (6) requests to establish storefront churches on commercial corridors and all six (6) applicants were approved. Two CUP applications were withdrawn because they could not meet the parking requirement and have subsequently relocated to another facility. Three CUP applications are still pending.

In the coming months, City staff will pursue civil lawsuits to enforce life/safety violations and expanded enforcement efforts to South Street and Pacific Coast Highway, while continuing maintenance on previously surveyed corridors.

Policy Options

Moving forward, a few adjustments to the zoning code can be made to provide the flexibility to staff to work more effectively with the applicants to ensure community compatibility and Federal regulatory compliance. Based on the Federal requirements found in RLUIPA, the City is compelled to provide a reasonable approval process for churches wishing to locate in Long Beach or legalize their existing sanctuary. Staff offers the following policy options for consideration:

1. Amend the Commercial Use Table (Table 32-1) to allow churches in all commercial zones (except Commercial Storage and the Neighborhood Pedestrian – CNP – District) with an Administrative Use Permit (AUP) instead of the current requirement for a Conditional Use Permit. This would allow the Zoning Officer to act as the hearing officer, with that decision being appealable to the Planning Commission. Hence, the time and cost involved in permit processing would be reduced but still provide the authority for reasonable conditions of approval to be added to insure building and fire code compliance and community compatibility. In addition, the prohibition in the CNP district will protect pedestrian-friendly commercial corridors from non-contributing land uses. Public assembly uses, such as private clubs and social halls, are currently prohibited in the CNP districts and the exclusion of religious assembly use is a consistent and reasonable restriction.

Amend the Conditional Use Section to allow the Zoning Administrator to waive the distance, provisions for tandem parking and deed restriction requirements for off-site parking. This would allow for more flexibility in providing joint use parking arrangements for churches

2. Maintain the status quo. Staff will continue to work with storefront churches to bring them into compliance with existing land use regulations.

In summary, staff is suggesting that the most effective method for regulating these types of uses in compliance with Federal law is to provide a more streamlined and flexible permitting process.

Table 1**NUMBER OF RELIGIOUS ORGANIZATIONS BY ZONING DISTRICT**

Residential	117
R-1-N	47
R-2-N	19
R-3-S	16
R-4-R	11
R-3-T	9
R-4-N	7
R-2-A	3
R-3-4	2
R-1-M	1
R-2-L	1
R-2-S	1
Commercial	74
CCA	37
CNR	22
CNP	6
CHW	3
CNA	3
CCP	1
CCR	1
CO	1
Institutional	66
Planned Development	29
PD-30	12
PD-25	9
PD-10	5
PD-29	2
PD-1	1
Industrial	5
IL	2
IG	2
IM	1
Park	4

295

Source: Planning and Building Department

Table 2

LAND USE REGULATION FOR CHURCHES

	Prohibited	CUP	By Right
Single Family	x¹		
Industrial	x		
Multifamily	x²		
Commercial		x³	
Institutional			x

^[1] City Council will consider a proposal in November 2006 to allow existing churches in R-1-N to

^[2] Existing Churches are allowed to expand with a CUP except for the R-2-S, R-2-I, R-2-L and RM zones

^[3] Except for the Commercial Storage (CS) Zone

Table 3
COMPARATIVE LAND USE REGULATIONS FOR CHURCHES

City	Zones				Parking Requirement		
	Residential	Commercial	Industrial	Other			
Long Beach	Not Permitted		CUP	Not Permitted		1 space per 3.3 fixed seats 1 spaces per 50 sq. ft. gross floor area	
Carson	RM: Allowed by right on arterial street CUP on a collector street RS: Not Permitted RA: Not Permitted	CN: By right CR: By right CG: By right CA: Not Permitted	Not Permitted		1 space per 5 fixed seats 1 space per 35 sq. ft. net floor area		
Bellflower	SF: CUP R1: CUP AE: CUP R2: CUP R3: Not Permitted SCH: Not Permitted	CO: Not Permitted CG: CUP TC: CUP	M1: Not Permitted	Public Uses	CUP	1 space per 7.5 fixed seats. 1 space per 53 sq. ft. of floor area.	
Glendale	CUP	C1: By right C2: By right C3: By right CBD: By right CR: CUP	Not Permitted		Mixed Use CPD	CUP Not Permitted	1 space per 5 fixed seats 1 space per 35 sq. ft. of floor area
San Jose	CUP	CO: CUP CP: CUP CN: CUP CG: CUP	IP: Zoning Overlay LI: Zoning Overlay HI: Zoning Overlay	Downtown Ground Floor Space P		1 space per 4 fixed seats 1 per 30 sq. ft. of assembly area	
Santa Ana	RE: CUP R1: CUP R2: CUP R3: CUP R3H	C1: By right C2: By right C3: By right C4: By right C5: By right	M1: Not Permitted M2: Not Permitted	P (professional) CD (Civic Development)		Not Permitted	1 space per 3 fixed seats 1 space per 35 sq. ft. seating floor area
Gardena	R1: CUP R2: CUP R3: CUP R4: CUP	C-P: CUP C-2: CUP C-3: CUP C-4: CUP	M-1: CUP M-2: CUP	O	Not Permitted Not Permitted		1 space per 3 fixed seats 1 space per 35 sq. ft. of sanctuary
Garden Grove	R1: CUP R2: CUP R3: CUP	OP: Not Permitted C1: Not Permitted C2: Not Permitted C3: Not Permitted	M1: Not Permitted MP: Not Permitted	OS		CUP	1 space per 3 fixed seats 1 space per 21 sq. ft. of assembly area plus 1 space for each 250 sq. ft. of ancillary area

