

Resolution 2007-042



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

November 13, 2008

E-Mailed

Mrs. Amy Kimball-Murley, AICP
akimball@keywestcity.com
City of Key West Planning Director
P.O. Box 1409
Key West, Florida 33041

Re: Resolution # 2008-014 606 Grinnell Street
07-042 512 Eaton Street

Dear Mrs. Kimball-Murley:

The Department of Community Affairs Area of Critical State Concern Program has received your request for a letter stating whether we will appeal the above resolution. The Department will not appeal this resolution pursuant to Section 380.07, Florida Statutes.

This letter is not intended to constitute, and shall not be construed as constituting, a verification of compliance with the Comprehensive Plan and Land Development Regulations, and shall not be relied upon as a precedent or a waiver of rights regarding any other development order.

Sincerely,

Rebecca Jetton, Administrator
Florida Keys Area of Critical State Concern

RJ/kj

2655 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32309-2100
850-488-8466 (p) • 850-921-0781 (f) • Website: www.dca.state.fl.us

• COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) •
• HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) •

**PLANNING BOARD RESOLUTION
No. 2007-042**

**A RESOLUTION OF THE CITY OF KEY WEST
PLANNING BOARD PURSUANT TO SECTION 122-63,
LAND DEVELOPMENT REGULATIONS, OF THE CODE
OF ORDINANCES OF THE CITY OF KEY WEST,
APPROVING A PROPOSAL FOR A CONDITIONAL USE
ON THE PARCEL AT 512 EATON STREET, LEGALLY
DESCRIBED AS, RE# 00006500-000000; PROVIDING FOR
AN EFFECTIVE DATE.**

WHEREAS, an Application for a Conditional Use approval was filed on 5 September 2007, by Trepanier & Associates, Inc., for Lynn H. Kephardt, owner, to allow conversion of a former church/former theater into a restaurant with stage/screen entertainment in 4,690 square feet of consumption, stage, and accessory bar/seated waiting area, located in the HNC-1 (Historic Neighborhood Commercial district-Truman/Simonton) zoning district; and

WHEREAS, on October 24, 2007, an additional plan was filed showing proposed utilization of a total of 3,075 square feet of consumption area—2,685 s.f. on the first floor, and 390 s.f. on a second floor interior balcony of the existing building interior; and

WHEREAS, sit down restaurants are a Conditional Uses in the HNC-1 zoning district; and

WHEREAS, the applicant's proposal was submitted on 5 September 2007; and

WHEREAS, plans received 05 September 2007 were considered at the 13 September 2007 Development Review Committee meeting; and

WHEREAS, after public notice, the application for a Conditional Use approval, including supplementary information filed 24 October 2007, was considered by the Key West Planning Board at its Regular Meeting of 20 December 2007; and

WHEREAS, at the 20 December 2007 meeting, Gail Kenson, AICP, Planning Director, read into the record that for this project 48 notices were sent and received 10 responses; 4 Objections, 6 Do Not Object and 6 comments

WHEREAS, at that meeting staff presented the report, dated 20 December 2007; and

WHEREAS, the Board heard staff recommend conditional approval; and

WHEREAS, a motion was made at the 20 December 2007 meeting to approve the application based on the recommendation by the Planning Department. The motion to approve the application 4-0 by roll call vote;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

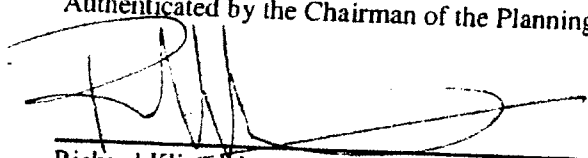
Section 1. That the Planning Board **APPROVES** the Application for Conditional Use for the parcel at 512 Eaton Street, (RE#00006500-000000) with the following conditions:

1. A grease trap shall be approved, installed, and inspected by the city.
2. Placement of solid waste containers out-of-doors will be timed closely and quietly for regular commercial pickup.
3. Applicant shall install sound attenuation to contain sound from entertainment activities within the building, particularly amplified sound from live performances;
4. Applicant will limit exterior lighting to existing approved marquee fixtures;
5. Hours of operation will be no later than 12:00 am, midnight Sunday through Thursday and regular hours of operation for the City of Key West on Friday and Saturday.

