



PLANNING COMMISSION STAFF REPORT

DATE: April 12, 2017

PUBLIC HEARING

SUBJECT: AN AMENDMENT TO AN EXISTING CONDITIONAL USE PERMIT FOR A COCKTAIL LOUNGE USE FOR PEABODY'S CAFÉ & BAR, LOCATED AT 134 SOUTH PALM CANYON DRIVE (CASE 5.0721 CUP AMND / HSPB # 22, ZONE CBD) (KL)

FROM: Department of Planning Services

SUMMARY:

Peabody's is a business in the Central Business District that has been in operation since at least 1991 according to Land Use Permit (LUP) records. Over time, the owner sought numerous amendments to their LUP and received approval in 1996 for a Conditional Use Permit for cocktail lounge use pursuant to Zoning Code Section 92.09.01 (D,5).

Subsequently, as more LUP amendments were approved, conflicting and inconsistent conditions emerged between the many LUP's and the CUP -- making conformance by the business owner and enforcement by the City onerous.

The purpose of this hearing is expunge the existing conditions of approval on the CUP and establish new conditions consistent with Land Use Permit, LUP 07-007, recently approved at staff level for the same business.

ISSUES:

1. Current conditions of approval on the CUP are in conflict with conditions imposed by previously approved land use permits.
2. There are several maintenance issues that Peabody's needs to address including (a) upgrade the quality of the outdoor furnishings to a level consistent with other downtown businesses, (b) replace the deteriorated fabric awning in dark green and (c) repaint the metal patio railings in black or the same dark green, that have been addressed in the amended Conditions of Approval.

RECOMMENDATION:

1. Open the public hearing and take testimony.
2. Close the public hearing and adopt Resolution ____ “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA APPROVING CASE 5.0721 CUP AMND, AN AMENDMENT TO A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT FOR A COCKTAIL LOUNGE USE AT PEABODY’S CAFÉ & BAR, LOCATED AT 134 SOUTH PALM CANYON DRIVE, SUBJECT TO CONDITIONS AS OUTLINED IN ATTACHED EXHIBIT “A”.”

BACKGROUND INFORMATION:

The current owner purchased Peabody’s in December, 1994 and expanded the business into the adjacent tenant space in or around 2000. The expansion roughly doubled the interior square footage and expanded the square footage of the patio.

Chronology of Amendments to Use Permits for Peabody’s. From 1995 to the present, Peabody’s requested and got approval for several amendments to their use permits, including increased seating, extended hours of operation, the addition of live music/entertainment (karaoke), and in 1996, approval of a CUP to add the cocktail lounge use. A summary of the use permits associated with Peabody’s is provided in Exhibit “B” attached to this staff report.

Seating Count. In terms of seating count, from 1991 to the present, Peabody’s received approvals to increase their seating count from 28 indoor seats (1991), to 39 indoor seats (1992), to 72 seats (1995), to 75 seats (1996), and back to 67 seats (2001). Current seating count with the newly approved Land Use Permit (LUP 07-007) established the total seating count at 75 seats. The amended conditions attached are consistent with this seating count.¹

Attached as Exhibit “A” are the proposed replacement conditions of approval for Case 5.0721 CUP AMND for Peabody’s Café & Bar.

CONCLUSION:

The amendment to the Conditions of Approval for Conditional Use Permit 5.0721 CUP AMND proposed herein, establishes consistency between the CUP and the LUP for this business owner, and eliminates conflicting conditions between the two use permits.

¹ Seating count for the LUP and the CUP are consistent. Seating for the cocktail lounge use relative to the service of alcoholic beverages is limited to the interior and the fenced area in front of the tenant space on private property. The conditions of approval attached acknowledge this and are written to prohibit the serving of alcohol at the seats in the public right of way.

New conditions of approval requiring the business owner to address specific maintenance concerns noted above have also been proposed.

ENVIRONMENTAL ANALYSIS:

The proposed amendment to the existing Conditional Use Permit is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical changes to the environment, directly or indirectly.

NOTIFICATION:

Written notice of the agenda for this meeting was posted in accordance with applicable law and written notice was provided to recognized neighborhood organizations within a half-mile radius. No public comment letters have been received.



