



CITY OF PALM SPRINGS
DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: January 27, 2016
To: Planning Commission
From: Flinn Fagg, AICP, Director of Planning Services (F)
Project Planner: David A. Newell, Associate Planner (DN)
Subject: Item ^{2B}~~3B~~ - Case No. LUP 13-067 "Hacienda Cantina"

On January 8, 2014, the Planning Commission upheld the Planning Director's decision to approve the subject Land Use Permit (LUP) and allow outdoor music / entertainment as accessory to a restaurant located at 1555 S. Palm Canyon Drive. At this meeting the Commission requested that staff monitor noise complaints and provide annual updates starting one year after the opening of the business.

The business began operating on June 13, 2014, and the Planning Commission held its first review on July 8, 2015. At this meeting, the Commission discussed the noise complaints that had been received to date and heard additional information from the Police Department. The Commission then directed staff to prepare another status review in six months (January, 2016).

At this time, staff believes the business is no longer in operation, due to the following:

- The business license expired on June 30, 2015 and has not been renewed.
- The business website states the business is no longer open for regular operation.

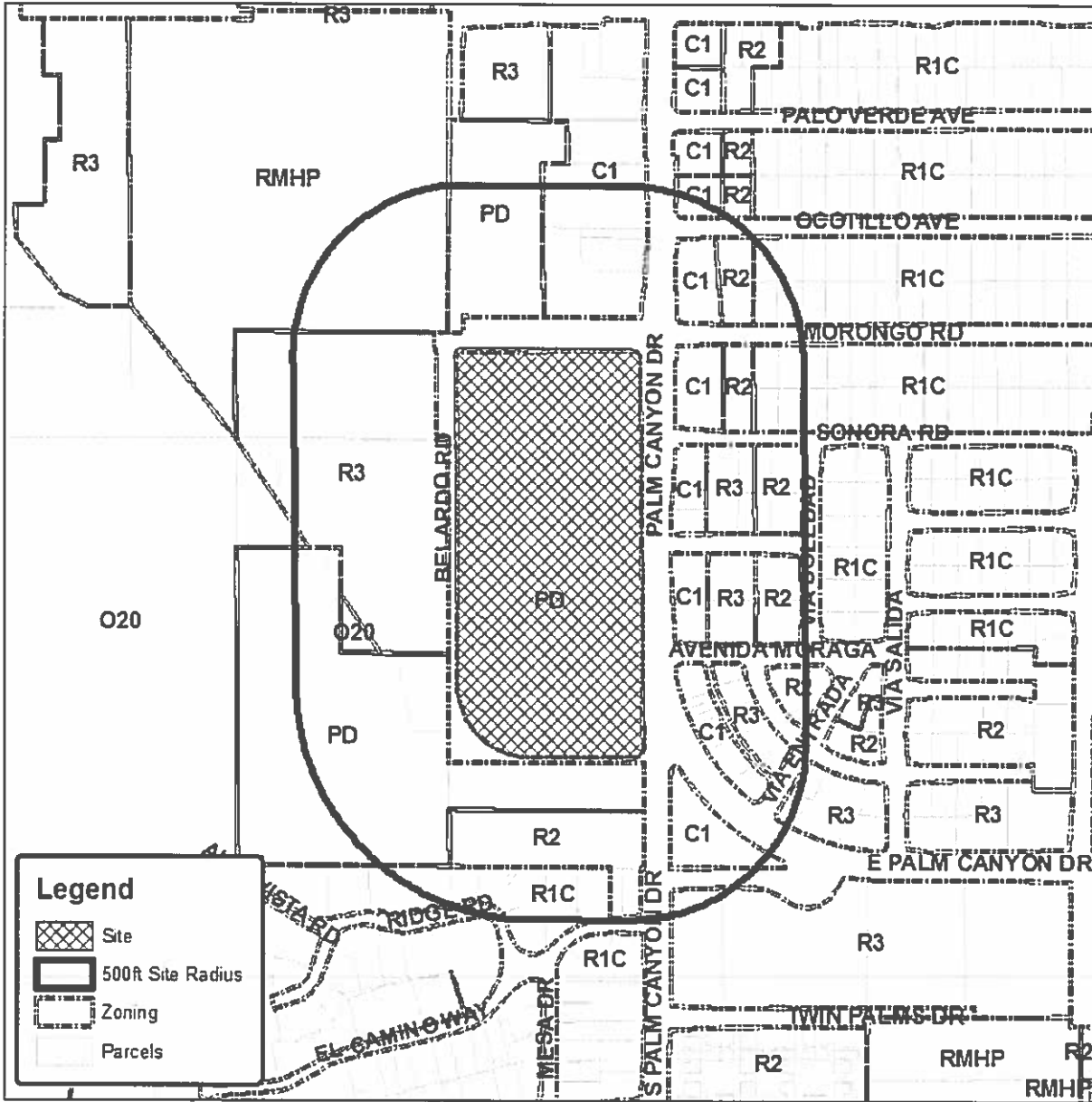
Based on this information, additional compliance updates are no longer necessary.

