



Planning Commission Staff Report

Date: January 27, 2010

Case No.: 5.1233 – CUP

Type: Conditional Use Permit

Location: 224 North Palm Canyon Drive

APN: 513-091-005

Applicant: Mark P. Green of Desert Fox Productions

General Plan: CBD (Central Business District)

Zone: CBD (Central Business District)

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: David A. Newell, Associate Planner

PROJECT DESCRIPTION:

The applicant has requested a Conditional Use Permit (CUP) to operate a cocktail lounge at 224 North Palm Canyon Drive. The subject location is an existing multi-tenanted commercial building.

RECOMMENDATION:

That the Planning Commission approve Case 5.1233 – CUP, a Conditional Use Permit to operate a cocktail lounge at 224 North Palm Canyon Drive, subject to the Conditions of Approval in the attached draft resolution

BACKGROUND:

The applicant proposes to operate a cocktail lounge known as Desert Fox Bar that is approximately 1,014 square feet in size and located on the first floor of a mixed-use

commercial / retail center. The proposed space was previously occupied by a retail candy store. The applicant proposes to modify the existing floor space by installing a bar and seating area with nineteen seats.

Table 1: The surrounding General Plan, Zoning and Land Uses:

	General Plan	Zone	Land Use
North	CBD (Central Business District)	CBD (Central Business District)	Retail / Commercial
South	CBD (Central Business District)	CBD (Central Business District)	Retail / Commercial
East	CBD (Central Business District)	CBD (Central Business District)	Retail / Commercial
West	CBD (Central Business District)	CBD (Central Business District)	Retail / Commercial

ANALYSIS:

The subject location is in the Central Business District area of the General Plan. General Plan Policy Land Use Element states,

The Central Business District designation allows for a mix of commercial, residential, and office uses... The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here.

Staff believes that the proposed use would qualify as a commercial uses within the context of the Central Business District. Section 92.09.01(D)(5) of the Palm Springs Zoning Code also allows the proposed use within the CBD Zone upon the approval of a Conditional Use Permit; this Section requires that on-site consumption of alcohol is to be regulated with a Conditional Use Permit.

The proposed use would establish a maximum of nineteen seats, which includes nine bar seats and ten tables with two seats each (see attached floor plan). The proposed site is within a mixed-use development that contains various clothing and accessories shops on the first floor and hotel rooms on the second floor.

The site currently has no established parking except for what is available on the street and the site would not be able to meet the parking requirement. The site's parking condition is considered non-conforming. Section 93.06.00(B)(3)(a) of the Zoning Code allows non-conforming parking to continue as long as there is no expansion of the use.

The applicant has filed an application with the California Department of Alcoholic Beverage Control (ABC) for a type 48 (On-Sale General for Public Premises) liquor license; the ABC summarizes this type of license as follows:

Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for

consumption off the premises where sold. Minors are not allowed to enter and remain... Food service is not required.

The ABC is also requesting that the applicant obtain a Letter of Convenience or Necessity from the City Council. Staff has included Condition of Approval No. PLN 1 in the draft resolution which requires the applicant to obtain the Council's approval prior the commencement of the use.

Furthermore, staff has included conditions in the draft resolution from the Fire Department and the Police Department to ensure that the use is in compliance with the necessary Codes and Ordinances.

REQUIRED FINDINGS:

The Conditional Use Permit process, outlined in Section 94.02.00 of the PSZC, requires the Planning Commission to make a number of findings for approval of the permit. Those findings are analyzed by staff in order below:

- 1) *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

Pursuant to Section 92.09.01(D)(5) of the Zoning Code, a cocktail lounge use is permitted within the CBD Zone with the approval of a Conditional Use Permit. The use will be located within a multi-tenanted commercial / retail complex that fronts a major thoroughfare within the Central Business District of the City.

- 2) *That the use is necessary or desirable for the development of the community, and is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*

The use will be desirable for a portion of the local and tourist populations while promoting the various policies of the General Plan, including Land Use Policy LU 10.4 which states, "Accommodate a broad range of uses Downtown to meet the needs of both residents and visitors and to stimulate both daytime and evening activity." The proposed use is necessary and desirable for the development of the community as it adds to the nighttime activities available in downtown.

- 3) *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The project does not propose any significant changes to the site. Minor tenant improvements are proposed. Any adjustments to the project site will be primarily internal, and the existing site is adequate to serve the proposed use.

