



City Council Staff Report

NEW BUSINESS

DATE: APRIL 3, 2013

SUBJECT: AUTHORIZE CREATION OF INCENTIVE ASSISTANCE AGREEMENTS FOR RESTAURANT/NIGHTCLUB PROJECTS IN THE BID AREA AND A PORTION OF SECTION 14; AND, APPROVAL OF INCENTIVE ASSISTANCE AGREEMENT WITH THE COPA ROOM, INC. FOR A 6,000 SQUARE FOOT NIGHTCLUB LOCATED AT 244 E. AMADO ROAD, SECTION 14 (CUP 5.1289) IN A FORM ACCEPTABLE TO THE CITY ATTORNEY

FROM: David H. Ready, Esq., Ph.D., City Manager

BY: John Raymond, Community & Economic Development Director

SUMMARY

This action would establish an Incentive Assistance Agreement program with owners or tenants of businesses investing in the redevelopment of retail space into eating and drinking spaces and/or nightclubs/performing spaces in the downtown and uptown core and the western portion of Section 14. The incentive would be accomplished through the deferral of certain City fees until the business is operating.

The first Incentive Assistance Agreement that is recommended is the proposed Copa Room, a 6,000 square foot nightclub located at 244 East Amado Road, which has been leased by Copa Room, Inc., the owner of the Tropicale Restaurant next door. This agreement would defer the Public Art and Sewer Connection Fees, with payments made in 12 equal monthly installments after the restaurant receives its Certificate of Occupancy and begins operating. No Parking In-Lieu fees apply.

RECOMMENDATION:

1. AUTHORIZE CREATION OF INCENTIVE ASSISTANCE AGREEMENTS FOR RESTAURANT/NIGHTCLUB PROJECTS IN THE BID AREA AND THE WESTERN HALF OF PORTION OF SECTION 14;
2. APPROVE AN INCENTIVE ASSISTANCE AGREEMENT WITH THE COPA ROOM, INC. FOR A 6,000 SQUARE FOOT NIGHTCLUB LOCATED AT 244 E.

ITEM NO. 5A

AMADO ROAD, SECTION 14 (CUP 5.1289) IN A FORM ACCEPTABLE TO THE CITY ATTORNEY;

3. Authorize the City Manager to execute all documents related to the Incentive Assistance Agreement.

BACKGROUND:

In 2009, the City Council adopted the Interior Remodel Program which assisted a number of sales tax-producing businesses, particularly restaurants, to upgrade the “front of house” experience for their customers as a way of spurring new business investment during the recession. The program was a companion to the larger but more financially limited Façade Improvement Program which provided assistance for exterior remodeling for approximately 120 businesses. Both programs have been phased out due to funding constraints largely attributable to the loss of redevelopment dollars.

These two renovation programs were extraordinary successful during the recession, helping set the stage in downtown for the recent growth in new business activity. The latest wave of business investment activity in the downtown has been the intensification of land uses, namely the conversion of traditional retail spaces into eating and drinking spaces and/or nightclubs/performing spaces. As downtown continues its transformation into an arts and entertainment destination, this next step is necessary to create the critical mass necessary to for the economic vitality to become sustainable. This type of development has also had a positive and significant effect on tourism in the City, and created other positive spillover effects.

Nevertheless, this type of development represents the most expensive type of investment into a retail space: not only are kitchens themselves expensive and require Riverside County Health Department review and approval, but transforming commercial space into a restaurant or nightclub requires expensive fire and safety upgrades (sprinklers), new sewer connections and, potentially, costly ADA improvements. Since the City no longer has the Interior Remodel Program, it is recommended that the Council consider entering into Incentive Assistance Agreements to defer – but not waive – the payment of certain fees collected by the City until after a remodel project has received a Certificate of Occupancy, and then allow the payment of such fees over the next year.