Attachments:

- 1) 500' Radius Map
- 2) LUP 13-067
- 3) Planning Commission Minutes of January 8, 2014 (excerpt)
- 4) Planning Commission Minutes of July 8, 2015 (excerpt)



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS



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Department of Planning Services

LAND USE PERMIT # 13-067

Applicant: Miggy's Cantina, LLC	Mailing Address: 700 E. Tahquitz Canyon Way Palm Springs, CA 92262	Phone: (949) 922-8210 Fax: E-Mail: rhm@nexusd.com
Business Name: Hacienda Cantina		Site Address: 1555 South Palm Canyon Drive
Zone/GP: C-1 / NCC 92.12.01(C)(2)(j)	APN: 513-300-038	Section, Township, Range: 22/A/4

PROCEDURE: An application for a Land Use Permit shall be submitted to the Department of Planning Services, and shall be accompanied by the following:

1. A Processing fee of \$696.00
2. A floor plan and/or site plan displaying the layout of the proposal.
3. Such other information as the Director of Planning Services may require, including, but not limited to adjacent uses, photographs, building elevations, landscape plans, design studies, furniture information, etc.

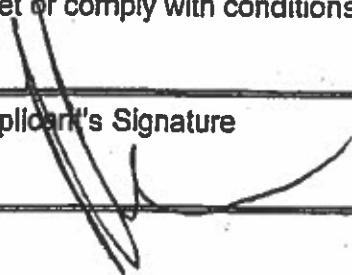
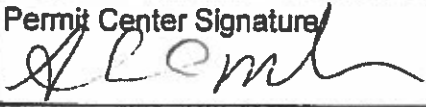
STATEMENT OF ACTIVITY: Applicant shall submit a statement of the use, expected size, volume, hours, and length of operations; information relating to sanitation, noise, air pollution, vehicle parking, traffic circulation, and any other information of the proposed project:

Land Use Permit for musicians and entertainment (subject to provisions of noise ordinance) outside on pool deck; entertainment to include live DJ's and bands with hours of operation for outside pool area to be from 8:00 AM to 6:00 PM seven days a week.

CONDITIONS: See Land Use Permit for conditions including the requirement of an encroachment agreement to be obtained from the City Engineering Department.

TRANSFER: Transfer of Land Use Permit to another applicant is subject to review and approval by the Director of Planning Services.

REVOCAION: The Director of Planning Services may revoke any Land Use Permit that does not meet or comply with conditions and requirements of this permit.

Applicant's Signature 	Permit Center Signature 	Date 11-27-17	Account # 001-32204
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City of Palm Springs

Department of Planning Services
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
(760) 323-8245 -- direct
(760) 322-8360 -- facsimile

LAND USE PERMIT #13-067 CONDITIONS OF APPROVAL

- DATE:** November 27, 2013
- REQUEST:** Land Use Permit for musicians and entertainment (subject to provisions of noise ordinance) outside on pool deck; entertainment to include live DJ's and bands with hours of operation for outside pool area to be from 8:00 AM to 6:00 PM seven days a week.
- APPLICANT:** Mlggy's Cantina LLC
- LOCATION:** 1555 South Palm Canyon Drive
- ZONING/
GENERAL PLAN:** C-1 / NCC - Section 92.12.01(C)(2)(j) – outdoor musicians and entertainment (subject to provisions of noise ordinance) located on the same property as permitted use allowed with a Land Use Permit.

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

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

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.
2. 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 this Land Use Permit application. 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 or 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.

3. No architectural approval is granted herein. Any exterior changes of the establishment shall require separate applications and permits.
4. Any exterior signing, including menu boards and temporary signs shall be approved by the Planning Department. Menu boards and portable open signs shall not be permitted within the City right-of-way without a permit and violations will result in issuance of citations and revocation of all permits and agreements.
5. This Land Use Permit authorizes the use of live DJ's and bands providing entertainment outdoor on pool deck.

Live Entertainment is approved as follows:

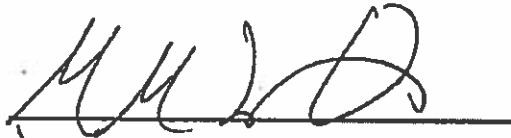
- a) Live entertainment shall be limited to the pool deck within the hours of 8:00 AM to 6:00 PM.
 - b) Any and all instruments shall have limited amplification.
 - c) All amplification equipment shall be placed so that sound is projected toward other commercial properties and roadways away from nearby residential communities.
 - d) Noise levels shall be maintained to a level where customers can conduct normal conversation.
 - e) All activities shall comply with the provisions of the City's Noise Ordinance.
6. Hours of operation for outdoor pool area to be from 8:00 AM to 6:00 PM seven days a week.
 7. This permit does not waive the City's noise ordinance. The business is required to adhere to the following noise levels at all times according to Muni. Code Chap. 11.74.