- 4) *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along North Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The tenant space is approximately 1,014 square feet in size and any traffic generated by the proposed use will be insignificant to the streets and highways.

- 5) *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*
 - a. *Regulation of use*
 - b. *Special yards, space and buffers*
 - c. *Fences and walls*
 - d. *Surfacing of parking areas subject to city specifications*
 - e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
 - f. *Regulation of points of vehicular ingress and egress*
 - g. *Regulation of signs*
 - h. *Requiring landscaping and maintenance thereof*
 - i. *Requiring maintenance of grounds*
 - j. *Regulation of noise, vibrations, odors, etc.*
 - k. *Regulation of time for certain activities*
 - l. *Time period within which the proposed use shall be developed*
 - m. *Duration of use*
 - n. *Dedication of property for public use*
 - o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

There is no change to the existing site plan. Staff has included Conditions of Approval to provide parameters and restrictions for the proposed use.

CONCLUSION:

The proposed request is consistent with the use on the site and is compatible with the General Plan and Zoning Ordinance land uses. Required findings necessary for the issuance of a Conditional Use Permit have been made and staff is therefore

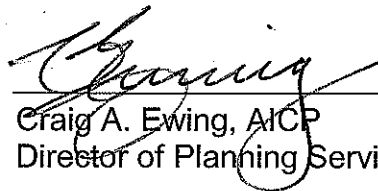
recommending approval of Case 5.1233 – CUP, subject to the attached Conditions of Approval.

ENVIRONMENTAL DETERMINATION:

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project is Categorically Exempt as a Class I exemption per Section 15301(Existing Facilities).



David A. Newell
Associate Planner



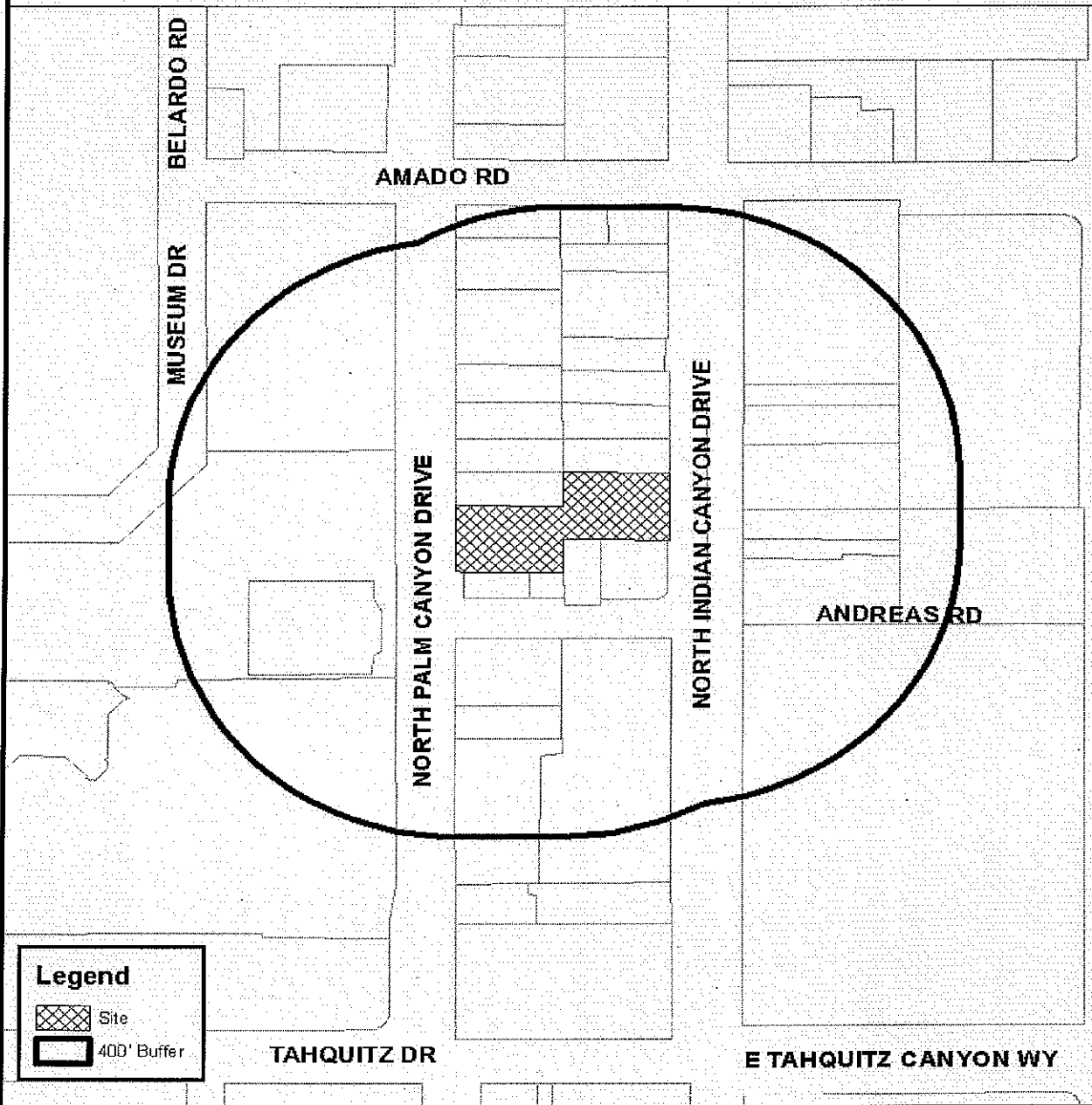
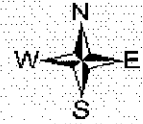
Craig A. Ewing, AICP
Director of Planning Services