Ken Lyon, RA,
Associate Planner



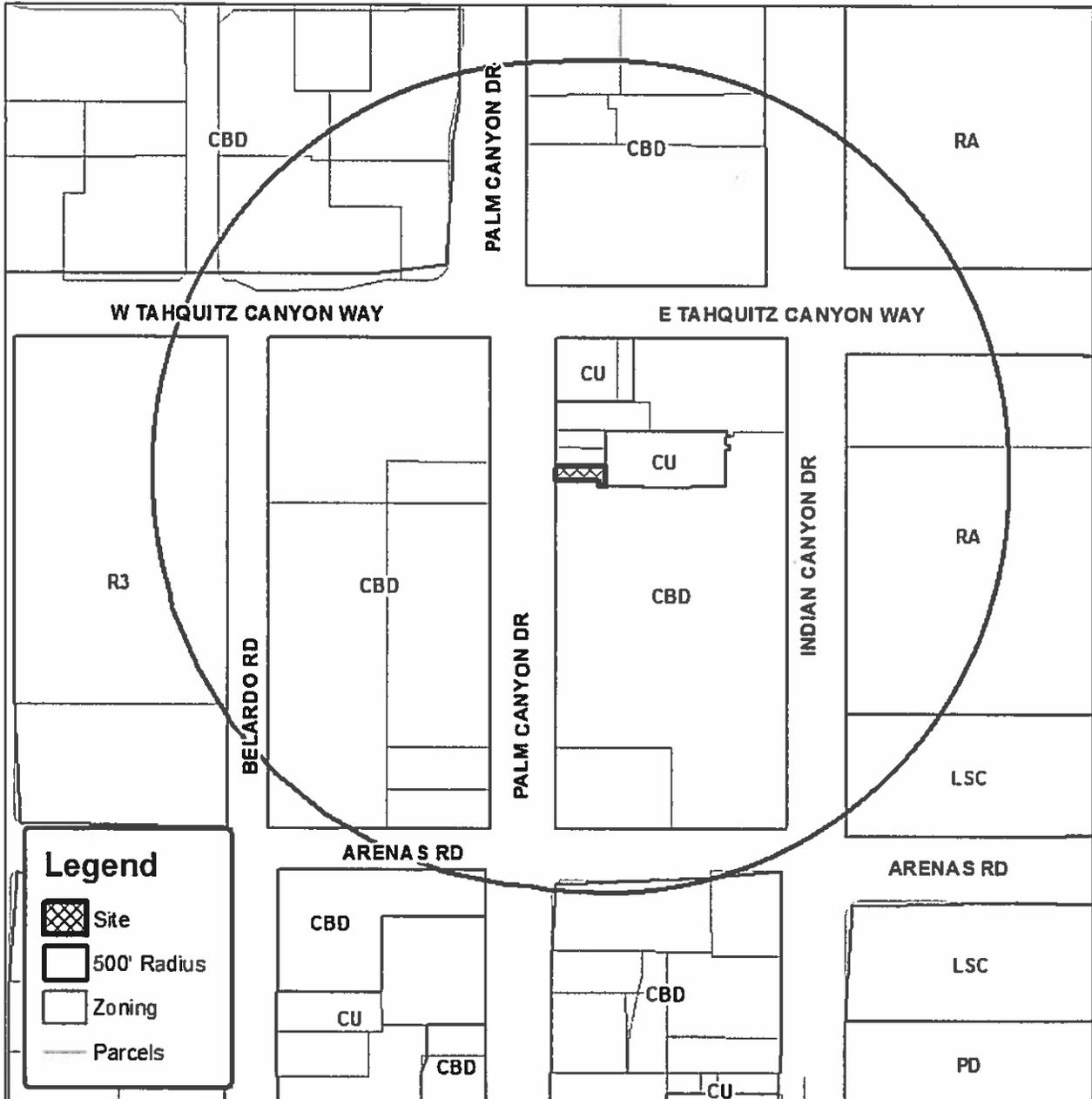
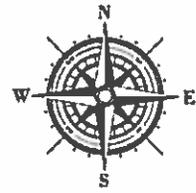
Flinn Fagg, AICP
Director of Planning Services

ATTACHMENTS:

1. Vicinity Map
2. Draft Resolution
3. Exhibit "A" proposed amended Conditions of Approval.
4. Copy of staff-approved Land Use Permit LUP 07-007 dated March 27, 2017.



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS
134 S Palm Canyon Drive

RESOLUTION No. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA APPROVING CASE 5.0721 CUP AMND, AN AMENDMENT TO A CONDITIONAL USE PERMIT (CUP) FOR A COCKTAIL LOUNGE FOR PEABODY'S CAFÉ & BAR, ("PEABODY'S"), LOCATED AT 134 SOUTH PALM CANYON DRIVE (ZONE CBD, DOWNTOWN PARKING COMBINING ZONE, LA PLAZA, A CLASS 1 HISTORIC SITE (HSPB #22).

THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

- A. On June 12, 1996, at a noticed public hearing, the Planning Commission approved Case 5.0721 CUP, a Conditional Use Permit (CUP) for a cocktail lounge use pursuant to Palm Springs Zoning Code (PSZC) Section 92.09.01 (D,5) for Peabody's Café & Bar located at 134 South Palm Canyon Drive.
- B. The CUP authorized Peabody's to operate a cocktail lounge use with forty-nine (49) seats indoors, sixteen (16) seats within an outdoor patio area on private property in front of the tenant space, four (4) seats immediately outside the entry door to the tenant space on private property and six (6) seats within the City's right-of-way ("ROW") of South Palm Canyon Drive for a total count of seventy-five (75) seats.
- C. On March 21, 2001, the Planning Department approved a Land Use Permit (LUP) amendment pursuant to Zoning Code Section 92.09.01 (C,2,j) for Peabody's to add live musical entertainment (karaoke) to the permitted uses. The LUP requested, and was granted, seating for forty-seven (47) seats indoors, and twenty (20) seats outdoors of which eight (8) seats were approved in the City's ROW for a total of sixty-seven (67) seats.
- D. On April 11, April 21, and June 20, 2016, Peabody's was notified of various "out-of-conformance" conditions by the Palm Springs Code Enforcement Department.
- E. On August 3, 2016, Planning Department staff sent written notice to Peabody's summarizing a number of concerns and notifying Peabody's of the City Manager's direction to schedule a meeting with Peabody's and the Planning Commission to consider the City's concerns and allow the owner of Peabody's to address possible modification requests to the use agreements for Peabody's.
- F. On March 27, 2017, staff approved Land Use Permit LUP 07-007 for Peabody's for (1) restaurant use (2) outdoor food & beverage service on private property, (3)

outdoor food and non-alcoholic beverage service in the public right of way, (4) live entertainment.

- G. A notice of public hearing of the Planning Commission to consider Case 5.0721 CUP AMND, was given in accordance with applicable law.
- H. On April 12, 2017 the Planning Commission held a public hearing at which it considered the staff report and all written and oral testimony given in association the matter.
- I. Pursuant to the California Environmental Quality Act (CEQA), the City has evaluated the subject matter and determined that it is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical changes to the environment, directly or indirectly.

THE PLANNING COMMISSION DETERMINES AS FOLLOWS:

Section 1: The previous Conditions of Approval for Conditional Use Permit (Case 5.0721 CUP) are hereby expunged and are replaced with the revised conditions outlined in Exhibit "A" and hereby made a part of this resolution.

Section 1: Section 94.02.00(B)(6) of the Zoning Code requires the Planning Commission, in approving a Conditional Use Permit, to make the following findings:

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.*

Section 92.09.01(D)(5) of the Palm Springs Zoning Code permits a cocktail lounge and nightclub in the CBD zone when approved under a Conditional Use Permit.

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.*

The cocktail lounge use at 134 South Palm Canyon Drive has been in effect since June 12, 1996. During this time, the cocktail lounge use has not been detrimental to existing uses and would not likely be detrimental to future uses in the vicinity. The cocktail lounge use is consistent with the tourist-oriented nature of the Central Business District. The project is consistent with the General Plan as follows:

Policy LU 7.1: Encourage a diversity of high-quality commercial uses, attractive to both the residents and the visitor, including retail, entertainment cultural, and food sales in appropriate areas of the City.

The cocktail lounge use provides a commercial use that may be enjoyed by both residents and visitors.

Policy LU 10.4: Accommodate a broad range of uses in the downtown to meet the needs of both residents and visitors and to stimulate both daytime and evening activity.

And

Policy CD 30.3: Encourage retail uses that maintain extended evening hours and support nighttime activity.

A cocktail lounge use would stimulate both daytime and evening activity.

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 proposed cocktail lounge use is within a Class 1 historic site that is a mixed-use development. The building accommodates a multitude of uses. The tenant space in which the cocktail lounge use has been operating is properly designed to accommodate the 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 on South Palm Canyon Drive in a building that has existed since the 1930's as a mixed use commercial center. The cocktail lounge use has been in this location since 1996 without detriment to the surrounding businesses or community.

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.*

A draft set of revised Conditions of approval are proposed to address and minimize any potential adverse impacts caused by the cocktail lounge use.

Based upon the foregoing, the Planning Commission hereby expunges all previously approved conditions of approval associated with Case 5.0721 CUP and approves Case 5.0712 CUP AMND, an amendment to a Conditional Use Permit (CUP) for cocktail lounge use for Peabody's Café & Bar, located at 134 South Palm Canyon Drive, subject to the conditions of approval attached herein as Exhibit "A".

ADOPTED this 12th day of April, 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Flinn Fagg, AICP
Director of Planning Services

RESOLUTION NO. _____

EXHIBIT A

Case 5.0721 CUP AMND
Cocktail Lounge Use at "Peabody's Bar & Café"
134 South Palm Canyon Drive

April 12, 2017

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.