Ordinance Time of Day	Ordinance dBA Limits
7:00 AM to 6:00 PM	60
6:00 PM to 10:00 PM	55
10:00 PM to 7:00 AM	50

8. All conditions of approval associated with Minor Architectural Application (MAA) Case # 3.111 shall apply including site layout, hardscape, and landscaping.
9. This Land Use Permit recognizes the presence of 401 off-street parking spaces at Plaza del Sol Shopping Center meeting the requirements of Section 93.06.00(D)(19) of the Palm Springs Zoning Code (PSZC) for mixed-use developments over 20,000-square feet.

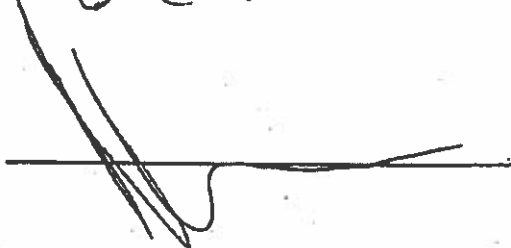
10. The food service use shall conform to all County of Riverside Department of Health requirements.
11. A business license and any other permits are required.
12. Applicant shall comply with all California Alcohol Beverage Control regulations.
13. This Land Use Permit shall be displayed on-site at all times and made available to City officials upon request.
14. Failure to comply with Municipal Codes, Ordinances, and the conditions of this land use permit may result in revocation of this permit.

Director of Planning Services
Signature:



Date: 11-27-13

Applicants
Signature:



Date: 11-27-13

A NEW TWO-CAR GARAGE ON A HILLSIDE LOT LOCATED AT 2343 BISNAGA AVENUE, ZONE R-1-B (CASE 3.2420 MAJ). (DN)

Principal Planner Robertson presented the proposed project as outlined in the staff report. He reported a correction on page 3, the expansion is proposed near both the front and rear yards and on page 4, the maximum proposed building height is 13 feet.

Commissioner Calerdine questioned if the concerns from the public correspondence will be addressed. Staff responded that the applicant, staff and the neighbor will meet to mitigate the measures.

ACTION: To approve, subject to Conditions.

Motion: Commissioner Roberts, seconded by Commissioner Calerdine and unanimously carried 4-0-3 on a roll call vote.

AYES: Commissioner Calerdine, Commissioner Klatchko, Commissioner Roberts and Chair Donenfeld

ABSENT: Commissioner Lowe, Commissioner Weremiuk, Vice Chair Hudson

3B. JUDY DEERTRACK FOR AN APPEAL OF THE PLANNING DIRECTOR'S DECISION TO APPROVE A LAND USE PERMIT FOR OUTDOOR ENTERTAINMENT / MUSICIANS AS AN ACCESSORY USE TO A RESTAURANT LOCATED AT 1555 SOUTH PALM CANYON DRIVE, ZONE PD-131 / I.L. (CASE LUP 13-067). (DN)

Commissioner Klatchko asked if staff is comfortable all the notice requirements by law have been met.

Director Wheeler responded that Minor Architectural Application (MAA) and Land Use Permits (LUP) require administrative review and neither requires a public hearing. She noted that the City's Noise Ordinance is not being waived. This location is within a commercial shopping center on a major arterial highway and the ambient noise level at this location is quite high.

Commissioner Calerdine commented that he thinks this is a good use of the site since this restaurant has had many problems and something new may be necessary to work. He noted that Ms. Deertrack raises two general procedural questions and addressed these issues. He stated that this city is a charter city and the General Plan and Zoning Code need not be consistent.

Commissioner Roberts concurred with many of the speakers today and the city is becoming a new demographic. This use is innovative and exciting. He thinks the real

issue is the impact to the neighborhood from this use and feels the noise ordinance may not be sufficient with this type of use.

Chair Donenfeld suggested monitoring this type of use closely with a report coming back to the Commission.

The Commission and staff discussed crafting a condition to monitor the noise level.

Commissioner Klatchko reminded the members of the public that a noise ordinance is in effect and neighbors should be vigilant and if there is non-compliance citations may be issued.

ACTION: To uphold the decision of the Planning Director and deny said appeal, as amended:

- Track noise complaints from the police department and code enforcement and provide annual reports beginning a date certain one year after opening.