Section 2. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Chairman of the Planning Board and the Planning Director.

Passed at a meeting held this 20th day of December 2007.

Authenticated by the Chairman of the Planning Board and the Planning Director.

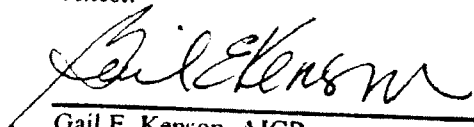


Richard Klitenick, Chairman
Key West Planning Board

12/31/2007

Date

Attest:

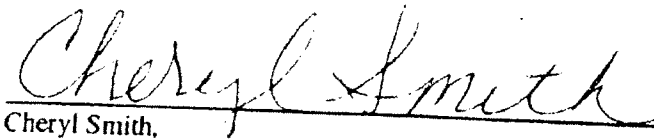


Gail E. Kenson, AICP
Planning Director

31 Dec 07

Date

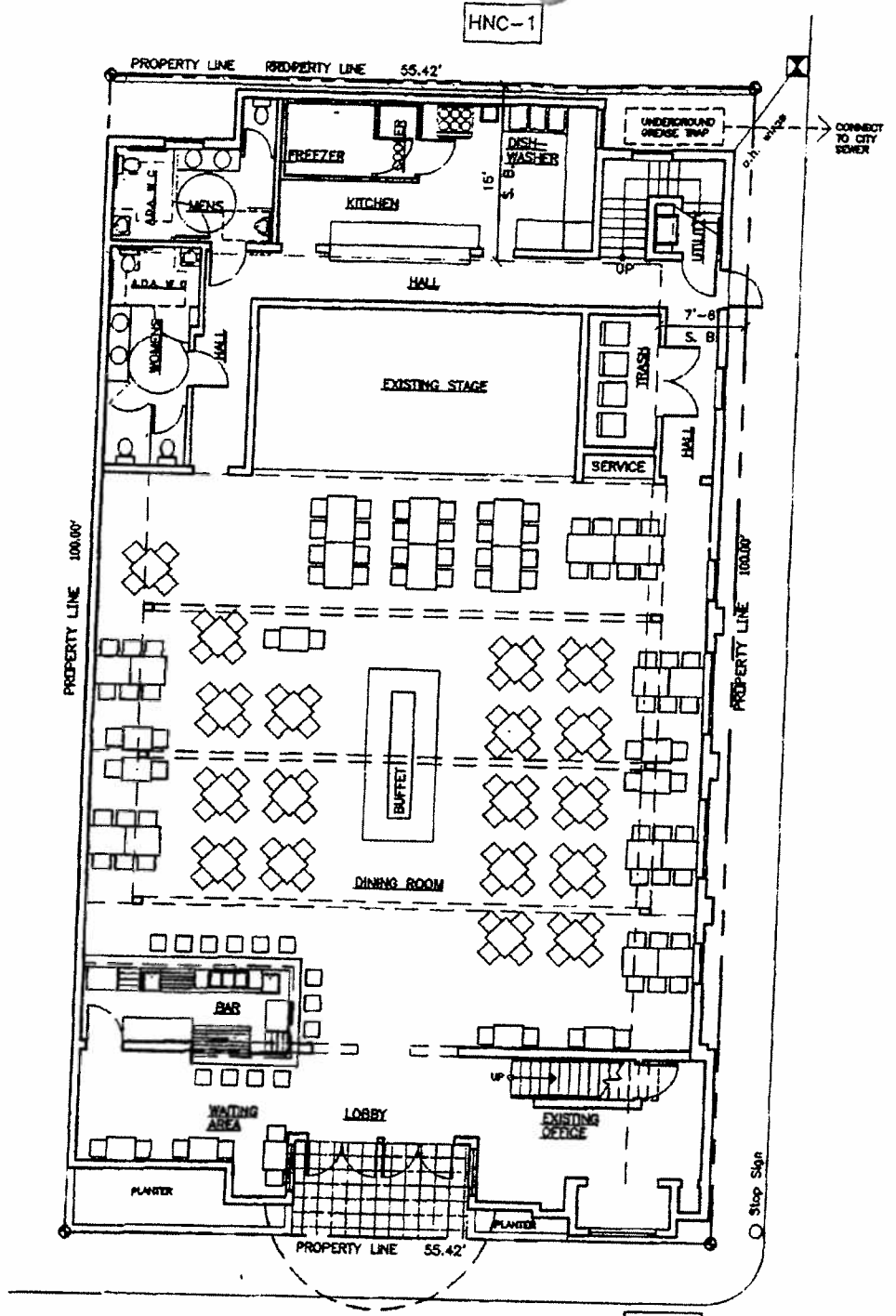
Filed with the Clerk



Cheryl Smith,
City Clerk

12-31-07

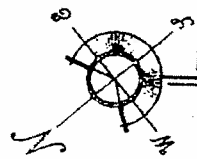
Date



HNC-1

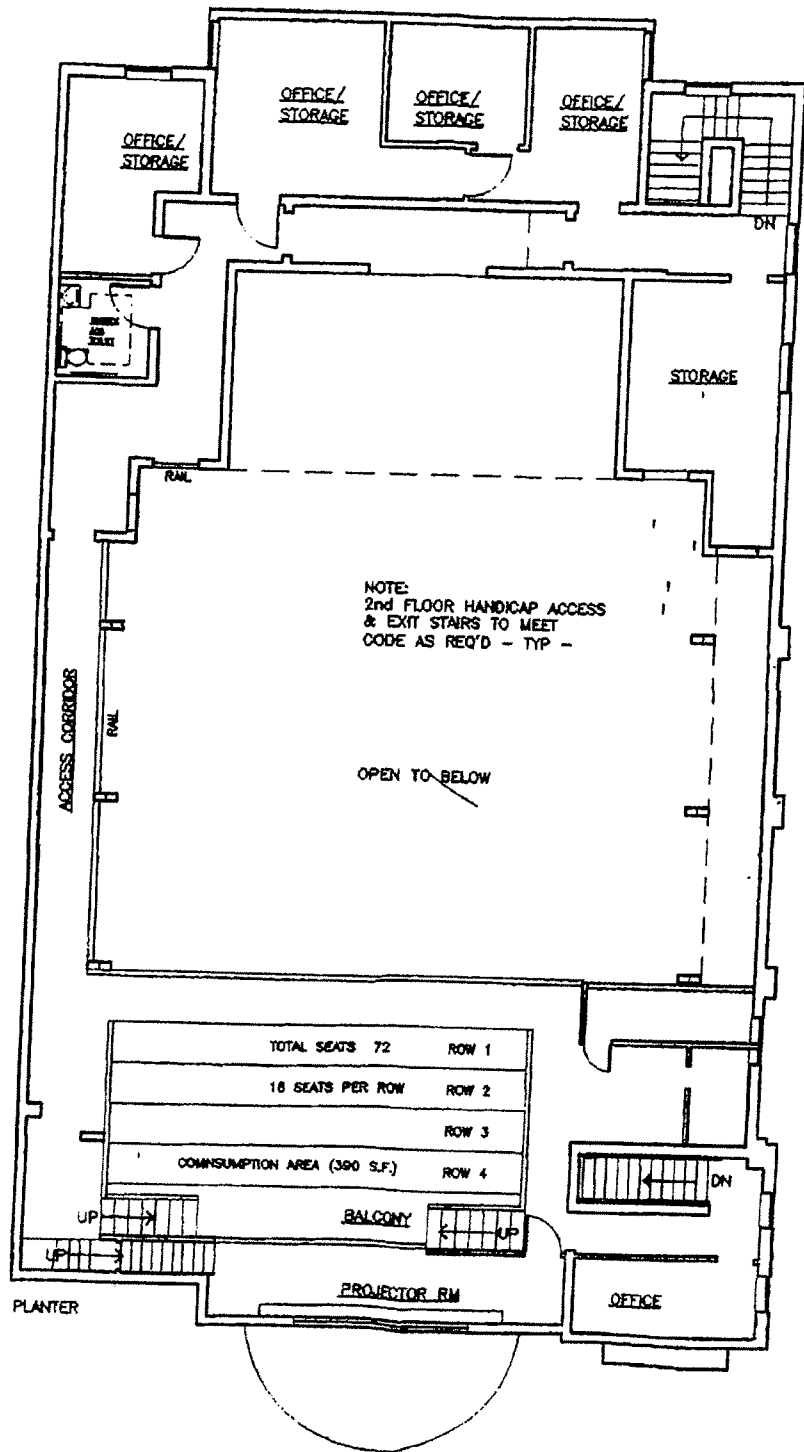
HNC-1

EATON STREET (30.00' R/W)



PROPOSED FIRST FLOOR PLAN

SCALE 1/8"=1'-0"



PROPOSED SECOND FLOOR PLAN



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board members
From: Wendy Tucker, Development Review Administrator
Through: Gail Kenson, AICP, Planning Director

Meeting Date: 20 December 2007

Agenda Item: **A Conditional Use Application for 512 Eaton Street (RE# 00006500-000000).** A conditional use application to operate a restaurant/theater in the existing building.

