



CITY COUNCIL STAFF REPORT

DATE: JUNE 21, 2017 UNFINISHED BUSINESS

SUBJECT: EXTENSION OF THE HOTEL INCENTIVE PROGRAM TIMELINE FOR COMMENCEMENT OF CONSTRUCTION OF THE "750 LOFTS" PROJECT LOCATED AT 750 N. PALM CANYON DRIVE, TO RUN CONCURRENT WITH AN APPROVED ENTITLEMENT

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The City Council created the Hotel Operations Incentive Program in January 2008 to support and encourage the construction of new hotels and the renovation and upgrading of existing hotels. The program provided operating assistance in the form of a transient occupancy tax rebate at a level, and for a duration that varied depending upon the nature and size of any new hotel, and at a fixed level for existing hotels that met program criteria. The City has always viewed the program as finite. The Council has the authority to extend the timeline for commencement of construction pursuant to the City Charter.

Developer 750 Lofts, LLC applied for entitlements for and pursued its 750 Lofts project during 2014. Just before the end of that same year, the City Council exercised its discretion pursuant to the City Charter, and approved an extension of the timeline for full entitlement of a hotel project in Chapter 5.26 of the Palm Springs Municipal Code, the City's Hotel Operations Incentive Program, giving the developer until the end of 2015 to achieve full entitlement of the project, but insisting that the project be under construction by December 31, 2017. After achieving full entitlement in the autumn of 2015, the project suffered a lawsuit that has nearly reached its conclusion in the Superior Court of California. The unfinished business before the Council at this time is an extension of the Program timeline for commencement of the construction of the 750 Lofts project. The impact of the Council's last decision with respect to this hotel's participation in the Program is now in jeopardy. The Council is deciding whether the filing and pursuit of a lawsuit against the project should have the impact of preventing the operator of the hotel to be developed from benefitting from the tax rebate provided in the program consistent with the Council's last consideration of this matter. Staff recommends approving an extension.

ITEM NO. 4.A.

The Council agenda June 21, 2017 includes consideration of "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTION 5.26.080 OF THE PALM SPRINGS MUNICIPAL CODE, REGARDING EXTENSION OF A DEVELOPMENT OR CONSTRUCTION TIMELINE FOR QUALIFICATION AND ELIGIBILITY FOR HOTEL OPERATIONS INCENTIVE PROGRAM." If the Council approves this proposed ordinance, it would be appropriate for the Council to make a factual finding pursuant to that new legislation.

RECOMMENDATION:

Make a specific finding that the City's extension of the timeline for the commencement of construction for the 750 Lofts project is mandated by equity with respect to an established program participant's interest, and determine that pursuant to newly introduced Section 5.26.080 of the Palm Springs Municipal Code and Sections 200 and 300 of the City Charter, the City's Hotel Operations Incentive Program deadline for commencement of construction for the 750 Lofts project, located at 750 N. Palm Canyon Drive by 750 Lofts, LLC, shall extend concurrent with the two (2) year validity of the approved Planned Development District ("PDD").

STAFF ANALYSIS:

In January 2008, the City Council adopted the Hotel Operations Incentive Program, codified in Chapter 5.26 of the Palm Springs Municipal Code. The program has worked, stimulating extensive investment in new and improved hotels. The Council has extended the program, which was originally set to expire at the end of December 2012, and extended program deadlines for projects on a case-by-case basis

During 2014, 750 Lofts, LLC applied for approval of its entitlements in order to construct a thirty-nine (39) room hotel on 1.13 acres of property located at 750 N. Palm Canyon Drive, Palm Springs (the "Property"). Under the terms of Chapter 5.26, if the 750 Lofts project is to be classified as a "new hotel," a "first class new hotel," or a "comfort new hotel," and thereby attain eligibility for the tax rebate provided by the incentive program, the project would have to be fully entitled as a hotel before December 31, 2014, and under construction prior to December 31, 2017.

On December 17, 2014, the Council took direct action with respect to this development application, extending the program deadline for entitlement of the 750 Lofts project until December 31, 2015, but maintaining the December 31, 2017 deadline, by which the hotel developer had to commence the project's construction. The staff report and minutes regarding that action are attached to this staff report as ATTACHMENT A. On September 16, 2015, the City Council approved all entitlements for this hotel project, including PD-374. The project was in compliance with the Council's extended deadline to that point. Then, on October 23, 2015, a community group sued the project.

The Superior Court denied all claims in the lawsuit except one - that the City failed to adequately analyze parking for the project in relation to an "event space." The Council is in receipt of more detail regarding the origin, nature, and outcome of the lawsuit against the 750 Lofts project in the staff report pertaining to the public hearing agenda item to take place on June 21, 2017 at the same meeting when this item will be considered. In that other agenda item, staff recommends complying with the direction of the Superior Court, and adequately addressing all parking issues, including event space parking, as required by the City's Municipal Code. If the Council takes the recommended action in that matter, the lawsuit in Superior Court will end unless the Court does not opine that the City of Palm Springs has complied with its ruling in the lawsuit. The community group that filed the lawsuit has the right to appeal as to this outcome, but whether it will do so or not cannot be predicted. Once the lawsuit is over, the Project's PDD, approved September 16, 2015, will have a life span of two (2) years, less the short time between the PDD's approval and the filing of the lawsuit. If the Council accepts staff's recommendation in this matter, the developer will have time to commence construction of its hotel commensurate with the life of the PDD. Without the 2014 extension as to full entitlement, this Project would not have been eligible for the program. Without the extension now recommended, the Project will lose its eligibility for the Program because it was subject to a lawsuit that to a significant degree, failed.