Table 4**CLOSED CODE ENFORCEMENT CASES ON STOREFRONT CHURCHES**

	Address	Council District	Zoning	Reason for Final
1	633 4th Street	1	PD-30	Permit Found
2	1735 East 7th Street	2	CNR	Moved out
3	992 East Artesia Blvd	9	CCA	Moved out
4	1000 East Artesia Blvd	9	CCA	CUP
5	5616 Atlantic Ave	9	CCA	Moved out
6	5879 Atlantic Ave	9	CNA	Moved out
7	2300 Fashion Ave	7	R-1-N	Moved out
8	5351 Long Beach Blvd	8	CCA	Closed
9	6100 Long Beach Blvd	9	CCA	Day Care
10	6240 Long Beach Blvd	9	CCA	Moved out
11	46 East Market St	8	CNR	Moved out
12	2135 East Market Street	8	IL	Complied
13	1250 Orange Avenue	6	CCP	CUP
14	2172 Pacific Ave	6	CNP	Moved out
15	2808 Petaluma Ave	5	R-1-N	Corrected
16	755 Pine Ave	1	PD-30	Moved out
17	271 South Street	9	CNR	Complied
18	320 South Street	8	CNR	Complied
19	77 East Market Street	8	CNR	Moved out

Table 5**ACTIVE CODE ENFORCEMENT CASES ON STOREFRONT CHURCHES**

	Address	Council District	Zoning	Applied for CUP
1	2300 Pacific Ave	6	CNP	----
2	1925 Pacific Ave	6	CNP	yes
3	2400 Pacific Ave	6	CNP	----
4	718 E Anaheim St	6	CHW	----
5	411 PCH	6	PD-29	----
6	5420 Dairy Ave	8	CNR	----
7	5727 Atlantic Ave	8	CCA	----
8	5239 Atlantic Ave	8	CCA	----
9	5505 Atantic Ave	8	CCA	----
10	5350 Long Beach Blvd	8	CCA	yes
11	5358 Long Beach Blvd	8	CCA	----
12	4684 Long Beach Blvd	8	CCA	----
13	6095 Atlantic Ave	9	CNA	----
14	6160 Atlantic Ave	9	CNA	yes
15	6432 Long Beach Blvd	9	CCA	----
16	6170 Long Beach Blvd	9	CCA	----
17	6258 Long Beach Blvd	9	CCA	----
18	1131 South St	9	CNR	----
19	1101 E Artesia Blvd	9	CCA	----
20	1083 E Artesia Blvd	9	CCA	----
21	1830 E Artesia Blvd	9	CCA	----

Table 6**2004-2006 CUP APPLICATIONS TO ESTABLISH A CHURCH**

	Case No.	Address	Code Enforcement Action	Status
2006	0601-37	5350 Long Beach Blvd	yes	In Process
	0603-96	77 East Market Street	yes	Withdrawn
2005	0502-04	1000 Studebaker	---	<i>Approved</i>
	0508-23	1925 Pacific	yes	<i>Pending appeal</i>
	0501-16	992 East Artesia	yes	Withdrawn
	0508-16	1520 Wardlow Rd	---	In Process
2004	0408-37	525 East 55th Street	yes	In Process
	0412-27	6160 Atlantic	yes	<i>Approved</i>
	0412-24	1250 Orange Avenue	yes	Approved
	0403-22	3210 Airport Way	---	<i>Approved</i>
	0407-05	1000 East Artesia	yes	<i>Approved</i>