Related applications cases or approvals: The uses permitted by this Conditional Use Permit are in conjunction with and intended to be consistent with uses permitted by Land Use Permit LUP 07-007 for the same applicant and location (134 South Palm Canyon Drive). If discrepancies arise, the Director of Planning shall make a determination to resolve the discrepancy. (Decisions of the Director are appealable as outlined in Municipal Code Section 2.05).

Notes:

- All conditions related to previous the original Conditional Use Permit are expunged.
- Where new conditions are imposed herein, they are denoted as "(new COA)".
- Where a condition of approval is carried over from previous use permits, they are cross-referenced in the following manner "(former CUP COA #1) or "(former LUP COA)", since typically LUP COA's were not numbered.

ADMINISTRATIVE CONDITIONS

- ADM 1. Project Description (new). This approval is for the project described per Case 5.0721 CUP AMND, a Conditional Use Permit for cocktail lounge use at Peabody's Café & Bar located at 134 South Palm Canyon Drive, except as modified by the conditions below.
- ADM 2. Conform to all Codes and Regulations (former COA# 1). The applicant / owner shall ensure that the use conforms 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 3. Street numbering (former COA# 3) The street address numbering / lettering, if installed, shall not exceed eight inches in height.
- ADM 4. Minor Deviations (new). 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 (former COA #1a). 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 5.0721 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 (new). The property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation all structures, railings, canopies, awnings, sidewalks, bikeways, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk 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. Revocation or Voiding of Conditional Use Permit (new). Approval of this Conditional Use Permit is subject to all terms and conditions outlined herein and pursuant to Zoning Code Section 94.02.00 (I).
- ADM 8. Trash Receptacles (former COA #8). Trash receptacles shall be strategically located for outdoor service areas so as to be convenient but not cause a nuisance.

- ADM 9. Right to Appeal (new). 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 10. Maintenance of Outdoor Seating/Dining (new). Daily cleaning and wash down of sidewalks for any outdoor seating areas or patios will be required. Contact Parks & Recreation at 760 323 8281 for information regarding the proper method of cleaning of sidewalks and pavers within the public rights-of-way.
- ADM 11. Cause No Disturbance (new). 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 12. Grounds for Revocation (new). 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 13. Comply with City Noise Ordinance (former COA #7). 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 14. (reserved)
- ADM 15. Seating Count. (Former COA #9) The applicant shall be limited to the total number of seats as follows: a maximum of 47 seats inside (including bar stools), 20 seats within an outdoor patio area on private property immediately in front of the tenant space fronting Palm Canyon Drive and 8 seats within a designated area in the public right-of-way immediately in front of the subject tenant space for a total of 75 seats. Any deviation from these numbers shall require prior approval by the Director of Planning. The applicant shall maintain the minimum clearance as specified by the Fire Department between the front entrance and the outdoor tables and chairs as well as the public sidewalk, but in no case shall the public sidewalk be less than 6'-9" in width as noted in the Encroachment Agreement associated with

LUP 07-007. This includes games, pool tables, and other fixtures, furnishings, and equipment or other amenities. The quantity and location of seating approved with this CUP shall be consistent with any other use permits that are issued or may be issued to the subject business and tenant space.

- ADM 16. Trash Enclosure. (Former COA#15). The location and configuration of the trash / dumpster enclosure (if required) shall conform to PSZC 93.07.02, subject to approval by the Director of Planning.
- ADM 17. (reserved)
- ADM 18. (reserved)
- ADM 19. (reserved)
- ADM 20. Hours of operation. The hours of operation for the uses permitted under this CUP shall be from 6:00 a.m. until 2:00 a.m. seven (7) days per week.
- ADM 21. Maintain Minimum Clearance of the Public Sidewalk (new COA). The distance from the curb to the property line for the subject tenant space is fifteen (15) feet. The applicant shall maintain not less than a six foot-nine inch (6'-9") wide public sidewalk at all times in front of the entire tenant space; free and clear of all furniture, signage, equipment, trash receptacles and other obstructions and in alignment with the public sidewalk on either side of the tenant space consistent with the Encroachment Agreement associated with this LUP. The requirement to maintain this clearance shall supersede any sign permits or provisions.