Attachments:



1. 400' Radius Map
2. Draft Resolution with Conditions of Approval
3. Floor Plan



Department of Planning Services Vicinity Map



Legend

-  Site
-  400' Buffer

CITY OF PALM SPRINGS

CASE NO: 5.1233 - CUP

APPLICANT: Desert Fox

DESCRIPTION: A request by Mark P. Green of Desert Fox Productions for a Conditional Use Permit to operate a cocktail lounge at 224 N. Palm Canyon Drive, Zone CBD, Section 15.

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF PALM SPRINGS, CALIFORNIA,
APPROVING A CONDITIONAL USE PERMIT (CUP) TO
ALLOW A COCKTAIL LOUNGE AT 224 NORTH PALM
CANYON DRIVE.

WHEREAS, Mark P. Green ("Applicant") has filed a Conditional Use Permit application with the City pursuant to Section 94.02.00 of the Zoning Code to allow a cocktail lounge in a multi-tenanted building located at 224 North Palm Canyon Drive, Zone CBD, Section 15, APN: 513-091-005; and

WHEREAS, a cocktail lounge may be permitted in the CBD (Central Business District) Zone with the approval of a Conditional Use Permit, pursuant to Section 92.09.01(D)(5) of the Zoning Code; and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider Case No. 5.1233 – CUP was given in accordance with applicable law; and

WHEREAS, on January 27, 2010, a public hearing on the application was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the proposed project is considered a "project" pursuant to the terms of the California Environmental Quality Act ("CEQA"), and has been determined to be Categorically Exempt as a Class III exemption (Existing Facilities) pursuant to Section 15301 of the CEQA Guidelines; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: Section 94.02.00(B)(6) of the Zoning Code requires the Planning Commission not approve a Conditional Use Permit unless it finds as follows:

1. *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*
2. *That the use is necessary or desirable for the development of the community, is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*
3. *That the site for the intended use is adequate in size and shape to accommodate*

such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.

4. *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*
5. *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*
 - a. *Regulation of use*
 - b. *Special yards, space and buffers*
 - c. *Fences and walls*
 - d. *Surfacing of parking areas subject to city specifications*
 - e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
 - f. *Regulation of points of vehicular ingress and egress*
 - g. *Regulation of signs*
 - h. *Requiring landscaping and maintenance thereof*
 - i. *Requiring maintenance of grounds*
 - j. *Regulation of noise, vibrations, odors, etc.*
 - k. *Regulation of time for certain activities*
 - l. *Time period within which the proposed use shall be developed*
 - m. *Duration of use*
 - n. *Dedication of property for public use*
 - o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

Section 2: Based upon the foregoing, the Planning Commission finds as follows:

1. Pursuant to Section 92.09.01(D)(5) of the Zoning Code, a cocktail lounge use is permitted within the CBD Zone with the approval of a Conditional Use Permit. The use will be located within a multi-tenanted commercial / retail complex that fronts a major thoroughfare within the Central Business District of the City.
2. The use will be desirable for a portion of the local and tourist populations while promoting the various policies of the General Plan, including Land Use Policy LU 10.4 which states, "Accommodate a broad range of uses Downtown to meet the needs of both residents and visitors and to stimulate both daytime and evening activity." The proposed use is necessary and desirable for the development of the community as it adds to the nighttime activities available in downtown.