City of Long Beach Locations of Religious Organizations

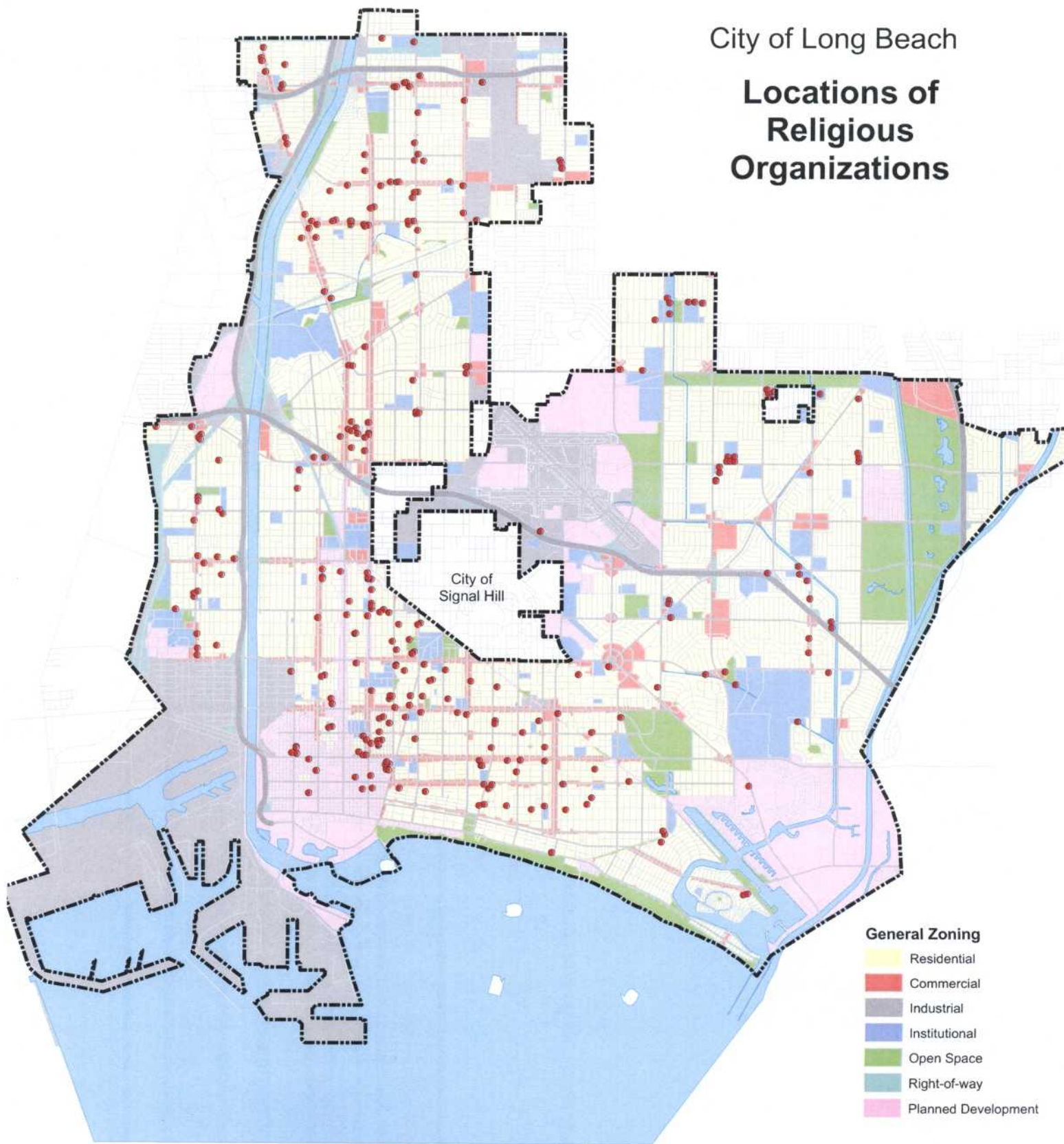
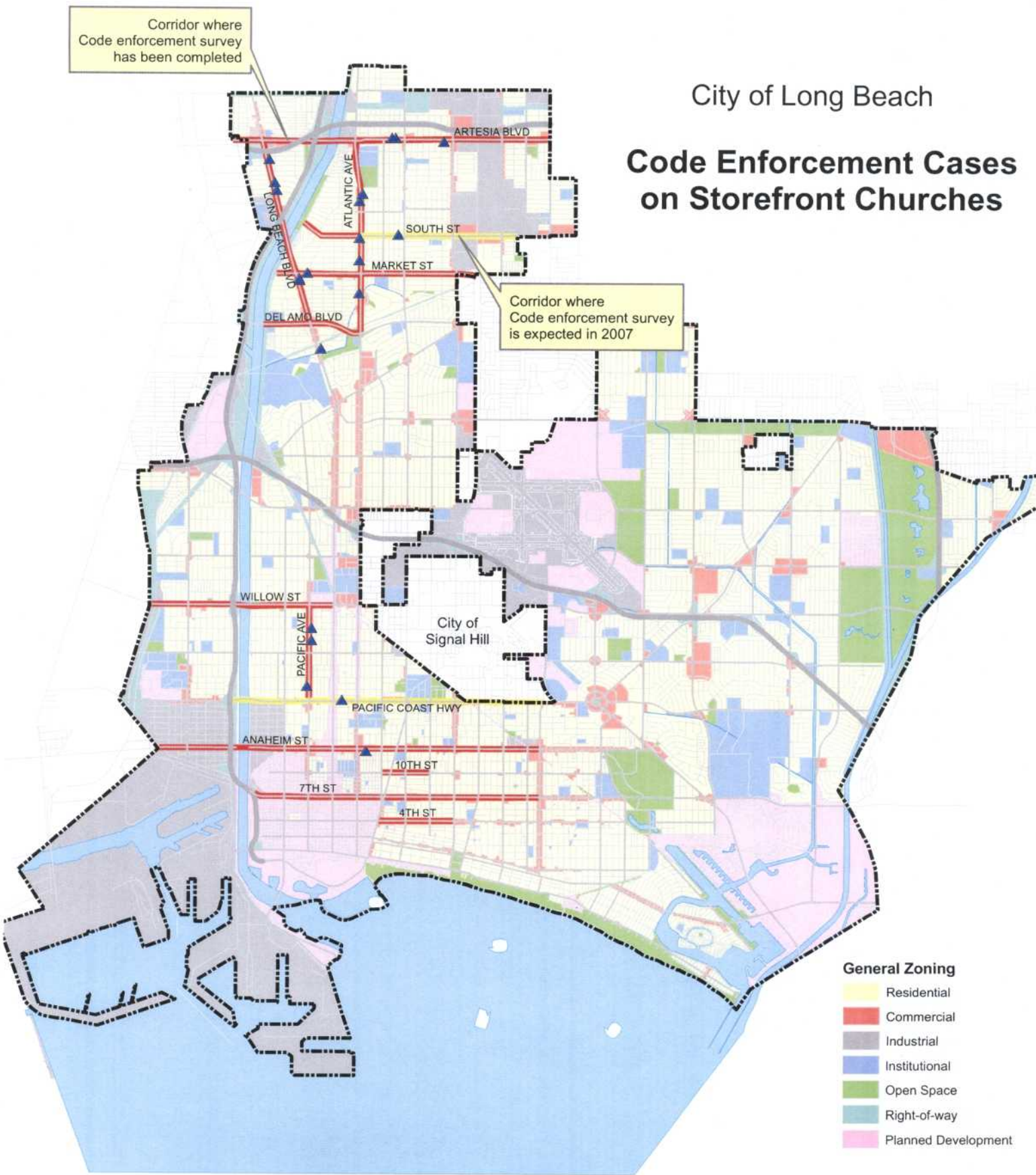