ALTERNATIVES:

Grant an extension of the City's Hotel Operations Incentive Program deadline for commencement of construction for the 750 Lofts project, but decline to make the factual finding proposed by staff. NOTE – if the Council adopts the ordinance to be considered June 21, 2017 codifying criteria upon which an extension may be based, this alternative no longer exists unless the Council wants to take action that is legal, but inconsistent with an introduced ordinance.

Grant an extension of the City's Hotel Operations Incentive Program deadline for commencement of construction for the 750 Lofts project, but limit the duration of the extension to a time shorter than the life of the approved PDD for the project.

Reject this extension of the City's Hotel Operations Incentive Program deadline for commencement of construction for the 750 Lofts project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION:

The environmental assessment prepared and approved in conjunction with the 750 Lofts Project is the foundational environmental assessment for purposes of this agenda item. The only defect in this assessment, per judicial rulings in the litigation related to the project, was analysis of parking related to the event area. Although the Court set aside the City's prior approval of that assessment, the analysis of the Project contained therein,

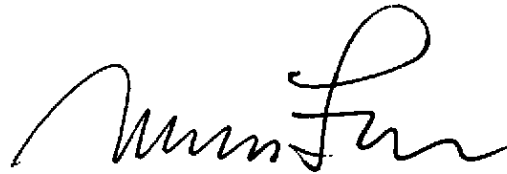
clarified by the staff report prepared in relation to the public hearing on the 750 Lofts project scheduled for June 21, 2017, *i.e.*, the Project does not include the event area, supports the recommended action in this matter. Since the Project's impacts are adequately addressed, the extension of the City's Hotel Incentive Program considered at this time is not a new or separate "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378. This action is organizational or administrative activity by the City of Palm Springs in furtherance of its police power, and will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

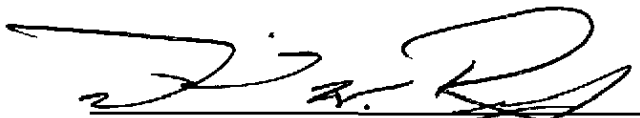
Given the number of hotel rooms in this project, application of the incentive program to this project will affirm the developer's entitlement to *(i)* a rebate of fifty percent (50%) of the hotel's "adjusted tax rate" (10.9% of rent charged for transient occupancies) for ten (10) years, or until the developer has received fifteen million dollars (\$15,000,000.00) in rebated tax, whichever comes first, *or, if the 750 Lofts hotel is determined to be a "First Class New Hotel" under the Program, (ii)* a rebate of seventy-five percent (75%) of the hotel's "adjusted tax rate" (10.9% of rent charged for transient occupancies) for thirty (30) years, or until the developer has received fifty million dollars (\$50,000,000.00) in rebated tax, whichever comes first.



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

Attachments:

- A. Staff Report and Minutes for December 17, 2014

ATTACHMENT A

Authorize the City Manager to execute all necessary documents. A6648.
Motion Councilmember Mills, seconded by Councilmember Hutcheson and unanimously carried on a roll call vote.

Councilmember Foat stated she has a property-ownership-related conflict of interest with respect to Item 5.B, would not participate in the discussion or the vote, and left Council Chamber.

5.B. EXTENSION OF HOTEL INCENTIVE PROGRAM PARTICIPATION FOR NEW CHURCH II, LLC AND 750 LOFTS, LLC FOR THE ORCHID TREE HOTEL, 261 SOUTH BELARDO ROAD, AND THE 750 LOFTS PROJECT, 750 NORTH PALM CANYON DRIVE FOR A PERIOD OF ONE (1) YEAR FOR PROJECT ENTITLEMENT, WITH CONSTRUCTION COMMENCING NO LATER THAN DECEMBER 31, 2017:

John Raymond, Director of Community and Economic Development, provided background information as outlined in the Staff Report dated December 17, 2014.

Mayor Pro Tem Lewin commented on the success of the Hotel Incentive Program, and questioned how many opportunities would have been missed if this program did not exist.

Councilmember Hutcheson commented on the elements of the Hotel Incentive Program, and the success of the program.

Councilmember Mills commented on the development of the program.

Mayor Pougnet thanked Staff for the Valley Voice explaining the program.

ACTION: 1) Approve eligibility for participation in the Hotel Incentive Program by New Church II, LLC for the Orchid Tree Inn & Spa, located at 261 South Belardo Road for a period of one year, extending the deadline for project entitlement until December 31, 2015; the deadline for commencing construction remains on December 31, 2017; and 2) Approve eligibility for participation in the Hotel Incentive Program by 750 Lofts, LLC for the 750 Lofts hotel project, located at 750 North Palm Canyon Drive for a period of one year, extending the deadline for project entitlement until December 31, 2015; the deadline for commencing construction remains on December 31, 2017. **Motion Mayor Pougnet, seconded by Mayor Pro Tem Lewin and unanimously carried 4-0 on a roll call vote.**

AYES: Councilmember Hutcheson, Councilmember Mills, Mayor Pro Tem Lewin, and Mayor Pougnet.

NOES: None.

ABSENT: Councilmember Foat.