



CITY OF CORONADO

CITY COUNCIL STAFF REPORT

100-104 Orange Avenue (PC 2025-15): Appeal of a Planning and Design Commission Decision to Take No Action on a Director’s Interpretation that an Existing Restaurant, Nicky Rottens, must Continue to Provide Off-street Parking Spaces as Stipulated by their 2012 Joint Use Parking Plan because the Existing Restaurant is not a “Residential, Commercial, or Other Development Project” as that Term is Used in Government Code Section 65863.2

RECOMMENDATION

Deny the appeal and uphold the Director’s Interpretation.

BACKGROUND

The City Council approved a Joint Use Parking Plan on January 17, 2012 that permitted Nicky Rottens to expand their dining area by 500 square-feet and meet their associated parking requirements by providing five off-site spaces behind Coronado Hardware Glass and Paint. As a condition of approval, Nicky Rottens and Coronado Hardware Glass and Paint executed and recorded a covenant on May 12, 2012 that encumbers both properties and legally binds the owners and their successors to continue to provide the parking spaces so long as Nicky Rottens maintains their use of the 500 square-foot addition.

On February 25, 2025, an owner of Nicky Rottens (Appellant) emailed the Director of Community Development (Director) requesting the City recognize that Nicky Rottens was exempt from local minimum parking requirements pursuant to Government Code section 65863 (enacted by Assembly Bill 2097 of 2022 and more commonly known as “AB 2097”) due to “the restaurant’s proximity to public transit.” On March 6, 2025, the Director responded that AB 2097 applies only to new development and therefore does not relieve Nicky Rottens from complying with their permit conditions to provide off-street parking, which were adopted in 2012, long before AB 2097 was enacted.

The Appellant sent several additional emails over the ensuing months to express their disagreement with staff’s assessment. On September 4, 2025, the Appellant emailed the Director to request an interpretation under Orange Avenue Corridor Specific Plan (Specific Plan) Section III.A on whether AB 2097 exempts Nicky Rottens from complying with their 2012 parking conditions. The Director responded on November 26, 2025 and restated staff’s position first shared on March 6, 2025 that AB 2097 only applies to new development and that there was therefore nothing to interpret with respect to the Specific Plan.

The Appellant replied and indicated that they considered the Director’s November 26 email (Attachment 1) to be a Specific Plan interpretation and stated their intent to appeal the alleged interpretation to the Planning and Design Commission (PDC). The Appellant submitted their appeal on December 4, 2025 (Attachment 2).

The PDC considered the appeal on January 13, 2026. The final PDC vote was 2-1-1-1, with two members voting to deny the appeal and uphold the Director’s interpretation, one member recused, one member abstaining, and one member absent. Because there were not three votes, the PDC took no action on the matter. The appellant filed an appeal of the PDC action on January 21, 2026 (Attachment 3).

ANALYSIS

Pursuant to the Appellant’s request, staff has received and processed their appeal of a Director’s interpretation issued under Section III. A of the Orange Avenue Corridor Specific Plan. In addition to the

Director's November 26, 2025 email, the Appellant also requests the City Council consider several other issues that were not addressed in the Director's email from November 26, 2025, which is the subject of the Appeal.

Scope of Appeal

The sole basis of this appeal is the Director's November 26, 2025 email. Any assertions made by the Appellant regarding AB 2097 or other factors beyond the Director's November 26, 2025 email are outside the scope of this Appeal. The full subject email contains the following three statements:

1. "As noted in our March 6, 2025 email (attached), AB 2097 only applies to new development and therefore would not relieve you from complying with your existing permit conditions to provide off-street parking. Therefore, there is nothing to 'interpret' with respect to the Orange Avenue Corridor Specific Plan provisions applicable to your property."
2. "Moreover, Section III.A.4 of the Orange Avenue Corridor Specific Plan (OACSP) obligates the Director to '...interpret the provisions of this Specific Plan. All such interpretations shall be in written form and shall be permanently maintained. Any person may request that such interpretation be reviewed by the Planning Commission.' (emphasis added)"
3. "The OACSP does not contain any provisions or references to AB 2097 or its applicability, and therefore, section III.A.4 does not require the City to issue interpretations of laws that exist outside of the OACSP. Regardless, as noted above, the question is moot because there is no proposed development project that could trigger AB 2097, to the extent that law could be applicable."

Of these three statements, only the first is a substantive matter that may be considered. The second statement is a verbatim citation of the Specific Plan and is therefore not an interpretation subject to appeal. The third statement regarding the scope of a Director's interpretation under the OACSP need not be considered. The Appellant has asserted that AB 2097 preempts OACSP parking standards and therefore the Director's interpretation of the OACSP must consider AB 2097. Without reaching the issue of whether AB 2097 does or does not preempt parking standards in the OACSP in general, which was not part of the Director's November 26, 2025 email and thus is not part of this Appeal, staff has accepted Appellant's assumption that the Director's November 26, 2025 email constitutes an interpretation of the OACSP and thus may be the subject of an Appeal. Therefore, there is no issue relative to the third statement for the Council to consider.