Figure 2





CITY OF LONG BEACH

DEPARTMENT OF PLANNING AND BUILDING

333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-5972 FAX (562) 570-6068

ADVANCE PLANNING

February 1, 2007

CHAIR AND PLANNING COMMISSIONERS

City of Long Beach
California

SUBJECT: Proposed Amendment to the Zoning Regulations regarding the permitting requirements for new churches and related parking requirements.

LOCATION: Citywide

APPLICANT: Suzanne Frick
Director of Planning Building

RECOMMENDATION

Planning Commission recommend that the City Council adopt the amendment to the Zoning Ordinance.

BACKGROUND

In light of recent issues relating to storefront churches, on August 15, 2006, the City Manager requested that the Department of Planning and Building prepare a background report on issues relating to storefront churches. On October 13, 2006, the Department of Planning and Building submitted their findings and recommendations to the City Council. Based on Council communications and City Council action on recent storefront church applications, on December 21, 2007, staff presented to the Planning Commission policy options for regulating these uses. After considering this information, the Planning Commission directed planning staff to draft text changes to the Zoning Ordinance regarding permitting requirements for new churches and related parking requirements.

Current Land Use Regulations

The term "storefront" church is used to describe places of worship that occupy retail or office spaces along commercial corridors. They tend to begin initially with very small congregations, between 15 and 30 parishioners, and operate independently of each other and other mainline denominations. The exact number of storefront churches in Long

Beach is unknown. However, they are generally found on older commercial corridors developed on small lots with little off-street parking. These mature corridors are less desirable to commercial tenants because of the lack of off-street parking and therefore have lower lease rates. In turn, the lower lease rates are attractive to small religious congregations.

For the purposes of land use regulation, storefront churches fall within the definition of a "church" in the Long Beach Municipal Code. The Long Beach Municipal Code defines the use as follows:

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As indicated in Table 1, storefront churches are a permitted use in the Institutional Zone and are permitted subject to the approval of a Conditional Use Permit (CUP) in all the Commercial Zones except for the Commercial Storage Zone. New churches are prohibited in the Industrial and Residential Zones. However, legal nonconforming churches in some residential zones can be expanded subject to approval of a CUP.

The approval of a CUP is a discretionary action by the Planning Commission, appealable to the City Council. This process provides an opportunity for the Planning Commission to ensure that the use, design and location does not adversely impact the surrounding uses. The process includes opportunity for public involvement through notification of surrounding property owners and effected neighborhood associations. The approval process for a CUP is approximately two months and, the permit fee for a CUP is approximately \$3,000.

Storefront churches that convert retail or office spaces to assembly use must often meet stricter zoning and building code standards. The parking standard for public assembly use, which is much higher than a retail use, is a significant obstacle for some churches. A typical retail building would require four (4) parking spaces per 1,000 square feet; whereas, a public assembly use would require 20 parking spaces per 1,000 square feet for the congregation area. In addition, the reuse of a retail space may also involve extensive retrofitting of retail or office space to comply with building and fire codes. For example, required renovations may include additional building exits, installation of fire sprinklers, additional access provisions for persons with disabilities, or installation of additional restroom facilities. The combined requirements for providing adequate parking, applying for a CUP and providing building upgrades makes the establishment of storefront churches potentially expensive, time consuming and difficult.

Neighborhood Issues

Either because of the lack of awareness of the zoning regulations or the inability to comply, many storefront churches operate without a permit. These un-permitted uses pose a number of issues for City staff and residents.

A common concern by residents and business groups about storefront churches, which close during normal business hours, is that they create "dead space" in commercial districts. Moreover, for those areas that are in transition, storefront churches are viewed as a sign of blight by prospective tenants. In addition, un-permitted uses have not been reviewed for compliance with all fire and building codes and therefore could pose a safety hazards to residents and occupants. In short, the Planning permitting process allows for land use and safety issues to be revealed and addressed.

Many storefront churches operate without a permit and only become known to the City as a result of code enforcement activity. Code enforcement identifies these un-permitted uses as a result of a complaint being filed or through enforcement sweeps on selected corridors. When a commercial enterprise applies for a business license, the request is also checked for zoning code conflicts and other regulations. Whereas for churches, a business license is not required and there is not a "trigger" in the process to identify zoning code conflicts before storefront churches are established.

Proactive code enforcement on selected corridors between January 2004 and August 2006 resulted in 40 locations cited for operating a church without a permit. As a result of these citations, 19 storefront churches have either received a CUP or have ceased operation. As indicated on Table 2, there are 21 active cases of storefront churches operating without a permit. All cited storefront churches are located in commercially zoned districts with more than half located within the Community Commercial Automobile-Oriented (CCA) Zoning District.

The majority of the CUP applications to establish storefront churches are the result of code enforcement action. As shown on Table 3, between January 2004 and August 2006, the Planning Commission heard six (6) requests to establish storefront churches on commercial corridors and all six (6) applicants were approved. Two CUP applications were withdrawn because they could not meet the parking requirement and have subsequently relocated to another facility. Three (3) CUP applications are still pending.

Federal Religious Land Use and Institutionalized Persons Act

Under the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), churches and other religious assemblies and organizations, such as home bible studies, now have the protection of specific federal statutes against burdensome, restrictive or discriminatory land use regulations. Congress adopted the Act in response to "massive evidence" that churches, especially new, small or unfamiliar churches, are "frequently"

discriminated against by zoning codes and in the discretionary process of land use regulation.

To address this concern, RLUIPA prohibits zoning and land use laws that “substantially burden” religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where the substantial burden arises from the state or local government’s formal or informal procedures for making individualized assessments of a property’s uses (i.e., land use decisions).