Motion: Commissioner Calerdine, seconded by Chair Donenfeld and unanimously carried 4-0-3 on a roll call vote.

AYES: Commissioner Calerdine, Commissioner Klatchko, Commissioner Roberts and Chair Donenfeld

ABSENT: Commissioner Lowe, Commissioner Weremiuk, Vice Chair Hudson

30. JEAN GOLD FOR A NEW 4,675-SQUARE FOOT HOUSE ON A HILLSIDE LOT TO INCLUDE AN ADMINISTRATIVE MINOR MODIFICATION REQUESTING AN INCREASE IN BUILDING HEIGHT LOCATED AT 131 RIDGE MOUNTAIN DRIVE, ZONE R-2 (CASE 3.3697 MAJ / 7.1409 AMM). (GM)

Principal Planner Robertson presented the proposed project as outlined in the staff report.

BRENDAN CANNING, project architect, described the proposed house, terrain and type of materials that will be used.

Commissioner Roberts said he does not have a concern with the height because it works very well with the terrain and it will not create a problem to the surrounding neighbors.

ACTION: To approve, subject to Conditions.

Middleton made a good point that this is a commercial area and the Springs shopping center is now just beginning to fill the vacancies.

Commissioner Calerdine said he will support the motion but does not share the same concern and does not see much risk to the city. He is more concerned that there is no development in the entire surrounding area and suggested the zoning and general plan may not be appropriate for this area.

Commissioner Weremiuk agreed this site could be zoned inappropriately and will not support the motion. She does not believe there is a demand for retail in this area.

ACTION: Approve one-year time extension with the provision that without any substantial movement (plans submitted to the City) it will not be approved next year.

Motion: Commissioner Roberts, seconded by Commissioner Donenfeld and carried 5-1-1 on a roll call vote.

AYES: Commissioner Calerdine, Commissioner Donenfeld, Commissioner Middleton, Commissioner Roberts, Vice-Chair Klatchko

NOES: Commissioner Weremiuk

ABSENT: Commissioner Lowe

3C. REVIEW OF AN APPROVED LAND USE PERMIT ISSUED TO MIGGY'S CANTINA, LLC FOR OUTDOOR ENTERTAINMENT / MUSICIANS AS AN ACCESSORY USE TO A RESTAURANT LOCATED AT 1555 SOUTH PALM CANYON DRIVE, ZONE PD-131 / I.L. (CASE LUP 13-067). (DN)

City Attorney Michael Daudt addressed the Commission's purview on this matter.

Planning Director Fagg clarified that a letter was received from the Department of Alcoholic Beverage Control (ABC) to modify their conditions of approval; however, the applicant has not applied with the City to modify their conditions.

Associate Planner Newell presented the proposed request to allow outdoor entertainment as outlined in the staff memorandum.

BRYAN REYES, Operations Captain, Police Dept., introduced Lieutenant Araiza to provide facts regarding the calls received.

GUS ARAIZA, Lieutenant, Police Dept., responded to questions from the Commission pertaining to the response time, noise volume reductions and complaints from vibration levels (bass) reverberating from the mountain. He stated that the majority of complaints

are coming from the Tahquitz Mesa Villa and Parkview with a small percentage from Treno and Deepwell.

Commissioner Weremiuk questioned if there's a possibility to research measuring bass volume. Director Fagg indicated that staff would provide research on this matter.

The Commission questioned or commented on:

- Meet with the applicant on a voluntary basis on compliance issues;
- To return for review in six months;
- Nature of complaints made to the Alcohol Beverage Control;
- Encourage decibel readings to be taken in front of apartment complex;
- The Happy Traveler Trailer Park residents do not have a problem with the sound levels but oppose any expansion of the hours of this facility.

Commissioner Roberts left for the remainder of the meeting at 3:57 pm.

Director Fagg recapped the Commission's comments:

1. Planning Commission review in 6 months.
2. Research the complaints received by the ABC and provide to the Commission.
3. Research ways of measuring and/or limiting bass levels.
4. The hours are appropriate and not extend additional hours for the facility.
5. Take decibel readings in front of the properties towards the west.
6. Meet with the applicant on a voluntary basis on compliance issues.

ACTION: Receive and file.

Motion: Commissioner Calerdine, seconded by Commissioner Middleton and unanimously carried 5-0-2 on a roll call vote.

AYES: Commissioner Calerdine, Commissioner Donenfeld, Commissioner Middleton, Commissioner Weremiuk, Vice-Chair Klatchko
ABSENT: Commissioner Lowe, Commissioner Roberts

4. OTHER BUSINESS.

4A. ELECTION OF OFFICERS:

1. Election of Chair

Commissioner Calerdine nominated Vice-Chair Klatchko as Chair, seconded by Commissioner Weremiuk.