ENVIRONMENTAL ASSESSMENT CONDITIONS

- ENV 1. Coachella Valley Multiple-Species Habitat Conservation Plan (CVMSHCP) Local Development Mitigation Fee (LDMF) NOT required (new)

PLANNING DEPARTMENT CONDITIONS

- PLN 1. Outdoor Lighting Conformance (new). Existing lighting man remain. Any proposed new, replacement or additional lighting must conform to Section 93.21.00 Outdoor Lighting Standards of the Palm Springs Zoning ordinance, shall be submitted for approval by the Department of Planning prior to issuance of a building permit. Manufacturer's cut sheets of all exterior lighting on the building and in the landscaping shall be included. If lights are proposed to be mounted on buildings, down-lights shall be utilized. No lighting shall be installed that causes glare, impaired visibility or light spillage onto adjacent properties in such a way as to cause a nuisance.

- PLN 2. Sign Applications Required (former COA 2). 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 (former COA #6). All awnings, canopies and projections shall be kept in a clean and well-maintained condition.
- PLN 4. Screen Roof-mounted Equipment (new). 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 (former COA #4). No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
- PLN 6. Outside Storage Prohibited (former COA #5). No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.
- PLN 7. (reserved)
- PLN 8. Pedestrian Access to Street (former LUP COA). A six (6) foot wide pedestrian path of travel shall be maintained from the entrance to the street, free of all obstructions, at all times.
- PLN 9. Outdoor seating. (Former COA# 12). layout and furniture shall be submitted to the Director of Planning Services for review and approval. The furniture selection shall be submitted to the Department of Planning Services by December 20, 2017.
- PLN 10. Awning Replacement. (New COA). The existing awning shall be replaced by December 20, 2017. The awning colors and materials shall be submitted to the Director of Planning Services for review and approval.
- PLN 11. Encroachment Agreement (Former COA #11). The applicant shall secure and maintain an encroachment agreement from the City prior to any placement of tables and/or chairs within the City's right-of-way.
- PLN 12. No paper or plastic table service.(new COA). To prevent litter, no paper or plastic table service is permitted.
- PLN 13. Change in ownership (Former COA #13). The applicant / business owner shall notify the Director of Planning Services in writing 30 days in advance of any changes in ownership.
- PLN 14. (reserved)
- PLN 15. Comply with County Health Department (former LUP COA). The food and beverage service shall conform to all County of Riverside Department of Health requirements.

PLN 16. Business License Required (former LUP COA). A business license and all other city-required permits are to be obtained and kept current at all times.

PLN 17. (reserved)

PLN 18. La Plaza Center a Class 1 Historic Site (new COA). The building in which this tenant is located is a Class 1 historic site subject to the provisions of Municipal Code 8.05. No outdoor heaters, misters, lights or similar devices are permitted in any of the outdoor dining areas or attached to any part of the building without prior approval by the Director of Planning.

PLN 19. (add any additional conditions imposed by the Planning Commission or City Council here)

POLICE DEPARTMENT CONDITIONS

POL 1. (Former COA #14) Applicant shall comply with Section II of Chapter 8.04 “Building Security Codes” of the Palm Springs Municipal Code. (“Building Security Regulations”).

BUILDING DEPARTMENT CONDITIONS

BLD 1. (Former COA # 16). Prior to any construction on-site, all appropriate permits must be secured.

ENGINEERING DEPARTMENT CONDITIONS

Encroachment Agreement / License (new). Related to outdoor dining in the public right-of-way associated with LUP 07-007, The applicant shall execute an encroachment agreement with the City for placement of four (4), 36-inch tables with four (4) table umbrellas not to exceed six feet six inches (6’-6”) in diameter, and eight (8) chairs.

FIRE DEPARTMENT CONDITIONS

Conform to all applicable Codes (new). Conform to all applicable codes, regulations and directives of the Palm Springs Fire Department.

FID 1 **Floor Plan Required (new):** The floor plan shall address the following and include room and patio dimensions:

- Seating/table diagram with compliant aisle widths
- Door and openings locations
- Locations of fire extinguisher (minimum rating 2A-10BC).

Note: Floor plan to be approved by the fire department as a condition of approval

END OF CONDITIONS



CITY OF PALM SPRINGS

Department of Planning Services

LAND USE PERMIT # 07-007

March 27, 2017

Applicant: Deborah Alexander D/B/A Peabody's Café & Bar		Mailing Address: 134 South Palm Canyon Dr. Palm Springs, CA 92262		Phone: 760 322 1877 Fax: E-Mail: peabodyscfe@gmail.com	
Business Name: Peabody's Bar & Cafe			Site Address: 134 S. Palm Canyon Drive		
Zone/GP: CBD/CBD 92.09.01(C)(1)(l) Food services and restaurants, (92.09.01 (C)(2)(k) Outdoor food service on private property; (92.09.01 (C) (3)(f) Outdoor food service in the public ROW. (92.09.01 (C)(2),(j) Musicians/Entertainment subject to noise ord.				APN: 513-144-009	Section, Township, Range: 15/4/4

STATEMENT OF REQUESTED ACTIVITY:

Request for a Land Use Permit for a full service restaurant with 47 indoor seats, 20 outdoor seats on private property in a fenced-in patio fronting Palm Canyon Drive, and 8 outdoor seats in the public ROW at (4) 36-inch diameter tables each with a table umbrella not to exceed 6-1/2 feet in diameter and not less than 78 inches clear height above the pavement & properly secured (weighted bases), live entertainment and karaoke, including musicians (indoors), hours of restaurant operation from 6:00 a.m. to 2:00 a.m. seven days per week.