In practice, this means that a city cannot, as a general rule, deny a church the use of any land regardless of its zoning codes, as doing so would place a substantial burden on the church by limiting its “religious expression.” Unless a city can show that denial was both necessary due to some compelling government interest AND the least restrictive means of achieving that interest, then a city would be at risk of violating Federal law.

Code Amendment

Based on the Federal requirements found in RLUIPA, the City is compelled to provide a reasonable approval process for churches wishing to locate in Long Beach or legalize their existing sanctuary. Staff offers the following code changes for consideration:

1. Amend the Commercial Use Table (Table 32-1), as shown in Attachment A, to allow churches in all commercial zones (except Commercial Storage and the Neighborhood Pedestrian – CNP – District) with an Administrative Use Permit (AUP) instead of the current requirement for a Conditional Use Permit. This would allow the Zoning Officer to act as the hearing officer, with that decision being appealable to the Planning Commission. Hence, the time and cost involved in permit processing would be reduced while still providing the authority for reasonable conditions of approval to be added to insure building and fire code compliance and community compatibility.
2. Amend the commercial use table (Table 32-1), as shown in Attachment A, to prohibit of new churches in the CNP district. This action is intended to protect pedestrian oriented commercial corridors from non-contributing land uses. Due to their function and operation, storefront churches function poorly in these types of permit pedestrian districts. In pedestrian districts, the city is trying to foster active ground floor retail that encourages walking. In many cases, churches are unoccupied during normal business hours except for typically Sunday. Public assembly uses, such as private clubs and social halls, are currently prohibited in the CNP districts and the exclusion of religious assembly use is a consistent and reasonable restriction.
3. Amend the Conditional/Administrative Use Section (21.52.213), as shown in Attachment A, to include language allowing the Zoning Administrator to allow greater flexibility distance and deed restriction requirements for off-site parking and allowing

provisions for tandem parking and compact spaces. In recent cases where the Planning Commission approved a CUP for a storefront church, a Standards Variance relating to parking was also granted.

These few adjustments to the zoning code can be made to provide the flexibility to staff to work more effectively with the applicants to ensure community compatibility and Federal regulatory compliance.

PUBLIC HEARING NOTICE

In accordance with the Notice Requirements of the Zoning Ordinance, a legal notice appeared in the Press-Telegram newspaper on January 18, 2007. Notices were also sent posted at City Hall and public libraries.

ENVIRONMENTAL REVIEW

The project has been deemed categorically exempt from further environmental review pursuant to the Guidelines of the California Environmental Quality Act. As a result, Categorical Exemption CE 05-07 was issued.

IT IS RECOMMENDED THAT THE PLANNING COMMISSION

Planning Commission recommend that the City Council adopt the amendment to the Zoning Ordinance.

Respectfully submitted,

SUZANNE FRICK
DIRECTOR OF PLANNING AND BUILDING

By: _____

Ira Brown
Planner

Approved: _____

Greg Carpenter
Planning Manager

Enclosure:

Attachments A: Text Changes
Attachments B: Staff Report – December 21, 2006



Attachment C

CITY OF LONG BEACH

The City Planning Commission

333 W. Ocean Boulevard - Long Beach, CA 90802 - (562) 570-6321 - FAX (526) 570-6068

December 5, 2006

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare ordinance amending zoning regulations regarding expansion of churches in the R-1-N zone with a Conditional Use Permit read the first time and laid over to the next regular meeting of the City Council for final reading (Case No. 0601-20). (Citywide)

DISCUSSION

This is an application by the California Heights United Methodist Church for an amendment to the Municipal Code related to how the zoning regulations deal with the expansion of churches in the single-family residential district. While this amendment is being made by a private applicant to resolve a specific issue, it does have citywide implications.

Throughout the City there are a number of established churches and religious institutions that are located in residential zones. Currently, those facilities located in the R-1-N zoning district are prohibited from expanding. The proposed amendment to the Municipal Code would allow for the expansion of churches or similar religious facilities on existing or abutting sites in the R-1-N zoning district, subject to the approval of a Conditional Use Permit. The Municipal Code currently allows for church expansion with a Conditional Use Permit in the R-2-N, R-2-A, R-3-S, R-3-4, R-3-T, R-4-R, R-4-N, R-4-H, and R-4-U zones. Planning staff estimates that there are approximately 50 existing churches located within the R-1-N zone (see Figure 1). Without this code amendment, the primary alternative for churches located in R-1-N district wishing to expand is to request a Zone Change to the I (Institutional) zone. The Institutional zone allows a range of uses such as colleges or universities, police and fire stations, and hospitals that may not be as compatible or neighborhood-serving as an established church or religious institution.