Fees would include the Public Art Fee and the Sewer Connection Fee, as well as the Parking In-Lieu Fee in areas where such fee applies. The recommended geographic area would be limited to the Business Improvement District (BID) area plus the western half of Section 14 (west of Avenida Caballeros). As proposed, the program would only apply to existing commercial retail space undergoing a food or entertainment-related intensification of land use subject to either a Conditional Use Permit or a Land Use Permit issued by the City.

One of the first new venues is the proposed Copa Room, a 6,000 square foot nightclub located at 244 East Amado Road, which has been leased by Copa Room, Inc., which are also owners of the Tropicale Restaurant next door. The two properties would be operated as separate businesses but the Copa Room would be more of a club/lounge and cater to the after dinner crowd leaving Tropicale and other restaurants in the downtown area.

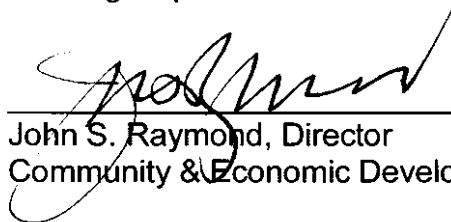
The development of Tropicale, "off the beaten path" has been a tremendous improvement to the area east of Indian Canyon Drive, and the Copa Room will additionally replace a dilapidated property (the former thrift store property) with an activity center. The property has adequate parking per the Code and is not in an area eligible to pay the in-lieu parking fee, so those fees are not part of the consideration. They must pay other remaining fees prior to the issuance of a Building Permit, including school fees, TUMF (outside agencies), plan check and other fees (direct costs to the City).

In order to provide partial "fee relief" to the project, the Incentive Assistance Agreement would defer the payment of two local fees – the Sewer Connection Charge (\$40,086) and the Public Art Fee (\$1,095) until the Certificate of Occupancy, after which the owner would pay the City in an agreed-upon number of installments (12 monthly installments). They are required to pay the remaining fees – plan check, TUMF, etc. By the time the project is completed the agreement would be in place and they would receive a full Occupancy Permit.


All of the proposed agreements would include commitments from the tenants or owners to complete the improvements and repay the City the amount of the deferred fees. In the event such an owner defaulted, the City would seek collection and furthermore, hold up the issuance of any occupancy permit on the space until the deferred fees are paid.

FISCAL IMPACT:

The Fiscal Impact for this Incentive Assistance Agreement for the Copa Room would be zero, since the club owner is proposed to pay the deferred fees in the first year of operation. The total amount of deferred fees would be about \$41,181 based on the Building Department calculation of fees.



John S. Raymond, Director
Community & Economic Development



David H. Ready, Esq., Ph.D.,
City Manager

Attachment A

Description of Remodel Approval Process for Restaurants

This incentive program is a small way of streamlining the redevelopment of downtown, where the two most challenging fees have been in-lieu parking and sewer connection. Other factors such as fire sprinklers and ADA improvements represent direct project costs and would require City cash to provide assistance, which is no longer available. Assuming the land use is approved by the Planning Department, below is a description of the remodel process in converting a retail space to eating/drinking/entertainment use:

Before undertaking tenant improvements in the space, the owner would need to obtain a building permit from the City's Building Department. In many cases, the contractor would describe to the Building Department the work to be done and receive a permit once it is inspected. However, for more substantial projects, such as the demolition or construction of interior or exterior walls, plans must be submitted and "plan-checked" by the City.

The Building Department is charged with enforcing local, state, and federal building codes and look at a number of other categories of alterations, including:

1. Structural Changes
2. Electrical Codes
3. Plumbing Codes
4. Title 24 (including energy efficiency)
5. Americans with Disability Act (ADA) compliance

If the owner proposes making structural changes to the space, the Building Department will analyze whether the change would alter the structural integrity of the building. For example, if the owner opens a part of the exterior wall to create a new storefront opening, was the building originally constructed with that opening? Would the new opening weaken the wall, making the building potentially unsafe? Would the building continue to meet seismic building codes, or if it doesn't, is there a retrofit available and required? Or, if the owner plans to remove an interior wall, is it a load bearing wall? In other words, does it now help hold up the ceiling or upper floors? What is a proposed structural change to the building that would still allow the wall to be removed without the building collapsing?