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

APPROVED - SUBJECT TO CONDITIONS OF APPROVAL IN ATTACHED EXHIBIT "A"

Director of Planning
Services' Signature:

Date: 3/27/17

Applicant's
Signature:

Date: 3/27/17

(Print name:)

Deborah N. Alexander

LAND USE PERMIT LUP #07-007

for "Peabody's Bar & Café"
134 South Palm Canyon Drive

March 27, 2017

EXHIBIT A: CONDITIONS OF APPROVAL

Before final acceptance of the project and/or use associated with this Land Use Permit application, all conditions listed below shall be completed and/or maintained in an ongoing basis 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 into which the applicant and the City shall enter shall be in a form approved by the City Attorney.

Related applications cases or approvals: The uses permitted by this Land Use Permit are in conjunction with and intended to be consistent with uses permitted by Conditional Use Permit 5.0712 CUP AMND, relating to cocktail lounge uses at the subject tenant space. If discrepancies arise, the Director of Planning shall make a determination to resolve the discrepancy. (Decisions of the Director are appealable as outlined in Municipal Code Section 2.05).

Notes:

- All conditions related to previous Land Use Permits are expunged.
- Where new conditions are imposed herein, they are denoted as "(new COA)".
- Where a condition is carried over from previous use permits, they are cross-referenced in the following manner "(former CUP COA #1)" or "(former LUP COA)", since often LUP COA's were not numbered.

ADMINISTRATIVE CONDITIONS:

ADM 1. Project Description (new COA). This approval is for the project described per LAND USE PERMIT LUP 07-007 except as modified by the conditions below. The land use permit approval is comprised of the following:

- Approval of a restaurant use, pursuant to zoning code section 92.09.01(C)(1)(l); ("*Restaurant and Food Service in the CBD Zone*").
- Approval of a restaurant use with outdoor seating on private property, pursuant to zoning code section 92.09.01 (C)(2)(k); ("*Restaurant and Food Service with*

seating outdoors on private property in the CBD zone”).

- Approval of a restaurant use with outdoor seating in the public right of way pursuant to zoning code section 92.09.01 (C)(3)(f) – (“*Restaurant and Food Service with seating outdoors in the public right of way in the CBD zone*”).
- Approval of live entertainment and Karaoke, including musicians (indoors), until 2:00 a.m. pursuant to zoning code section 92.09.01 (C)(2)(j) – (“*Musicians/Live Entertainment Subject to the provisions of the Noise Ordinance*”).

- ADM 2. Conform to all Codes and Regulations (former CUP COA# 1). The applicant / owner shall ensure that the use conforms 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 3. Street numbering (former CUP COA# 3). Street address numbering/lettering, if installed, shall not exceed eight inches in height.
- ADM 4. Minor Deviations and/or Amendments. (new COA). The Director of Planning or designee may approve minor deviations to the approval granted herein in accordance with the provisions of the Palm Springs Zoning Code.
- ADM 5. Indemnification (former CUP COA #1a). 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 LAND USE PERMIT LUP #07-007. 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 (new COA). The property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and

without limitation all structures, railings, canopies, awnings, sidewalks, bikeways, landscape, irrigation, lighting, signs, walls, furnishings and fences between the curb and the front of the building, including sidewalk easement areas that extend onto private property, in a first class condition, free from waste, dirt, damage 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. All Previous Land Use Permits are null and void. (new COA). This LUP supersedes and replaces all previously approved Land Use Permits for the subject applicant, business and tenant space and expunges all previous Conditions of Approval.
- ADM 8. Trash Receptacles (former CUP COA #8). Trash receptacles shall be strategically located for outdoor service areas so as to be convenient and shall be cleaned and emptied as needed so as not cause a nuisance.
- ADM 9. Right to Appeal (new COA). 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 10. Maintenance of Outdoor Seating/Dining (new COA). Daily cleaning and wash down of sidewalks for any outdoor seating areas or patios will be required. Contact Parks & Recreation at (760)323-8281 for information regarding the proper method of cleaning of sidewalks and pavers within the public rights-of-way.
- ADM 11. Cause No Disturbance (new COA). 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 12. (Reserved.)
- ADM 13. Comply with City Noise Ordinance (former CUP COA #7). 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 Use Permit.
- ADM 14. (Reserved.)