The applicant's specific proposal calls for demolition of an existing day care center and construction of a new two-story 16,964-sq.ft. dual-use facility with a day care center for 147 children in an R-1-N zone. On September 7, 2006 and October 5, 2006, the Planning Commission conducted public hearings on this matter (Attachment 2). At the September 7, 2006 hearing, three individuals spoke against the project. The Planning Commission continued the item to October 5, 2006 to allow for a community meeting with project neighbors. At the October 5, 2006 hearing, one individual returned to express concern with the project. No letters or telephone calls were received in opposition to the project. After

considering this testimony, Commissioner Winn moved to Certify Mitigated Negative Declaration No. ND 13-06, and to recommend that the City Council amend the Municipal Code to allow for the expansion of churches or similar religious facilities on existing or abutting sites in the R-1-N zone with a Conditional Use Permit, and to approve the Site Plan Review, Standards Variances (front yard setback, parking, and fence height in the front yard setback), Lot Merger, and Conditional Use Permits, subject to conditions as amended. Commissioner Gentile seconded the motion, which passed 6-0 (Commissioner Rouse was absent). No appeals were filed.

In taking their action, the Planning Commission found that amending the zoning regulations was preferable to rezoning the property to the Institutional zone, because the wider range of uses allowed in the Institutional zone are not as compatible with the R-1-N zoning district. The Planning Commission also found that the recommended text amendment to the Municipal Code is consistent with the Land Use Element of the General Plan to allow for neighborhood-serving uses in residential land use districts, and that the amendment would help support existing neighborhood institutions.

Assistant City Attorney Michael J. Mais reviewed this report on November 21, 2006.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, a Mitigated Negative Declaration (ND-16-06) has been prepared for this project, and certified by the Planning Commission at their October 5, 2006 meeting (Attachment 3).

TIMING CONSIDERATIONS

The Long Beach Municipal Code requires that the recommendation of the Planning Commission's decision regarding an amendment to the zoning regulations be transmitted to the City Council within sixty (60) days (by December 4, 2006) of the Planning Commission's decision. Upon receipt of the recommendation, the City Clerk shall set a time for this matter to be considered by the City Council within the time frame. Due to the limited number of changes allowed to the zoning regulations per calendar year, and City Council meeting schedules, the requested date exceeds the sixty (60) day period by one day, but is essentially consistent with this requirement.

A 14-day public notice of hearing and a published newspaper notice are required.

FISCAL IMPACT

None.

HONORABLE MAYOR AND CITY COUNCIL

December 5, 2006

Page 3

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

LESLIE GENTILE, CHAIR
CITY PLANNING COMMISSION

BY:



SUZANNE FRICK
DIRECTOR OF PLANNING AND BUILDING

Attachments:

1. Map of Churches in R-1-N District
2. Planning Commission staff report and minutes of September 7, 2006 and October 5, 2006
3. Mitigated Negative Declaration 16-06
Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING CHAPTER 21.33 BY AMENDING TABLE 32-1; AND AMENDING SECTION 21.52.213 BY ADDING SUBSECTION E, ALL RELATING TO ZONING OF CHURCHES

WHEREAS, Section 65860 of the California Government Code requires that a zoning ordinance be consistent with the City's General Plan; and

WHEREAS, the California Government Code also provides that in order for the ordinance to be consistent with the General Plan, the various land uses authorized by the ordinance should be compatible with the objectives, policies, general land uses, and programs specified in the General Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing at a meeting on February 1, 2007, for which a public notice was published in accordance with applicable state and local law, and recommended the Long Beach City Council amend certain sections of the Long Beach Municipal Code to establish regulations related to the zoning of churches; and

WHEREAS, the Long Beach City Council held a duly noticed public hearing on _____, 2007, for which a public notice was published in accordance with applicable state and local law; and

WHEREAS, from the facts and testimony presented at the noticed public hearing held on _____, 2007, the Long Beach City Council found and determined as follows:

1. That the proposed amendments to the Long Beach Municipal Code are consistent with the General Plan; and

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City Attorney of Long Beach
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2. That the proposed amendments to the Long Beach Municipal Code will implement the goals, objectives, and policies of the General Plan; and

3. That the proposed amendments are consistent with the purposes of the Zoning Ordinance; and

4. That the proposed amendments to the Long Beach Municipal Code are reasonably related to the public interest, and that public necessity, convenience and general welfare require the proposed amendments.