Note that the Appellant also requests that the City Council consider statements made in prior emails dated March 6, 2025, April 3, 2025, and April 18, 2025 (Attachment 4). These emails and the statements therein do not constitute valid grounds for an appeal because they predate the Appellant's September 4, 2025 request for a Director's interpretation and were not appealed within the 10-calendar day limit provided by Municipal Code section 1.12.020.

Consequently, the scope of this appeal is limited to the Director's November 26, 2025 email and specifically whether or not the Director erred by indicating that AB 2097 applies only to new development projects.

Appellant's Basis for Appeal

The Appellant contends that AB 2097 prohibits the City from enforcing minimum parking requirements on Nicky Rottens, including the 2012 Joint Use Parking Plan and associated covenant. To support their position, the Appellant cites Government Code Sections 65863.2(a) and 65863.2(h) and a Technical Advisory issued by the California Department of Housing and Community Development (HCD) on the Implementation of AB 2097, Prohibition on Minimum Parking Requirements.

Government Code Section 65863.2

The Appellant asserts that the Director erred by interpreting that AB 2097, as codified by Government Code Section 65863.2, applies only to new development. Government Code Section 65863.2(a) states:

*A public agency shall not impose or enforce any minimum automobile parking requirement on a residential, commercial, or other **development project** if the project is located within one-half mile of public transit. (emphasis added)*

Staff Response: The term “development project” is routinely used in state and local codes and is commonly understood to mean prospective actions to build new structures and/or operate new land uses. Furthermore, California Government Code Section 65928 defines “development project” as follows:

a) *“Development project” means any project undertaken for the purpose of development. “Development project” includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate.*

(b) (1) (A) Except as otherwise provided in subparagraph (B), “development project” does not include any ministerial projects proposed to be carried out or approved by public agencies.

(B) Notwithstanding subparagraph (A), “development project” includes a housing development project, as that term is defined in paragraph (3) of subdivision (b) of Section 65905.5, that requires an entitlement from a local agency, regardless of whether the process for permitting that entitlement is discretionary or ministerial.

(2) “Development project” does not include a post entitlement phase permit, as that term is defined in Section 65913.3.

The Appellant has not proposed any new construction or changes in use that could be considered a “development project” as defined by state law. If the legislature intended to extinguish all existing parking conditions near qualifying public transit, they could have included clear language in the statute to indicate that the law applied to both existing buildings and proposed development projects. Staff therefore maintains its position that the statute only applies to qualifying new and prospective development projects and/or changes in use.

California Department of Housing and Community Development Technical Advisory

The Appellant further asserts that questions 6 and 8 of the Frequently Asked Questions section the HCD Technical Advisory supports their position. Questions 6 and 8 and their corresponding answers are as follows:

6. *Does AB 2097 only apply to new “ground-up” development projects?*

*No. In addition to new construction, AB 2097 also applies to **changes of use** in existing buildings or structures, including the creation or expansion of qualifying uses. (emphasis added)*

8. *Can AB 2097 be used to eliminate an existing parking agreement?*

Yes, with the exception of contractual commercial parking agreements with a public agency that were executed before January 1, 2023.

Staff Response: Neither of HCD’s responses in their FAQ section support the Appellant’s position. For question 6, HCD indicates that AB 2097 can apply to a change of use in addition to a “ground-up” development. Nicky Rottens, however, has proposed neither new development nor a change in use. There is nothing in the statutory language or in HCD’s Technical Advisory that suggests AB 2097 applies to pre-existing buildings or uses that are not part of a development project.

In their response to question 8, HCD refers to Government Code Section 65863.2(h) (attachment 4) which excludes certain commercial parking agreements from the provisions of section 65863.2(a). As previously described, section 65863.2(a) only applies to “development projects” or qualifying changes in use and therefore does not apply to Nicky Rottens. Furthermore, the HCD guidance specifically notes that the provisions of 65863.2(h) do not apply to commercial parking agreements executed prior to January 1, 2023. Nicky Rottens’ parking conditions were effectuated in 2012.

FISCAL IMPACT

None.

ALTERNATIVE

The City Council could grant the appeal and overturn the Director’s Interpretation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

This activity is not a project as defined by CEQA and is therefore exempt from environmental review.

PUBLIC NOTICE

A public notice regarding this agenda item was published in the Coronado Eagle & Journal on February 18, 2026, and was mailed to all property owners within 300 feet of the subject property.

ATTACHMENTS

1. November 26, 2025 email from Director to Appellant
2. Appeal of November 26, 2025 Director email
3. Appeal of PDC decision to take no action
4. Email correspondence between Director and Appellant dated March 6, 2025; April 3, 2025; April 18, 2025; and September 4, 2025
5. Government Code Section 65863.2

Submitted By: Community Development / Richard Grunow