3. The project does not propose any significant changes to the site. Minor tenant improvements are proposed. Any adjustments to the project site will be primarily internal, and the existing site is adequate to serve the proposed use.
4. The project site is located along North Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The tenant space is approximately 1,014 square feet in size and any traffic generated by the proposed use will be insignificant to the streets and highways.
5. There is no change to the existing site plan. Conditions of Approval to provide parameters and restrictions for the proposed use have been attached to this resolution.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.1233 – CUP, a Conditional Use Permit to allow a cocktail lounge at 224 North Palm Canyon Drive, subject to the conditions set forth in the attached Exhibit A.

ADOPTED this 13th day of February, 2008.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Craig A. Ewing, AICP
Director of Planning Services

RESOLUTION NO. _____

EXHIBIT A

Case 5.1233 CUP
Mark P. Green of Desert Fox

224 North Palm Canyon Drive

January 27, 2010

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning Services, the Director of Building and Safety, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ADMINISTRATIVE CONDITIONS

- ADM 1. Project Description. This approval is for the project described per Case 5.1233 CUP except as modified the conditions below.
- ADM 2. Reference Documents. The site shall be developed and maintained in accordance with the approved plans on file in the Planning Division except as modified by the conditions below.
- ADM 3. Conform to all Codes and Regulations. The project shall conform to the conditions contained herein, all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, and any other City County, State and Federal Codes, ordinances, resolutions and laws that may apply.
- ADM 4. Minor Deviations. The Director of Planning or designee may approve minor deviations to the project description and approved plans in accordance with the provisions of the Palm Springs Zoning Code.
- ADM 5. Indemnification. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.1233 CUP. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter

and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

- ADM 6. Maintenance and Repair. The property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation all structures, sidewalks, bikeways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.
- ADM 7. Time Limit on Approval. Approval of this Conditional Use Permit shall be valid for a period of two (2) years from the effective date of the approval. Once the use is implemented, the Conditional Use Permit does not have a time limit, provided the project has remained in compliance with all conditions of approval.
- ADM 8. Right to Appeal. Decisions of an administrative officer or agency of the City of Palm Springs may be appealed in accordance with Municipal Code Chapter 2.05.00. Permits will not be issued until the appeal period has concluded.
- ADM 9. Cause No Disturbance. The owner shall monitor outdoor parking areas, walkways, and adjoining properties and shall take all necessary measures to ensure that customers do not loiter, create noise, litter, or cause any disturbances while on-site. The owner and operator shall ensure that at closing time, all customers leave the property promptly and that the property is clean and secure before the owner/operator leaves the premises. The Police Chief, based upon complaints and/or other cause, may require on-site security officers to ensure compliance with all City, State, and Federal laws and conditions of approval. Failure to comply with these conditions may result in revocation of this permit, temporary business closure or criminal prosecution.

- ADM 10. Grounds for Revocation. Non-compliance with any of the conditions of this approval or with City codes and ordinances, State laws; any valid citizen complaints or policing and safety problems (not limited to excessive alcohol consumption, noise, disturbances, signs, etc) regarding the operation of the establishment; as determined by the Chief of Police or the Director of Building and Safety, may result in proceedings to revoke the Conditional Use Permit. In addition, violations of the City Codes and Ordinances will result in enforcement actions which may include citations, arrest, temporary business closure, or revocation of this permit in accordance with law.
- ADM 11. Comply with City Noise Ordinance. This use shall comply with the provisions of Section 11.74 Noise Ordinance of the Palm Springs Municipal Code. Violations may result in revocation of this Conditional Use Permit.
- ADM 12. Control of Noise. Live entertainment is permitted in the location shown on the approved floor plan only. If complaints are received, all exterior doors and windows shall be closed immediately upon request of the enforcement officer.
- ADM 13. Seating Count. The applicant shall be limited to the total number of 19 seats inside (including bar stools). Any deviation from this number, including any outdoor seating, shall require prior approval by the Director of Planning Services.
- ADM 14. Notice to Tenants. The applicant shall provide all tenants with a copy of the Conditions of Approval for this project.
- ADM 15. Conditional Use Permit Availability. The applicant shall provide a copy of this Conditional Use Permit to all buyers and potential buyers.