There are other factors that get analyzed, too, when walls are added or removed, such as how it changes the occupancy of the space, which may trigger a Fire Code concern (discussed below).

If the business is moving into a space and not making any changes, the business owner will probably not be required by the City to make any additional changes to the building to bring it up to code. But if electrical or plumbing changes are proposed, all of the new improvements will be required to meet current codes. The same applies to Title 24 issues. Title 24 is part of the State Building Code that governs a number of issues, most notably the energy efficiency of buildings; these rules mainly apply to new buildings or those undergoing major remodeling.

Finally, there is the issue of ADA and how it applies to building remodels: when an owner submits a permit application (at the estimated construction cost as determined by the contractor at the time of application), the City is required under the Federal ADA to require the owner to also spend 20% of that amount on ADA improvements to the business. A Building Department inspector will go out to the site to create a checklist of potential ADA improvements to the business. They may include such things as lowering a sink in the restroom to be at the proper height, to improving wheelchair access to the store from the parking lot. Note that even for a tenant, eligible improvements could be in the parking lot, out of the tenant's direct control. Obviously, the tenant would need the approval and cooperation of the landlord. Such "parking" improvements would be related to making it easier to get from the handicapped space into the shop. This could include installing parking wheel stops (bumpers) to keep the fronts of the cars parked in the lot from encroaching onto the sidewalk in order to ensure a full 48" path of travel in a wheelchair.

Note also that a business owner is only required to spend the 20% of permit value on ADA, which in some cases is less than \$1,000. The business owner can apply for a waiver of the amount above the 20% figure, but still have to spend the 20%, however. The City would revisit the list of "waived" improvements if the owner comes in with another building permit application in the same calendar year. And, the waiver is only available for projects of \$125,000 or less: if the permit is for more than that, the owner has to fully comply with ADA regardless of the cost. These are State laws that are based on the State's interpretation of the Federal ADA. There is no "grandfathering" in ADA, once there is a new permit application on the table.

Fire Codes

For most retail businesses, the Fire Code requirements are fairly straightforward: exit signs and fire exiting, storage of flammable materials. However, for public assembly uses such as restaurants, nightclubs and theaters, an "A" fire rating is necessary for any space with occupancy over 49 persons. "A" rated spaces typically have fire sprinklers and meet all the codes related to fire exiting in the space.

If the owner plans on opening a restaurant or nightclub, the owner should first check on the occupancy rating of the owner's new space. A tenant cannot assume it is "A" rated no matter what tenant previously occupied the space.

Changes to a building can also change the rating of a space: if the owner wants to remove an interior wall to enlarge a room in a restaurant, the new larger space may now hold more than 49 seats, triggering the requirement for "A" rated space. The owner's space may have a "B" rating, which may lack one or more of the requirements necessary for the higher occupancy, even if the space is large enough to hold many more than 49 people.

If the owner wants to consider adding fire sprinklers, they must understand that sprinklers require a dedicated water service and cannot be shared with a domestic water meter. The installation of a new water line and meter is handled through the Desert Water Agency.

Other fire issues arise when different land uses share the same building, such as in mixed use developments. Of particular concern are buildings where "sleeping" uses, such as residential and hotel uses, share walls or floors with other commercial uses. Often sprinklers, or additional fire, heat, and smoke detection alarms will be required on both sides of the wall.

Restaurants and other food sellers also require approval by the Riverside County Department of Environmental Health. This is not a City department. The business owner or contractor would be required to submit an application and set of plans to both the County and the City for plan check. If the owner makes changes to the plans during plan check based on corrections from either the City or County, the owner must submit the corrected plan to the other agency for their review as well. At the end of the review the plans will be reconciled and a building permit will be issued by the City. The owner will not receive a building permit from the City for a project requiring Health Department approval without their sign-off first.