Request: To convert a former church/former theater into a restaurant with stage/screen entertainment in 4,690 square feet of consumption, stage, and accessory bar/ seated waiting area.

Applicant: Trepanier & Associates, Inc.

Property Owner: Lynn H. Kephardt

Location: 512 Eaton Street, RE# 00006500-000000.

Zoning: Historic Neighborhood Commercial District-Truman/Simonton (HNC-1)

Uses permitted in HNC-1

- (1) Single-family and two-family residential dwellings.
- (2) Multiple-family residential dwellings.
- (3) Group homes with less than or equal to six residents as provided in section 122-1246.
- (4) Places of worship.
- (5) Business and professional offices.
- (6) Commercial retail low and medium intensity less than or equal to 2,500 square feet.
- (7) Hotels, motels and transient lodging.
- (8) Medical services.
- (9) Parking lots and facilities.
- (10) Veterinary medical services, without outside kennels.

Conditional uses allowed in HNC-1

- (1) Group homes with seven to 14 residents as provided in section 122-1246.
- (2) Community centers, clubs and lodges
- (3) Cultural and civic activities.
- (4) Educational institutions and day care.
- (5) Nursing homes, rest homes and convalescent homes.
- (6) Parks and recreation, active and passive.
- (7) Protective services.

- (8) Public and private utilities.
- (9) Commercial retail low and medium intensity greater than 2,500 square feet.
- (10) Commercial retail high intensity.
- (11) Funeral homes.
- (12) Light industrial.
- (13) Restaurants, excluding drive-through.
- (14) Small recreational power-driven equipment rentals.

Existing Conditions

The existing building is currently vacant. There were many previous uses, including a church and a theater. These uses ceased several years ago. Since that time the property owner has received various development approvals and has maintained a city business license for a theater, even though this non-conforming use is no longer in existence and has expired.

Planning board, city commission and board of adjustment resolutions for previous actions are attached to this report along with active city and county business licenses.

Proposed Development

The applicant is proposing to operate a dinner theater/restaurant in the existing building. The floor plans submitted as part of the application show a proposal for 148 restaurant seats, 19 bar seats on the first floor and 72 seats in the balcony for a total of 237 seats. The total consumption area is 3075 square feet.