PLANNING DEPARTMENT CONDITIONS

- PLN 1. Letter of Convenience or Necessity. The applicant shall obtain a Letter of Convenience or Necessity from the City Council prior to commencement of the cocktail lounge use.
- PLN 2. Sign Applications Required. No signs are approved by this action. Separate approval and permits shall be required for all signs in accordance with Zoning Ordinance Section 93.20.00.
- PLN 3. Maintenance of Awnings & Projections. All awnings shall be maintained and periodically cleaned.
- PLN 4. Screen Roof-mounted Equipment. All roof mounted mechanical equipment shall be screened per the requirements of Section 93.03.00 of the Zoning Ordinance.

- PLN 5. Exterior Alarms & Audio Systems. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
- PLN 6. Outside Storage Prohibited. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.

POLICE DEPARTMENT CONDITIONS

- POL 1. Developer shall comply with Section II of Chapter 8.04 "Building Security Codes" of the Palm Springs Municipal Code.

BUILDING DEPARTMENT CONDITIONS

- BLD 1. Prior to any construction on-site, all appropriate permits must be secured.

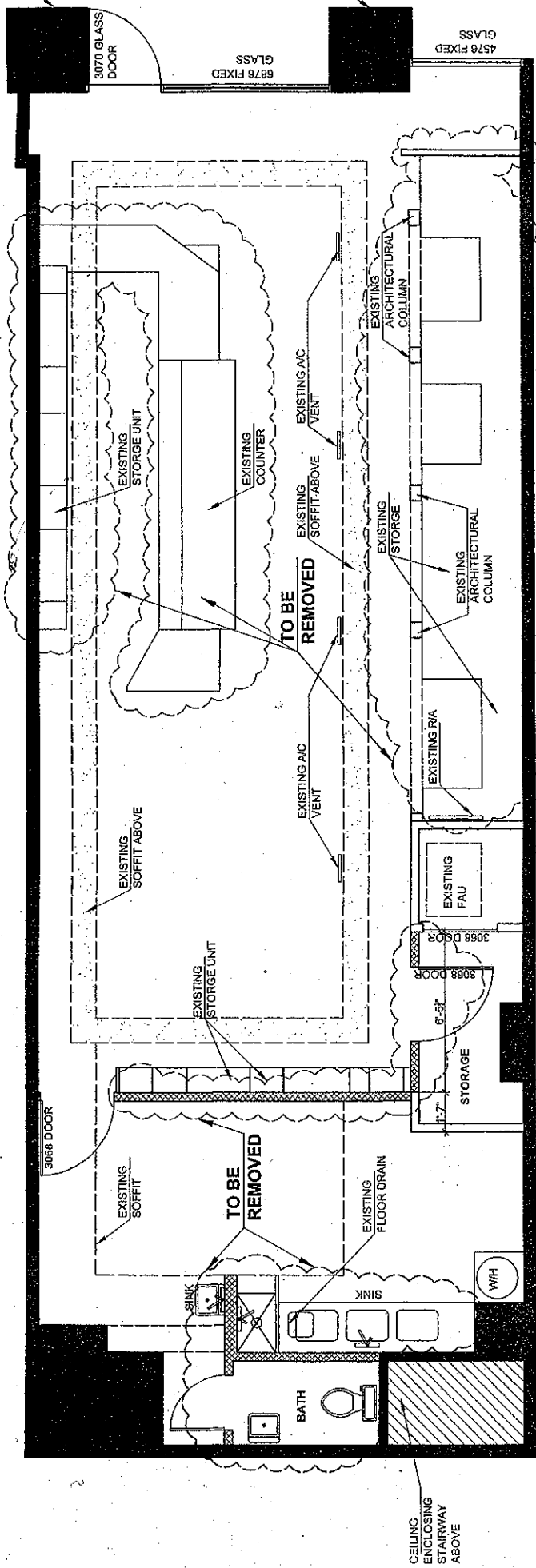
FIRE DEPARTMENT CONDITIONS

- FID 1. The project shall conform to the California Fire Code (CFC) 2007 Edition with additions, deletions and amendments per City of Palm Springs Ordinance 1736.
- FID 2. **Construction and Demolition:** Structures in the course of construction, alteration or demolition shall comply with Chapter 24 of the 2007 California Fire Code and NFPA 241.
- FID 3. **Fire Extinguisher Requirements (CFC 906):** Provide one 2-A:10-B:C portable fire extinguisher for every 75 feet of floor or grade travel distance for normal hazards. Show proposed extinguisher locations on the plans. Extinguishers shall be mounted in a visible, accessible location 3 to 5 feet above floor level. Preferred location is in the path of exit travel or near an exit door.
- FID 4. **HVAC Duct Detection/Shut Down with Fire Detection or Alarm Systems:** All HVAC systems supplying greater than 2,000 CFM shall require a duct detector and HVAC shutoff when smoke is detected. (609.0 CMC & NFPA 72) Where fire detection or alarm systems are provided, the smoke detectors shall be supervised by such systems and shall activate the fire alarm system. (609.0 CMC)
- FID 5. **Listed Equipment Installation:** All listed equipment shall be installed in accordance with the terms of their listings and the manufacturer's instructions.

- FID 6. **Ceiling Clearance (CFC 315.2.1):** Storage shall be maintained 2 feet or more below the ceiling in non-sprinklered areas of buildings or 18 inches or more below sprinkler head deflectors in sprinklered areas of buildings. Attention to this requirement during installation of storage shelving will reduce problems later.
- FID 7. **Fire Dampers (CMC 606.2):** They shall be provided where air ducts penetrate fire-rated walls or ceilings.