- ADM 15. Seating Count. (Former CUP COA #9). The applicant shall be limited to the total number of seats as follows: a maximum of 47 seats inside (including bar stools), 20 seats within an outdoor patio area on private property immediately in front of the tenant space fronting Palm Canyon Drive and 8 seats within a designated area in the public right-of-way immediately in front of the subject tenant space for a total of 75 total seats. Any deviation from these numbers shall require prior approval by the Director of Planning. The applicant shall maintain the minimum clearance as specified by the Fire Department between the front entrance and the outdoor tables and chairs as well as the public sidewalk but in no case shall the public sidewalk be less than 6’-9” in width as noted in the Encroachment Agreement associated with this LUP. This includes games, pool tables, and other fixtures, furnishings, and equipment or other amenities. The quantity and location of seating approved with this Land Use Permit shall be consistent with any other use permits that are issued or may be issued to the subject business.
- ADM 16. Trash Enclosure. (Former CUP COA# 15). The location and configuration of the trash/dumpster enclosure (if required) shall conform to PSZC 93.07.02, subject to approval by the Director of Planning.
- ADM 17. Change of Ownership requires new LUP (new COA). Any change in business ownership will require a new Land Use Permit from the Planning Department and a new encroachment agreement from the Engineering & Public Works Department.
- ADM 18. Revocation and Transfer of Land Use Permit (pursuant PSZC 94.02.01(D),(5) (new COA).
- a. When the applicant/owner/business/tenant has not maintained compliance with the conditions of a Land Use Permit, the director of Planning shall give at least (10) days notice to the permittee(s) of intention to revoke such permit. The permittee shall be given opportunity at an office hearing to show cause why the permit should not be revoked. If good cause is not shown, the director may revoke the permit. Such revocation may be appealed to the planning commission.
 - b. When a land use permit has not been acted upon within one (1) year after the date of granting thereof, or in the event the use terminates or is inactive for six (6) months, then without further action by the department of planning and building, planning commission, or city council, the land use permit shall be null and void.
- ADM 19. Criteria for Outdoor Seating in the Right-of-Way (ROW) in the CBD. (From Criteria Standards outlined in an attachment to the form letter from City of Palm Springs, Maria Trask, Community Preservation Officer to Merchants dated January 17, 1995)

1. All seating within the paved area in the public right-of-way shall be subject to and conform to all conditions of an approved Land Use Permit. Such approval by the Director of Planning Services is required prior to installation of any seating, tables or other furnishings.
2. Encroachment permits shall be required for outdoor seating within the public right-of-way and shall include standard liability provisions as required by the City Attorney.
3. Food and beverage service at tables within the public right-of-way shall be limited to non-alcoholic beverage and food service only.
4. In order to provide adequate pedestrian circulation, table occupancy in the right-of-way shall be limited to two (2) seats only and tables shall not be larger than thirty (36) inches in diameter.
5. Advertising, logos, or signage of any kind is not permitted on table umbrellas (where specifically permitted), chairs, tables or other outdoor furnishings.
6. Outdoor seating shall only be permitted in the ROW for food and beverage service uses that have direct frontage on Palm Canyon Drive in the CBD.
7. All furniture in the ROW shall be kept a minimum of two (2) feet back from the face of the curb at all times.
8. Table umbrellas (where specifically permitted) shall be adequately secured to prevent any harm or damage to persons or property and shall have a minimum clear height from the pavement to the open umbrella structure of no less than seventy-eight (78) inches (6-1/2 feet). Umbrella bases shall be as approved by the City Engineer.

ADM 20. Hours of Operation.(COA from previous LUP). The hours of operation for the uses permitted under this LUP shall be from 6:00 a.m. until 2:00 a.m., seven (7) days per week.

ADM 21. Maintain Minimum Clearance of the Public Sidewalk (new COA). The distance from the curb to the property line for the subject tenant space is fifteen (15) feet. The applicant shall maintain not less than a six foot-nine inch (6'-9") wide public sidewalk at all times in front of the entire tenant space; free and clear of all furniture, signage, equipment, trash receptacles and other obstructions and in alignment with the public sidewalk on either side of the tenant space consistent with the Encroachment Agreement associated with this LUP. The requirement to maintain this clearance shall supersede any sign permits or provisions.