Previous City Actions

- Easement - Approved by City Commission Resolution 05-204, June 7, 2005.
- Variances – Approved by Board of Adjustment Resolution 04-361, November 4, 2005.
- Minor Development Plan – Approved by City Commission Resolution 05-226, June 21, 2005
- Transfer of Transient Units – Approved by Planning Board Resolution 2005-033, November 17, 2005
- Transfer of Transient Unit – Approved by Planning Board Resolution 2005-034, November 17, 2005

(All resolutions are attached to this report)

Process

Development Review Committee Meeting: 13 September 2007

- The Fire Marshal stated a field verification will be necessary, and fire protection plans are to be submitted. A fire alarm is to be provided, and sprinkling is a possibility. The Fire Department will have to do measurements for occupancy limits, and details of cooking facilities must also be provided.
- Keys Energy Services does not object to the use, but requires full plans for project review.
- Florida Keys Aqueduct Authority also requires plans.
- Also at the DRC meeting, comments and suggestions included parking concerns and directing customer drivers to what is available in the area, compliance issues including the stage and accessibility.

Evaluation for Compliance with the Land Development Regulations (LDRs)

The proposed restaurant use is considered a conditional use under the City of Key West Land Development Regulations. The criteria for evaluating a conditional use are listed in Section 122-62 of the Code. Pursuant to the Code, the Planning Board shall give due consideration to the evaluation criteria addressed within this report when rendering a decision to grant approval, conditional approval or deny the requested permit.

1. Scale and intensity of the proposed conditional use as measured by the following:

Traffic generation

The applicant has submitted trip generation data from the *ITE Trip Generation, 7th Edition* to show that the proposed restaurant and dinner theater use will significantly reduce trip generation from the prior uses of the property. The previous uses have not been in operation as the building has been vacant for several years. The *ITE Trip Generation, 7th Edition* states a quality restaurant will generate approximately 90 average daily trips (ADT) per 1000 square feet of floor area or approximately 277 ADT for the total consumption area of the proposed uses. The ITE manual states the ADT for a theater use is approximately 86 trips per day. The two proposed uses generate similar amounts of traffic.

Proposed employment

The applicant did not provide any employment information. Staff is unable to determine the number of employees required to operate the proposed business.

Proposed number and type of service vehicles

The applicant states there will be approximately 3 to 4 service vehicles per week on Bahama Street. The location is in the City's busy Historic District, one block off Duval Street. Because the existing building covers most of the property, there is no room for off-street parking or an off-street loading zone. Service deliveries will be on-street. The applicant has stated the deliveries will be on Bahama Street, which is 30 feet wide. Traffic may be impeded due to the narrow right-of-way on Bahama Street.

Off-street parking needs

The site is unable to accommodate off-street parking or off-street loading spaces. However, the site is in the Historic Pedestrian Oriented Parking Waiver District, and no change in commercial floor area is proposed that would require provision of additional parking under Section 108-573 of the LDRs.

As mitigation for the absence of on-site parking, the applicant at the DRC meeting agreed to establish website maps to direct patrons to area parking lots and garages, and describe available transportation alternatives.

2. On- or off-site improvement needs generated by the proposed conditional use and not identified on the list in subsection (b)(1) of this section including the following:

Utilities

The applicant will install a grease trap as required by the city prior to connecting to the existing sewer on Bahama Street. Solid waste handling on-site would be accomplished with all-interior, air-conditioned trash handling. The floor plan shows trash containers stored inside the building. The intended regular outdoor placement for pickup should be indicated. Also possible hours could be established for outdoor trash handling to coincide with commercial pickup and minimize impact on neighbors. Noise containment should also be demonstrated. Hours of operation may be restricted in respect for neighboring non-transient residential and transient guesthouse uses, and in respect for the neighboring church/cemetery uses.

Public facilities, especially any improvements required to ensure compliance with concurrency management as provided in chapter 94

The existing and proposed uses are currently serviced by existing infrastructure. No additional infrastructure is required to meet concurrency requirements.

Roadway or signalization improvements or other similar improvements

No other improvements to roadways, signalization or other infrastructure are required.

Accessory structures or facilities

N/A

Other unique facilities/structures proposed as part of site improvements

N/A

3. On-site amenities proposed to enhance site and planned improvements. Amenities including mitigative techniques such as:

Open space

Based upon the applicant materials submitted, there is very little existing open space. The applicant has stated that the restaurant will utilize only the existing structure, but would work with the City Landscape staff to determine appropriate plantings for the available space.