- FID 8. **Maintenance of Fire-Resistance-Rated Construction (CFC 703.1):** The required fire-resistance rating of fire-resistance-rated construction (including walls, firestops, shaft enclosures, partitions, smoke barriers, floors, fire-resistive coatings and sprayed fire-resistant materials applied to structural members and fire-resistant joint systems) shall be maintained. Such elements shall be properly repaired, restored or replaced when damaged, altered, breached or penetrated. Openings made therein for the passage of pipes, electrical conduit, wires, ducts, air transfer openings and holes made for any reason shall be protected with approved methods capable of resisting the passage of smoke and fire. Openings through fire-resistance-rated assemblies shall be protected by self- or automatic-closing doors of approved construction meeting the fire protection requirements for the assembly.
- FID 9. **Interior Finish, Decorative Materials and Furnishings (CFC 801.1):** The provisions of this chapter shall govern interior finish, interior trim, furniture, furnishings, decorative materials and decorative vegetation in buildings. Section 803 shall be applicable to existing buildings. Sections 804 through 808 shall be applicable to new and existing buildings.
- FID 10. **Required Exit Signs (CFC 1011.1):** Exits & exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. Access to exits shall be marked by readily visible exit signs in cases where the exit or path is not immediately visible to occupants. No point in the corridor shall be more than 100 feet or the listed viewing distance for the sign, whichever ever is less, from the nearest visible sign.
- FID 11. **Exit Sign Illumination (CFC 1011.2, 4 & 5):** Exit signs shall be internally or externally illuminated. When the face of an exit sign is illuminated from an external source, it shall have an intensity of not less than 5 foot-candles from either of two electric lamps. Internally illuminated signs shall provide equivalent luminance and be listed for the purpose.
- FID 12. **Means of Egress Illumination (CFC 1006.1 & 2):** The means of egress, including the exit discharge, shall be illuminated at all times the building space served by the means of egress is occupied. The means of egress illumination level shall not be less than 1 foot-candle at the walking surface.

- FID 13. **Power supply (CFC 1006.3):** The power supply for means of egress illumination shall normally be provided by the premises electrical supply. In the event of power supply failure, an emergency electrical system shall automatically illuminate for a duration of not less than 90 minutes.
- FID 14. **Key Box Required to be Installed - Front and Back of Store (CFC 506.1):** Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. Contact the Fire Department at 760-323-8186 for a Knox application form. (902.4 CFC) Key boxes shall be located at the main entrance and loading dock door.
- FID 15. **Key Box Contents (CFC 506.1):** The Knox key box shall contain keys to all areas of ingress/egress, alarm rooms, fire sprinkler riser/equipment rooms, mechanical rooms, elevator rooms, elevator controls, plus a card containing the emergency contact people and phone numbers for the building/complex.
- FID 16. **Premises Identification (CFC 505.1):** New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4" high for R-3 occupancies and 6" - 12" for all other occupancies depending on distance from street with a minimum stroke width of 0.5".

END OF CONDITIONS



EXISTING FLOOR PLAN - 1,014 SQ. FT.

SCALE: 1/4"=1'-0"