NOW, THEREFORE, the City Council of the City of Long Beach ordains as follows:

Section 1. Section 21.33 of the Long Beach Municipal Code is amended by amending Table 32-1 (Uses in Institutional Districts)

Table 32-1
 Uses in All Other Commercial Zoning Districts

Use	Neighborhood			Community				Regional	Other	
	CNP	CNA	CNR	CCA	CCP	CCR	CCN	CHW	CS	
Church or temple	N	AP	AP	AP	AP	AP	AP	AP	N	Also see Section 21.52.213

Section 2. Section 21.52.213 is amended by adding subsection E to read as follows:

E. Parking shall be provided in accordance with Chapter 21.41.

However, in recognition of the provisions of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), the Zoning Administrator shall provide reasonable relief from the parking requirements of Chapter 21.41 provided the Zoning Administrator finds that strict compliance with Chapter 21.41 would impose a substantial burden upon the religious exercise of a person or assembly, and that said

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1 relief is not detrimental to the health, safety or welfare of surrounding
2 residential or other uses. Relief from parking requirements may include
3 tandem or joint use parking where appropriate, or relief from the distance
4 and guaranteed permanence requirements as set forth in Section
5 21.41.222 A and B.

6 Sec. 3. The City Clerk shall certify to the passage of this ordinance by the
7 City Council and cause it to be posted in three conspicuous places in the City of Long
8 Beach, and it shall take effect on the thirty-first day after it is approved by the Mayor.

9 I hereby certify that the foregoing ordinance was adopted by the City Council of
10 the City of Long Beach at its meeting of _____, 2007, by the
11 following vote:

12 Ayes: Councilmembers: _____

13 _____

14 _____

15 _____

16 Noes: Councilmembers: _____

17 _____

18 Absent: Councilmembers: _____

19 _____

20 _____

21 _____
City Clerk

24 Approved: _____

Mayor

25
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27 MJM:kjm 3/1/07; 3/13/07 #07-00879
28 L:\APPS\CtyLaw32\WPDOCS\D027\P005\00100703.WPD

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AUTHORIZING THE DIRECTOR OF PLANNING AND BUILDING TO SUBMIT AMENDMENTS TO THE LONG BEACH ZONING REGULATIONS TO THE CALIFORNIA COASTAL COMMISSION FOR APPROVAL

The City Council of the City of Long Beach resolves as follows:

WHEREAS, on December 12, 2006, and _____, 2007, the City Council of the City of Long Beach amended certain provisions of the Long Beach Zoning Regulations of the City of Long Beach; and

WHEREAS, it is the desire of the City Council to submit the above referenced zoning regulation amendments to the California Coastal Commission for its review as implementing ordinances of the Long Beach Local Coastal Program (LCP); and

WHEREAS, the Planning Commission and City Council gave full consideration to all facts and the proposals respecting the amendments to the zoning regulations at a properly noticed and advertised public hearing; and

WHEREAS, the City Council approved the proposed changes to the LCP by adopting the amendments to the zoning regulations. The proposed zoning regulation amendments are to be carried out in a manner fully consistent with the Coastal Act and become effective in the Coastal Zone immediately upon Coastal Commission certification; and

WHEREAS, environmental documentation has been prepared, certified, received and considered as required by law, and the City Council hereby finds that the proposed amendments will not adversely affect the character, livability or appropriate

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1 development of the surrounding properties and that the amendments are consistent
2 with the goals, objectives and provisions of the general plan;

3 NOW, THEREFORE, the City Council of the City of Long Beach resolves
4 as follows:

5 Section 1. The amendments to the Long Beach Zoning Regulations of
6 the City of Long Beach adopted on December 12, 2006, by Ordinance No.
7 ORD-06-0058, and on _____, 2007, by Ordinance No. ORD-06-_____,
8 copies of which are attached to and incorporated in this resolution as Exhibits "A" and
9 "B" and are hereby submitted to the California Coastal Commission for its earliest
10 review as to those parts of the ordinances that directly affect land use matters in that
11 portion of the California Coastal Zone within the City of Long Beach.

12 Sec. 2. The Director of Planning and Building of the City of Long Beach is
13 hereby authorized to and shall submit a certified copy of this resolution, together with
14 appropriate supporting materials, to the California Coastal Commission with a request
15 for its earliest action, as an amendment to the Local Coastal program that will take
16 effect automatically upon Commission approval pursuant to the Public Resources Code
17 or as an amendment that will require formal City Council adoption after Coastal
18 Commission approval.

19 Sec. 3. This resolution shall take effect immediately upon its adoption by
20 the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I certify that this resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 2007, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Robert E. Shannon
City Attorney of Long Beach
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