Setbacks from adjacent properties

This is an existing structure. There are no changes in the existing setbacks.

Screening and buffers

There is little area available for buffer/screen plantings, but the applicant will work with City landscape staff on appropriate plantings at the front of the structure.

Landscaped berms proposed to mitigate against adverse impacts to adjacent sites

N/A

Evaluation for Compliance with the Land Development Regulations (LDRs)

The proposed changes are considered a Conditional Use under the City of Key West Land Development Regulations. The criteria for evaluating a conditional use are listed in Section 122-61 of the Code. The purpose of the related provisions are to "ensure that a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity."

Pursuant to the Code, the Planning Board shall give due consideration to the evaluation criteria addressed within this report when rendering a decision to grant approval, conditional approval or deny the request. Applications for a Conditional Use shall clearly demonstrate the following:

1. Land use compatibility

The applicant has stated the proposed restaurant/dinner theater is compatible with the surrounding land uses. The Section 122-776 of the LDRs state, in part, the intent of the HNC zoning districts is "the HNC districts shall accommodate both residential and neighborhood commercial uses typically located along major thoroughfares which lead into or are adjacent to the central core commercial area of the city. Retail sales and services, excluding automotive sales and services as well as drive-through restaurants, theaters or other drive-through facilities which potentially generate similar traffic flow problems". The proposed restaurant use meets the intent of the HNC zoning district. While the theater is not a permitted use and the former theater has lost its non-conforming status, the property owner has maintained a license for a theater use.

In order to maintain land use compatibility and a compliance with the intent of the HNC zoning districts, a condition of approval is that the theater use shall be restricted to a dinner theater and if the dinner theater ceases to operate for more than twenty-four months, the theater use shall lose its non-conforming status in compliance with Section 122-30.

Therefore, it is staff's opinion that the request is in compliance with the requirements of these sections provided the conditions of approval are met.

2. Sufficient site size, adequate site specifications, and infrastructure to accommodate the proposed use

The site is a fully developed site that is located in the Historic Pedestrian Oriented Parking Waiver District, and no change in commercial floor area is proposed that would require provision of additional parking under Section 108-573 of the LDRs.

Therefore, it is staff's opinion that the request is in compliance with the requirements of these sections.

3. Proper use of mitigative techniques

As mitigation for the absence of on-site parking, the applicant agrees to establish website maps to direct patrons to area parking lots and garages, and describe available transportation alternatives. Additionally, the applicant will work with City landscape staff on appropriate plantings at the front of the structure.

Therefore, it is staff's opinion that the request is in compliance with the requirements of these sections.

4. Hazardous waste

The existing and proposed uses do not and will not generate hazardous waste materials.

Therefore, it is staff's opinion that the request is in compliance with the requirements of these sections.

5. Compliance with applicable laws

The applicant has agreed to comply with requirements and obtain all required building permits and other permits and licenses required by federal, state, county, and city agencies.

Therefore, it is staff's opinion that the request would be in compliance with the requirements of these sections if the conditions met.

6. Additional criteria applicable to specific land uses

a. *Land uses within a conservation area*

N/A

b. *Residential*

N/A

c. *Commercial or mixed use*

The property is located in the HNC-1 zoning district. Section 122-748(13) conditionally allows small recreational power-driven equipment rentals.

d. *Development within or adjacent to historic district*

The scope of the request does not require HARC approval.

e. *Public facilities or institutional*

N/A

f. *Commercial structures, uses and related activities within tidal waters*

N/A

g. *Adult entertainment establishments.*

N/A

RECOMMENDATION

This is an application for a conditional use. The Planning Department recommends the Planning Board **approve** the conditional use application with the following conditions:

1. ~~The theater use shall be restricted to a dinner theater and if the dinner theater ceases to operate for more than twenty-four months, the theater use shall lose its non-conforming status in compliance with Section 122-30 regardless of the status of the theater business license associated with the property.~~ *Should the theater cease*
2. A grease trap shall be approved, installed, and inspected by the city.
3. Placement of solid waste containers out-of-doors will be timed closely and quietly for regular commercial pickup.