PLANNING DEPARTMENT CONDITIONS

PLN 1. Outdoor Lighting Conformance (new COA). Existing lighting may remain. Any proposed new, replacement or additional lighting must conform to Section 93.21.00 Outdoor Lighting Standards of the Palm Springs Zoning ordinance, shall be submitted for approval by the Department of Planning prior to issuance of a building

permit. Manufacturer's cut sheets of all exterior lighting on the building and in the landscaping shall be included. If lights are proposed to be mounted on buildings, down-lights shall be utilized. No lighting shall be installed that causes glare, impaired visibility or light spillage onto adjacent properties in such a way as to cause a nuisance.

- PLN 2. Sign Applications Required (former CUP COA 2). No signs of any kind including menu boards, portable open signs and/or temporary or special event 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 (former CUP COA #6). All awnings, canopies and projections shall be kept in a clean and well-maintained condition.
- PLN 4. Screen Roof-mounted Equipment (new COA). 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 (former CUP COA #4). No sirens, outside paging or any type of signalization will be permitted, except alarm systems approved by the City.
- PLN 6. Outside Storage Prohibited (former CUP COA #5). No outside storage of any kind shall be permitted except as approved as a part of the proposed plan associated with this use permit.
- PLN 7. Emergency Exits (Former CUP COA #10). The applicant shall provide an emergency exit gate with panic hardware for the outdoor patio area as specified by the Fire Department.
- PLN 8. Pedestrian Access to Street (former LUP COA). A six (6) foot wide pedestrian path of travel shall be maintained from the entrance to the street, free of all obstructions, at all times.
- PLN 9. Outdoor seating. (Former CUP COA# 12). The layout, color and type of furniture shall be submitted to the Director of Planning Services for review and approval prior to installation. The furniture selection shall be submitted to the Department of Planning Services by December 20, 2017.
- PLN 10. Awning Replacement. (New COA). The existing awning shall be replaced by December 20, 2017. The awning colors and materials shall be submitted to the Director of Planning Services for review and approval.

- PLN 11. No paper or plastic table service.(new COA). To prevent litter, no paper or plastic table service is permitted.
- PLN 12. Encroachment Agreement (Former CUP COA #11). The applicant shall secure and maintain an encroachment agreement from the City prior to any placement of tables and/or chairs within the City's right-of-way.
- PLN 13. Change in ownership (Former CUP COA #13). The applicant / business owner shall notify the Director of Planning Services in writing 30 days in advance of any changes in ownership.
- PLN 14. Live Entertainment (new COA). Live entertainment and Karaoke, including musicians, is permitted at the subject tenant space. Doors and windows between the tenant space and outdoor seating areas may be open such that patrons at the outdoor seating may enjoy the entertainment. All equipment related to amplified sound shall be operated entirely within the tenant space and at no time shall the live entertainment be amplified or transmitted by electronic signal or speakers placed in the outdoor dining area or conversely, transmitted electronically from the outdoor dining area into any other part of the tenant space.
- PLN 15. Comply with County Health Department (former LUP COA). The food and beverage service shall conform to all County of Riverside Department of Health requirements.
- PLN 16. Business License Required (former LUP COA). A business license and all other city-required permits are to be obtained and kept current at all times.
- PLN 17. On-site Display of Land Use Permit (former LUP COA). This Land Use Permit shall be displayed on site at all times and made available to City officials upon request.
- PLN 18. La Plaza Center a Class 1 Historic Site (new COA). The building in which this tenant is located is a Class 1 historic site subject to the provisions of Municipal Code 8.05. No outdoor heaters, misters, lights or similar devices are permitted in any of the outdoor dining areas or attached to any part of the building without prior approval by the Director of Planning.

POLICE DEPARTMENT CONDITIONS

- POL 1. (Former CUP COA #14). Applicant shall comply with Section II of Chapter 8.04 "Building Security Codes" of the Palm Springs Municipal Code. ("Building Security Regulations").

BUILDING DEPARTMENT CONDITIONS

BLD 1. Building Permits. (Former CUP COA # 16). Prior to any construction on-site, all appropriate permits must be secured.

ENGINEERING DEPARTMENT CONDITIONS

Encroachment Agreement / License (new COA). The applicant shall execute an encroachment agreement with the City for placement of four (4) 36-inch tables with four (4) table umbrellas not to exceed six (6) feet in diameter, and eight (8) chairs.

FIRE DEPARTMENT CONDITIONS

Conform to all applicable Codes (new COA). Conform to all applicable codes, regulations and directives of the Palm Springs Fire Department.

FID 1 **Floor Plan Required (new):** The floor plan shall address the following and include room and patio dimensions:

- Seating/table diagram with compliant aisle widths
- Door and openings locations
- Locations of fire extinguisher (minimum rating 2A-10BC).

Note: Floor plan to be approved by the fire department as a condition of approval

END OF CONDITIONS